MEMORANDUM IN SUPPORT OF HOUSE BILL 4312

Date: March 14, 2017

To: Michigan House Judiciary Committee

From: Daryl Waters

Based upon the premise that the role of attorney licensing in Michigan has a primary purpose of protection of public, this memo will show how HB 4312 will extend that goal in relation to candidates for the bar, who are licensed in other US jurisdiction, but have not necessarily attended a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association (ABA-Approved).

In Michigan, individuals who wish to become attorneys may, after appropriate general and legal education, be licensed after successfully sitting for the bar exam or upon admission by motion when the candidate is licensed in another jurisdiction. Currently, candidates for the bar are required to graduate from a law school that is "reputable and qualified," MCL 600.940. The Board of Law Examiners states that a law school approved by the ABA is reputable and qualified.

While the role of ABA-approval of a law school and marketability of a degree from such a school may certainly be a factor in a student's decision of which law school to attend, the accrediting standards are significantly focused towards the administration, solvency, quality, facilities, libraries, resources, and organization of the law school, and very few of the standards address specific curricular or educational requirements. It is certainly not the goal of this memo to discuss or discount the role of the ABA approval standards or ABA-approved law schools, but rather, to show that quality candidates can be prepared for legal practice and reasoning by non-ABA approved law schools as well.

The role of law school is to prepare a student through education, clinical training, and other methodologies for the practice of law; this outcome is tested through the administration of a bar exam in US jurisdictions. When a candidate has passed the bar examination, has passed the Multistate Professional Responsibility Exam (MPRE), required in 56 US jurisdictions, has completed a character and fitness evaluation, and has been licensed in an US jurisdiction, certainly the candidate has shown that they possess required learning in law, at least minimally on par with the level of an individual graduating from an ABA-approved law school, who are subject to the same evaluations. Further, candidate's licensure in another jurisdiction maintains, or amplifies their qualifications, as they have past proven knowledge that has been demonstrated objectively on previous exams. Moreover, candidates licensed in other jurisdictions would still be required to pass the Michigan bar showing competence in Michigan law, achieve a score of 85 on the MPRE, and achieve a favorable recommendation from the Michigan Committee on Character and Fitness. This provides for a double screening (or more if candidate is licensed in more than one jurisdiction) for candidates, further ensuring protection of the public.

HB 4312 also allows for the general education requirement through the original licensing jurisdiction of the candidate, but also allows the Board of Law Examiners the ability to rebut a presumption of learning if deemed necessary.

While the ABA Standards for Accreditation focus on the law school's capability, the concerns over capabilities of a candidate who has attended a law school in the US that is not ABA-approved can easily be assuaged by the candidate's completion of the rigors of the licensure and admission process in other jurisdictions, and also by the history of the lack of disciplinary history where these candidates are eligible for licensure, most notably in Wisconsin, which has allows non-ABA law school educated attorneys admission since 1998[1]. Also, none of these candidates have been subject to discipline.

Michigan can certainly benefit from allowing candidates who are licensed from this path as traditionally, non-ABA law school cost and debt is significantly less than ABA schools, allowing attorneys to potentially offer lower billing rates and increase access to justice. Medial debt load after law school is reported at $100,000, and average billing rates are on the rise according to a January 2013 Michigan Bar Journal article by Bruce Courtade.[2] Additionally, this path may allow some candidates to practice in underlawyered areas of the state, such as the Upper Peninsula, where there are not currently any law schools.

When the focus is placed on the candidates' abilities, and not the law school attended, the licensing process in other jurisdictions shows that the candidate has the requisite knowledge and capabilities to be allowed the opportunity to sit for the Michigan bar exam and licensure process. There is no evidence showing a greater threat to public safety or welfare from a graduate of a non-ABA approved school already licensed in another jurisdiction, than that of an individual who graduates from an ABA approved school.

Respectfully Submitted,

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[1] https://docs.legis.wisconsin.gov/misc/sco/37. Accessed March 14, 2017
[2] http://www.michbar.org/file/journal/pdf/pdf4article2138.pdf. Accessed March 14, 2017