

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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HOUSE BILL 1501

Short Title: Amend Reqs for Comity Applicants/NC State Bar. (Public)

Sponsors: Representative Jones.

Referred to: Judiciary II, if favorable, Finance.

April 13, 2009

A BILL TO BE ENTITLED
AN ACT AMENDING THE REQUIREMENTS FOR COMITY UNDER THE LAWS
PERTAINING TO THE NORTH CAROLINA STATE BAR.

Whereas, at least 40% of female lawyers take time off for childrearing and approximately a quarter of them take leave from the workforce for childrearing for six to nine years; and

Whereas, the history of women at the bar has been fraught with discrimination and roadblocks, both intentional and unintentional; and

Whereas, the proportion of women law students and women attorneys hovers at or around half of the respective legal population, such gains being hard-fought; and

Whereas, the American Bar Association, local and State bar associations, the media, and women themselves have highlighted the staggering attrition numbers of women attorneys attributable to caregiving and childrearing, and the deleterious effects on the careers of women attorneys who avail themselves of a caregiving hiatus, have joined in a trend to publicize this problem and create effective "on-ramps" to facilitate reentry into the workforce; and

Whereas, the State of North Carolina, one of the nation's fastest-growing states, desires to attract and retain talented professionals, and in order to do so, has examined such barriers with an eye toward alleviating them; and

Whereas, we find our State is part of an increasingly interconnected and mobile workforce and economy; and

Whereas, the North Carolina Board of Bar Examiners' rules, in certain instances where the applicant-attorney's hiatus is attributable to childbearing or caregiving, operate to bar otherwise qualified candidates from admission to the bar of North Carolina through comity, thus depriving the State of needed talent; and

Whereas, these rules do not operate in an onerous manner against those already admitted to the North Carolina State Bar, but are only directed at those who wish to relocate or have relocated to this State; and

Whereas, these rules artificially proscribe comity after arbitrarily set, very short time frames of absence from the full-time practice of law; and

Whereas, the North Carolina Board of Law Examiners' rule .0502(3), regarding requirements for comity applicants, as it now stands bars comity for an applicant who did not practice full-time for a cumulative 24 months of the prior six years, regardless of the length of admission to any other bar, duration of full-time practice, or depth of experience, creating anomalous results barring comity for even very long-standing attorneys who have recently reduced their practice to accommodate childrearing or caregiving; and

Whereas, laws that tend in application to negatively affect a protected class of people need to be subjected to strict scrutiny and narrowly tailored so their effect is justifiable



1 and proportionate in light of practicality and common sense and in recognition of the common
2 human experience; and

3 Whereas, practical inequities would be rectified, family values and families
4 reinforced, and justice would be served, by relieving from a protected class of persons –
5 women – on whom the burden of childbearing, childrearing, and caregiving fall
6 disproportionately, of the Draconian effects of this North Carolina Board of Law Examiners'
7 rule; and

8 Whereas, protections to working women have been found necessary and are
9 reflected in national legislation such as the Family and Medical Leave Act and the Pregnancy
10 Discrimination Act, wherein women's rights to move in and out of the workforce due to
11 childrearing and caregiving have risen to the level of civil rights; and

12 Whereas, the quality of attorneys bears little provable relationship to the time they
13 may spend in childrearing or caregiving and there is no evidence of the public being injured by
14 women who took a hiatus from the full-time practice of law to bear and raise children or give
15 care to ill family members; and

16 Whereas, it is an undue hardship to force otherwise qualified applicants for comity
17 to undertake the expense, time, and effort of retaking the bar examination and any study
18 courses necessary for preparation, many of whom have been members of comity-state bars for
19 decades; and

20 Whereas, the proposed legislation will ensure comity applicants have equal
21 experience as under the current rules, as the prior law allowed a hiatus one-third of the most
22 recent six years, and the proposed legislation does as well but also allows consideration of the
23 sum of the applicant's full-time practice of law, eliminating the requirement of only counting
24 the most recent six years' of experience to the neglect of what may be decades of prior legal
25 experience, which will produce a more equitable and logical result; Now, therefore,
26 The General Assembly of North Carolina enacts:

27 **SECTION 1.** Article 4 of Chapter 84 of the General Statutes is amended by adding
28 the following new section to read:

29 **"§ 84-24.1. Comity applicants.**

30 (a) If all other qualifications for eligibility for comity have been met by an applicant
31 pursuant to rules adopted by the Board of Law Examiners, the Board of Law Examiners shall
32 examine any short-term hiatus from an applicant's full-time practice of law that is attributable
33 to the applicant's verifiable caregiving responsibilities by measuring and weighing the totality
34 of circumstances and the qualifications of the applicant.

35 (b) If any applicant due to caregiving has experienced a period of not engaging in the
36 full-time practice of law, that period shall be deemed a short-term hiatus and deemed excusable
37 if the applicant has otherwise been in the active full-time practice of law for an additional
38 minimum of double the period of non-full-time work, as follows: a hiatus of eight years is
39 excusable if the applicant otherwise practiced law full-time for 16 years; a hiatus of seven years
40 is excusable if the applicant otherwise practiced law full-time for 14 years; a hiatus of six years
41 is excusable if the applicant otherwise practiced law full-time for 12 years; or five years if the
42 applicant otherwise practiced law full-time for 10 years; or four years if the applicant otherwise
43 practiced law full-time for eight years; or three years if the applicant otherwise practiced law
44 full-time for six years. Therefore, if an applicant has otherwise practiced law full-time for a
45 minimum of six years, a caregiving or childrearing hiatus of up to one-third that time is
46 excusable and shall not be a bar to comity.

47 (c) If all other qualifications for eligibility for comity have been met by an applicant
48 with at least a minimum of six years continuous active practice experience, the Board of Law
49 Examiners, after carefully measuring and weighing the totality of circumstances and the
50 qualifications of the applicant, shall allow any short-term hiatus from an applicant's full-time

1 practice of law that is attributable to the applicant's verifiable caregiving responsibilities to be
2 remedied by:

3 (1) Requiring the applicant to complete continuing legal education, the number
4 of continuing legal education hours to be set by the Board of Law Examiners
5 after taking into account the totality of circumstances and the qualifications
6 of the applicant; or

7 (2) Requiring a period of 24 months of part-time practice or 12 months of
8 full-time practice under the direct supervision of a licensed member of the
9 North Carolina bar in good standing.

10 (d) For purposes of determining comity under this section, the phrase 'full-time work'
11 shall be defined as a minimum of 30 hours a week."

12 **SECTION 2.** This act is effective when it becomes law.