

2002

# In the Matter of the Application: Joseph R. Fox v. : Brief of Appellant

Utah Supreme Court

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Billy L. Walker.

Joseph R. Fox; Pro Se .

Billy L. Walker Senior Counsel Office of Professional Conduct Utah State Bar 645 South 200 East Salt Lake City, Utah 84111 Telephone: (801) 531-9110

Joseph R. Fox Pro Se 2185 S. Larsen Pkwy Provo, Utah 84606 Tel. (801)358-0846

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## Recommended Citation

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**IN THE UTAH SUPREME COURT**

**In the Matter of the  
Application**

**Brief of the Appellant**

**Joseph R. Fox,**

**Docket No. 200220559 SC**

**Petitioner/Appellant**

**Appeal from a final judgment of the Fourth Judicial**

**District Court for Utah County, State of Utah, the Honorable**

**Anthony W. Schofield, Judge, presiding, Civil No. 010402140.**

**Oral argument required**

**Billy L. Walker**

**UNITED STATES**

**Office of Professional Conduct**

**Utah State Bar**

**645 South 200 East**

**Salt Lake City, Utah 84111**

**Telephone: (801) 531-9110**

**Joseph R. Fox**

**Pro Se**

**2185 S. Farnsworth Pkwy**

**Provo, Utah 84606**

**Tel. (801) 358-0846**

**IN THE UTAH SUPREME COURT**

**In the Matter of the  
Application:**

**Joseph R. Fox,  
  
Petitioner/Appellant.**

**Brief of the Appellant**

**Docket No. 200220559-SC**

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**Appeal from a final judgment of the Fourth Judicial**

**District Court for Utah County, State of Utah, the Honorable**

**Anthony W. Schofield, Judge, presiding, Civil No. 010402146.**

**Oral argument required.**

**Billy L. Walker  
Senior Counsel  
Office of Professional Conduct  
Utah State Bar  
645 South 200 East  
Salt Lake City, Utah 84111  
Telephone: (801) 531-9110**

**Joseph R. Fox  
Pro Se  
2185 S. Larsen Pkwy  
Provo, Utah 84606  
Tel. (801)358-0846**

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## **Jurisdiction of the Supreme Court**

Article VIII, Section 4, Utah Constitution

### **Statement of the Issues**

Issue: Whether the trial court was correct in denying the Appellant the opportunity to take and pass the student bar exam as Required by Rules 25(e)(7), Utah Rules of Lawyer Discipline and Disability (RLDD), in view of Rule Fourteen, Section 14-2, Utah Rules of Admission (RFA), and Rule Three, Section 3-1, paragraph 3, RFA.

Standard for Review: Review of the trial court's ruling for correctness, giving no deference to conclusions of law. Greenwood v. City of North Salt Lake, 817 P.2d 816, 818 (Utah 1991).

Review of the trial court's findings under the clearly erroneous standard, reserving for itself the right to draw different inferences from the facts. In re Discipline of Ince, 957 P.2d 1233, 1236 (Utah 1998); In re Kathleen Arnovick, et al., no-21010136 (Utah, July 26, 2002).

Issue: Whether Rule Fourteen, Section 14-2, RFA; and Rule Three, Section 3-1, paragraph 3, RFA, as applied by the District Court to deny the Appellant the opportunity to take and pass the student bar exam, infringe the Appellant's rights of due process and equal protection under the law by placing the Appellant on a unequal footing and treating the Appellant differently than other disbarred attorneys. (Classification, Unequal treatment of those on an

equal footing and not rationally related to accomplish the articulated purpose of the rules.)

Standard for Review: Review of the trial court's ruling for correctness, giving no deference to conclusions of law. Greenwood v. City of North Salt Lake, 817 P.2d 816, 818 (Utah 1991).

Review of the trial court's findings under the clearly erroneous standard, reserving for itself the right to draw different inferences from the facts. In re Discipline of Ince, 957 P.2d 1233, 1236 (Utah 1998); In re Kathleen Arnovick, et al., no-21010136 (Utah, July 26, 2002).

Issue: Whether Rule Fourteen, Section 14-2, RFA; and Rule Three, Section 3-1, paragraph 3, RFA, as applied by the District Court create a conclusive presumption of unfitness in the Appellant in violation of the Appellant's rights of due process and equal protection under the law. (a conclusive presumption is sustainable only if it is necessarily and universally true, and there are no less restrictive means for an individualized determination of the facts.)

Standard for Review: Review of the trial court's ruling for correctness, giving no deference to conclusions of law. Greenwood v. City of North Salt Lake, 817 P.2d 816, 818 (Utah 1991).

Review of the trial court's findings under the clearly erroneous standard, reserving for itself the right to draw different inferences from the facts. In re



Discipline of Ince, 957 P.2d 1233, 1236 (Utah 1998); In re Kathleen Arnovick, et al., no-21010136 (Utah, July 26, 2002).

**Determinative Constitutional Provisions, Statutes, Ordinances, and**

**Rules by Citation** (Set forth verbatim in the Addendum.)

United States Constitution

Fourteenth Amendment

Utah Constitution

Article VIII, Section 4

Article 1, Section 24

Rules

Chapter 14, Supreme Court Rules of Professional Practice

Rule 25, Rules of Lawyer Discipline and Disability

Rule 25(e)(7), Rules of Lawyer Discipline and Disability

Section 14-2, Utah Rules of Admission

Rule Three, Utah Rules of Admission

Rule 4, Utah Rules of Admission

**Statement of the Case**

Nature of the Case: The Appellant seeks readmission to the Bar following disbarment.

Course of Proceedings: The Appellant filed a petition in the Fourth District Court, the Honorable Judge Schofield, presiding, pursuant to Rule 25,

RLDD, seeking readmission to the Bar. On stipulation of the parties, and before otherwise receiving evidence on the Appellant's character and fitness, the trial court heard the precedent issue now before the Supreme Court: whether the Appellant is eligible to take and pass the student's bar exam in view of the fact that previously he had been admitted as an attorney applicant, and that he had not graduated from an ABA accredited law school.

Disposition at Trial Court: The trial court concluded that Rules 25(e)(7), RLDD; Rule Fourteen, Section 14-2, RFA; and Rule Three, Section 3-1, paragraph 3, RFA, operated in conjunction to preclude the Appellant from taking the bar exam.

### **Relevant Facts**

The Appellant graduated from Western States University College of Law, Anaheim, California, in June of 1974. At the time Western States was not an ABA-accredited law school. It has since received provisional accreditation. (Addendum: Findings of Fact, paragraph 1 through 3).

The Appellant passed the California Bar in 1975, practiced law in California for more than 5 years, and moved to Utah in 1981. (Addendum: Findings of Fact, paragraph 4).

As an attorney in good standing in California, the Appellant applied for and was granted admission to the Utah State Bar in 1982. (Addendum: *Findings of Fact*, paragraph 5).

In 1992, the Appellant was disbarred by order of Utah Supreme Court, No. 920101. (Addendum: Findings of Fact, paragraph 6).

On or about May 1, 2001, the Appellant filed a Petition for Readmission to the Utah State Bar in the Fourth District Court, Utah County, Case No. 010402146. The petition was amended on January 11, 2002. The Fourth District Court, the Honorable Judge Schofield, presiding, denied the Appellants petition on the ground that he had not graduated from an approved law school and that the Rules operated in conjunction to preclude his eligibility to take and pass the student's bar exam. This appeal is in consequence of the denial of the amended petition. (Addendum: Ruling, pages 1 through 3).

Rule 25(e)(7), Rules of Lawyer Discipline and Disability, requires, in pertinent part, that the Appellant take and pass the student bar exam. (Addendum: Rule 25)

Section 14-2, Utah Rules of Admission, provides "An applicant for readmission to the Bar after disbarment shall satisfy all requirements of Rule Three as stated above, and shall satisfy all other requirements imposed by the Supreme Court." (Addendum: Section 14-2)

Rule Three, Section 3-1, paragraph 3, Utah Rules of Admission, requires that a student applicant "Have graduated with an LL.B, J.D., or equivalent degree from an approved law school." An approved law school is one that has

at least provisional accreditation by the American Bar Association.

(Addendum: Section 3-1)

The Fourth District Court denied the Appellant's amended petition and refused to allow the Appellant the opportunity to take and pass the student bar exam solely because Western States was not an ABA-accredited law school at the time of his graduation. (Addendum: Ruling, pages 4 through 6)

### **Summary of the Argument**

The trial court erred in denying the Appellant the opportunity to take and pass the student bar exam as Required by Rules 25(e)(7), RLDD, based upon a misconstruction and misapplication of Rule Fourteen, Section 14-2, Utah Rules of Admission (RFA), and Rule Three, Section 3-1, paragraph 3, RFA.

Rule Fourteen, Section 14-2, RFA; and Rule Three, Section 3-1, paragraph 3, RFA, as applied by the District Court in order to deny the Appellant the opportunity to take and pass the student bar exam, put the Appellant on an unequal footing and treat the Appellant differently than other disbarred attorneys, infringing the Appellant's rights of due process and equal protection under the law.

Rule Fourteen, Section 14-2, RFA; and Rule Three, Section 3-1, paragraph 3, RFA, as applied by the District Court operate in conjunction to

create a conclusive presumption of unfitness in the Appellant in violation of the Appellant's rights of due process and equal protection under the law.

### **Detail of Argument**

#### **First Issue**

The trial court erred in denying the Appellant the opportunity to take and pass the student bar exam as required by Rule 25(e) (7), Utah Rules of Lawyer Discipline and Disability (RLDD), in view of the Court's determination that Rule 25 must be read in conjunction with Rule Fourteen, Section 14-2, Utah Rules of Admission (RFA), and Rule Three, Section 3-1, paragraph 3, RFA. However, the Appellant contends that the relevant portions of Rule 25 should not be read in conjunction with Rules Fourteen and Rule Three because they conflict with Rule 25, create a redundancy under the law, lead to confusion and inconsistent determinations, and makes the authority of the decisions of the District Court subject to the Rules of Admission as administered by the State Bar.

Rule 25(e) (7) does not require that the disbarred attorney qualify to take the bar exam as a student applicant. Rule 25 merely requires that the disbarred attorney take and pass the student exam, as opposed to the attorney's exam provided for in Rule 10, RFA.

The RLDD were the result of an extensive six-year study to evaluate the practices and procedures then in effect for the discipline of attorneys in the

State. (Addendum: Rule 25 Summary.) It is comprehensive in nature and includes detailed provisions for disbarment proceeding as well as readmission to the bar. One of the effects of the Rules was to remove from the Bar Association's hearing panels the burden of investigating, prosecuting, and readmitting members of the bar. Those functions were transferred to the exclusive jurisdiction of the District Courts.

The authority granted by the RLDD to the District Courts was sufficiently broad to include the power to waive any of the requirements of the Rules, when the facts of a particular case so justified such individualized determination.

The RLDD do not make the District Court's individual determination of fitness subject to the Rules of Admission.

Although the District Court may waive a requirement under the Rules, the Rules do not grant authority to the District Court to add to the requirements of the Rules. By superimposing the Rules of Admission onto the RLDD, the District Court actually enhanced the conditions for reinstatement, an act beyond its jurisdiction.

Section 14-2 provides that the disbarred attorney must comply with all the conditions of Rule Three. However, making all of the requirements of Rule Three a condition of reinstatement is absurd, since the requirements are directed to student applicants of various backgrounds. Therefore, the Court

must pick and choose between the various requirements in order to determine which sections apply and which do not. Such an exercise is a seed bed for arbitrary and discriminatory application of the rule and renders the rule vague in its application to disbarred attorneys.

The Appellant contends that Sections 3-2, 3-3, and 3-4 clearly do not apply to disbarred attorneys. The only possible section that may be applied to disbarred attorneys is Section 3-1. However, a careful reading of the section reveals that all of its provisions are covered in Rule 25. Therefore, the imposition of the requirement of Rule Three onto Rule 25 serves no useful purpose, leads to confusion and arbitrary decision making, and is without substantive effect.

Rule Three makes 7 requirements of student applicants. All of which are included in the provisions of Rule 25 as they pertain to the reinstatement a disbarred attorney.

The first requirement is to fill out an application as provided for in Rule 5. One of the stated purposes of the application in Rule 5 is so that Bar may gain information regarding the background of the applicant. Rule 25 provides for a petition and an evidentiary hearing, according to the rules of civil procedure, in order to accomplish the same end. Furthermore, Rule 25 sets forth in detail the terms and conditions upon which reinstatement may be

granted and places the burden on the disbarred attorney to show good and sufficient reason for reinstatement.

The second requirement of Rule Three is that the disbarred attorney be at least 21 years of age. This requirement is met by every disbarred attorney is without effect.

The third requirement is that the disbarred attorney graduate from an approved law school. This requirement is the center of dispute in this matter. This requirement only has relevance to student applicants, since Rule 4, RFA, provides for the admission of attorney applicants without regard for school graduation. Ostensibly, this provision is intended as a means to ensure that student applicants are qualified educationally to practice law. The same purposes are met in the requirements of Rule 4 as they pertain to practicing attorneys, whose education and experience provide similar assurances. However, all disbarred attorneys have not practiced law for at least 5 years. Therefore, school graduation is irrelevant since there is no confidence in the law that they have retained the skills required to ensure the public safety. Hence the provisions of Rule 25(e) (5), which require that all disbarred attorneys satisfy the Court as to their competency to practice law. Under the rule, it is the District Court and not the Bar which determines the competency of disbarred attorney to practice law in conjunction with all the other requirements of Rule 25.



The fourth requirement is that the disbarred attorney be of good moral character and comply with Rule 6. Rule 6 provides for an investigation and hearing before a Bar panel. In the Summary section which prefaces Chapter 14, Rules of Lawyer Discipline and Disability, RLDD, it is stated that the District Court and not the hearing panels are to be the forum to try issues of fact regarding the fitness of a disbarred attorney. The character and fitness of the disbarred attorney as it relates to reinstatement is central to Rule 25. Therefore, it is the District Court and not Bar panel that must pass on the fitness of a disbarred attorney. Duplication of this process by the Bar is clearly outside and contrary to the purpose of the RLDD.

The fifth requirement is that the disbarred attorney pass the student bar exam. This requirement is found in Rule 25(e) (7).

The sixth requirement is that the disbarred attorney comply with the provisions of Rule 12 concerning enrollment fees. Rule 12 makes no provision for fees for reinstated attorneys. There are no provisions in either the RFA or the RLDD for fees for reinstated attorneys. Clearly an oversight.

The seventh requirement is that disbarred attorneys pass the Multistate Professional Responsibility Examination. This is covered by Rule 25(e) (7), also.

The Appellant proposes that the implications of Rule 14-2, RFA, were inadvertently overlooked when the RLDD were enacted and promulgated by

the Court. The concluding sentence of the Summary anticipates this situation and allows for refinement of the process in the interests of fairness to the Bar and the public. This is just such a case.

### Second Issue

Rules 25(e)(7), RLDD; Rule Fourteen, Section 14-2, RFA; and Rule Three, Section 3-1, paragraph 3, RFA, relied upon by the District Court to deny the Appellant the opportunity to take and pass the student bar exam, operate in conjunction to infringe the Appellant's rights of due process and equal protection under the law.

The Fourteenth Amendment of the United States Constitution provides that a state may not deny to any person within its jurisdiction the equal protection of the laws, and the Utah Constitution provides, further, at Article I, section 24, that "All laws of general nature shall have uniform application."

The Utah Supreme Court has made the following statement with regard to the foregoing constitutional provisions where fundamental rights are not at issue, "the Fourteenth Amendment requires that classifications be rationally related to a valid public purpose. (Citations omitted) Article 1, section 24 requires that a law must apply equally to all persons within a class and that statutory classifications must have a reasonable tendency to further the objectives of the statute." Greenwood v. City of North Salt Lake, 817 P.2d 816, 821 (Utah 1991).

When the Appellant was admitted to the Bar in Utah, he was admitted to practice law without restriction in all state and federal courts within the state. When the Appellant was disbarred, he was treated without distinction similar to all other attorneys undergoing that form of discipline. Now, the Appellant is within the class of disbarred attorneys seeking reinstatement to the Bar under the provisions of Rule 25, RLDD. He should be treated similarly to any other disbarred attorney seeking reinstatement under the rules, since the RLDD make no distinction with regard to qualification to practice law in the first instance.

The District Court concluded that in order for the Appellant to qualify under the rules to take the student bar exam, he must either be graduated from an approved law school, or he must qualify as an attorney applicant having recent experience in another jurisdiction. The Court's conclusion creates a classification that is not provided for in the rules. The Court supports its conclusion by stating that it serves the public's interest to require graduation from an approved school or recent experience. There were no facts presented at trial to support the conclusion that the Appellant because of his law school background posed more of a threat to the public than a disbarred attorney who had graduated from an approved school. Therefore, such a distinction is irrelevant for readmission because regardless of training and experience, all disbarred attorneys have demonstrated a lack of fitness to practice law and have not practiced law for at least 5 years. The classification is especially untenable

in view of the fact that most disciplined attorneys within the State are graduated from approved schools. Therefore, graduation from an approved school, by itself, does not serve the public interest with regard to reinstatement of a disbarred attorney, and a classification based upon school graduation, or recent experience, does not tend to further the objectives of the RLDD, which are designed to make a particularized determination as to the fitness of the disbarred attorney to practice law again, taking into consideration his lack of recent experience and his training, neither of which deterred grounds for disbarment.

For example, an attorney may be disbarred decades after graduation from an approved school, his conduct may be especially heinous, his character reprobate, and his contrition marginal. Yet, he would be entitled to reinstatement based upon his graduation from an approved school. On the other hand another attorney may be disbarred for a less grievous offense, but not be entitled to reinstatement for lack of graduation from an approved school. To accept the former and reject the latter without a more objective scrutiny does not serve the public's interest at all. It simply discriminates against a former attorney based on an arbitrary and capricious standard.

The disbarred attorney who graduated from an approved law school is not required to regraduate, notwithstanding his demonstration of unfitness to practice law. By the same reasoning, a disbarred attorney who did not graduate

from an approved law school, but who qualified in the first instance as an attorney applicant, should not be required to graduate from an approved law school or requalify as an attorney applicant. As stated above the provisions of Rule 25 place the burden on the disbarred attorney to satisfy the District Court that he is competent to practice law. This burden ensures that the public interests are protected and it provides a equal and fair path for the disbarred attorney to regain admission to the Bar.

### Third Issue

Rules 25(e)(7), RLDD; Rule Fourteen, Section 14-2, RFA; and Rule Three, Section 3-1, paragraph 3, RFA, as applied by the District Court operate in conjunction to create a conclusive presumption of unfitness in the Appellant in violation of the Appellant's rights of due process and equal protection under the law.

In the case of Cleveland Board of Education v. LaFleur, 414 U.S. 632, 645, (1974), the United States Supreme Court held that a conclusive presumption violates due process and equal protection under the law when the presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination.

The rules as applied by the District Court operate to conclusively presume that the Appellant is unfit to be reinstated because of his lack of graduation from an approved school, and his lack of recent experience. While,

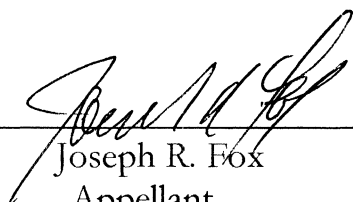
on the other hand, all other factors being equal, another disbarred attorney is presumed to be fit for reinstatement because of graduation from an approved law school.

Neither case is necessarily and universally true. And the RLDD provide a method for a particularized determination as to the fitness of a disbarred attorney to be admitted again regardless of his school background.

### **Conclusion**

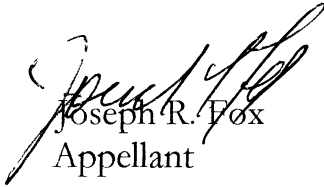
The District Court has the exclusive jurisdiction to determine the fitness of the disbarred attorney. The provisions of Rule 25, RLDD, do not require that the disbarred attorney qualify as a student applicant in order to take the bar exam. Therefore, the Appellant prays that the Supreme Court set aside the judgment of the District Court and allow the Appellant to take the bar exam and otherwise qualify for readmission to the Bar.

Dated: September 24, 2002.

  
\_\_\_\_\_  
Joseph R. Fox  
Appellant

## CERTIFICATE OF SERVICE

I, Joseph R. Fox, certify that on September 24, 2002, I served a copy of the foregoing Brief of Appellant upon Billy L. Walker, Office of Professional Conduct, Utah State Bar, by personally delivering it to him at the following address: Utah State Bar, 645 South 200 East, Salt Lake City, Utah 84111.

  
Joseph R. Fox  
Appellant

## ADDENDUM





3. On or about August 4, 1998, Western was granted provisional approval by the ABA.

4. As an attorney in good standing with the California State Bar in 1982, with over five years of practice, Fox was eligible to apply for membership in the Utah Bar as an attorney applicant. He did so and obtained admission.

5. On December 3, 1992, by order of the Utah Supreme Court, Fox was disbarred from the practice of law in the State of Utah.

6. Fox now seeks readmission to the Utah Bar.

7. Rule 25(b) of the Rules of Lawyer Discipline and Disability requires that Fox file a verified petition with this Court specifying with particularity the manner in which he meets each of the criteria specified in paragraph 25(e) or, if not, why there is otherwise good and sufficient reason for his readmission.

8. Rule 25(e) states: "A respondent may be reinstated or readmitted only if the respondent meets each of the following criteria, or, if not, presents good and sufficient reason why the respondent should nevertheless be reinstated or readmitted:. . ." Of issue for the Court in this case is Rule 25(e)(7) which provides that in cases of disbarment that a respondent is required to pass the student bar examination and the Multistate Professional Responsibility Examination.

9. Pursuant to the admission rules promulgated by the Utah Supreme Court, it is the OPC's position that Fox does not meet the requirements for the student bar exam and thus he does not meet the criteria of Rule 25(e).

10. Specifically, the OPC asserts that the requirements of the admission rule are that a student bar exam applicant be a graduate of an ABA-approved law school. Fox is not since his law school was not ABA approved at the time of his graduation.

### **CONCLUSIONS OF LAW**

Fox brings a petition for readmission to the Utah State Bar pursuant to Rule 25 of the Utah Rules of Lawyer Discipline and Disability ("RLDD"). Fox was previously disbarred in this state and so may be readmitted only if he meets each of the criteria set out in paragraph (e) of Rule 25, or, if not, "presents good and sufficient reason why he should nevertheless be reinstated or readmitted." RLDD, 25(e). One of these criteria is that he pass the student applicant bar examination, which Fox has not yet taken. Fox takes the position that because the Utah State Bar will not permit him to take the student examination, he should either be readmitted without being required to pass it or the Utah Bar should be ordered to allow him to sit for the examination.

The Court will not waive the requirement that Fox pass the student bar examination before he is readmitted. Although a readmission requirement may be waived for "good and sufficient reason," the only rationale Fox gives for why he should not have to pass the examination is that the Utah Bar will not allow him to sit for it. This does not present sufficient reason to waive the requirement as Fox has not practiced law for several years and has submitted no evidence to indicate that he possesses a knowledge of current law sufficient to resume the practice of law. Given the interest of this state in admitting to

practice only those who can meet a high standard of legal proficiency,<sup>1</sup> the Court is unprepared, in the absence of any evidence of Fox's present knowledge of the law, to waive the requirement that he pass the student bar exam.

The Court next reviews Fox's request that the Utah State Bar be ordered to permit him to sit for the student bar examination. The Utah Bar bases its denial of Fox's application to sit for the student bar exam on the grounds that he did not graduate from an ABA-approved law school as is required under Rule 3 of the Utah Rules of Admission ("RFA"). Fox contends that Rule 25 of the Rules of Lawyer Discipline and Disability does not require that he have graduated from an ABA-approved law school and that for the Utah Bar to impose this additional requirement on him is contrary to Rule 25 and unconstitutional.

The RFA and the RLDD both apply to Fox in his attempt to be readmitted to the Utah Bar. The two sets of rules are promulgated by the authority of the Utah Supreme Court pursuant to the Utah State Bar Rules for Integration and Management and are intended to prescribe the qualifications for lawyers admitted to practice in this state.<sup>2</sup>

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<sup>1</sup> Utah Rules of Lawyer Discipline and Disability 1(a):

The purpose of lawyer disciplinary and disability proceedings is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers and to protect the public and the administration of justice from those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities.

<sup>2</sup> Utah State Bar Rules for Integration and Management:

I. Regulation of the practice of law in Utah.

B. Qualifications. The qualifications of lawyers and Foreign Legal Consultants for admission to practice law in Utah, the duties, obligations and the grounds for discipline

There is nothing to support a conclusion that one set of rules is superior to the other, so the Court reads the RFA and the RLDD in conjunction.

Rule 14(b) of the RFA provides that an applicant for readmission after disbarment must satisfy all the requirements of Rule 3 pertaining to student applicants, which includes the requirement that a student applicant have graduated from an ABA-approved school. Rule 14 also requires that an applicant for readmission after disbarment satisfy “all other requirements imposed by the Supreme Court.” Such “other requirements” can be found in Rule 25 of the RLDD. Rule 25(e) lists seven criteria that must be met before a disbarred person may be readmitted and while none of those seven expressly requires that the

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of members, and the method of establishing such grounds, subject to the right of this Court to discipline a member admitted to the Bar, shall be prescribed in these Rules, the Rules of Admission approved by the Court on June 15, 1990 and as thereafter amended and the Rules of Lawyer Discipline and Disability as approved by the Court on July 1, 1993 and as thereafter amended. . . .

### III. Rules of organization and management of the bar. . . .

#### K. Admission to practice law, qualifications, enrollment, oath, and fees.

(1) The Board by delegation from the Court shall have the power to determine the qualifications and requirements for admission to the practice of law, and to conduct examinations of applicants; and it shall from time to time certify to the Court those applicants found to be qualified. Qualifications and requirements for admission to the practice of law shall be as set forth in the Rules for Admission to the Utah State Bar approved by the Court on June 15, 1990 and as amended thereafter. The approval by the Court of any person certified for licensure to practice law in accordance with such Rules shall entitle him or her to be enrolled in the Bar upon his or her taking an oath to support the Constitution of the United States and of Utah and to discharge faithfully the duties of an attorney at law or foreign legal consultant to the best of his or her knowledge and ability, and payment of the fee fixed by the Board with the approval of the Court, and thereafter, to practice law upon payment of annual or special license fees herein provided, subject to the provisions of these Rules.

applicant have graduated from an ABA-approved law school, they do require that the applicant take and pass the student bar examination.

Certain qualifications must be met in order to take the bar examination for this state. In a recent case dealing with the issue of who may take the Utah bar exam, In re Gobelman, 31 P.3d 535 (Utah 2001), the Utah Supreme Court stated: “Only two categories of persons are eligible to sit for the examination: ‘student applicants’ as described in rule 3 of the Rules Governing Admission, and ‘attorney applicants’ as described in rule 4.” *Id.* at 536. Fox cannot qualify as an attorney applicant under Rule 4 of the RFA because he does not meet the recent practice requirements. Therefore, under Rule 1 of the RFA<sup>3</sup>, he is classified as a student applicant and is subject to the Rule 3 student applicant requirements, including the requirement that he have graduated from an ABA-approved law school. Because Fox did not graduate from an ABA-approved law school, he does not qualify as a student applicant to take the bar examination and so may not sit for it. *See id.* at 536.

When read together, the RFA, the RLDD, and In re Gobelman clearly show that not only is the requirement that Fox have graduated from an ABA-approved law school not contrary to Rule 25 of the RLDD, but it is in fact mandated under the rules governing readmission after disbarment.

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<sup>3</sup> “Student Applicant. A ‘student applicant’ is any applicant for admission to the Bar who does not qualify as an ‘attorney applicant’ under Rule 4.”

Fox also maintains that it is unconstitutional for the Utah Bar now to require him to meet the ABA-approved law school requirement for student applicants because he was previously admitted to practice in Utah after having graduated from a non-approved law school. Although Fox manifestly is put into a difficult situation by being required to have graduated from an ABA-approved law school, it does not violate either the federal or the state constitution to treat him differently now than when he first was admitted to practice in this state.

Where there is no fundamental right or suspect class involved, the Fourteenth Amendment of the U.S. Constitution requires only that a classification be rationally related to a valid public purpose. See Greenwood v. City of N. Salt Lake, 817 P.2d 816, 821 (Utah 1991). Admission to practice law in this state is not a right inherent to every citizen, but a “peculiar privilege granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character.” In re Strong, 616 P.2d 583, 585 (Utah 1980) (quoting In the Matter of Keenan, 50 N.E.2d 785, 786 (Mass. 1943)). Because the right to practice law is not a fundamental right, the Utah Bar can restrict its admissions to certain classes if there is a valid public purpose for that restriction. It is clearly a valid public purpose for Utah to seek to ensure that attorneys in this state possess the requisite competence and ability by requiring that applicants for admission have either graduated from an approved law school or recently practiced law in another jurisdiction.

Article I, Section 24 of the Utah Constitution provides for a more restrictive test than does the Fourteenth Amendment: “[A] law must apply equally to all persons within a class and [the] statutory classifications must have a reasonable tendency to further the objectives of the statute.” See Greenwood v. City of N. Salt Lake, 817 P.2d 816, 821 (Utah 1991). However, Fox still fails to prevail under Article I, Section 24. His prior admittance to the bar in this state was based on his status as an attorney applicant and he is not an attorney applicant at this time, having resigned from the California bar and been disbarred in Utah. Disbarment in this state places a person “in the same position as if he had never been admitted to practice.” In re Oliver, 89 P.2d 229, 234 (Utah 1939). Since Fox is no longer a licensed attorney in California and now is looked upon by Utah as an individual never before admitted to practice, he is no longer entitled to be treated as an attorney applicant. By classifying Fox as a student applicant who must show completion of law school at an ABA-approved institution, the Utah Bar furthers its objective of admitting only qualified persons to the practice of law.

#### **ORDER**

Based on the foregoing, the Court denies Fox’s petition for readmission.

DATED: June \_\_\_\_\_, 2002.

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Honorable Anthony W. Schofield  
Fourth District Court Judge



**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_\_\_, 2002 I mailed via United States first-class mail, postage pre-paid, a true and correct copy of the foregoing Findings of Fact,

Conclusions of Law, and Order to:

Joseph R. Fox  
2185 S. Larsen Pkwy.  
Provo, Utah 84606

Billy L. Walker  
Utah State Bar  
Office of Professional Conduct  
645 South 200 East  
Salt Lake City, Utah 84111

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FILED  
Fourth Judicial District Court  
of Utah County, State of Utah

5-21-02 K Deputy  
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IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH

In re:	CASE NUMBER: 010402146
JOSEPH R. FOX,	DATED: MAY 21, 2002
Petitioner.	<b>RULING</b>
	ANTHONY W. SCHOFIELD, JUDGE

This case is before the court on Fox's amended petition for readmission to the Utah State Bar. Having reviewed the memoranda of counsel and heard oral arguments on the motions, I now issue this ruling denying the petition.

**Analysis & Ruling**

Fox brings a petition for readmission to the Utah State Bar pursuant to Rule 25 of the Utah Rules of Lawyer Discipline and Disability ("RLDD"). Fox was previously disbarred in this state and so may be readmitted only if he meets each of the criteria set out in paragraph (e) of Rule 25, or, if not, "presents good and sufficient reason why he should nevertheless be reinstated or readmitted." RLDD 25(e). One of these criteria is that he pass the student applicant bar examination, which Fox has not yet taken. Fox takes the position that because the Utah State Bar will not permit him to take the student examination, he should either be readmitted without being required to pass it or the Utah

Bar should be ordered to allow him to sit for the examination.

The court will not waive the requirement that Fox pass the student bar examination before he is readmitted. Although a readmission requirement may be waived for “good and sufficient reason”, the only rationale Fox gives for why he should not have to pass the examination is that the Utah Bar will not allow him to sit for it. This does not present sufficient reason to waive the requirement as Fox has not practiced law for several years and has submitted no evidence to indicate that he possesses a knowledge of current law sufficient to resume the practice of law. Given the interest of this state in admitting to practice only those who can meet a high standard of legal proficiency,<sup>1</sup> I am unprepared, in the absence of any evidence of Fox’s present knowledge of the law, to waive the requirement that he pass the student bar exam.

I next review Fox’s request that the Utah State Bar be ordered to permit him to sit for the student bar examination. The Utah Bar bases its denial of Fox’s application to sit for the student bar exam on the grounds that he did not graduate from an ABA-approved law school as is required under Rule 3 of the Utah Rules for Admission (“RFA”). Fox contends that Rule 25 of the Rules of Lawyer Discipline and Disability does not require that he have graduated from an ABA-approved law school and that for the Utah Bar to impose this additional requirement on him is contrary to Rule 25 and unconstitutional.

The Utah Rules for Admission and the Utah Rules of Lawyer Discipline and

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<sup>1</sup> Utah Rules of Lawyer Discipline and Disability 1(a):

The purpose of lawyer disciplinary and disability proceedings is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers and to protect the public and the administration of justice from those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities.

Disability both apply to Fox in his attempt to be readmitted to the Utah Bar. The two sets of rules are promulgated by the authority of the Utah Supreme Court pursuant to the Utah State Bar Rules for Integration and Management and are intended to prescribe the qualifications for lawyers admitted to practice in this state.<sup>2</sup> There is nothing to support a conclusion that one set of rules is superior to the other, so I read the RFA and the RLDD in conjunction.

Rule 14(b) of the RFA provides that an applicant for readmission after disbarment must satisfy all the requirements of Rule 3 pertaining to student applicants, which includes the requirement that a student applicant have graduated from an ABA-approved school. Rule 14 also requires that an applicant for readmission after disbarment satisfy

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<sup>2</sup>Utah State Bar Rules for Integration and Management:  
I. Regulation of the practice of law in Utah.

...

B. Qualifications. The qualifications of lawyers and Foreign Legal Consultants for admission to practice law in Utah, the duties, obligations and the grounds for discipline of members, and the method of establishing such grounds, subject to the right of this Court to discipline a member admitted to the Bar, shall be prescribed in these Rules, the Rules of Admission approved by the Court on June 15, 1990 and as thereafter amended and the Rules of Lawyer Discipline and Disability as approved by the Court on July 1, 1993 and as thereafter amended.

...

III. Rules of organization and management of the bar.

...

K. Admission to practice law, qualifications, enrollment, oath, and fees.

(1) The Board by delegation from the Court shall have the power to determine the qualifications and requirements for admission to the practice of law, and to conduct examinations of applicants; and it shall from time to time certify to the Court those applicants found to be qualified. Qualifications and requirements for admission to the practice of law shall be as set forth in the Rules for Admission to the Utah State Bar approved by the Court on June 15, 1990 and as amended thereafter. The approval by the Court of any person certified for licensure to practice law in accordance with such Rules shall entitle him or her to be enrolled in the Bar upon his or her taking an oath to support the Constitution of the United States and of Utah and to discharge faithfully the duties of an attorney at law or foreign legal consultant to the best of his or her knowledge and ability, and payment of the fee fixed by the Board with the approval of the Court, and thereafter, to practice law upon payment of annual or special license fees herein provided, subject to the provisions of these Rules.

“all other requirements imposed by the Supreme Court.” Such “other requirements” can be found in Rule 25 of the RLDD. Rule 25(e) lists seven criteria that must be met before a disbarred person may be readmitted and while none of those seven expressly requires that the applicant have graduated from an ABA-approved law school, they do require that the applicant take and pass the student bar examination.

Certain qualifications must be met in order to take the bar examination for this state. In a recent case dealing with the issue of who may take the Utah bar exam, *In re Gobelman*, 31 P.3d 535 (Utah 2001), the Utah Supreme Court stated: “Only two categories of persons are eligible to sit for the examination: ‘student applicants’ as described in rule 3 of the Rules Governing Admission, and ‘attorney applicants’ as described in rule 4.” *Id.* at 536. Fox cannot qualify as an attorney applicant under Rule 4 of the RFA because he does not meet the recent practice requirements. Therefore, under Rule 1 of the RFA<sup>3</sup>, he is classified as a student applicant and is subject to the Rule 3 student applicant requirements, including the requirement that he have graduated from an ABA-approved law school. Because Fox did not graduate from an ABA-approved law school, he does not qualify as a student applicant to take the bar examination and so may not sit for it. *See id.* at 536.

When read together, the Utah Rules for Admission, the Utah Rules of Lawyer Discipline and Disability, and *In re Gobelman* clearly show that not only is the requirement that Fox have graduated from an ABA-approved law school not contrary to

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<sup>3</sup> “Student Applicant. A ‘student applicant’ is any applicant for admission to the Bar who does not qualify as an ‘attorney applicant’ under Rule 4.”

Rule 25 of the RLDD, but it is in fact mandated under the rules governing readmission after disbarment.

Fox also maintains that it is unconstitutional for the Utah Bar now to require him to meet the ABA-approved law school requirement for student applicants because he was previously admitted to practice in Utah after having graduated from a non-approved law school. Although Fox manifestly is put into a difficult situation by being required to have graduated from an ABA-approved law school, it does not violate either the federal or the state constitution to treat him differently now than when he first was admitted to practice in this state.

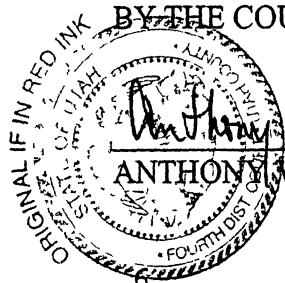

Where there is no fundamental right or suspect class involved, the Fourteenth Amendment of the U.S. Constitution requires only that a classification be rationally related to a valid public purpose. *See Greenwood v. City of N. Salt Lake*, 817 P.2d 816, 821 (Utah 1991). Admission to practice law in this state is a not a right inherent to every citizen, but a ““peculiar privilege granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character.”” *In re Strong*, 616 P.2d 583, 585 (Utah 1980) (quoting *In the Matter of Keenan*, 50 N.E.2d 785, 786 (Mass. 1943)). Because the right to practice law is not a fundamental right, the Utah Bar can restrict its admissions to certain classes if there is a valid public purpose for that restriction. It is clearly a valid public purpose for Utah to seek to ensure that attorneys in this state possess the requisite competence and ability by requiring that applicants for admission have either graduated from an approved law school or recently practiced law in another jurisdiction.

Article I, Section 24 of the Utah Constitution provides for a more restrictive test than does the Fourteenth Amendment: “[A] law must apply equally to all persons within a class and [the] statutory classifications must have a reasonable tendency to further the objectives of the statute.” *See Greenwood v. City of N. Salt Lake*, 817 P.2d 816, 821 (Utah 1991). However, Fox still fails to prevail under Article I, Section 24. His prior admittance to the bar in this state was based on his status as an attorney applicant and he is not an attorney applicant at this time, having resigned from the California bar and been disbarred in Utah. Disbarment in this state places a person “in the same position as if he had never been admitted to practice.” *In re Oliver*, 89 P. 2d 229, 234 (Utah 1939). Since Fox is no longer a licensed attorney in California and now is looked upon by Utah as an individual never before admitted to practice, he is no longer entitled to be treated as an attorney applicant. By classifying Fox as a student applicant who must show completion of law school at an ABA-approved institution, the Utah Bar furthers its objective of admitting only qualified persons to the practice of law.

Based on the foregoing, I deny Fox’s petition for readmission. Pursuant to Rule 4-504, Utah Code of Judicial Administration, the OPC’s counsel is directed to prepare an appropriate order.

Dated this 21<sup>st</sup> day of May, 2002.

BY THE COURT:

   
ANTHONY W. SCHOFIELD, JUDGE

### **Readmission after Resignation or Disbarment**

**Section 14-1. Readmission after Resignation.** Readmission subsequent to the resignation of a member of the Bar shall be by petition in writing verified by the petitioner, addressed to the Board and filed with the Executive Director. The petition shall set forth the name, age, residence and address of the petitioner, his residence and occupation during the period subsequent to his resignation, the reasons for this resignation and a copy of the Order of the Supreme Court, if any, with respect to the resignation. The petition must be accompanied by a filing fee of \$200.00.

**Section 14-2. Readmission after Disbarment.** An applicant for readmission to the Bar after disbarment shall satisfy all requirements of Rule 3 as stated above, and shall satisfy all other requirements imposed by the Supreme Court.



## **Qualifications for Admission of Student Applicants**

**Section 3-1. Requirements of Student Applicants.** To be recommended as a student applicant for admission to the Bar, a person must:

Have filed an application for Bar Examination and Admission to the Bar as a student applicant in accordance with Rule 5;

Be at least twenty-one years old;

Have graduated with an LL.B, J.D., or equivalent degree from an approved law school.

Be of good moral character and have satisfied the requirements of Rule 6;

Have successfully passed the Bar Examination as prescribed in Rule 7;

Have complied with the provisions of Rule 12 concerning enrollment fees;

Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

**Section 3-2. Foreign Law School Applicants.** Applicants who have not graduated from an ABA accredited law school, but who have graduated from a foreign law school in a country where principles of English common law form the basis for the country's jurisprudence, may be recommended for admission to the Bar under the following conditions:

Have filed an application for Bar Examination and Admission to the Bar as a foreign law school applicant in accordance with Rule 5;

Be at least twenty-one years old;

Have (a) been admitted to practice in the jurisdiction where the applicant attended law school, and (b) successfully completed, within twenty-four (24) consecutive months, not less than twenty-four (24) semester hours, or their equivalent in quarter hours, at an ABA-approved law school, including no less than one course each in constitutional law, civil procedure, criminal procedure, legal ethics

and evidence.

Be of good moral character and have satisfied the requirements of Rule 6;

Have successfully passed the Bar Examination as prescribed in Rule 7;

Have complied with the provisions of Rule 12 concerning enrollment fees;

Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8.

**Section 3-3. Other Foreign Law School Graduates.** All other students and graduates from foreign law schools not meeting the requirements of Section 3-2 may be recommended only if they have been admitted to an ABA approved law school, consistent with Standard 308 of the American Bar Association Standards for Approval of Law Schools, and have completed the required course of study resulting in a LL.B., or J.D. degree from that school.

**Section 3-4. Foreign Law Schools.** A foreign law school, for purposes of these rules, is any school located outside of the U.S. and its protectorates, and accredited by that jurisdiction's legal accreditation body, if one exists, or who's graduates are otherwise permitted by that jurisdiction's highest court to practice law.

## **Qualifications for Admission of Attorney Applicants**

**Section 4-1. Requirements of Attorney Applicants.** To be recommended as an attorney applicant for admission to the Bar, a person must:

- Have filed an application for the Utah Bar Examination and Admission to the Bar as an attorney applicant in accordance with Rule 5;
- Be at least twenty-one years old;
- Have been admitted to the practice of law before the highest court of a sister state or the District of Columbia for no less than five years, and have been substantially and lawfully engaged in the practice of law in such jurisdiction for any four of the five years immediately preceding the filing of the application. For purposes of this rule, the practice of law includes the following activities or the equivalent thereof:
  - sole practitioner in a private law firm;
  - partner, shareholder, associate, or one of counsel in a private or public law firm;
  - officer of a corporation or other business organization whose principal responsibilities include rendition of legal advice and/or assistance;
  - government employee whose principal duties are providing legal advice to the governmental agency by which he or she is employed or representing such agency before the courts;
  - service in the armed forces in the Judge Advocate department in a legal capacity in any state;
  - judge of a court of general or appellate jurisdiction requiring admission to the Bar as a qualification for admission thereof;
  - law clerk to a judge of a court of general or appellate jurisdiction;
  - teaching full-time in an approved law school.
- Be of good moral character and have satisfied the requirements of Rule 6;
- Have successfully passed the Bar Examination as prescribed in Rule 10-1;
- Have complied with the provisions of Rule 12 concerning enrollment fees;
- Have successfully passed the Multistate Professional Responsibility Examination (MPRE) as prescribed in Rule 7-8