Federal District Court Bar Admissions
A Systemwide Policy of Local Autonomy

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Since the beginning, the district courts of the United States have maintained separate bars, each exercising independent authority to admit attorneys to practice before them, regulating the professional conduct of such attorneys, and taking disciplinary action (including disbarment) whenever such attorneys violate applicable standards. While this authority over the bar is often considered an inherent part of the “judicial power” constitutionally vested in each federal court, Congress over the years has also recognized by statute the power of the individual courts to permit, by local rule, the appearance of counsel to “manage and conduct causes therein.” It is this emphasis on local control of bar admissions that has prevailed over periodic attempts to foster uniform admission standards among the courts.
The existence of a distinct bar for each district is but one example of the “independence, decentralization, and individualism” that have always characterized the federal courts as an institution. Indeed, during the first 125 years of the judiciary’s history, every court operated with near-complete administrative autonomy—both as to other courts in the system and vis-à-vis the other two branches of the federal government. Though Congress has retained authority to legislate on judicial structure and process, and the executive branch (principally the Department of Justice) initially handled various key administrative functions (e.g., budgeting and accounting, contracting, payroll, and statistics) for the judiciary, federal judicial administration was not effectively integrated until early in the 20th century. Starting in 1922, Congress responded to calls for modernization of court administration at the national level by establishing a Judicial Conference of the United States as the systemwide policy-maker with an executive arm, the Administrative Office of the United States Courts, serving as the system’s administrative hub. And it delegated authority to the Supreme Court to adopt rules of practice and procedure applicable in all the courts.

As a result of those changes, the judiciary began to look at ways in which administrative policies and practices in the courts could be made uniform or at least more consistent across the circuits and districts. Soon after the first Federal Rules of Civil Procedure were approved, the Judicial Conference established a special committee in 1938 to review local rules of the district courts and make recommendations “so that the greatest practicable degree of uniformity throughout the country may be secured.” While the committee proposed to the Conference a set of uniform local rules that the individual courts could adopt, the committee found “complete uniformity … [to be] neither feasible nor desirable … illustrated by the requirements in the various districts for the admission of attorneys to practice.”

In that context, the committee explained, “considerations of local policy and conditions play a controlling part.” When the Conference soon after revisited the possibility of greater uniformity in attorney admission requirements, a three-year study completed in 1947 merely noted a “wide disparity among the rules dealing with this subject” and, with the Conference’s concurrence, concluded that consideration of national rules on the subject was at that time “inadvisable.” That conclusion was reaffirmed nine years later, in 1956, when the Conference expressed its disapproval of pending legislation that would make all members in good standing of the Bar of the United States Supreme Court automatically eligible to practice in any federal court.

In the ensuing decades, the Judicial Conference was occasionally asked to reconsider making district court bar admission requirements consistent, or at least subject to certain national standards, but no change occurred. A survey of district judges in 1972 showed a high degree of receptivity to changes in bar admission and disciplinary rules, and in the same year, an American Bar Association resolution urged the federal courts to establish uniform bar admission and attorney discipline processes. Responding to these developments, the Conference’s Committee on Court Administration recommended that legislation be sought to regularize the courts’ attorney discipline procedures through standard methods for investigating alleged misconduct. But at the same time, the committee found neither “great disparity” in district court bar admission rules nor “general dissatisfaction with present practices and procedures” for either permanent or pro hac vice admissions and, thus, did not ask the Conference to seek greater standardization of bar admission requirements.

Later in the same decade, the Conference responded to concerns (raised by then-Chief Justice Warren Burger and others) about the declining quality of trial advocacy in the federal courts by establishing a special committee. The Conference subsequently approved the committee’s recommendation to use pilot programs in several districts to test stricter attorney admission standards including examinations, experience requirements, and peer-review procedures. A multiyear study ensued and the Conference, in 1985, approved a recommendation that all courts consider adopting similar measures. The committee that conducted the study, however, expressly declined to propose a uniform bar admission rule, citing (1) doubts as to the legal authority for imposing such a rule and (2) concern that a uniform rule could, by its nature, prevent individual courts from further improving advocacy by imposing requirements beyond the minimum national standards. Some 13 years later, another Conference committee cited those caveats in recommending that the Conference oppose a proposal of the National Bankruptcy Review Commission that any attorney admitted to practice and in good standing in one federal bankruptcy court be automatically entitled to practice in any other bankruptcy court.

During the past 18 years, the Judicial Conference has not entertained any new proposals to adopt uniform district court bar admission requirements. The federal judiciary’s decentralized nature, however, has remained unchanged, and so any renewed effort to impose a national standard on the district courts—through the federal rulemaking process, by Judicial Conference policy resolution, or through legislation—would again be likely to face substantial resistance.

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Endnotes


2See Act of Sept. 24, 1789 (hereinafter the “Judiciary Act of 1789”), ch. 20, § 35, 1 Stat. 73, 92 (codified as amended at 28 U.S.C. § 1654). See also 30 Moore’s Federal Practice §§ 801.01, 801.20 (3d ed. 2010). Throughout their history, individual federal courts have possessed authority to prescribe rules for the conduct of their own business to the extent such rules are consistent with Acts of Congress and, since 1934, national rules of practice and procedure (see note 9 infra and accompanying text). See Judiciary Act of 1789, supra, at § 17, 1 Stat. at 83 (codified as amended at 28 U.S.C. § 2071(a)).


4Id. at 7.
and Proposed Rules, which was discussed at length in Burton C. Agata, of the need for uniformity of attorney admission and disciplinary
18 Appeals. for admission to the respective bars of the United States Courts of
17 federal rulemaking process to establish a national eligibility standard
16 already admitted to practice before the Supreme Court. 15 individual courts of any control over admission to their bars of lawyers
14 proper administration of justice” because it appeared to deprive in
13 “[c]ourts in urban communities and … close to the boundaries of
12 personal knowledge of most attorneys” and thus find it unnecessary
to impose stricter admission requirements. Id. 11 Among other things, the committee noted a perceived need of
“[c]ourts in rural districts … [t]o protect themselves from inexperienced, incompetent and unfit practitioners” whereas “in rural districts … judges are personally acquainted with or have easily accessible sources of personal knowledge of most attorneys” and thus find it unnecessary to impose stricter admission requirements. Id. 10 Judicial Conf. of the U.S., Report of the Proceedings of the Judicial Conference 24 (Sept. 1944) (special committee formed to consider the advisability of uniform bar admission rules for the federal courts). 9 Report to the Judicial Conference of the Committee to Consider the Avisability of Regulating Admission to the Bar of the Federal Courts by Uniform Rules 3 (Sept. 1947). 8 Judicial Conf. of the U.S., Report of the Proceedings of the Judicial Conference 26 (Sept. 1947). 7 Judicial Conf. of the U.S., Report of the Proceedings of the Judicial Conference 42-43 (Sept. 1956). In recommending that the Conference oppose the legislation, the reviewing committee stated that “conditions in the various federal judicial districts throughout the states of the union are sufficiently diverse as to make [uniform bar admission standards] inadvisable.” Report to the Judicial Conference of the Committee on Revision of Laws 4-5 (Sept. 1956). It also opined that the proposed change “would not be conducive to the proper administration of justice” because it appeared to deprive individual courts of any control over admission to their bars of lawyers already admitted to practice before the Supreme Court. Id. at 5. 6 By contrast, when the Federal Rules of Appellate Procedure were first developed and adopted in the 1960s, the Conference (and ultimately the Supreme Court) apparently saw no difficulty in using the federal rulemaking process to establish a national eligibility standard for admission to the respective bars of the United States Courts of Appeals. See Fed. R. App. P. 46(a). 5 This survey was conducted as a part of an internal judiciary study of the need for uniformity of attorney admission and disciplinary rules, which was discussed at length in Burton C. Agata, Admissions and Discipline of Attorneys in Federal District Courts: A Study and Proposed Rules, 3 Hofstra L. Rev. 249 (1975). 4 American Bar Association, Summary of Action, House of Dele- gates, Midyear Meeting 26 (1972). 3 Judicial Conf. of the U.S., Report of the Proceedings of the Judicial Conference 43 (Sept. 1973). 2 Id.; see also Report to the Judicial Conference of the Committee on Court Administration 1-2 (Sept. 1973). 1 Judicial Conf. of the U.S., Report of the Proceedings of the Judicial Conference 103-05 (Sept. 1979).