Litigation Update

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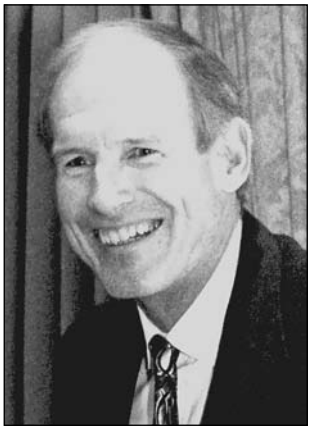

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Character and Fitness

Criminal charges (DUI); substance abuse; financial irresponsibility

In re Application of Phelps, 878 N.E.2d 1037, 2007 Ohio 6459

Rachel Phelps graduated from law school in May 2005 and filed an application to take the February 2007 Ohio Bar Examination. The Admissions Committee of the Akron Bar Association conducted an interview and expressed concern over her two DUI arrests, her lack of candor about and failure to take responsibility for that conduct, and the possibility that she may have had a substance abuse problem. The committee gave her a negative recommendation.

Phelps then appealed to the Ohio Board of Commissioners on Character and Fitness, which set a panel to hear the matter. She failed to appear at the hearing. The panel recommended that she not be approved to take the July 2007 bar examination but

that she be allowed to apply to take the July 2008 bar examination and undergo a full character and fitness hearing at that time. The panel further recommended that she be required to demonstrate that she had satisfied her financial obligations, had been assessed for substance abuse, and had obtained treatment for any substance abuse problem identified in her assessment.

The Board, in adopting the panel's report and recommendations, found that Phelps had been charged with speeding and DUI in December 2001 and had blown .085 on the breathalyzer. Phelps contended that the reading was legal at the time and reported that the DUI charge had been dismissed. In March 2005, she was stopped by a police officer for failing to use a turn signal and the officer smelled alcohol. Phelps denied drinking alcohol and refused the breathalyzer test. In her vehicle, the officer also found a marijuana pipe and a bag of marijuana, which Phelps claimed belonged to a friend. She was charged with and pled no contest to DUI, and the possession charges were dropped. Phelps also had two civil judgments entered against her which she had failed to pay, and she owed fines on several unpaid parking tickets.

The Ohio Supreme Court, in reviewing the Board's decision, noted that Phelps had not challenged the Board's findings and recommendations. The court stated that her two DUI arrests and her failure to pay the judgments against her along with the parking fines showed a pattern of disregarding the law and of not taking responsibility for her actions. The court denied Phelps's application but stated that she could apply to take the July 2008 bar examination; at that time, said the court, Phelps would have to undergo a full hearing into her character and fitness and would be required to demonstrate that she had satisfied her financial obligations, had been assessed for substance abuse, and had obtained treatment for any substance abuse problems.

Financial irresponsibility

In re Application of Kline, 116 Ohio St. 3d 185, 877 N.E.2d 654, 2007 Ohio 6037

Robert Kline graduated from law school in May 2004. He took and failed the July 2006 Ohio Bar Examination after having delayed taking the exam for two years. He reapplied to take the February 2007 bar examination; the Akron Bar Association Admissions Committee conducted an interview and recommended that he be approved for admission with qualifications. The committee was concerned about Kline's unpaid debts and his sporadic employment history.

Kline appealed the recommendation to the Ohio Board of Commissioners on Character and Fitness, which appointed a panel to hear the matter. Following the hearing, the panel recommended that Kline not be approved at this time but that he be allowed to reapply to take the February 2008 examination, which would give him additional time to resolve his standing debts and improve his employment record. The Board adopted the panel's report.

In reviewing the Board's recommendation, the Ohio Supreme Court noted that, while the Board found that Kline's total debts were not particularly alarming (the total amount without student loans was only $3,500), the Board members were concerned with the age of his debts and his delay in paying them. The Board was also concerned about Kline's sporadic work history since graduating from law school and pointed out that he had a pattern of leaving jobs without any meaningful job prospects. For example, Kline had left a temporary employment

assignment after four days, a pizzeria job after five days, and another position after four months, with periods of unemployment in between. At the time of the hearing, Kline had been employed at a plant nursery for three months; he submitted a budget detailing his financial plans through October 2007 which would reduce his debt but still leave an outstanding balance of approximately $1,600. The Board concluded that Kline had offered no evidence demonstrating a legitimate justification for not resolving his debts. Since May 2004, he had failed to maintain steady employment and showed a lack of direction. Kline's budget was not realistic because it allocated nearly all of his wages for paying off debts and left very little for living expenses. The court stated that "[a] bar applicant's tendency toward financial irresponsibility makes him a risk for entrustment with the duties owed clients, the courts, adversaries, and others in the practice of law." The court disapproved Kline's bar application but stated that he could reapply for the February 2008 bar examination.

In re Application of Holbrook, 116 Ohio St. 3d 248, 877 N.E.2d 984, 2007 Ohio 6095

Melinda Holbrook graduated from law school in May 2006. She registered as a candidate for admission to take the July 2006 Ohio Bar Examination. At her interview in July 2006, the Delaware County Bar Association Admissions Committee was concerned about her pending bankruptcy and allegations that she had failed to pay rent for almost a year. After investigation of the underlying facts, the committee approved Holbrook as to character and fitness and noted that her husband's severe alcohol and gambling addictions may have been the root of her family's financial problems.

The Ohio Board of Commissioners on Character and Fitness, however, appointed a panel to review Holbrook's qualifications and, following a hearing in January 2007, recommended that she not be approved to take the February 2007 bar examination but that she be allowed to take the February 2008 bar examination if she could demonstrate her financial and moral responsibility at that time. The Board adopted the panel's report, but recommended that she not be allowed to reapply until the July 2008 examination.

The Board found that Holbrook's husband had operated an electrical contracting business and that she had been the office administrator for the business and responsible for keeping the company checkbook, doing payroll, and paying local and payroll taxes. Holbrook claimed that during this time, she simply followed the instructions of her husband.

In 2001, Holbrook Electric began to have financial difficulties which affected the Holbrooks' personal finances. In 2003, the couple stopped making payments on a house in Kentucky that they owned as an investment, and the property went into foreclosure. Despite these financial difficulties, in August 2003 Holbrook enrolled at Capital University Law School in Ohio. When they moved to Ohio, Holbrook and her husband signed a contract to purchase a $587,000 house in New Albany, but when they were unable to obtain financing, they entered into a short-term lease with an option to buy instead. The payments on the house were $4,500 per month. After the initial down payment of $9,500 and a second payment of $8,000, no other payments were made on the New Albany residence, and the couple eventually moved to a motel.

In November 2003, RLI Insurance Company sued Holbrook Electric and the Holbrooks in federal district court. Both were served, but Holbrook along with her husband ignored the service and allowed RLI to obtain a default judgment in excess of $170,000. In 2004, the Holbrooks defaulted on a surety

bond of over $1,000,000. In 2005, the Holbrooks filed for bankruptcy protection. The bankruptcy petition reflected a variety of unpaid bills for cell phones, credit cards, utilities, and women's clothing. While in law school, Holbrook accumulated additional personal debt, including law school tuition, but continued to drive a Mercedes-Benz and did not seek employment.

The Board concluded that the evidence showed that Holbrook had not been totally candid and had not been responsible in the management of her financial affairs. The Board felt that she had taken a cavalier attitude about her spending in light of her mounting financial problems. "Despite all of this, Ms. Holbrook continued to conduct herself as if there were no financial issues whatsoever.… [S]he came to Ohio, enrolled in law school, signed a contract for an expensive home, drove an expensive car, and continued to otherwise spend money as if there were no problems. When questioned about this, she attributed all responsibility to her husband. She denied knowing about the problems and blamed everything on her husband's drinking and gambling."

THE BOARD CONCLUDED . . . THAT HOLBROOK HAD NOT BEEN TOTALLY CANDID AND HAD NOT BEEN RESPONSIBLE IN THE MANAGEMENT OF HER FINANCIAL AFFAIRS. THE BOARD FELT THAT SHE HAD TAKEN A CAVALIER ATTITUDE ABOUT HER SPENDING IN LIGHT OF HER MOUNTING FINANCIAL PROBLEMS. "DESPITE ALL OF THIS, MS. HOLBROOK CONTINUED TO CONDUCT HERSELF AS IF THERE WERE NO FINANCIAL ISSUES WHATSOEVER . . . . [S]HE CAME TO OHIO, ENROLLED IN LAW SCHOOL, SIGNED A CONTRACT FOR AN EXPENSIVE HOME, DROVE AN EXPENSIVE CAR, AND CONTINUED TO OTHERWISE SPEND MONEY AS IF THERE WERE NO PROBLEMS."

On review, the Ohio Supreme Court disagreed with the Board's finding that Holbrook's husband's compulsive gambling played no part in her financial problems and found that his gambling losses significantly contributed to the family's financial downfall. The husband had been concealing the extent of his gambling losses, which amounted to hundreds of thousands of dollars, and Holbrook was not aware of how large the losses were until after the panel hearing. The court noted that while in Ohio "financial irresponsibility alone is grounds to disapprove a candidacy for the bar or an application to take the bar exam," the Board's concerns were tempered by the fact that Holbrook was unaware of her husband's staggering gambling losses that had caused major problems for the financial health of his company and the family's personal finances. The court modified the Board's recommendation by allowing Holbrook to reapply and sit for the February 2008 bar examination provided that she was approved to do so by the character and fitness board.

Criminal conviction (child pornography); discipline by a professional board; lack of candor; misleading testimony

Nicholson v. Board of Bar Examiners, Docket No. Bar-07-01 (Maine)

Andrew Nicholson was a licensed physician engaged in a family practice. In 2002, he mailed an order along with $80 cash to purchase two videotapes portraying 10- and 11-year-old children engaged in explicit sexual acts. Nicholson was not aware that the person from whom he sought to make the purchase was part of an undercover Postal Inspections Service

sting operation. He was stopped by the U.S. Postal Inspector after he picked up what he believed was the package containing the videos. He waived his Miranda rights and in a written confession claimed that this was the first time he had received illegal pornography. He also provided a consent to search his home computer. He did not expect the authorities to find child pornography stored in the computer because he had used a software program to erase the adult and child pornography he had downloaded; however, the software apparently failed to erase all of his files because the authorities found evidence that he had been acquiring illegal child pornography over the Internet since 2001. Nicholson had also made at least one other attempt, in February or March 2002, to purchase videos depicting children engaged in sexually explicit conduct.

The federal authorities deferred prosecution to the state authorities and, following a polygraph test, the prosecuting attorney and Nicholson arrived at a plea agreement. In January 2003 Nicholson pled guilty to a single misdemeanor count of possession of sexually explicit material for which he was sentenced to 364 days in prison with all but 72 hours suspended. He was placed on probation and was required to submit to random searches for pornography, to undergo psychological treatment, and to restrict his medical practice to patients who were at least 18 years old.

Before pleading guilty to possession of sexually explicit material, Nicholson entered into a consent agreement with the Maine Board of Licensure in Medicine and agreed to restrict his practice of medicine to adults over the age of 18, to participate in ongoing treatment with a Board-approved therapist experienced in the treatment of sexual offenses, and to be placed on probation indefinitely, subject to licensure evaluation one year later. The Board referred Nicholson to a clinical psychologist for a psychological evaluation. The psychologist concluded that Nicholson qualified as a "pedophile" who posed a "meaningful level of risk." A later evaluation was conducted and the assessment was revised from a "meaningful level of risk" down to "minimal level" overall risk. This conclusion was also reached in a third evaluation even though the psychologist knew that Nicholson had had two relapses involving purchasing and downloading adult pornography.

Nicholson also participated in ongoing therapeutic counseling with a licensed clinical social worker. The social worker testified at Nicholson's hearing that Nicholson had made real changes and that in his opinion Nicholson did not meet "the definition of a pedophile." After the Board of Licensure's 2006 review, it continued the limitation of Nicholson's medical practice to patients 18 and older. After Nicholson's petition to the superior court to lift the restriction, the restriction was affirmed.

In January 2003, prior to his guilty plea in the criminal matter, Nicholson applied to the University of Maine School of Law; he did not disclose in his application that he was under investigation by the U.S. Attorney's office and the Knox County District Attorney's office. Nicholson claimed that the application did not require him to reveal this fact. Eight months later, after he had begun law school, he did inform the law school officials of his conviction and consent agreement.

In December 2005, Nicholson filed an application for admission to the Maine bar and disclosed the conviction and the consent agreement. He took the February 2006 bar examination and received notice that he had passed the examination, but the Maine Board of Bar Examiners told Nicholson that it would

not issue him a certificate recommending his admission until after he had completed his moral character investigation. Following a hearing in January 2007, the Board issued its decision denying Nicholson's application. Nicholson appealed.

The matter then went before a single justice of the Maine Supreme Court for a de novo hearing. The justice found that Nicholson was a 36-year-old licensed family physician authorized by law to provide medical care for children and that "his interest in and involvement with child pornography was grossly immoral. Nicholson knowingly sought through interstate commerce videos that he believed would depict young children engaged in sexually explicit conduct. He also employed the Internet to gain access to photographs depicting both nude children and children engaged in sexual acts with other children and with adults." The justice noted that (1) the agreement to plead guilty to a single count did not lessen the "serious immorality associated with his actions," and (2) Nicholson could not have established the good moral character required for admission to the bar when he applied to law school.

> THE JUSTICE NOTED THAT MORE THAN FOUR YEARS HAD PASSED SINCE NICHOLSON'S CONVICTION AND THAT HE HAD SPENT TIME AND RESOURCES ATTEMPTING TO REHABILITATE HIMSELF AND START A NEW CAREER. THE JUSTICE FURTHER NOTED THAT THE ISSUE WAS NOT "WHETHER NICHOLSON HA[D] BEEN SUFFICIENTLY PUNISHED FOR HIS WRONGDOING, BUT WHETHER HE HA[D] DEMONSTRATED A LEVEL OF HONESTY, INTEGRITY, RESPECT FOR THE LAW AND RESPECT FOR THE RIGHTS OF OTHERS REQUIRED FOR AN INDIVIDUAL TO ASSUME THE TRUST THAT THE PUBLIC PLACES IN THOSE LICENSED TO PRACTICE LAW."

In terms of his rehabilitation since 2002 the justice found that Nicholson had not engaged in any criminal conduct, had completed his probation without incident, and had attended and graduated from law school. He had worked as a volunteer with Maine's Volunteer Lawyers Project (VLP). He had also engaged in long-term counseling.

In opposition to a finding of rehabilitation were his written statement to the Postal Inspector in 2002 in which he falsely claimed that incident was the first time he had received illegal pornography, and his failure to reveal on his law school application that he was under investigation by federal and state authorities for the commission of a crime, which he reported only after he had started attending classes. This failure to disclose reflected a lack of candor in his dealings with the school. Nicholson had begun volunteer work with the Volunteer Lawyers Project in 2004, but he did not inform the administration of his child pornography conviction until December 2006, after he had stopped working and shortly before his January 2007 hearing. His work as a volunteer placed him in contact with individuals facing law disputes that involved child custody issues. The report of the psychologist's 2005 reevaluation noted that Nicholson had stated that the child pornography he had viewed involved only children with peers, not children with adults; however, Nicholson's computer included pictures of children or adolescents engaged in sexual acts with male adults. When asked about this inconsistency at the hearing, he testified that his statement to the psychologist referred to the videos he had ordered and not to the photographs on his home computer. The Board found this state-

ment misleading. Nicholson's references were a law school professor, a supervisor at the VLP, and a roommate, all of whom indicated on their reference questionnaires that to their knowledge Nicholson had not been convicted of a crime or subjected to professional discipline. The fact that he did not tell his references of his conviction and prior professional discipline also demonstrated a lack of candor. There was also evidence that Nicholson had declined to continue taking certain medication recommended to treat his condition, and although Nicholson's explanation was that the side effects outweighed the usefulness of the medication, the psychologist was unable to rule out a resistance to treatment.

The justice noted that more than four years had passed since Nicholson's conviction and that he had spent time and resources attempting to rehabilitate himself and start a new career. The justice further noted that the issue was not "whether Nicholson ha[d] been sufficiently punished for his wrongdoing, but whether he ha[d] demonstrated a level of honesty, integrity, respect for the law and respect for the rights of others required for an individual to assume the trust that the public places in those licensed to practice law." The justice gave substantial weight to the pattern suggested by Nicholson's lack of candor and his resistance to treatment, and concluded that he had failed to prove that he possessed the good moral character necessary to practice law in Maine. Nicholson's application was denied.

Substance abuse

In re Application of Alban, 116 Ohio St. 3d 190, 877 N.E.2d 658, 2007 Ohio 6043

John Alban graduated from law school in May 2006 and filed an application to take the February 2007 Ohio Bar Examination. The Joint Admissions Committee of the Cuyahoga County and Cleveland Bar Associations conducted an interview and recommended that he be approved for admission with the qualification that he enter into a contract with the Ohio Lawyers Assistance Program (OLAP) and provide evidence of ongoing compliance. Alban appealed this recommendation to the Ohio Board of Commissioners on Character and Fitness. A June 2007 panel recommended that Alban not be approved to take the July 2007 examination but that he be allowed to reapply to take the February 2008 examination, which would give him more time to demonstrate continuing compliance with his OLAP contract.

The Board adopted the panel's report and made the following findings. In 1986, Alban had been stopped in Florida for minor traffic violations and the police discovered that he had a small amount of marijuana. He was charged with possession of marijuana and sentenced to probation. In June 2003, the Cleveland police charged Alban with possession of crack cocaine. He pled to a lesser charge, and after he completed a 20-week intensive outpatient program, his misdemeanor plea was set aside and the charge was dismissed. In June 2005, Alban was stopped in Middlefield, Ohio, and charged with DUI. He pled guilty to a reduced charge. Both the 2003 and 2005 charges occurred while he was in law school.

When he was advised that he could not take the February 2007 Ohio Bar Examination, Alban contacted OLAP and entered into a contract with them in January 2007. Nonetheless, his history of alcohol and drug abuse and the related criminal offenses raised significant concerns, as did a relapse after completing Cleveland's Drug Court Program.

The Ohio Supreme Court shared the Board's belief that Alban's relapse following treatment, his drug- and alcohol-related offenses, and the relative

recentness of his abstinence raised concerns about his fitness to practice law. Alban's application for admission was not approved, but he was allowed to reapply for the February 2008 examination.

IMMUNITY

Judicial immunity; *Rooker-Feldman* doctrine

Raymond v. Moyer, 2007 FED App. 0332P (6th Cir.)

In October 2004, Douglas Raymond, an attorney admitted to practice law in Colorado, Michigan, and Missouri, applied for admission to practice in Ohio without examination. The Ohio Supreme Court denied his application without offering an explanation for the denial. Raymond filed a motion asking the court for clarification and reconsideration. For the second time, the court denied his request without an explanation for its decision.

In December 2005, Raymond filed a complaint in federal district court against the justices of the Ohio Supreme Court pursuant to 42 U.S.C. § 1983, alleging that the denial of his application for admission violated the Privileges and Immunities Clause, the First Amendment, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution. Raymond asked for a declaration that the denial of his application was unconstitutional and an injunction requiring the defendants to grant his application.

THE COMPLAINT DID NOT, DESPITE HIS ARGUMENT TO THE CONTRARY, CHALLENGE THE RULES AND PRACTICES OF THE OHIO SUPREME COURT CONCERNING ADMISSION TO THE BAR WITHOUT EXAMINATION. "RAYMOND'S COMPLAINT DOES NOT EVEN ALLEGE THE EXISTENCE OF RULES PROHIBITING THE ADMISSION OF NON-RESIDENTS AND PERSONS WHO EXERCISE FIRST AMENDMENT RIGHTS, MUCH LESS EXPRESS GENERAL CHALLENGES TO SUCH RULES." THE COURT EMPHASIZED THAT IN THE FUTURE, RAYMOND, AS WELL AS ANY OTHER PROPER PLAINTIFF, COULD CERTAINLY BRING A GENERAL CHALLENGE TO THE RULES AND PRACTICES OF THE OHIO SUPREME COURT.

The defendants filed a motion to dismiss and the district court granted the motion, finding that the defendants were entitled to judicial immunity. Raymond appealed the decision of the district court to the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit dismissed the case for lack of jurisdiction.

The Sixth Circuit raised the issue of jurisdiction sua sponte, noting that it was "under an independent obligation to police [its] own jurisdiction." The court first discussed the narrow scope of the *Rooker-Feldman* doctrine, stating that "[t]he doctrine applies only when a plaintiff complains of injury from the state court judgment itself." The court said that under the *Rooker-Feldman* doctrine, lower federal courts did not have jurisdiction over cases brought by "state-court losers" challenging state-court judgments rendered prior to commencement of the federal lawsuits.

The question the court posed to itself was whether the decision denying Raymond admission to practice law in Ohio was a state-court judgment for purposes of applying the *Rooker-Feldman* doctrine. The court found that the decision denying Raymond's admission to practice law was judicial in nature. The decision was not legislative, administrative, or ministerial. Rather, the court concluded, the decision "involved a 'judicial inquiry' in which the court was called upon to investigate, declare, and enforce

'liabilities as they [stood] on present or past facts and under laws supposed already to exist' by measuring Raymond's application against the standards set forth" in the Ohio rules governing bar admissions.

Raymond argued that the *Rooker-Feldman* doctrine should not apply in his case because he was not provided with a hearing, an opportunity to respond to any deficiencies in his application, or even a reason for denying his application. The court was sympathetic to Raymond's position, noting that it seemed "fundamentally unfair that he could be denied admission to practice law by the Ohio Supreme Court and have as his only recourse the opportunity to file a petition for a writ of certiorari from the U.S. Supreme Court, without a reasoned decision or any apparent state-court record on which to base his petition." The court added,

> The possibility for abuse is high when a court can hide its reasoning and knows that its decision is virtually unreviewable, and this possibility raises particular concerns when, as in this case, the decision at issue can carry with it severe collateral consequences. Nevertheless, the Supreme Court has made clear that the *Rooker-Feldman* doctrine applies even when the state court provides as little process as it did here.

The court noted that Raymond's complaint focused on the particular decision denying his admission to the Ohio bar. The complaint did not, despite his argument to the contrary, challenge the rules and practices of the Ohio Supreme Court concerning admission to the bar without examination. "Raymond's complaint does not even allege the existence of rules prohibiting the admission of non-residents and persons who exercise First Amendment rights, much less express general challenges to such rules." The court emphasized that in the future, Raymond, as well as any other proper plaintiff, could certainly bring a general challenge to the rules and practices of the Ohio Supreme Court.

MISCELLANEOUS

Diploma privilege; effect of admission rule on interstate commerce

Weismueller v. Kosobucki, 492 F. Supp. 2d 1036 (W.D. Wis. 2007), 2008 WL 220709 (7th Cir.)

Christopher Weismueller, a student at Oklahoma City University School of Law, sued the director and members of the Wisconsin Board of Bar Examiners and the members of the Wisconsin Supreme Court. His complaint, filed in federal district court under 42 U.S.C. § 1983, alleged that the supreme court's rule exempting students who graduated from the University of Wisconsin and Marquette University law schools from taking and passing the bar exam to obtain admission to the Wisconsin bar violated the Commerce Clause. Wisconsin is the only remaining U.S. jurisdiction that allows admission via diploma privilege.

Weismueller moved for summary judgment, asserting that Wisconsin Supreme Court Rule 40.03 discriminated against interstate commerce in violation of rights secured under the Commerce Clause.

The district court first discussed Wisconsin Supreme Court Rule 40.03, the diploma privilege rule, which permits graduates of the University of Wisconsin and Marquette University law schools (the only two ABA-accredited law schools in Wisconsin) to be admitted to practice law without sitting and passing the Wisconsin bar exam. The court noted that the admission fees for taking the bar exam are $450–$650, while the diploma privilege admission fees are $210–$310. The court said that although all bar

applicants undergo the same background check and complete the same application form, Weismueller, a graduate of a law school outside Wisconsin, also had to take the bar exam in order to practice law in the state, a situation which he asserted violated the Commerce Clause.

In reaching its decision, the district court reviewed the Commerce Clause, Article 1, Section 8, clause 3 of the U.S. Constitution, which provides Congress with the power to regulate commerce among the several states by prohibiting states from discriminating unjustifiably against or burdening the interstate flow of articles of commerce.

The court analyzed whether Rule 40.03 violated the Commerce Clause by determining whether the rule discriminated against interstate commerce or whether it regulated evenhandedly with only incidental effects on interstate commerce. Discrimination in this context is defined as differential treatment of in-state and out-of-state economic interests that benefits in-state interests and burdens those from outside the state.

The court held that Rule 40.03 had only incidental effects on interstate commerce because the rule did not discriminate against nonresidents. There was no discrimination since all graduates (residents and nonresidents) of all law schools outside Wisconsin were required to sit for the bar exam to gain admittance to the Wisconsin bar.

After determining that Rule 40.03 had only incidental effects on interstate commerce, the court applied the *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), balancing test. The test is whether the burden imposed is "clearly excessive in relation to the putative local benefits." The district court held that "[r]equiring graduates of law schools not in Wisconsin to show their familiarity with Wisconsin law is reasonable based on the state's interest in regulating the profession." The district court ruled that the diploma privilege rule did not violate the Commerce Clause and denied the plaintiff's motion for summary judgment.

The defendants filed a motion to dismiss and while the motion was pending, Weismueller moved to certify a class consisting of other graduates of out-of-state law schools who wished to practice law in Wisconsin. The district court granted the motion to dismiss Weismueller's claim and consequently, ruled moot his motion to certify the class.

Weismueller appealed the district court's decision to the U.S. Court of Appeals for the Seventh Circuit. Shortly after filing his notice of appeal, Weismueller sat for the Wisconsin Bar Examination and passed. The defendants then moved the Seventh Circuit to dismiss Weismueller's claim as moot.

The Seventh Circuit ruled that the case was moot as far as Weismuller's claim for relief on his own behalf because he had attained the object of his lawsuit, which was satisfying a prerequisite to being licensed to practice law in Wisconsin. However, finding that Weismueller and the district judge "put the cart before the horse, by moving for class certification after moving for summary judgment," the Seventh Circuit reversed the district court's denial of the motion for class certification as moot. The Seventh Circuit remanded the case and instructed the district court to rule on the motion for class certification.

FRED P. PARKER III is the Executive Director of the Board of Law Examiners of the State of North Carolina.

JILL J. KAROFSKY is the Director of Human Resources and Counsel at the National Conference of Bar Examiners.