RUSSO v. GRIFFIN: THE DEATH OF VERMONT'S LOCALITY RULE IN LEGAL MALPRACTICE

INTRODUCTION

In *Russo v. Griffin*,[1] the Vermont Supreme Court established a new standard of care for Vermont lawyers. The *Russo* decision overruled *Hughes v. Klein*[2] which held, just five years before, that "[t]he standard for legal services . . . is the exercise of the customary skill and knowledge which normally prevails at the time and place."[3] In *Russo*, the court analogized the minimum degree of skill and knowledge required of lawyers to that of physicians, and held that attorneys could no longer hide behind standards set by the legal communities in which they practiced.[4] However, instead of holding Vermont attorneys to the same *national* standard as physicians,[5] the *Russo* court adopted a standard based upon the *state* in which the attorney is licensed to practice.[6]

I. *Russo:* CREATING A NEW STANDARD OF CARE

Joseph Russo established a paving business in Rutland, Vermont in the 1930's.[7] In 1975, Mr. Russo decided to incorporate the business and turn its control over to his two sons, Anthony (Tony) and Francis (Frank). They subsequently hired defendant Griffin, a local Rutland attorney, who drafted all the necessary documents and filed the corporate charter with the Secretary of State. All corporate meetings between 1975 and 1978 were held at Mr. Griffin's office.[8]

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1. 147 Vt. 20, 510 A.2d 436 (1986).

2. 139 Vt. 232, 427 A.2d 353 (1981).

3. *Id.* at 233, 427 A.2d at 354.

4. *Russo*, 147 Vt. at 23, 510 A.2d at 437-38 (citing *R. Mallen & V. Levit, Legal Malpractice* § 254, at 334 (2d ed. 1981)).

5. *See infra* note 41.

6. *Russo*, 147 Vt. at 24, 510 A.2d at 438. Four of the five Vermont Supreme Court Justices joined in Justice Hill's majority opinion. Justice Hayes, however, wrote a separate opinion. He agreed that the correct standard should no longer be based on the community in which a lawyer practices. Nevertheless, he disagreed with the majority's holding that the applicable standard of care should be limited to the practices of this state alone. *Id.* at 25-26, 510 A.2d at 439 (Hayes, J., concurring and dissenting). The majority opinion did, however, acknowledge that there would be exceptions to the state standard of care for " 'national law' specialties." *See infra* note 24 and accompanying text.

7. 147 Vt. at 21, 510 A.2d at 436.

8. *Id.* The facts in the opinion imply that defendant Griffin had a long standing professional relationship with the Russo family. *Id.* at 22, 510 A.2d at 437. *See also* Brief for

In 1978, Frank decided to sell his interest in the corporation, and defendant Griffin was employed to expedite the stock transfer.[9] Three months after the completion of the sale, Frank started his own paving business in Rutland.[10] During the negotiations, Mr. Griffin never informed the corporation nor its sole remaining stockholder, Tony Russo, of the value of obtaining from Frank a covenant not to compete.[11] As a result, Tony and the corporation sued defendant Griffin and his firm for legal malpractice.[12]

During the ensuing trial, the plaintiff introduced two Burlington attorneys as expert witnesses.[13] Both testified that by neglecting to advise the corporation to obtain a covenant not to compete, defendant Griffin failed to meet the degree of care required of lawyers practicing in Vermont at that time.[14] However, defendants introduced two qualified Rutland attorneys who testified that Mr. Griffin had acted according to the standard of care then established by Rutland attorneys.[15]

Appellant at 5, Russo v. Griffin, 147 Vt. 20 (1986) (No. 83-462).

9. *Id.* at 21, 510 A.2d at 436. Frank wanted to purchase a laundromat and discussed with Tony his interest in selling his stock in the corporation. Eventually a meeting was held at Mr. Griffin's office. *Id.* Mr. Griffin subsequently drafted a $6,000 promissory note from the corporation payable to Frank. Frank agreed to resign as president and transfer his stock to the corporation. *Id.* at 21-22, 510 A.2d at 437. In return, the note, secured by a chattel mortgage, was personally guaranteed by Tony and his wife. *Id.* at 21, 510 A.2d at 437.

Though it is not clear from the facts of the opinion, Mr. Griffin appears to have been representing both Frank and the corporation. *See* Brief for Appellant at 2-3, *Russo* (No. 83-462).

10. *Id.* at 22, 510 A.2d at 437.

11. *Id.*

12. *Id.* at 20-22, 510 A.2d at 436-37. Legal malpractice can arise form an attorney's negligence. As in any negligence action, the plaintiff must prove that the defendant attorney owed the plaintiff a duty, breached that duty by acting unreasonably, that the breach was the proximate cause of the plaintiff's injury, and that the breach resulted in damages. *See* Faure & Strong, *The Model Rules of Professional Conduct: No Standard for Malpractice*, 47 MONT. L. REV. 363 (1986). *See also* W. PROSSER, W. KEETON, D. DOBBS, R. KEETON & D. OWEN, THE LAW OF TORTS § 30, at 164-65 (5th ed. 1984) (hereinafter W. PROSSER & W. KEETON). In general, the standard of care is one of "reasonableness." However, the attorney, as a professional, must not only act reasonably but also adhere to a "standard minimum of special knowledge and skill." *Id.* at § 32, at 185. *See also* R. MALLEN & V. LEVIT, LEGAL MALPRACTICE § 250, at 315 (2d ed. 1981). Theoretically, legal malpractice may be either the breach of a standard of care (ordinary skill and knowledge, i.e. competence) or the breach of a standard of conduct (the breach of a fiduciary obligation). Mallen, *Recognizing and Defining Legal Malpractice*, 30 S.C.L. REV. 204-06 (1979).

13. *Russo*, 147 Vt. at 22, 510 A.2d at 437. *See generally* O'Neil v. Bergan, 452 A.2d 337 (D.C. App. 1982). In a legal malpractice suit, expert testimony is necessary to establish "the standard of care unless the attorney's lack of care and skill is so obvious that the trier of fact can find negligence as a matter of common knowledge." *Id.* at 341.

14. 147 Vt. at 22, 510 A.2d at 437.

15. *Id.*

At the trial level, the court agreed with the defendants.[16] Judge Morrissey found "the relevant standard of care to be limited to what a careful and prudent practitioner in the Rutland area would do under the circumstances" and ordered judgment for the defendants.[17]

On appeal, the Vermont Supreme Court held that the trial court had "erroneously applied the locality rule in defining the applicable standard of care"[18] and remanded for a new trial.[19] In reaching its decision, the court reviewed the rise and fall of the locality rule in medical malpractice[20] and concluded that attorneys, like physicians, should be subject to standards outside their immediate community.[21] However, in setting its new standard, the court distinguished between the medical and legal professions.[22] Unlike lawyers, the court noted, physicians have "established a certification and licensing process which is national in scope," and as a result, a national medical standard has evolved.[23] Thus, except for those practicing " 'national law' specialties,"[24] the court held that the applicable standard for Vermont attorneys is " 'that degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in this jurisdiction.' "[25]

The court has recently been criticized for legislating in cases involving statutory interpretation.[26] *Russo*, however, involves an

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16. *Id.*

17. *Id.* Judge Morrissey concluded:

> The *standard of care in the Rutland area* in 1978 required of an attorney did not require him to suggest to or recommend to a purchasing client that a noncompete agreement be obtained from a seller who is a relative and who has been a business associate for several years, the transaction not being one at arms length.

Id. at 22-23, 510 A.2d at 437 (Emphasis in original).

18. *Id.* at 25, 510 A.2d at 439.

19. *Id.*

20. *Id.* at 23, 510 A.2d at 437-38.

21. *Id.* at 23, 510 A.2d at 438.

22. *Id.* at 25, 510 A.2d at 439.

23. *Id.* (citing R. MALLEN & V. LEVIT, LEGAL MALPRACTICE § 254, at 337 (2d ed. 1981)).

24. *Id.* at 25, 510 A.2d at 439. Such areas demanding national uniformity might, according to the court, include "federal taxation law, securities law, patent law, and bankruptcy law . . . ." *Id.*

25. *Id.* at 24, 510 A.2d at 438 (quoting Cook, Flanagan & Berst v. Clausing, 73 Wash. 2d 393, 395, 438 P.2d 865, 867 (1968)).

26. *See* Note, *The Vermont Supreme Court: "Guilty" of Judicial Legislating?*, 11 VT. L. REV. 661 (1986). *See also* Peck v. The Counseling Service of Addison County, Inc., 146 Vt. 61, 499 A.2d 422 (1985), Langle v. Kurkul, 146 Vt. 513, 510 A.2d 1301 (1986), and Hay v.

area where the legislature has yet to voice its opinion. Therefore, the case afforded the court an opportunity to make a bold statement concerning the professional standard of care for lawyers in Vermont. By overruling the locality rule, the court wisely abandoned a precedent which had outlived its usefulness.[27] However, in creating a new standard of care based upon state rather than national practices, the court simply made a lateral move when it should have boldly proceeded forward.

II. Locality Rule in Vermont

A. Medical Malpractice

The origin of the locality rule[28] as applied to physicians in Vermont goes back to 1867 when it first appeared, in note form, in *Wilmot v. Howard*.[29] Eleven years later in *Hathorn v. Richmond*,[30] the Vermont Supreme Court, relying on the *Wilmot* note, held that physicians and surgeons must exercise "such skill as doctors in the same general neighborhood, in the same general lines of practice, ordinarily have and exercise in like cases."[31]

The courts developed the neighborhood or locality rule to protect small town and rural practitioners. Unlike city physicians, rural practitioners lacked well equipped facilities and did not have the opportunity to treat a great variety of diseases and injuries.[32]

Medical Center Hospital of Vermont, 145 Vt. 533, 496 A.2d 939 (1985).

27. In general, courts should adhere to precedents. However, judges should not hesitate to abandon a rule which has been proven inconsistent with the sense of justice and social welfare of the times. B. Cardozo, The Nature of the Judicial Process 150 (1921).

28. The locality rule is exclusively American, having no English counterpart. Because England is geographically small, English courts may not have felt the need to develop a similar rule. Shilkret v. Annapolis Emergency Hospital Ass'n, 276 Md. 187, 192, 349 A.2d 245, 248 (1975) (citing Waltz, *The Rise and Gradual Fall of the Locality Rule in Medical Malpractice Litigation*, 18 De Paul L. Rev. 408 (1969)).

29. 39 Vt. 447, 459 (1867). The rule appears in the note as follows: "A physician and surgeon is bound to have and exercise such skill and learning in his profession as is ordinarily possessed and used by physicians and surgeons in the locality where he practices, having regard to the advanced state of the profession at the time of the treatment." *Id.* at 459.

30. 48 Vt. 557 (1876). In *Hathorn*, the defendant surgeon was called to set the plaintiff's fractured leg. The plaintiff alleged that the defendant bound his leg so tightly that injury resulted. Defendant, however, claimed that he left the dressing in the hands of the plaintiff's attending physician. The surgeons called to testify confirmed that the responsibility for examining and adjusting the bandages must necessarily lay with the attending physician. *Id.* at 557-58.

31. *Id.* at 559.

32. *Shilkret*, 276 Md. at 193, 349 A.2d at 248. *See also* W. Prosser & W. Keeton, *supra* note 12, § 32, at 187-88.

The rule, potentially, immunized from liability the physician, whether skilled or not, who was the sole practitioner in a community.[33] In addition, it promoted a " 'conspiracy of silence' in the plaintiff's locality which, in many cases, effectively preclude[d] plaintiffs from retaining qualified experts to testify on their behalf."[34]

Modern advances in medicine,[35] improved communications,[36] availability of medical literature,[37] and the standardization of medical education[38] in the United States has led to the liberalization[39] or outright abandonment[40] of the locality rule. In 1975, the Vermont Legislature chose the later approach.[41] Presently, the degree of knowledge or skill required of physicians practicing in Vermont is the ordinary care exercised by reasonable health care professionals in a similar field under similar circumstances on a national basis.[42]

B. Legal Malpractice

The formal application of the locality rule in legal malpractice in Vermont is a modern development.[43] In 1975, the Vermont Supreme Court, in *In Re Cronin*, first published a standard of care for the legal practitioner.[44] In *Cronin*, the appellant, in a post-conviction relief action, claimed that he had entered into a plea agreement without benefit of effective counsel.[45] Lacking Vermont authority, the court cited one seminal federal opinion supported by a

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33. *Russo*, 147 Vt. at 23, 510 A.2d at 437.

34. *Id.* at 23, 510 A.2d at 437-38 (citing *Shilkret*, 276 Md. at 193-94, 349 A.2d 244).

35. *Shilkret*, 276 Md. at 194, 349 A.2d at 249 (citing Note, *An Evaluation of Changes in the Medical Standard of Care*, 23 VAND. L. REV. 729, 732 (1970)).

36. W. PROSSER & W. KEETON, *supra* note 12, § 32, at 188.

37. *Id.*

38. *Shilkret*, 276 Md. at 194, 349 A.2d at 249.

39. W. PROSSER & W. KEETON, *supra* note 12, § 32, at 188.

40. *Id.*

41. VT. STAT. ANN. tit. 12, § 1908(1) (Supp. 1986). "The degree of knowledge or skill possessed or the degree of care ordinarily exercised by a reasonably skillful, careful, and prudent health care professional engaged in a similar practice under the same or similar circumstances whether or not within the state of Vermont." *Id.*

42. *Id.*

43. No judicial definition of the professional standard of care required of an attorney appeared until 1975. Two possible explanations include: (1) that the standard generally applied by the trial courts was never challenged; or (2) that the legal community in Vermont had effectively insulated itself from legal malpractice suits.

44. 133 Vt. 234, 336 A.2d 164 (1975).

45. *Id.* at 235, 336 A.2d at 165.

string of federal appellate and state decisions[46] and held the standard of care to be that "of the customary skill and knowledge which normally prevails at the time and place."[47]

In 1981, the Vermont Supreme Court affirmed a small claims judgment for the defendant in *Hughes v. Klein*.[48] Plaintiff Hughes had retained defendant Klein, a Rutland attorney, to represent her in a divorce action.[49] Upon defendant's advice, plaintiff relinquished originals of certain financial statements and checks to her estranged husband.[50] The documents were never returned. As a result, the plaintiff had to pay for photocopies of numerous checks which she had surrendered.[51] She subsequently sued Mr. Klein for malpractice. The trial court found that the defendant's advice was consistent with practices within the community.[52]

On appeal, the Vermont Supreme Court affirmed the lower court's decision.[53] The court interpreted the *Cronin* "time and place" standard to mean the customary skill and knowledge that prevails in the locality in which the attorney practices.[54]

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46. *Id.* at 240, 336 A.2d at 168. The court cited Moore v. United States, 432 F.2d 730 (3d Cir. 1970) to support its "time and place" standard. In *Moore*, a convicted bank robber claimed that he was prejudiced by the ineffective assistance of his appointed counsel. The United States Court of Appeals for the Third Circuit held that the "standard of adequacy of legal services as in other professions is the exercise of the customary skill and knowledge which normally prevails at the time and place." *Id.* at 736. In a footnote following the "time and place" standard, the court refers the reader to a section of the Restatements dealing with professional conduct in which the locality rule is mentioned. *Id.* at n.24. However, the comments indicate that for attorneys there is little or no need to apply community standards. RESTATEMENT (SECOND) OF TORTS § 299A comment g (1965).

To further support its position, the *Cronin* court then cited West v. Louisiana, 478 F.2d 1026 (5th Cir. 1973), United States v. DeCoster, 487 F.2d 1197 (D.C. Cir. 1973), Brubaker v. Dickson, 310 F.2d 30 (7th Cir. 1962), Pinedo v. United States, 347 F.2d 142 (9th Cir. 1965), and State v. Fleury, 111 N.H. 294, 282 A.2d 873 (1971). All five cases involved criminal defendants claiming ineffective counsel. However, none of these decisions mention "time and place." The only standard applied is one of "reasonableness."

In my opinion, the *Cronin* court was concerned not with a duty of care based upon locality but with a minimum standard of competency necessary to satisfy a criminal defendant's constitutional right to representation.

47. 133 Vt. at 240, 336 A.2d at 168.

48. 139 Vt. 232, 427 A.2d 353 (1981).

49. *Id.* at 232, 427 A.2d at 353.

50. *Id.* at 232-33, 427 A.2d at 353.

51. *Id.* at 233, 427 A.2d at 354.

52. *Id.*

53. *Id.*

54. *Id.* The court in *Hughes*, by relying on *Cronin*, took an unwarranted and ill-advised leap of faith. The court had no support for interpreting "time and place" to mean locality. *See supra* note 46. Furthermore, the court gave no rationale for applying the *Cronin* standard for ineffective counsel in a post-conviction relief case to legal malpractice in a civil

However, in *Russo*, the Vermont Supreme Court overruled *Hughes*.[55] Citing the evolution of the locality rule in medical malpractice, the court held that the standard of care should no longer be limited by the practices of a practitioner's immediate community.[56]

> Although attorneys throughout this state may be required to familiarize themselves with local practices, rules or customs to their area, the crucial inquiry for malpractice purposes turns not on the substance of the underlying practice, rule, or custom but on whether a reasonable and prudent attorney can be expected to know of its existence and practical applications.[57]

However, the court in *Russo* did not slay the locality dragon, it merely cooled the beast's flame. Unlike Vermont's medical professionals, whose standard of care knows no geographic bounds, lawyers in this jurisdiction remain protected by the state borders. Except in the area of " 'national law' specialties,"[58] "[t]he relevant geographic area then is not the community in which the attorney's office is located or the nation as a whole, but the jurisdiction in which the attorney is licensed to practice."[59]

III. Standard of Care

Historically, courts have not been enthusiastic about legal malpractice and therefore, have provided little judicial guidance on the elements of the tort.[60] Nevertheless, three views have emerged, none of which provide a clear and concise standard by which the trier of fact is to measure an attorney's professional competence.[61]

Some jurisdictions still cling to the pure locality rule which obligates an attorney "to exercise that degree of care, skill and diligence which is exercised by prudent practicing attorneys in his locality."[62] Others, like the Vermont Supreme Court in *Russo*,[63] rely

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55. *Russo*, 147 Vt. at 23, 510 A.2d at 437-38.

56. *Id.* at 23-24, 510 A.2d at 437-38.

57. *Id.* at 24, 510 A.2d at 438.

58. *See supra* note 24 and accompanying text.

59. *Russo*, 147 Vt. at 24, 510 A.2d at 438.

60. Mallen, *Recognizing and Defining Legal Malpractice*, 30 S.C.L. Rev. 203 (1979).

61. R. Mallen & V. Levit, Legal Malpractice § 251, at 317 (2d ed. 1981).

62. Gifford v. New England Reinsurance Corp., 488 So.2d 736, 739 (La. App. 1986). *See also* Bowman v. Doherty, 235 Kan. 870, 686 P.2d 112 (1984); Rorrer v. Cooke, 313 N.C. 338, 329 S.E.2d 355 (1985).

63. *Russo*, 147 Vt. at 24-25, 510 A.2d at 438-39. *See also* Ramp v. St. Paul Fire &

on the "degree of skill, care, diligence and knowledge commonly possessed and exercised by a reasonable, careful, and prudent lawyer *in the practice of law in the state.*"[64] Finally, there are jurisdictions which recognize no discrete geographic parameters, holding attorneys simply to " 'such skill, prudence, and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of tasks which they undertake.' "[65]

A better way of defining the standard of competence may be a synthesis of all three approaches. The standard of competence then becomes "*the skill and knowledge ordinarily possessed by attorneys under similar circumstances.*"[66] Under such a definition considerations of locality, custom, and special skills are acknowledged.[67] However, expert witnesses would be qualified according to their familiarity with the disputed conduct rather than according to the geographic area in which they practice.[68] The trier of fact would be free to decide if the defendant's conduct meets the minimum common skill within the profession as a whole rather than just within a particular community or state.

IV. Standard of Care: State vs. National

In choosing to end its medical-legal analogy at the stateline, the *Russo* court noted that education, licensing, and the practice of medicine are national in scope[69] while those for the legal profession tend to be jurisdictional.[70] However, a close look at legal education

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Marine Insurance Co., 254 So.2d 79 (La. App. 1971); Hodges v. Carter, 239 N.C. 517, 80 S.E.2d 144 (1954); Feil v. Wishek, 193 N.W.2d 218 (N.D. 1971); Cook, Flanagan & Berst v. Clausing, 73 Wash. 2d 393, 438 P.2d 865 (1968).

64. Martinson Bros. v. Hjellum, 359 N.W.2d 865, 872 (N.D. 1985) (emphasis added). *See also* Cleckner v. Dale, 719 S.W.2d 535 (Tenn. App. 1986).

65. Southland Mechanical Constructors Corp. v. Nixen, 119 Cal. App. 3d 417, 426, 173 Cal. Rptr. 917, 921 n.3 (1981) (quoting Neel v. Magana, Olney, Levy, Cathcart & Gelfand, 6 Cal. 3d 176, 180, 491 P.2d 421, 422-23, 98 Cal. Rptr. 837, 838-39 (1971)).

66. R. Mallen & V. Levit, *supra* note 61, § 251, at 318 (emphasis in original).

67. *Id.*

68. As stated earlier, expert witnesses are generally necessary to establish the standard of care in legal malpractice suits. *See supra* note 13.

At the trial level, in *Russo*, Judge Morrissey disregarded the plaintiff's expert witnesses because they did not practice in the defendant's community. *See supra* text accompanying notes 16-17. Under the "similar circumstance" standard, it would not matter whether an expert witness practiced in the same locale as the defendant, so long as that expert was qualified in the matter to which he or she testified.

69. *Russo*, 147 Vt. at 25, 510 A.2d at 439.

70. *Id.* at 24-25, 510 A.2d at 438-39.

and the requirements for admission to the practice of law makes a strong argument to the contrary.

A. Legal Education

Legal education in the United States since 1850 has progressed through four stages.[71] The first was some form of law office study. By the turn of the century, however, law school was a recognized alternative to apprenticeship.[72] By the 1930's, most states required law school education without the alternative of law office study.[73] After World War II, the recognized standard included graduation from an American Bar Association approved law school following four years of undergraduate college education.[74] By the late 1950's, nationwide standardization of legal education throughout the country prevailed[75] to the extent that "[t]he idea that the bar was unitary was taken to be an irrebutable presumption."[76] Today, law schools are truly national in legal training.[77]

B. Admission to Practice

Requirements for admission to state bars have, likewise, become increasingly uniform. Since 1933, every state in the nation has required that an applicant pass a written examination.[78] Beginning in 1972, with the introduction of the ABA Multistate Bar Examination (MBE), testing standards have become national in character.[79] As of 1986, all 50 states require that bar applicants pass

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71. R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980's 205 (1983).

72. *Id.* After 1870 university law schools under the leadership of Harvard's Dean Langdell actively sought to end apprenticeship as an alternative to formal legal education. G. WHITE, TORT LAW IN AMERICA AN INTELLECTUAL HISTORY 26 (1985).

73. R. STEVENS, *supra* note 71, at 205.

74. *Id.* at 206.

75. *Id.* at 209.

76. *Id.* at 206.

77. *Russo*, 147 Vt. at 26, 510 A.2d at 436 (Hayes, J., concurring and dissenting). One example is Vermont's only law school, the Vermont Law School (a private institution), whose curriculum is national in scope. LAW SCHOOL ADMISSION/LAW SCHOOL ADMISSION SERVICES, THE OFFICIAL GUIDE TO U.S. LAW SCHOOLS 360 (1986).

78. Hafter, *Toward the Multistate Practice of the Law Through Admission by Reciprocity*, 53 MISS. L.J. 1, 8 (1983) (citing Stevens, *Diploma Privilege, Bar Examination or Open Admission*, B. EXAMINER 15, 21 (1977). However, several jurisdictions still admit graduates of approved in-state law schools under the so-called "diploma exception." *See* WIS. SUP. CT. R. § 40.03 (West Supp. 1986); MONT. CODE ANN. § 37-61-204 (1985).

79. Hafter, *supra* note 78, at 8.

the MBE.[80] Due in part to the Watergate scandal, the ABA, in 1974, required that accredited law schools teach courses in professional responsibility.[81] Furthermore, the ABA Multistate Bar Examination Committee developed the Multistate Professional Responsibility Examination,[82] which presently is mandatory in twenty-eight jurisdictions.[83]

Admission to the practice of law in Vermont follows this national trend. The Vermont Supreme Court requires that an applicant complete a general study of law at a law school "accredited by the American Bar Association, American Association of Law Schools, or otherwise approved by this Court."[84] In addition to passing an essay exam,[85] all applicants must successfully complete the Multistate Bar Examination[86] and the Multistate Professional Responsibility Examination,[87] both of which test the applicant's knowledge of national legal principles.[88]

Another example of the trend toward a national legal practice is illustrated by the fact that a majority of states[89] allow "admission by reciprocity."[90] These states "admit to general practice, without additional examination, members of the bar of other states who establish residence in the state in which application for admis-

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80. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR AND THE NATIONAL CONFERENCE OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 14-15 (1986).

81. AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION, LAW SCHOOLS AND PROFESSIONAL EDUCATION: REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION OF THE AMERICAN BAR ASSOCIATION 4 (1980).

82. *Id.*

83. *See supra* note 80, at 18-19.

84. *See* Rules of Admission to the Bar of the Vermont Supreme Court, VT. S. CT. ADMIN. ORDERS AND RULES § 6(g)(2) (1986). Vermont also allows an applicant to pursue the study of law under the supervision of a practicing attorney in lieu of graduating from an accredited law school. *Id.* § 6(g)(1), (k).

85. *Id.* § 6(a)(1).

86. *Id.* § 6(a)(2).

87. *Id.* § 6(a)(3).

88. *See supra* notes 79-80 and accompanying text.

89. Chase, *Does Professional Licensing Conditioned Upon Mutual Reciprocity Violate the Commerce Clause?*, 10 VT. L. REV. 223 (1985). "[S]ome thirty-two jurisdictions in the United States will now admit experienced attorneys to practice without the requirement of a new examination." *Id.* at 223 (citing Hafter, *Toward the Multistate Practice of the Law Through Admission by Reciprocity*, 53 MISS. L.J. 1, 46 (1983)). Vermont extends reciprocity to licensed attorneys, in good standing, who have practiced for at least five years in another jurisdiction. *See* Rules, *supra* note 84, at § 7(a).

90. Hafter, *supra* note 78, at 4.

sion is made."[91] In arguing for a National Practice of Law Act, former ABA President Chesterfield Smith wrote:

> As the world becomes smaller and national and international legal activity increases, the states should recognize that lawyers' skills do not terminate at a state's boundaries. Much of the daily routine of the average practitioner encompasses laws that are national in scope. It would be to the direct benefit of both the public and the legal profession for every state to allow qualified and experienced lawyers of approved character from other states under proper regulation and registration, to practice law anywhere in the United States.[92]

CONCLUSION

Both the medical and legal professions have outgrown any valid need for a locality rule. Standardization in education and testing, modern communications, and the development of uniform practices throughout the nation in both professions militate against a standard of care based upon locality. Therefore, the Vermont Supreme Court, in *Russo*, was correct in overturning the legal malpractice locality rule.

However, for the same reasons, the court should have adopted a standard of care free of any geographic protections.[93] Holding Vermont lawyers to a lesser duty than the law requires of physicians only further erodes the public's confidence in a profession already maligned. Imposing a national standard on attorneys would serve at least two important purposes. First, it would help dispel public notions that the legal community is not only self-regulating but also self-protecting. Second, the quality of legal services would improve by putting lawyers on notice that they could no longer hide behind jurisdictional practices.

David R. Cowles

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91. *Id.*

92. Smith, *Time For a National Practice of Law Act*, 64 A.B.A. J. 557, 558-59 (1978).

93. *See generally Russo*, 147 Vt. at 25-26, 510 A.2d at 439 (Hayes, J., concurring and dissenting).