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8
9 **IN THE SUPREME COURT**

10 **STATE OF ARIZONA**

11 PETITION TO AMEND RULE 35(b)) Supreme Court No. R-_____
12 ARIZONA RULES OF THE SUPREME)
13 COURT) PETITION TO AMEND RULE 35(b)
14 _____)

15 Pursuant to Arizona Supreme Court Rule 28, the State Bar of Arizona,
16 respectfully submits this petition to the Court requesting an amendment to Rule 35(b)
17 of the Rules of the Supreme Court, as set out in Appendix "A", to include Indian law
18 as one of the subject areas which may be tested on the Arizona Bar Examination ("bar
19 examination").

20 **I. Background and Need for the Proposed New Rule**

21 An attorney's understanding of the basic precepts of Indian law, especially
22 regarding jurisdiction and the limited circumstances under which a tribe is subject to
23 suit, can have a significant impact on the rights and remedies available to that
24 attorney's clients. It is, therefore, essential to amend Rule 35(b) to include Indian law
25 as a potential subject for the bar examination to ensure that exam takers are able to
26 recognize the three distinct governments operating within the State of Arizona – state,

1 federal and tribal government. Incorporating Indian Law into the bar examination
2 will not require applicants to have a comprehensive knowledge of Indian law. In fact,
3 this amendment simply proposes that applicants be able to spot issues relating to tribal
4 government jurisdiction and sovereignty which are implicated in otherwise common
5 situations.

6 Indian tribes and tribal governments in this State have always been influential
7 players in the economic, political, and legal developments that have shaped Arizona.
8 More recently, tribal governments engage in real estate development, energy
9 development, banking and finance, telecommunications, wholesale and retail trade,
10 and tourism as an exercise in inherent tribal sovereignty and economic self-
11 determination. These activities occur both on and off-reservation and implicate an
12 array of legal issues, especially those involving determinations of jurisdiction, which
13 call for competent legal counsel.

14 There are twenty-two federally recognized tribes exercising jurisdiction over
15 nearly twenty-two million acres of land located within the State of Arizona –
16 comprising over one quarter of the land within this State. Arizona has the greatest
17 percentage of Indian lands of all states in the country. Indian lands have been (and
18 continue to be) developed by some of *Fortune 500's* most powerful companies,
19 including Wal-Mart, AT&T, Home Depot, Bank of America, Peabody Energy, El
20 Paso Gas Corporation, and John Deere. These partnerships between Arizona's tribal
21 governments and national corporations generate billions of dollars in income and tax
22 revenue, and create significant employment opportunities for tribal members and non-
23 Indians alike. These transactions necessarily give rise to questions of jurisdiction
24 regarding the relationship between tribes and non-tribal businesses, employees, and
25 customers.

1 Another area in which Indian law issues arise on a consistent basis is during
2 the development of non-Indian owned land near reservations or waterways –
3 particularly in the context of negotiations or litigation. As a result of the expansion of
4 Arizona's cities and towns today, tribal lands are integral components of local,
5 regional and state planning efforts that include transportation, water rights, right-of-
6 way development, energy development, and environmental compliance. As such,
7 more and more municipalities are finding that their ability to properly plan for the
8 future requires developing a relationship with neighboring Indian tribes. And many
9 attorneys who represent these local governments are found to lack the basic
10 understanding of the powers and authorities of Indian tribal governments.

11 Legal issues that require an understanding of Indian law are not confined solely
12 to transactions that occur solely on our near Indian lands, or to which an Indian tribe
13 is a party. Indian law is a critical component of a wide array of practice areas which
14 are implicated in everyday interactions. Much of the general population is not aware
15 of how greatly Indian Law implications can affect their rights.

16 For example the State of Arizona – Tribal Gaming Compact, authorized by
17 voter initiative in 2002, requires that each tribal government that is a signatory to the
18 compact establish procedures for handling tort claims involving patrons at gaming
19 facilities. The patrons making such claims are typically non-Indian. Further, the
20 attorneys who represent these clients are usually not regular practitioners of Indian
21 law. It is not uncommon for these attorneys to mistakenly assume that (1) the State
22 has jurisdiction over these claims and (2) State tort laws apply. As a result these
23 attorneys neglect to look for applicable tribal laws and consequently run afoul of such
24 basic legal requirements as notice rules, statutes of limitation, and general
25 jurisdictional considerations to the detriment of their clients.
26

1 Other examples of situations where attorneys regularly fail to adequately
2 identify the impact that Indian law may have on their client's interests are: litigation
3 involving the adoption of an Indian child, the probate of real property on tribal lands,
4 auto accidents which occur on tribal reservations, criminal activity occurring within
5 the boundaries of Indian reservations, environmental compliance, and energy
6 development on tribal lands. Each of these examples represents a practice area that an
7 Arizona attorney should reasonably expect to encounter at some point in his practice,
8 yet each example also presents a situation where an attorney must be able to spot the
9 Indian law issue in order to competently represent their client.

10 The odds are that the general practitioner or public lawyer in Arizona, at some
11 point over the course of his career, will become involved in a case requiring the
12 ability to identify issues raised by Indian law. This intersection of Indian law
13 considerations vis-à-vis the general practice of law in this State is the crux of this
14 petition to include Indian Law as a possible test subject on the bar examination.

15 In the best interest of Arizona citizens, every lawyer licensed by the Arizona
16 Supreme Court must be able to spot Indian legal issues in the general practice of law
17 in order to possess basic competency. Each bar applicant must have an understanding
18 of Indian law implications on basic matters involving jurisdiction as they are already
19 required to be for federal, and state, government. Further, the potential to harm
20 clients and the unnecessary burden on State, Tribal and Federal courts attributable to
21 the inability of practitioners and even judges to recognize Indian law jurisdictional
22 issues far outweigh the natural disinclination to include an additional subject matter
23 area into the bar examination.

24 To underscore this point, at least three other states – Washington, New Mexico
25 and South Dakota – now include aspects of Indian law as potential areas for
26 examination on their bar exams. These changes came as a direct result of the

1 increased appreciation by those bars that lawyer competence in states with significant
2 populations of Indian people and Indian tribal governments requires, at a minimum,
3 that lawyers be able to identify situations where tribal jurisdiction and tribal
4 governmental sovereignty are implicated.

5 Initiatives similar to the Petition before you are currently under active
6 consideration in Michigan, Oklahoma, Montana, Wisconsin, Idaho, and Oregon.
7 Although Arizona has the largest percentage of Indian lands comprising the state, we
8 are facing the prospect of falling behind the bars of other similarly situated states by
9 failing to recognize the importance of Indian law as a legal area which must be tested
10 on the bar examination. The unfortunate result is the potential harm to clients due to
11 attorneys who cannot adequately identify key issues.

12
13 **II. Including Tribal Jurisdiction and Tribal Governmental Sovereign**
14 **Immunity as Examination Subjects Will Not Require Specialized**
15 **Understanding of a Sophisticated Area of Law**

16 The bar examination is designed to test core competencies and specialty subjects
17 are not appropriate examination material. And, while it is true that Indian law can
18 contain many nuances, this Petition proposes to include Indian law as a possible test
19 subject on the bar examination in a manner that will not require bar applicants to have
20 specialized knowledge of Indian law in order to be adequately prepared for the exam.
21 Instead, this Petition seeks to include only those fundamental Indian law issues, tribal
22 jurisdiction and tribal governmental immunity, that come from an attorney having the
23 most basic knowledge of Indian law.

24 The ability to identify when tribal jurisdiction might apply is no different than
25 the existing requirement that applicants be able to discern when state law applies and
26 when federal law applies. For example, applicants are already tested on the ability to

1 identify when Arizona and federal civil procedure rules apply; it would not be a great
2 leap to also expect that applicant to be cognizant of the possibility that tribal laws may
3 apply where the action is in tribal court, which is not subject to either state or federal
4 rules of civil procedure. The inclusion of Indian law on the bar examination would
5 not require each applicant to be intimately familiar with the specific laws of a
6 particular tribe. Instead, this proposal would merely require that the test taker be able
7 to identify when tribal law may be implicated in a situation that is otherwise
8 commonplace in the practice of law in Arizona.

9 The following is an example test question taken from facts similar to a recent
10 criminal case decided by the Supreme Court of Wyoming:

11 A Native American father is charged by the State of Arizona for
12 felony murder resulting from the death of his daughter by child abuse.
13 The alleged murder occurred in the family home in the town of Rio
14 Salado, Arizona, located within the former boundaries of the Rio
15 Salado Reservation established in 1879 by Executive Order. The
16 lands upon which the town of Rio Salado is located were ceded by the
17 Rio Salado Indian Community to the federal government in 1905 by
18 treaty. The town of Rio Salado is presently unincorporated as a
19 municipality of the State of Arizona. You have been appointed to
20 represent the accused in the case filed by the State of Arizona.
21 Discuss all issues that could be raised on the question of jurisdiction
22 of the state court over your client and the subject matter. Assume this
23 offense occurred on Indian lands.

19 A proper legal analysis would include discussing the potential criminal
20 jurisdiction by the federal government under the Major Crimes Act for acts of a
21 Native American charged as murder. It may also include a discussion of concurrent
22 tribal court jurisdiction if the tribal laws of the Rio Salado Indian Community provide
23 for the prosecution of child abuse resulting in death.

24 Including tribal governmental immunity would simply seek to have the
25 applicant recognize that Indian tribes are governments, not businesses or entities
26

1 subject to Arizona law. As such, tribal governments, like any other government, have
2 laws governing when and where the tribe may be subject to suit. By adopting the
3 proposed rule change to include tribal governmental immunity on the bar
4 examination, applicants will not be required to know the specifics about when and
5 where a tribe can be sued. The proposed change would require that exam takers be
6 able to recognize that the answers to questions regarding when and where a tribe can
7 be sued will not be found in Arizona or federal law and attorneys must look for
8 answers in laws of the Tribe against which they are seeking to bring a claim. Once
9 more, this situation is becoming increasingly common for Arizona practitioners, and
10 bar applicants need to be aware of the potential negative consequences that can result
11 from their inability to recognize this basic principle of Indian law.

12 The Indian Child Welfare Act is a prime example of a specific law that is
13 encountered everyday in State Courts throughout Arizona by practitioners who must
14 be aware of the law and its implications in order to competently represent their
15 clients; ICWA is an act of Congress which specifically requires that Indian tribes be
16 provided an opportunity to intervene as a party in any actions in State Court which
17 impact the parental rights of Indian tribal members, and understand that each Tribe's
18 laws will impact any potential placement or adoption of an Indian child. Accordingly,
19 it is important for applicants to know that there are Indian law implications in all
20 adoption and dependency matters involving Indian children. When the Court
21 considers that Arizona has a significant Indian population and that Indian children are
22 disproportionately represented in the juvenile court system, the importance of such
23 understanding on the part of practitioners is even more compelling. Although this
24 Petition does not seek to compel applicants to become experts on specific laws, such
25 as ICWA, including Indian law as a possible subject area on the bar examination
26

1 could be as simple as requiring that an applicant be able to spot an Indian law issue in
2 a commonly arising, but otherwise every-day dependency or child welfare matters.
3

4 **III. Proposed Period for Implementation the Amended Rule**

5 One logical concern about this Petition is that Indian law is not a required course
6 in law school; and, applicants, especially those from out of state, may not have had an
7 opportunity to become familiar with the subject matter. However, the same is true for
8 other "fair game" subject matters such as taxation, evidence, and secured transactions.
9 Like Indian Law, these subjects are not required law school courses; however, these
10 courses are offered as part of the elective law school curriculum. Bar applicants have
11 been regularly tested on these areas for decades and have routinely proven their
12 competency without any extraordinary bar preparation efforts. The same result could
13 reasonably be expected once Arizona requires Indian law on the bar examination.

14 However, in order to address this concern in a proactive manner, this Petition
15 proposes that the Supreme Court implement the inclusion of Indian law on the bar
16 examination following a reasonable notice period. This notice period will provide the
17 incoming class of first-year students, enrolled at the time of the Supreme Court's
18 adoption of the Rule, with sufficient notice of the new requirement. Such a notice
19 period is precisely how the State Bar of Washington resolved this concern.


20 Preparation for this change is facilitated by the fact that BAR/BRI (one of the
21 preeminent bar prep course firms in the nation) already offers Indian law materials as
22 part of its prep course for exam takers in those states which require it on their bar
23 examination. Additionally, the law schools at Arizona State University and the
24 University of Arizona already offer a wide variety of Indian law courses (and have for
25 well over 10 years) which enjoy healthy enrollment by a broad range of law students.
26

1 A reasonable notice period, coupled with the already ubiquitous law school
2 Indian law course offerings and prep course materials, will adequately ensure that all
3 future applicants are well-prepared for the possibility of Indian law as a test subject on
4 the bar examinations beginning in July of 2011.

5 **IV. CONCLUSION**

6 The State Bar respectfully requests that the Court amend Rule 35(b) as set forth
7 in Appendix "A".

8
9 DATED this 1st day of May, 2008.

10
11
12
13 
14 Robert B. Van Wyck
15 Chief Bar Counsel
16 STATE BAR OF ARIZONA
17 4201 North 24th Street, Suite 200
18 Phoenix, Arizona 85016-6288

19 Electronic copy filed with the
20 Clerk of the Supreme Court of Arizona
21 this 6th day of May, 2008.

22 by: Kathleen A. Lundgren
23
24
25
26

APPENDIX A

PROPOSED AMENDMENT TO RULE 35(b)

(proposed additional language shown by underscoring and proposed deletions shown by strike-through)

Rule 35(b). Examination Subject; Grading

1. "Essay examination questions at each examination will be upon some, but not necessarily all, of the following subject mater areas: contracts (including the Uniform Commercial Code except Articles 4, 5, 7, and 8); torts; criminal law; constitutional aspects of criminal procedure; corporations, partnerships, and other business organizations; trusts; wills; professional responsibilities; civil procedure; civil procedure (Arizona and federal); constitutional law (Arizona and federal); evidence; real property; ~~and;~~ community property; and jurisdiction (including Arizona, federal, and tribal) and tribal governmental immunity."



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
FACSIMILE: 602-542-7601

January 8, 2009

James Stipe, President
Indian Law Section
State Bar of Arizona
4201 N. 24th Street, Suite 200
Phoenix, AZ 85016-6288

Dear Mr. Stipe,

I write today in support of the Indian Law Section's efforts to have tribal government jurisdiction and immunity included as a potential test subject for the Arizona State Bar examination. As United States Attorney for the District of Arizona, Attorney General, and Governor, I have worked on legal issues with tribes in a variety of contexts including public safety, growth and development, the environment and contractual matters. These issues can be very complex and lawyers in Arizona should have a foundational awareness of tribal government jurisdiction and immunity in order to be able to advise their clients in a competent and responsible fashion.

Given the important role tribal governments play in Arizona's legal landscape, it is highly likely that a large portion of attorneys practicing in Arizona will at some point in their careers encounter a tribal government jurisdictional or immunity issue. Arizona is home to 22 tribal governments who collectively control roughly 28% of our state land base, meaning almost all roads lead through Indian Country. Because there is more Indian reservation land within Arizona than any other state, there are potentially more jurisdictional issues present here. Moreover, even within Indian Country there are distinctions: Arizona is home to the Navajo Nation with the largest reservation in the country, the San Juan Southern Paiute Tribe with no reservation land, and several tribes whose land is comprised of Indian and non Indian ownership rendering these reservations a checkerboard of state, tribal, and federal jurisdiction.

Tribal leaders frequently tell me of challenges they face from growth and development approaching their boundaries particularly when working with developers and residents who do not understand the unique legal status of tribal governments. Economic growth on Indian lands involving tribal governments, tribal members and non-tribal members and entities has increased and will undoubtedly continue to grow. In

Jim Stipe
December 7, 2008
Page Two

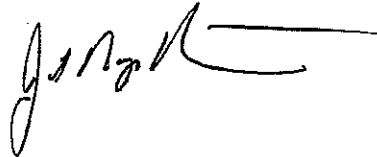
several regions of our state, tribal enterprises are the area's largest employers, offering jobs to tribal members and non-members alike. These dynamics mean that Arizona attorneys are increasingly called upon, more so than probably any other state, to deal with land, contractual, tort, and family matters that implicate Indian law or have Indian law as the foundational backdrop.

Arizona's legal landscape and the significant role tribal governments play renders it essential for the Bar to understand core federal Indian law principles to effectively represent individual, business and government clients. Failing to do so could lead, and in fact does lead, to lawyers filing claims in the wrong court or worse, having claims dismissed entirely for lack of jurisdiction. Certainly, Arizona businesses and citizens are deserving of protection from such disastrous results. In my view, the potential harm to clients and the unnecessary burden on state, tribal and federal courts far outweighs the natural disinclination to include more subject matters on the bar examination.

Several of our sister states including New Mexico, South Dakota, and Washington now include federal Indian law as a potential test subject for their bar examinations. Other states are considering such action. As a result, the major bar preparation courses have materials to help test takers adequately prepare for this potential subject. More importantly, Arizona is home to two of the finest Indian law programs in the country. Our law schools support the effort to include tribal government jurisdiction and immunity as a potential test subject and will ensure that future graduates are prepared for this portion of the exam, should the Supreme Court act favorably upon the Indian Law Section's petition.

Finally, Arizona's tribal leaders acting through the Inter Tribal Council of Arizona also support this effort. Adding tribal government jurisdiction and immunity as a potential test subject for the Arizona Bar examination is a natural step in the development of legal practice in our state and one I am happy to support.

Yours very truly,

A handwritten signature in black ink, appearing to read "Janet Napolitano", with a long horizontal line extending to the right.

Janet Napolitano
Governor



Supreme Court

STATE OF ARIZONA

COMMITTEE ON EXAMINATIONS

1501 W. Washington Street, Suite 104
Phoenix, Arizona 85007-3222
602-452-3971

March 27, 2009

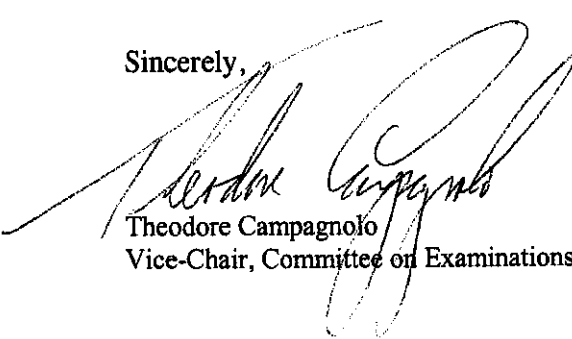
Honorable Ruth V. McGregor
Chief Justice of the Arizona Supreme Court
Room 402, Arizona State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007-3329

Dear Chief Justice McGregor:

This letter is in response to the petition to amend Rule 35(b) of the Arizona Rules of the Supreme Court, which seeks to include Indian Law as one of the subject areas that may be tested on the Arizona Bar Examination. Your Committee on Examinations carefully considered this issue when it was previously raised three years ago, and the Committee voted to not recommend a change to the rule at that time. Our then-Chair Jeanette Boulet provided the Committee's decision and reasoning in a letter to you dated September 22, 2006. Because we have not seen any new evidence or arguments regarding this issue in the interim, the Committee has not altered its recommendation to the Court.

For your information, I have enclosed copies of the September 22, 2006 letter, along with documents and copies of correspondence that provided the basis for our decision not to recommend a change. Please let us know if we can provide you or the other justices with additional information about our review and recommendation.

Sincerely,



Theodore Campagnolo
Vice-Chair, Committee on Examinations

Anna Maria Chavez, Chair • Theodore Campagnolo, Vice-Chair • Jeffrey B. Messing
Terri L. Clarke • Michael G. Galloway • K. Scott McCoy • David B. Earl • Raymond K. Ramella
Jeff T. Bergin • Jim Drake, Jr. • Jeffrey A. Weinstein • Karen L. Karr



SALT RIVER
PIMA-MARICOPA INDIAN COMMUNITY

10005 East Osborn Road / Scottsdale, Arizona 85256-9722 / Phone (480) 362-7400 / Fax (480) 362-7593

May 18, 2009

Honorable Ruth V. McGregor
Supreme Court, State of Arizona
Room 402, Arizona State Courts Building
1501 W. Washington
Phoenix, Arizona 85007-3329

Re: Letter of Support for Inclusion of Indian Law on the Arizona State Bar Examination

Dear Chief Justice McGregor:

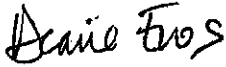
I respectfully submit this letter in support of the Arizona State Bar Association's petition to amend Supreme Court Rule 35 (b) to include Indian Law as a subject for the Arizona State Bar Examination. In my experiences as both a practicing attorney and an elected official charged with representing the Salt River Pima-Maricopa Indian Community, I have seen first-hand the importance of Indian Law and policy within the legal and political structure of the State of Arizona, and also understand the importance of having a state bar that knows the basics of Indian law, even among practitioners who don't regularly practice in this area.

Because Indian tribes are some of the largest employers in the State of Arizona and more non-Indian businesses are locating on Indian lands, Indian law is no longer confined to disputes between tribal members in a tribal court setting. Instead, non-Indians in a variety of professions and walks of life now frequently encounter tribal jurisdiction. Among other examples, family law judges now often hear adoption and foster care placement matters involving Indian children, non-Indians more regularly drive across tribal lands to reach their jobs, and commercial and retail businesses more frequently decide to locate within tribal communities. Without testing Indian Law on the Arizona State Bar Examination, attorneys representing clients who have engaged in activities over which Indian tribes have jurisdiction are less likely to understand the complexities of civil and/or criminal jurisdiction within Indian Country, including what is the proper forum for resolving such disputes.

In 1999, Arizona Supreme Court adopted the Rules of Procedure for the Recognition of Tribal Court Civil Judgments. This was an important step in recognizing the necessary interplay and coordination between the judicial systems of the State of Arizona and Indian tribal governments, but more must be done.

By including Indian Law on this important examination, the State of Arizona will be taking affirmative steps to: (1) increase lawyer competency; (2) improve the quality of legal services received by clients of Arizona attorneys; (3) reduce the burden on state and tribal courts imposed by lawyers who do not understand tribal sovereignty and who fail to properly identify the applicable jurisdiction and laws; and (4) provide for a meaningful and effective partnership between all Arizona Jurisdictions and judicial systems, including those in Indian Country. I urge your serious consideration and approval of including Indian Law on the Arizona State Bar Examination.

Respectfully,



Diane G. Enos

President

Salt River Pima-Maricopa Indian Community



STATE OF ARIZONA

JANICE K. BREWER
GOVERNOR

EXECUTIVE OFFICE

May 13, 2009

Arizona Supreme Court
1501 West Washington Street
Phoenix, Arizona 85007-3231

Re: R-08-0016 Petition to Amend Rule 35(b) Arizona Rules
of the Supreme Court

Dear Chief Justice McGregor and Honorable Justices of the Supreme Court:

I am in support of the pending petition to add Indian Law as a subject to be tested on the Arizona State Bar Examination. As Governor of the great State of Arizona, I support the effort to require proof of competency to practice law prior to admission and believe that a basic knowledge of tribal jurisdiction and sovereign immunity is essential for all practicing lawyers in our State.

Arizona's bar examination focuses on those areas most relevant to Arizona practice. Within the borders of Arizona lies more Indian reservation land than within any other state. With twenty-two tribes that control almost one-third of the state's land base, all lawyers are very likely to confront Indian law issues at some point in their practice. A fundamental understanding of whether a tribe has jurisdiction over land, a person and ultimately a matter, or whether a tribe is immune from suit, is necessary knowledge for all Arizona lawyers.

I commend you for the work you do on behalf of the people of Arizona. I know you will scrutinize this proposal with the same rigor and thought you apply to all matters coming before the Court. I thank you for the time spent reviewing this comment and hope that it is useful to you as you deliberate on this important proposal.

Sincerely,

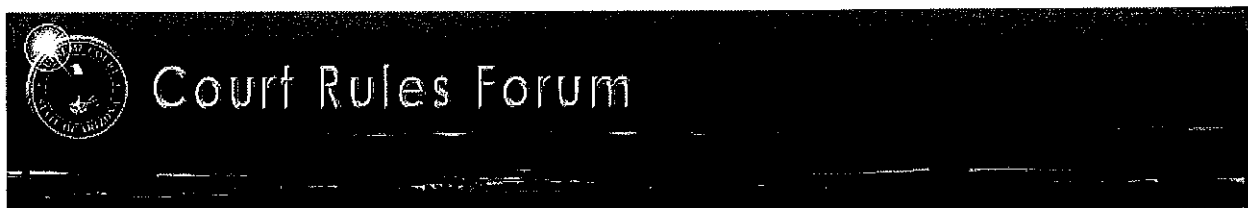
A handwritten signature in black ink that reads "Janice K. Brewer". The signature is fluid and cursive, with the first name "Janice" being the most prominent part.

Janice K. Brewer
Governor

JKB/kn/jk

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Monday, December 17, 2012

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Topic is locked

Page 2 of 2 << < 1 2

Author	Messages	Oldest First
JMRuggieri Posts:2	<p>05/20/2009 1:37 PM</p> <hr/> <p>Honorable Justices of the Supreme Court</p> <p>As a Member of the Indian Law Section pf the State Bar of Arizona, and the Bar Exam Exploratory Committee of the Indian Law Section, I have been given permission by the current Attorney General for the Tohono O'odham Nation, Mr. Jonathan Jantzen, to respectfully submit the attached letter for your consideration in support of the Petition to include Indian Law on the Bar Exam.</p> <p>Sincerely,</p> <p>Justin M. Ruggieri, Esq. AZ Bar No. 023437</p> <p>JRuggieri@azbar.org 520-884-1385</p> <p>for Jonathan Jantzen Attorney General, Tohono O'odham Nation P.O. Box 830 Sells, AZ 85634 520-383-3410</p> <p>Attachment: 152037364171.pdf</p>	
kpatters Posts:2	<p>05/20/2009 4:29 PM</p> <hr/> <p>Native American Bar Association of Arizona ("NABA-AZ") 3003 N. Central Avenue Suite 2600 Phoenix, AZ 85012 602-916-5491 (phone) 602-916-5691 (fax) kpatters@fclaw.com</p> <p>Attachment: 1520291576158.pdf Attachment: 1520291577629.DOC</p>	
sfreemont Posts:1	<p>05/20/2009 6:41 PM</p> <hr/> <p>Honorable Chief Justice Ruth V. McGregor Chief Justice of the Supreme Court</p>	

May 20, 2009

On behalf of the Arizona Tribal Prosecutors Association, we would like to encourage the inclusion of Indian law as an examination topic on the Arizona State Bar exam. The Arizona Tribal Prosecutors Association, ("AZTPA") is composed of prosecutors who serve Arizona Indian tribal governments. In their various capacities, these prosecutors have daily experience with the complexities of Indian law. There are a few common situations that this letter with highlight to illustrate the importance of Indian law in the State of Arizona.

With so much of Arizona's lands being Indian lands, and many of the state's highways passing through Indian land, incidents and criminal offenses occur regularly that place victims within the jurisdictional maze of Indian law. Those victims are sometimes subject to unnecessary confusion and misinformation when they contact attorneys who are not familiar with the Indian law aspects of personal injury tort claims, restitution, or even the criminal justice systems. Sadly, some victims may encounter attorneys who are virtually unaware that the claims may not be subject to state jurisdiction.

Another common area of practice in Indian country, where education in Indian law would be beneficial is in the area of service of process. Failure of an attorney to recognize that the proper service of process may be subject to an Indian tribal government's local rules could potentially delay or compromise a case. Similarly, state issued orders may be subject to a comity process for recognition within individual Indian tribal governments. When attorneys are unaware of these jurisdictional issues and possible conflict of laws, victims are potentially re-victimized.

With respect to criminal laws, Indian tribal governments have jurisdiction over criminal matters committed by Native American offenders that occur within Indian Country. Often, these criminal offenders also have different criminal matters pending within the Arizona State or federal judicial systems. On occasion, these crimes may also involve non-Indian offenders, or even a mix of offenders and victims. Therefore, criminal practitioners within the State of Arizona need to be aware of the various extradition practices that each jurisdiction may have. Effectively working together with the various jurisdictions is a mission of the AZTPA, and as we strive to reduce any and all barriers to justice and safety.

Of course, tribal prosecutors do not expect that all persons who seek admittance into the Arizona State Bar become Indian law experts. However, basic knowledge of the existence of this important area of law should be expected for all practitioners within the State of Arizona. The citizens of the state, who are future clients and sometimes victims, should have faith that a licensed attorney in Arizona has the competency to identify basic jurisdictional issues, potential limitations on claims, or even the availability of a tribal forum. For these reasons, the AZTPA encourages you to consider placing Indian law on the Arizona State Bar Examination.

Arizona Tribal Prosecutors' Association
c/o Sheri L. Freemont
10005 E. Osborn
Scottsdale, AZ 85256
480-362-5400
sherifreemont@srpmic-nsn.gov

JMRuggieri Posts:2

05/20/2009 7:08 PM

Honorable Justices of the Supreme Court

As a Member of the Indian Law Section of the State Bar of Arizona, and the Bar Exam Exploratory Committee of the Indian Law Section, I have been given permission by Mr. Robert C. Brauchli, a member of the State Bar of Arizona, to respectfully submit the attached letter for your consideration in support of the Petition to include Indian Law on the Bar Exam.

Sincerely,

Justin M. Ruggieri, Esq.
AZ Bar No. 023437

JRuggieri@azbar.org
520-884-1385

for
Robert C. Brauchli
P.O. Box 64607
Tucson, AZ 85728
520-299-8300
aztuc158@aol.com

Attachment: 152085597831.pdf

quigley Posts:1

05/21/2009 1:59 AM

Daniel J. Quigley

Quigley & Whitehill, PLC
2730 E. Broadway Boulevard, Suite 160
Tucson, Arizona 85716
520-326-4600
State Bar No. 011052

Attachment: 1521592299071.pdf

lochoa Posts:1

05/22/2009 6:49 PM

The reasons for the inclusion of Indian law on the Arizona bar exam are obvious:

- 1) There are 22 federally recognized tribes exercising jurisdiction over nearly twenty-two million acres of land located within the State of Arizona.
- 2) The land mass comprised by Arizona tribes is over one quarter of the land within this State. Arizona has the greatest percentage of Indian lands of all states in the country.
- 3) Indian lands have been (and continue to be) developed by some of the largest and most powerful companies in the U.S. and involve not only, complex business transactions, but the legal issues involved in these transactions involve far-reaching legal principles that even attorneys who do no work in this area should be able and trained to identify and have a basic level of competency.

These transactions give rise to questions of jurisdiction, liability and justice resulting from the relationship between tribes and non-tribal businesses, employees and citizens of this State.

Now is the time to add this area of the law - an area of great relevance to any lawyer admitted to practice in this state - to the Arizona bar.

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luis.ochoa@quarles.com

Ikoschney Posts:219

05/27/2009 5:38 PM

R-08-0016 Petition to Amend Rule 35(b) Arizona Rules of the Supreme Court

Terry Goddard
Arizona Attorney General
1275 West Washington
Phoenix, AZ 85007-2926
Ph: (602)542-4266
Fax (602)542-4085
State Bar #4557

Attachment: 152738327254.pdf
Attachment: 152738327258.doc

kpatters Posts:2

06/03/2009 11:01 AM

AMENDMENT TO NABA-AZ POST SUBMITTED ON 5-20-09 AT 3:29 P.M.

Native American Bar Association of Arizona ("NABA-AZ")
3003 N. Central Avenue
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kpatters@fclaw.com

The attachments to this post are to amend NABA-AZ's original post that was submitted on 5-20-09 at 3:29 p.m. The content of the letter did not change, only additional signatures were added. Thank you.

Attachment: 16315746471.DOC
Attachment: 16315752654.pdf

ACourson Posts:2

06/04/2009 3:50 PM

Honorable Justices of the Supreme Court

As Immediate Past Chair of the Indian Law Section and current Chair of the Bar Exam Exploratory Committee of the Indian Law Section, I respectfully submit for your consideration the attached letter from the current United States Attorney for the District of Arizona.

Sincerely,
Amy B. Courson
Immediate Past Chair
Indian Law Section
AZ Bar No. 022399
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Attachment: 164503572271.pdf

annedep Posts:1

06/30/2009 3:53 PM

Petitioner's Reply, filed on behalf of:

State Bar of Arizona
4201 N. 24th Street, Ste. 200
Phoenix, Arizona 85016-6288
(602) 252-4804

Attachment: 1630533520971.pdf
Attachment: 1630533520954.doc

Topic is locked

Page 2 of 2 << < 1 2

Forums > Rule Change Petitions under Consideration > Rules of the Supreme Court > R-08-0016 Petition to Amend Rule 35(b) Arizona Rules of the Supreme Court

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Monday, December 17, 2012

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Topic is locked

Page 1 of 2 [1](#) [2](#) [>](#) [>>](#)

Author	Messages	Oldest First
StateBarAZ Posts:35	<p>05/06/2008 9:33 AM</p> <hr/> <p>R-08-0016</p> <p>PETITION TO AMEND RULE 35(b), RULES OF THE SUPREME COURT</p> <p>AMEND RULE 35(b) TO INCLUDE INDIAN LAW AS ONE OF THE SUBJECT AREAS WHICH MAY BE TESTED ON THE ARIZONA BAR EXAMINATION.</p> <p>Petitioner: Robert B. Van Wyck Chief Bar Counsel State Bar of Arizona 4201 N. 24th Street, Suite 200 Phoenix, AZ 85016-6288 Phone: 602 340-7241 Fax: 602 271-4930</p> <p>Filed May 7, 2008</p> <p>ADOPTED as modified, effective January 1, 2012.</p> <p>Attachment: 156331242171.pdf Attachment: 156331242154.DOC</p>	
Ikoschney Posts:219	<p>02/20/2009 5:22 PM</p> <hr/> <p>R-08-0016 Petition to Amend Rule 35(b) Arizona Rules of the Supreme Court</p> <p>Hon. Janet Napolitano, Governor State of Arizona Office of the Governor 1700 W. Washington Street Phoenix, AZ 85007 Ph: 602-542-4331 Fax: 602-542-7601</p> <p>Attachment: 122022368971.pdf Attachment: 122022370554.pdf</p>	
Ikoschney Posts:219	<p>04/02/2009 12:09 PM</p> <hr/> <p>R-08-0016 Petition to Amend Rule 35(b) Arizona Rules of the Supreme Court</p>	

Theodore Campagnolo
Vice-Chair, Committee on Examinations
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Attachment: 14291253458.pdf

tjulian Posts:1

04/06/2009 4:44 PM

Hon. Ruth V. McGregor
Chief Justice of the Arizona Supreme Court

I am writing in support of the Petition to Amend Rule 35(b) of the Arizona Rules of the Supreme Court, which seeks to include aspects of Indian law on the Arizona State Bar examination.

A large part of my practice has been representing Indian tribes and their business entities, particularly involving personal injury claims and some commercial disputes. It is true that most every lawyer practicing in Arizona will face questions involving tribal law, and with increasing frequency, yet few are equipped to recognize fundamental principles of jurisdiction and sovereignty which go to the heart of every case. All too often new lawyers (as well as seasoned practitioners) simply do not appreciate these issues and pitfalls, which not only is a disservice to the client, it can be legal malpractice.

"Indian law" is complex, and there are far too many issues to cover as a whole on the bar exam, which is all the more reason why lawyers should be able to recognize when an Indian law issue exists and be keenly aware that jurisdiction and sovereignty will be case dispositive. For example, most cases arising on a tribal reservation within the state of Arizona will implicate tribal court jurisdiction, and many commercial and tort remedies involving tribal governments and business enterprises require an understanding tribal law and procedure will likely govern. A lawyer proceeding under the false assumption "Indian law" claims can be litigated in Federal Court will find the case dismissed leaving the client with no remedy, except against the lawyer.

It is not too much to ask that applicants sitting for the Arizona Bar Examination be expected to understand that Indian tribes have a unique status as sovereign nations, and that claims involving tribal governments or occurring on tribal lands will necessarily require careful analysis and faithful adherence to the applicable rules of law and procedure. I strongly urge the Court to Amend Rule 35(b) to include these discrete issues of Indian law on the Arizona Bar Examination.

Theodore A. Julian, Jr.
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Phoenix, AZ 85014

canbyw Posts:1

04/28/2009 7:28 PM

Commenter:
William C. Canby, Jr.
401 W. Washington St. Spc 55
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Phone: 602-322-7300
Fax: 602-322-7309
Bar No. 002926

I urge the adoption of the proposed rule to include tribal jurisdiction and tribal sovereign immunity as areas that may be tested in the Arizona Bar Exam. I offer these comments as a student and former teacher, and writer, of Indian Law; my comments do not represent the views of the United States Court of Appeals of which I am a member.

The purpose of the bar exam, of course, is to assure an adequate level of competence in Arizona practitioners of law. It is difficult to see how that level can be achieved without some basic knowledge of the general structure of Indian law. More than a quarter of the land mass of Arizona is Indian country, which is a term of art with enormous jurisdictional consequences for the state, federal and tribal courts. The 22 tribes that exercise sovereign authority over this expanse conduct an extraordinary amount of annual business, both in the legal and commercial sense. The influx of gaming revenues in the past several years has led to a huge increase in economic activity by the tribes, not only in the operation of casinos, but in

numerous other economic activities made possible by increased resources. All of these endeavors are leading to greatly increased contact between the Indian and non-Indian populations of Arizona, with the usual legal consequences of such interaction. For example, Arizona Indian gaming compacts require tribes to make arrangements for dealing with tort claims of casino patrons. These arrangements are tribal, but an attorney representing a tort claimant may not think to look into the possible existence, and exclusivity, of tribal remedies if he or she is ignorant of the sovereign status of the tribe and its territory. The same problem potentially exists with the thousands of Arizona non-Indians who are employed, permanently or for specific projects, in Indian country, or who live on reservations and engage in consensual activities, including marriage, with Indians and their tribes. Many others engage in business transactions with tribes or their members. A competent attorney representing these clients needs to know threshold issues of jurisdiction and sovereign immunity that may affect or even determine the outcome of a claim arising from such activity.

I have recently had occasion to survey the whole area of Indian Law over the period of the last five years, as part of updating a book on Indian law. I have done this several times before, but this time I was truly impressed with how many more cases of Indian law were decided by state and federal courts in the last five years, compared to the number in previous periods. The numbers are multiples of what they were fifteen years ago. I was especially struck by the large increase in cases challenging tribal sovereign immunity, generally without success. These cases reflect both increased litigation pressures and, likely, ignorance on the part of claimants about the existence or strength of tribal immunity. The increase in legal activity in Indian Law in general is undeniable. A quick Westlaw search in Arizona under key words "Indian" and "tribe" and "jurisdiction" brought up more than a dozen reported cases from the Arizona state appellate courts in the last two years. Arizona federal courts decide many more, and state and federal trial courts many more again. This is an area that the bar exam should not entirely overlook.

The state bars of New Mexico, Washington, and South Dakota are in various stages of implementing the inclusion of Indian Law on their bar exams, and I am told some other states are considering the matter. Arizona is a prime candidate for two reasons. First, we have the most Indian country and the highest reservation population of any state. Second, like New Mexico, we are not a state subject to Public Law 280, which gave certain states civil and criminal adjudicatory jurisdiction over Indian country. A practitioner in a Public Law 280 state might be relatively safe in assuming that litigation will occur in state or federal, rather than tribal court, no matter where the claim arose. In a non-Public-Law-280 state like Arizona, that mistake may be fatal to a lawsuit because claims against Indians arising in Indian country lie within the exclusive jurisdiction of tribal court, even if the plaintiff is a non-Indian. What the practitioner does not know can hurt the client.

The rule change proposed by the State Bar is a sensible and modest one. It does not require all practitioners to know the intricacies of Indian Law, but it does require them to know the potential jurisdictional and sovereign immunity problems that will require inquiry when they have a case with Indian country contacts. The chances that an Arizona practitioner will have such cases in the future are high, and ever increasing.

For these reasons, I strongly and respectfully urge the adoption of the State Bar rule change. And I thank the Arizona Supreme Court for affording me the opportunity to express these views.

William Canby

RTsodie Posts:1

05/05/2009 12:49 PM

Honorable Ruth V. McGregor
Chief Justice of the Arizona Supreme Court

Dear Chief Justice McGregor:

On behalf of the Indian Legal Program at the Sandra Day O'Connor College of Law, I am writing in support of the Petition to Amend Rule 35(b) of the Arizona Rules of the Supreme Court, to include basic principles of Federal Indian Law that concern jurisdiction and tribal sovereign immunity. I am aware that many key organizations and offices within the State have supported this change, including the Office of the Governor and the Arizona State, Tribal and Federal Court Forum. These statements outline in detail the substantial concerns that motivated the Petition and do not need to be duplicated in this letter. However, I also realize that the Arizona Supreme Court's Committee on Examinations continues to resist such a change, on the grounds that Indian law is "a specialized topic" that is not required by law schools, and that the bar exam is merely designed to test "core competencies needed to begin the practice of law" and not expertise within any particular area of specialization. I would like to respond specifically to that perspective, from my position as a law professor and Executive Director of the Indian Legal Program at the Sandra Day O'Connor College of Law.

When I was in law school, the popular view was that Indian law was an esoteric subject

understood only by a small subset of "experts" who delved into ancient treaties and the labyrinth of federal statutes and regulations that governs Indian lands and Indian tribes. The popular analogy was to "admiralty law" and students were advised to take such subjects, if and when they were ever offered, only out of interest and not because the issue would ever come up in practice. In the contemporary world, nothing could be further from the truth. Tribal governments today exercise active jurisdiction over their lands, and most have quite sophisticated executive, legislative and judicial structures, which must interact daily with federal and state government entities. This was the impetus behind the development of the Arizona State, Tribal and Federal Court Forum, which enhances coordination between all of these court systems, and is also represented by efforts within the Office of the Governor, which regularly sponsors state-tribal forums on a variety of subject areas requiring intergovernmental coordination, such as health, education, and environmental protection. The advent of Indian gaming and other forms of economic development on tribal land has attracted huge numbers of non-Indians to the reservation, and thus it can no longer be said that there is only a "remote" possibility of an "Indian law" case arising in the daily practice of a lawyer in Arizona. I regularly get calls from attorneys throughout the state seeking a "place to start" on Indian law issues, ranging from tort lawsuits to criminal defense actions, to contract actions, to property claims, to domestic relations actions where one spouse or party resides on the reservation. Many of these attorneys have never had Indian law and some only realize that they have an "Indian law" issue at a point in the litigation where interests of the client have already been compromised.

In a state where over 25% of the land is tribal land, where there are 22 federally recognized tribal governments enacting laws to govern their lands and members, and where non-Indians go onto the reservation on a daily basis, it is incomprehensible that Arizona would not require some jurisdictional knowledge that there are tribal governments operating on tribal lands and that tribal governments enjoy sovereign immunity and other attributes of the sovereign powers enjoyed by other governments. That is the "competent practice" of law in Arizona and is surely a permissible standard to set for attorneys who aspire to practice within the state. By continuing the myth that Indian law is like admiralty law, we compromise the rights of clients and impose considerable burdens on the courts to protect rights (for example in an Indian Child Welfare Act case) which have not been identified by the attorney. That cannot be an acceptable result. The more appropriate analogy is probably to "community property" which is required by states such as Arizona and California that maintain community property systems, but may not be required in states that do not have this system of marital property.

I believe that the proposed modification can be phased in, with appropriate notice to students, in ways that do not compromise interests of fairness, but instead enhance the ability of attorneys to meet the legal needs of clients throughout the state. This has already occurred in states such as New Mexico, which also contains a significant amount of tribal land, and is under active consideration by many other states. Arizona should follow the modern trend, rather than holding to past mythologies about the "esoteric" nature of Federal Indian law.

I appreciate the opportunity to share these perspectives and hope that they are useful to you as you discuss this important issue.

Sincerely,

Rebecca Tsosie
Willard H. Pedrick Distinguished Research Scholar, Professor of Law, and
Executive Director, Indian Legal Program
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Arizona State University
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BBD Posts:1

05/05/2009 2:26 PM

Dear Chief Justice McGregor and Honorable Justices of the Arizona Supreme Court:

I write to support the State Bar of Arizona, Indian Law Section's Petition #R08-0016, which requests that the Arizona Supreme Court amend Rule of the Supreme Court 35(b) to include Federal Indian Law as a potential subject of examination for admission to the State Bar of Arizona.

As you may or may not know, three other states with far fewer Indian reservations, Native American residents, and percentage of territory classified as Indian reservations currently include Federal Indian Law as a subject on their respective bar examinations. Washington, New Mexico, and South Dakota include Federal Indian Law as a potential subject of examination. Likewise, in July 2007, the New York State Bar Examination included a question

in its multistate performance test ("MPT") that addressed Federal Indian law issues indirectly.

In Arizona, approximately 28% of the State's total land base is comprised of Indian reservations – home to 22 Indian tribes. The geographic location of those Indian reservations is not remote; some border major metropolitan areas such as Phoenix, Scottsdale, Tempe, Mesa, and Chandler. As a result, Arizona attorneys regularly encounter matters that involve Federal Indian law issues, including but not limited to law enforcement and jurisdiction; employment and labor; tort; probate; domestic relations; construction; regulatory and taxation authority; contracts; land use; criminal law; and environmental issues.

Attorneys and their clients will benefit from testing of Federal Indian Law on the Arizona Bar Examination. The necessity and ability as attorneys to recognize potential Indian law issues will increase the competence of the profession in the State of Arizona and provide at least a basic knowledge of jurisdictional issues that are prevalent in Arizona.

The ability to determine that the Indian Child Welfare Act may apply to an adoption; that a Tribal court may be the appropriate forum for a dispute; that a contract's dispute resolution provision may or may not be effective depending upon choice of law and forum provisions; and the determination of controlling law and jurisdiction are a small sample of issues that can more effectively and efficiently be addressed by attorneys that gain a basic understanding of Federal Indian Law through a requirement that said subject be included on the Arizona Bar Examination.

While I anticipate that some naysayers and opponents will claim that they will never deal with Federal Indian Law issues, the same can be said for many of the subjects that are potentially examined in any given year. While I may not address community property or wills in my daily practice, the requirement that I learn the basic precepts of those areas of law in preparation for the Arizona Bar Examination does not diminish the importance of those subjects to the greater portion of the legal profession or the citizens of the State of Arizona. Although I do not practice in the fields of domestic relations, wills, or trust and estates, my ability to recognize those issues and take appropriate action was enhanced by the requirement to study those subjects in preparation for the Bar Examination. Similarly, the rule change does not require practitioners to have an intricate knowledge of Federal Indian Law, but will require understanding potential jurisdictional and tribal sovereign rights issues.

Likewise, inclusion of Federal Indian Law as a potential subject for the Arizona Bar Examination will enable exam takers to recognize three distinct governments operating within the State of Arizona, i.e., the State, federal government, and individual tribal governments. The ability to identify issues of tribal government jurisdiction and sovereignty that are implicated in a myriad of common situations will benefit the citizens of the State of Arizona, the courts, and the profession.

I urge the adoption of the proposed rule change. Thank you in advance for your consideration of these comments.

Respectfully,

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bllewis2 Posts: 1

05/06/2009 4:40 PM

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Tempe, Arizona 85287

Attachment: 156404453071.pdf

lussier Posts: 1

05/07/2009 1:35 PM

Leah Lussier
lussier@email.arizona.edu

Attachment: 15735864071.pdf

ACourson Posts:2

05/08/2009 12:15 AM

Honorable Justices of the Supreme Court

As Immediate Past Chair of the Indian Law Section and current Chair of the Bar Exam Exploratory Committee of the Indian Law Section, I respectfully submit the attached letter from the current Indian Law Section Chairman, Mr. James Stipe.

Sincerely,
Amy B. Courson
Immediate Past Chair
Indian Law Section
AZ Bar No. 022399
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Attachment: 15815202671.pdf
Attachment: 158152035554.pdf

BarbaraAtwood Posts:1

05/11/2009 4:04 PM

Barbara Atwood
U of A College of Law
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520-621-1912

In light of the increasingly important role played by Indian tribes and tribal members in the state's economy, I strongly favor including Indian law as a potential subject for the bar examination. As pointed out in the petition, the 22 tribes in this state account for over 1/4 of the state's land. A lawyer engaged in a general civil practice is likely to encounter issues concerning service of process across reservation boundaries, enforcement of judgments within tribal courts, enforcement of tribal judgments within state courts, and questions regarding tribal sovereign immunity. In addition, those engaged in family law practice may come across difficult jurisdictional clashes between tribal and state officials regarding divorce, child support, and child custody. Similarly, criminal law practitioners may come across tribal misdemeanor prosecutions as well as state and federal court prosecutions of Indian defendants.

In my view, lawyers who practice in this state need not be expert in the considerable complexities of federal Indian law, but they should at least have a grasp of the basic jurisdictional principles governing tribal/state relations, the role of federal authority vis a vis tribes, and the concept of tribal sovereign immunity. As it happens, the two public law schools in the state each offer nationally-recognized programs in Indian law. Each school could presumably accommodate any increased student enrollment in the basic Indian law course that might result from adoption of this rule change.

bullisaz Posts:1

05/14/2009 9:22 PM

Paul A. Bullis
Bar No. 007676
1847 N. Raven Circle
Mesa, AZ 85207
480-704-3974 (H) (No FAX no.)
bullisaz@yahoo.com

I submit these comments in support of the petition to amend Rule 35(b) of the Rules of the Supreme Court to include Indian Law as one of the subject areas which may be tested on the Arizona Bar Examination.

During the time when I was Director of the Arizona Department of Gaming, I saw first hand the need for attorneys to have basic awareness of potential issues involving tribal jurisdiction and immunity. For example, I would become aware from time to time of patron disputes with tribal casinos, and patron and employee injuries, as well as business disputes between tribes and vendors. Each of these matters potentially presents both jurisdictional as well as immunity issues.

The need for attorneys to have awareness of these issues continues to grow as tribal business grows. Gaming is one area that has shown tremendous growth over the past several years. From Fiscal Year 2004 to Fiscal Year 2008 tribal gaming in Arizona has grown by nearly 50%, and is now a \$2 Billion a year industry. That period also included construction or expansion of at least six casinos. In addition, two more casinos are currently under construction and another has been announced. Many of these casinos include hotels and other amenities.

This growth period has resulted in an increase in jobs as well as an increase in vendors providing goods and services for tribal enterprises. In fact, the most recent reports show that Indian gaming enterprises alone now directly employ over 12,000 Arizona citizens – 60% of whom are non-Indian.

The number and frequency of these types of disputes will only increase as tribal gaming continues to grow. The need for Arizona attorneys to be able to identify issues of tribal jurisdiction and immunity will also grow as a result. The time has come to include Indian Law as a subject area for testing on the bar exam.

theresarosier Posts:1

05/18/2009 5:43 PM

May 18, 2009

Honorable Ruth V. McGregor
Supreme Court, State of Arizona
Room 402, Arizona State Courts Building
1501 W. Washington
Phoenix, Arizona 85007-3329

Re: Letter of Support for Inclusion of Indian Law on the Arizona State Bar Examination

Dear Chief Justice McGregor:

I respectfully submit this letter in support of the Arizona State Bar Association's petition to amend Supreme Court Rule 35 (b) to include Indian Law as a subject for the Arizona State Bar Examination. In my experiences as both a practicing attorney and an elected official charged with representing the Salt River Pima-Maricopa Indian Community, I have seen first-hand the importance of Indian Law and policy within the legal and political structure of the State of Arizona, and also understand the importance of having a state bar that knows the basics of Indian law, even among practitioners who don't regularly practice in this area.

Because Indian tribes are some of the largest employers in the State of Arizona and more non-Indian businesses are locating on Indian lands, Indian law is no longer confined to disputes between tribal members in a tribal court setting. Instead, non-Indians in a variety of professions and walks of life now frequently encounter tribal jurisdiction. Among other examples, family law judges now often hear adoption and foster care placement matters involving Indian children, non-Indians more regularly drive across tribal lands to reach their jobs, and commercial and retail businesses more frequently decide to locate within tribal communities. Without testing Indian Law on the Arizona State Bar Examination, attorneys representing clients who have engaged in activities over which Indian tribes have jurisdiction are less likely to understand the complexities of civil and/or criminal jurisdiction within Indian Country, including what is the proper forum for resolving such disputes.

In 1999, Arizona Supreme Court adopted the Rules of Procedure for the Recognition of Tribal Court Civil Judgments. This was an important step in recognizing the necessary interplay and coordination between the judicial systems of the State of Arizona and Indian tribal governments, but more must be done.

By including Indian Law on this important examination, the State of Arizona will be taking affirmative steps to: (1) increase lawyer competency; (2) improve the quality of legal services received by clients of Arizona attorneys; (3) reduce the burden on state and tribal courts imposed by lawyers who do not understand tribal sovereignty and who fail to properly identify the applicable jurisdiction and laws; and (4) provide for a meaningful and effective partnership between all Arizona Jurisdictions and judicial systems, including those in Indian Country. I urge your serious consideration and approval of including Indian Law on the Arizona State Bar Examination.

Respectfully,

Diane G. Enos
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Attachment: 1518433273171.pdf

lisa1 Posts:1

05/18/2009 6:28 PM

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May 18, 2009

Arizona Supreme Court
1501 West Washington
Phoenix, AZ 85007-3231

Re: Indian Law on Arizona Bar Exam

I am writing as one of the Deans of Arizona's three law schools in support efforts to have American Indian tribal government jurisdiction and Indian sovereign immunity included as one of subjects on the Arizona State Bar Exam. The matter is currently under consideration before the Supreme Court of Arizona by virtue of State Bar of Arizona Board of Governors Petition # R08-0016, dated May 16, 2008, respectfully urging the Supreme Court to amend bar Rule 35 (b) to formally include Indian law as a topic on the state bar exam.

Other key interested parties strongly support this effort, including the State Bar of Arizona Section of Indian Law, the Native American Bar Association of Arizona, Arizona's tribal leaders through the Inter-Tribal Council of Arizona, former Governor, now United States Secretary of Homeland Security Janet Napolitano, many Arizona attorneys drawn from across our state, and, as mentioned above, Arizona's three law schools.

The evidence is strong that time has come for the Arizona bar to reflect the immense cultural, historical, economic and legal importance of Arizona's American Indians. The tribes employ thousands of Arizonans, both Indian and non-Indian; they own, operate, manage, employ or house a vast number of industries, retail firms, gaming concerns, natural resources, agriculture, tourist attractions, mining and educational institutions across our state. Approximately 28% of the state is in Indian Country; an astounding 250,000 Arizonans are enrolled in a tribe, and Arizona is home to no less than 22 Indian nations, including America's largest reservation – the Navajo Nation. Arizona's Indian nations share strategic boundaries and relationships with cities such as Phoenix, Scottsdale, Tempe, Mesa, Chandler, Prescott, Casa Grande, Florence, Tucson and Yuma.

The significance of Arizona's large Indian population and land base is amplified by the many issues of state law intertwining with Indian law. The Indian Child Welfare Act affects many state adoption and family matters. The Indian Gaming Regulatory Act regulates an industry that in 2007 employed nearly 15,000 Arizonans. Federal Indian law governs or affects mining and natural resources, burial sites, archeological finds, decedent's estates, energy and water issues, criminal jurisdiction, and issues of profound legal significance to Arizona. The practice of the typical Arizona attorney is increasingly likely to involve Indian law issues. It is therefore appropriate to ask that a competent state attorney have at least a basic understanding of jurisdiction and sovereignty immunity, so as to protect and advise clients. In recent years the Office of the U. S. Attorney for Arizona, the Office of the Arizona Attorney General, and many of the state's major law firms have established Indian law practice sections. All three Arizona law schools, the University of Arizona James E. Rogers College of Law, Arizona State University Sandra Day O'Connor College of Law, and Phoenix School of Law offer federal Indian law courses, typically quite popular among the students. Authors of top national law school casebooks in subjects such as Constitutional Law, Property, and Civil

Procedure have added Indian law sections to their new editions. Perhaps one of the best indicators of the coming change is that national bar preparation companies have already developed course materials in anticipation of the approaching national wave of Indian law.

Several other western and mountain states including New Mexico, Washington and South Dakota now include federal Indian law on their bar exams, with more states considering the matter. Arizona, which may bid to fairly outrank all its sister states for its proud richness of native history, culture, and vibrant presence, should be among this first vanguard of states leading the way in acknowledging one of our greatest resources – the descendants of its native inhabitants.

For all these reasons, the Phoenix School of Law community, in furtherance of our founding principles of serving the underserved, and producing highly ethical attorneys imbued with a sense practice-ready public service, respectfully urge the Court to amend Rule 35(b) to add to the subjects that may be tested on the Arizona State Bar Exam, Indian tribal government jurisdiction and sovereign immunity. Thank you for this opportunity to submit our comments.

Respectfully submitted,

Dr Eugene Clark
Interim Dean and Professor of Law

EC/bl

jamesstipe Posts: 1

05/19/2009 1:12 PM

Honorable Janice K. Brewer, Governor
State of Arizona
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Attachment: 1519125097958.pdf
Attachment: 151912511029.pdf

thomas.murphy@gric.nsn.us
Posts: 1

05/19/2009 1:43 PM

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Arizona Bar No. 022953
New Mexico Bar No. 7705

Attachment: 151943492858.pdf
Attachment: 151943494429.doc

psberman Posts: 1

05/19/2009 2:12 PM

Paul Schiff Berman
Dean, Sandra Day O'Connor College of Law
Arizona State University
P.O. Box 877906
Tempe, Arizona 85287

480-965-6181

May 19, 2009

The Honorable Ruth V. McGregor
Supreme Court of Arizona
Administrative Office of the Courts
1501 W. Washington, Suite 104
Phoenix, AZ 85007-3231

Re: Petition No. R-08-0016

Dear Chief Justice McGregor:

On behalf of the Sandra Day O'Connor College of Law, I am writing in support of the State Bar of Arizona's proposal to amend Rule 35(b), to include Indian Law as a subject on the Arizona Bar Examination.

Arizona bar applicants should have basic knowledge of subjects or areas of law that are unique and distinct to the State. Arizona, for example, is one of only nine community property states. The Arizona Bar Examination has long included community property as a fair-game subject, yet it fails to include Indian law—an area of law that is pervasive throughout the State. The Sandra Day O'Connor College of Law has recognized the importance of Indian law to the legal profession by offering many opportunities for students to learn about the basic principles of Indian law and incorporating these principles in many of the fundamental courses.

The recent growth in tribal economic development in Arizona has led to an increased interaction between legal practitioners unfamiliar with Indian law and the applicability of federal and state laws to Indian tribes and governments. Arizona's Indian tribes are actively engaging in energy, real estate development, natural resource development, agriculture, finance, telecommunications, wholesale and retail trade, tourism, and gaming—all of which contributes billions of dollars to Arizona's economy. Indian Law is no longer a highly specialized field—it touches almost every legal discipline and plays a significant role in Arizona. Indian law issues, for example, may arise in matters involving contracts, constitutional law, international law, family law, torts, criminal law, property rights, civil procedure, business organizations, environmental law, trusts and estates, and employment.

To date, New Mexico, South Dakota, and Washington test the topic of Indian Law on their bar examinations. These states recognize the importance and the need for their states' future attorneys to have adequate knowledge in the field. I understand that the bar examiners in Idaho, Montana, Oklahoma, Oregon and Wisconsin are also considering adding Indian Law as a subject on their bar examinations.

As business and governmental interactions increase, so too does the potential for malpractice and numerous ethical violations arising out of transactions involving attorneys ill-informed and ill-equipped to handle Indian Law. Therefore, it is important that we ensure Arizona attorneys have a basic knowledge in Indian Law by testing the subject on the Arizona Bar Examination.

Given the need for and the important and pervasive nature of the subject area, it would be truly unfortunate if Arizona—the state with the largest percentage of Indian lands in the country—failed to include such an important area of the law on the bar examination. I urge the Court to adopt the proposed rule change.

Sincerely,

Paul Schiff Berman
Dean, Sandra Day O'Connor College of Law
Foundation Professor of Law

hershey Posts:1

05/19/2009 5:19 PM

Commenter's Name: Indigenous Peoples Law & Policy Program, James E. Rogers College of Law
Mailing address: 1201 E. Speedway Blvd., P.O. Box 210176, Tucson, Arizona 85721
Phone Number: 520-621-5677
Fax Number: 520-621-9140
E-mail address: hershey@law.arizona.edu

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Waterjudge Posts:1

05/19/2009 8:17 PM

Michael C. Nelson
P.O. Box 3795
Phoenix, AZ 85006
602-258-4049
FAX 602-258-4049
Michael.Nelson@azbar.org
Bar Number 004944

I support the proposed addition of Indian Law to the subjects to be tested on the Arizona State Bar Exam.

I have practiced law in Indian Country for thirty-two years. I was the presiding judge of the Apache County Superior Court for almost fifteen years and the Chairman of the Arizona State, Tribal and Federal Judges Court Forum for ten years.

In Apache and Navajo Counties, the counties with which I am most familiar, state court criminal cases involving Native Americans as either defendants or victims constitute a substantial percentage of the total criminal cases. Virtually every criminal case involving a Native American defendant and/or victim requires a jurisdictional analysis.

The state court civil cases involving Indian Law issues arise in connection with state-funded on-reservation school districts; the White Mountain Apaches' Casino at Honda, which is adjacent to the growing communities of Pinetop, Lakeside and Show Low; the New Lands, located around Sanders in Apache County, where a significant number of traditional Navajos from the Navajo-Hopi Land Dispute area were relocated; cases arising on fee lands within the Navajo and White Mountain Apache Reservations and on-reservation non-Indian/non-Indian business dealings.

The Indian Child Welfare Act does not come into play in adoptions as much as it once did, as those adoptions have become fairly infrequent, but the I.C.W.A. still must be considered in D.E.S. cases involving Native American families and termination of parental rights. Domestic relations cases with Indian Law issues come up more than might be expected, with Native American couples living and/or working off reservation and with mixed Native American/non-Native American couples on-reservation.

In short, a significant proportion of the cases in Apache and Navajo Counties in a number of practice areas require some Indian Law analysis and understanding. These cases are not handled by Indian Law specialists, but rather by the general practitioners. While the answers to the questions raised by these cases are not always clear, a practitioner in those counties needs to be aware of the issues and needs to know where to go to find the answers. Either they get that background in law school, through a bar review course, or catch as catch can as they learn the law while practicing. Personally, I believe an organized, framed learning experience is preferable.

I urge the Arizona Supreme Court to approve the inclusion of Indian Law in the Arizona State Bar Exam.

Michael C. Nelson

pirvine Posts:1

05/20/2009 12:42 PM

Hon. Ruth V. McGregor
Chief Justice of the Arizona Supreme Court

I am writing to convey the support of the Arizona State, Tribal, and Federal Court Forum for the efforts of the Indian Law Section to have Indian law added to the topics that may be included in essay examination questions listed in the Rules of the Supreme Court, Rule 35 (b) (1).

The Arizona State, Tribal, and Federal Court Forum was established in 1990 by order of the Chief Justice of the State of Arizona. Today the Forum includes members from state, tribal and federal judiciaries and from the public law offices of these three jurisdictions. One of the stated purposes of the Court Forum is:

To promote improvement in the quality of justice delivered in the context of the overlapping jurisdiction of state, tribal and federal courts through judicial education, professional court administration, education of attorneys and the public about tribal courts,

The support of the Court Forum for the Indian Law Section's efforts , particularly to include civil and criminal jurisdictional issues on the Bar exam, promotes this purpose by prompting Bar examinees to educate themselves on these basic principles before they are licensed to practice in Arizona where these issues are so pervasive.

I have been involved in Indian law issues in Arizona for over thirty years. An awareness of these issues is more important today than it was when I first began practicing law. Therefore, I urge the addition of Indian law as a subject on the Arizona bar exam.

Sincerely,

Patrick Irvine
Judge, Arizona Court of Appeals, Division One
Chair, Arizona State, Tribal, and Federal Court Forum
1501 W. Washington
Phoenix, AZ 85007-3329
602-542-3493

Topic is locked

Page 1 of 2 1 2 > >>

Forums > Rule Change Petitions under Consideration > Rules of the Supreme Court > R-08-0016 Petition to Amend Rule 35(b) Arizona Rules of the Supreme Court

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Supreme Court

STATE OF ARIZONA

COMMITTEE ON EXAMINATIONS

1501 W. Washington Street, Suite 104

Phoenix, Arizona 85007-3231

602-364-0371

June 15, 2006

Shannon Keller O'Loughlin
Dreyer Boyajian LLP
75 Columbia Street
Albany, New York 12210

By Fax 518-463-4039 (3 pages)

Re: Arizona State Bar Indian Law Section Proposal

Dear Ms. O'Loughlin:

The Supreme Court Committee on Examinations has considered the proposal of the Executive Council of the Indian Law Section to amend Rule 35(b), Ariz. R. Sup. Ct., 17A A.R.S., to include Indian Law as a subject tested in the essay portion of the Arizona State Bar Examination. We are currently conducting a full review of our bar examination, including the areas tested and the format of the questions, and may in the future be submitting proposed rules changes to the supreme court to implement any recommendations we reach through that process. At your request, we have separately considered the change proposed by the Indian Law Section, which would amend the potential areas of testing to include, in addition to the twelve topics currently listed:

Tribal sovereign immunity; and civil and criminal jurisdiction over actions involving Tribes, Tribal members or entities, or arising on Indian lands.

After considerable discussion, the committee has voted to withhold its support for such an amendment to Rule 35 at this time.

As you know from our meeting with members of the Indian Law Section Executive Council last fall, we appreciate the need for Arizona attorneys to recognize and respond

Jeanette M. Boulet, Chair • Daniel P. Beeks, Vice-Chair • Karl B. Zangerle
Anna Maria Chavez • Marilyn A. Pollard • Theodore Campagnolo • Jeffrey B. Messing
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Shannon Keller O'Loughlin
Dreyer Boyajian LLP
June 15, 2006
Re: Arizona State Bar Indian Law Section Proposal
Page Two

appropriately to Indian Law issues that may be relevant to a case or legal problem. The committee discussed other ways such education might be provided, such as mandatory CLE, or integration of Indian Law issues in mandatory law school core courses.

We are concerned, however, about attempting to improve the knowledge of Arizona attorneys by including this sophisticated and complex field on the bar examination, when the subject matter is not a required course in Arizona's law schools or, to our knowledge, any law school in the country. As you can imagine, there is a tension between competing concerns about the efficacy of our bar examination, with some critics maintaining that the bar exam already tests too many subject areas and judges applicants too harshly, and others questioning whether the existing topics are sufficient to test basic legal knowledge.

We are mindful of our supreme court's admonition that the practice of law "is not a privilege but a right, conditioned solely on the requirement that a person have the necessary mental, physical and moral qualifications." *See, e.g. In re Klahr*, 102 Ariz. 529, 433 P.2d 977 (1967). Accordingly, the bar exam is designed to test the core competencies needed to begin the practice of law, not expertise in any particular area. Other highly specialized fields of legal knowledge that routinely impact practice are not tested. Committee members noted that taxation, administrative law, and bankruptcy are all examples of such omitted subject areas that regularly require attention in an Arizona attorney's practice.

Committee members also addressed whether a proposed change provides fair notice of the specific areas to be tested on the exam, an issue we discussed with you last fall. We appreciate your work in drafting the proposed language, but find it sweeps broadly, touching upon Indian Law aspects of constitutional law, jurisdiction, criminal law, procedure, and possibly conflicts of law. In the context of testing a range of topics to ensure general competency, the committee expressed concern that this change requires too much of applicants, at least in the context of the bar examination as it is currently comprised and formatted.

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Shannon Keller O'Loughlin

Dreyer Boyajian LLP

June 15, 2006

Re: Arizona State Bar Indian Law Section Proposal

Page Three

We wish you well in your important efforts to improve the education of members of the Arizona Bar about the Indian Law issues that may regularly affect their clients, and have appreciated the opportunity to meet with you about your concerns.

Sincerely,



Jeanette M. Boulet, Chair
Committee on Examinations
Supreme Court of Arizona

JMB/

Jeanette M. Boulet, Chair • Daniel P. Beeks, Vice-Chair • Kari B. Zangerle
Anna Maria Chavez • Marilyn A. Pollard • Theodore Campagnolo • Jeffrey B. Messing
Terri L. Clarke • Michael G. Galloway • K. Scott McCoy • David B. Earl • Raymond K. Ramella



August 2, 2005

Ms. Carolyn DeLooper
Committee on Examinations, Committee on Character and Fitness
Arizona Supreme Court
Administrative Office of the Courts
1501 W. Washington, Suite 104
Phoenix, AZ 85007-3231

Re: Indian Law Subject Matter on Arizona State Bar Examination

Dear Ms. DeLooper:

On May 20, 2005, the Arizona State Bar Board of Governors adopted and approved the Executive Council of the Arizona State Bar Indian Law Section's Resolution concerning Indian Country Jurisdiction on the Arizona State Bar Examination. Enclosed is a copy of that Resolution.

In addition, our Indian Law Section members have been informing the Indian legal community and Indian tribal communities about the Resolution. The Resolution was a topic of discussion at the Indian Law Section's CLE presentation and annual meeting at the Annual Bar Convention in Tucson, and at the May 2005 meeting of the Inter-Tribal Council of Arizona.

As stated in previous correspondence, the Indian Law Section is happy to assist the Committee on Examination in this matter in any way that it can. We appreciate your time and consideration into this matter. Please feel free to contact Shannon O'Loughlin, Chair Elect of the Indian Law Section, at (602) 528-4030.

Sincerely,

A handwritten signature in black ink, appearing to be "Shannon O'Loughlin".

The Indian Law Section of the Arizona State Bar

AUG 03 2005



RESOLUTION

Federal Indian Jurisdiction on the Arizona State Bar Examination

**Adopted and Approved by the Arizona State Bar Board of Governors on May 20, 2005,
and the Executive Council of the Arizona State Bar Indian Law Section on April 18, 2005**

WHEREAS, we, the members of the Indian Law Section of the Arizona State Bar Association, in support of our purpose to advance the understanding, study, adoption, application, interpretation, and improvement of Arizona state and tribal laws, rules, and regulations that pertain to Indians, Indian tribes or Indian Country, and to their administration and enforcement, to understand and improve the relationships of these bodies of law and judicial and administrative systems, and to encourage and support mutual respect for, and understanding of, the cultures, values, customs, and heritages which underlie them, hereby submit this Resolution; and

WHEREAS, the recent growth in tribal economic development and the resulting increase in interaction of Arizona's twenty-two (22) federally recognized Indian tribes with non-Indian entities and individuals, both on and off of the reservation, has given rise to an array of business transactions, regulatory issues and litigation matters between tribal and non-tribal parties in this state; and

WHEREAS, the citizens of Arizona and their attorneys do not generally understand the sovereign legal rights of Arizona Indian tribes; nor do they understand precisely how tribal self-governance and self-determination, and the laws and ways of Arizona Indian tribes, affect and intersect Anglo-American legal and jurisdictional principles; and

WHEREAS, the integrity and competence of the legal profession in this state would be enhanced if attorneys licensed by the Arizona State Bar Association generally understood significant Indian law jurisdictional principles, particularly the common law doctrines of tribal sovereignty, tribal sovereign immunity, tribal subject matter jurisdiction (both criminal and civil), and the Indian Child Welfare Act; and

NOW THEREFORE BE IT RESOLVED, that we do hereby support and urge that the Arizona Supreme Court and its Committee on Bar Examinations work together with the Indian Law Section to include Indian law jurisdictional subject matter on the Arizona State Bar examination, beginning with the Summer 2008 examination and continuing thereafter, such that every bar-licensed attorney will receive knowledge reasonably necessary for the representation and protection of all who are subject to Arizona State law.

Testing on Indian Law
March 2006 Survey

Jurisdiction	Do you currently test on Indian Law?	If yes, when did you begin?	Do you plan to test on Indian Law?	If yes, when?
Arizona	No		Under consideration.	
Colorado	No		No	
Connecticut	No		No	
Delaware	No		No	
Georgia	No		No	
Florida	No		All currently tested subject matters will be reviewed this year; does not imply IL will be added.	
Hawaii	No		No	
Idaho	No		No	
Illinois	No		No	
Indiana	No		No	
Iowa	No		No	
Kansas	No		No	
Louisiana	No		No	
Maryland	No		No	
Massachusetts	No		No	
Michigan	No		No	
Minnesota	No		No	
Mississippi	No		No	
Missouri	No		No	
Montana	No		No	
Nevada	No		No	
New Hampshire	No		No	
New Jersey	No		No	
New Mexico	Yes	Feb. 2003	IL is a "testable" subject matter; not necessarily tested on every exam.	
Ohio	No		No	
Oklahoma	No		No	
Oregon	No		No	
Pennsylvania	No		No	
Rhode Island	No		No	
South Carolina	No		No	
South Dakota	No		The SD Equal Justice Commission has recommended adding an Indian law question. The Board of Bar Examiners is in the process of proposing rule changes to the Supreme Court to allow for this. The Court will hear these sometime in the late summer or early fall of 2006. If approved the earliest would be July 2007.	

Tennessee	No		No	
Texas	No		No	
Utah	No		No	
Vermont	No		No	
Washington	No		IL will be tested, but no sooner than July 2007.	
West Virginia	No		No	
Wyoming	No		No	



Supreme Court

STATE OF ARIZONA

COMMITTEE ON EXAMINATIONS

1501 W. Washington Street, Suite 104
Phoenix, Arizona 85007-3231
602-364-0371

September 22, 2006

Honorable Ruth V. McGregor
Supreme Court, State of Arizona
Room 402, Arizona State Courts Building
1501 W. Washington
Phoenix, Arizona 850007-3329

Dear Chief Justice McGregor:

As you may or may not be aware, your Committee on Examinations has been considering whether or not to support or recommend an amendment to Rule 35(b), Ariz. R. Sup. Ct., 17A A.R.S., to include federal Indian law as a tested subject on of the Arizona Bar Examination. I am writing to apprise you that the Committee will not be recommending such a change at this time.

We first began our inquiry after we learned that New Mexico had decided to include this subject area, and based on our appreciation of the Indian law issues that frequently arise for Arizona lawyers. After our initial discussions, we were approached by the Indian Law Section of the Arizona State Bar, supported by the State Bar Board of Governors, and asked to "work together with the Indian Law Section to include Indian law jurisdictional subject matter on the Arizona State Bar examination, beginning with the summer 2008 examination and continuing thereafter, such that every bar-licensed attorney will receive knowledge reasonably necessary for the representation and protection of all who are subject Arizona State law." (For your information, I have enclosed the Board of Governors' resolution, along with a cover letter from the Indian Law section, with this correspondence.)

During the course of our review over many months beginning in 2005, we met with members of the Indian Law Section and others in the Arizona legal community who are knowledgeable about either federal Indian law or our bar examination requirements. In addition, the Committee members contacted various of their counterparts in other jurisdictions. And lastly, Carolyn de Looper of your staff has provided invaluable assistance in collecting and reporting to us about similar considerations in other states. (A survey of the thirty-seven states that responded to Carolyn's inquiries is also enclosed.)

Jeanette M. Boulet, Chair • Daniel P. Beeks, Vice-Chair • Karl B. Zangerle
Anna Maria Chavez • Marilyn A. Pollard • Theodore Campagnolo • Jeffrey B. Messing
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Honorable Ruth V. McGregor
Page 2

Ultimately, after much discussion, the committee determined that it would not, at this time, offer its support to the rule amendment proposed by the Indian Law Section. Our reasons for that decision are explained in the enclosed correspondence to Shannon O'Loughlin, our contact with that section's executive council.

Please let us know if we can provide you or the other justices with any further information about our review. Although our decision was one of "no action at this time," we nonetheless wanted you to be aware of our consideration of this subject.

Sincerely,



Jeanette M. Boulet
Chair, Committee on Examinations

jmb
attachments