

STATE OF MINNESOTA  
In Supreme Court

OFFICE OF  
APPELLATE COURTS

FILE NO. ADM-10- 8008

SEP 15 2010

FILED

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Petition of the Minnesota State Board  
of Law Examiners for Amendment  
of the Rules for Admission to the Bar

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**PETITION FOR  
RULE AMENDMENT**

**TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:**

Petitioner, the Minnesota State Board of Law Examiners ("Board"), respectfully petitions this Court to amend the Rules for Admission to the Bar ("Rules"). In support of its Petition, the Board asserts the following:

1. The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in Minnesota.
2. Under the supervision of the Court, the Board is responsible for ensuring that lawyers who are admitted to the Bar in Minnesota have the competence as well as the character and fitness required to maintain the trust and confidence of clients, the public, the legal system, and the legal profession.

**CLARIFICATION OF ELIGIBILITY BY PRACTICE (RULE 7A and 2A(6)(7) and (12))**

3. Current Rule 7A describes the process for admission to the bar in Minnesota without examination when the applicant otherwise qualifies for admission and has been engaged, as a principal occupation, in the active and lawful practice of law for 60 of the 84 months preceding the filing of an application.

4. As currently drafted, the terms “principal occupation” and “active and lawful practice” frequently result in inquiries from potential applicants as to how much time per week or per month a lawyer must spend practicing law in order to qualify as a “principal occupation” or as the “active and lawful practice of law.” The proposed revisions to Rule 7A(1) and Rule 2A(6), (7) and (12) are intended to codify the Board’s current practices and to eliminate confusion to applicants.
5. The purpose of Rule 7A is to allow applicants admitted in another U.S. jurisdiction who have been practicing law full-time to prove competence through the active practice of law rather than by sitting for and passing the Minnesota Bar Examination. For the public’s protection and to ensure that applicants admitted on motion are competent to practice, the Board has determined that the practice must be the applicant’s principal occupation and the practice of law must have been a full-time practice. The proposed rule defines full-time practice in Rule 2A(6) as “at least 130 hours per month for no fewer than 60 of the 84 months immediately preceding the submission of an application for admission.”
6. This proposed rule provides a bright line rule by which potential applicants will know whether they qualify under Rule 7A before submitting the application materials to Minnesota and paying the fee. If the potential applicant’s time in practice does not qualify under Rule 7A, the potential applicant will have adequate notice that he or she will need to apply for admission by examination.
7. In addition, because the Rules require that the 130 hours per month of practice be met during 60 of the 84 months preceding the application, the lawyer may qualify for admission without examination even though the lawyer may have been out of work, on leave, or otherwise not practicing law for a period of up to 24 months.
8. The proposed amendment also codifies the Board’s current practice of recognizing time spent as a judicial law clerk to qualify, so long as the primary responsibilities of the law clerk are legal research and writing. This amendment recognizes that

the judicial law clerk's practice is similar to the work of a first year or second year associate at a law firm. The Board recognizes the judicial law clerk, if licensed to practice law in the jurisdiction of the clerkship, is accruing the legal experience required to be eligible for the Rule 7 license. Law clerk positions which do not involve the performance of substantial legal work but which are more clerical in nature, would not qualify for admission without examination under the proposed amended Rule 7A(1)(c)(viii).

9. The Board also recommends the following minor changes to Rule 7 and related definitions to assist in clarifying the intentions of the Board:
  - a. Defining "principal occupation" to mean "an applicant's primary professional work or business." (See proposed amended Rule 2A(12).)
  - b. Defining a "full-time faculty member" at an approved law school in a manner consistent with the definition of full-time faculty set forth in the American Bar Association's Standards for Accreditation of Law Schools. (See proposed amended Rule 2A(7).)
  - c. Amending "five of the seven years" to "60 of the 84 months" to reflect the manner in which the Board calculates the qualifying time period.

#### ADDING LANGUAGE ON THE ENFORCEMENT OF DUE DATES TO RULE 6B AND RULE 6C

10. Rule 2B defines due date provisions and specifies that "[r]ules shall be strictly enforced." The Board receives frequent requests for waiver of bar examination filing deadlines. Adding the language "[d]ue dates shall be strictly enforced as specified in Rule 2B" to Rule 6B and Rule 6C is intended to discourage challenges to the deadlines.

## COMPUTER USE ON ESSAY AND PERFORMANCE TEST PORTION OF EXAM.

11. Since 2003, the Board has permitted examinees to use laptop computers to write the essay and performance test portions of the exam. Examinees using laptop computers pay an additional \$100 fee in order to offset the additional costs of the blocking software and technical assistance at the bar exam. Rule 6G incorporates the Board's authority to allow laptop usage and to clarify applicants' obligations to request laptop usage at the same time as submitting the application.

## HOUSE COUNSEL LICENSE

12. In Rule 9C (Requirements), the Board is proposing additional references to Rule 4 language to specifically state that the applicants must comply with Rule 4 and must also provide additional information in furtherance of the character and fitness investigation, as requested by the Board. Similar language has been added to Rule 10C, and is consistent with what is required of all other applicants.
13. The proposed additional language to Rule 9E clarifies the fact that although the investigation for a Temporary House Counsel License is abbreviated, the Board will not recommend the issuance of a license unless the Board finds that the applicant's present character and fitness qualifies him or her for admission.
14. Amendments to Rule 10 restate the license requirements within the body of the Rule, rather than referencing the language of Rule 9.
15. The proposed amendment to Rule 10G (renumbered from Rule 10F in current Rules) allows the license to be reissued when the holder moves from one employer to another employer. While Rule 9F limits a license to 12 months, Rule 10 does not. The change is intended to clarify that the reissued Rule 10 license is not limited to 12 months.

## FEES

16. Additional language has been added to Rule 12A to permit acceptance of electronic payments, which the Board expects to accept in the future.
17. The schedule for refunds has been amended to refund larger amounts to withdrawing applicants who paid fees of \$950 or \$1100. Currently such applicants are eligible to receive a refund of only \$150, the same amount that applicants paying between \$500 and \$650 receive. The proposed amended schedule of refunds would provide a \$150 refund to those who applied under the lower fees (\$500 or \$650), but would provide \$300 to those who applied under the higher fees. (See Rule 12I.) The Board does not anticipate that this change will result in a significant decrease in application revenue.
18. The deadline for requesting a refund under Rule 12I has been changed from 10 to 15 days prior to the exam in order to provide staff adequate notice of the withdrawal.
19. Changes have been proposed to Rule 12J to allow for more options for applicants who are deemed ineligible for the Rule 7 license based on years of practice. In addition to being able to transfer the application to the bar examination, the applicant who fails to meet the Rule 7 requirements could transfer his or her application fee to a Rule 8 (legal services), 9 (temporary house counsel), or 10 (house counsel) license.
20. The Board's proposed amendment to Rule 12N would allow the Board to charge an application processing fee. This Board is in the process of developing an online application which it anticipates will require the payment of a processing fee, likely in the amount of approximately \$20 to \$30 per submitted application. This language is intended to allow the Board to pass this fee through to the applicant so as to not require the Board to seek a rule amendment to adjust fees in a small amount.

## CONDITIONAL ADMISSION

21. Since 2004, the Rules have permitted the Board to conditionally admit applicants to the bar, subject to provisions outlined in a consent agreement. The Board monitors compliance with the terms of the agreement. Rule 16B currently states that an applicant “whose record shows conduct that may otherwise warrant denial, may consent to be admitted subject to certain terms and conditions set forth in a conditional admission consent agreement.” The Board has found that applicants whose conduct shows that they are committed to the rehabilitation process, but whose rehabilitation is recent, will sometimes offer to accept conditional admission rather than waiting for the Board to offer it to them. Additionally, the Board is able to identify candidates whose record suggests that conditional admission may be warranted. The revised language to Rule 16B is intended to more accurately describe the Board’s conditional admission process and to facilitate the Board’s recommendation of conditional admission for candidates whose record shows they are in recovery and able to meet the essential eligibility requirements of the practice of law as set forth in Rule 5A(1) through (10.)
22. Amendments are proposed to Rule 16H that would allow the Board’s Conditional Admission Committee to have additional flexibility in the event of minor violations of the consent agreement. For example, if a conditionally admitted applicant files a report a day or so beyond the filing deadline, the Committee will have the flexibility to determine whether or not the matter is serious enough to be referred to the Office of Lawyers Professional Responsibility.
23. Amendments proposed to Rule 16J would provide the Board with additional flexibility in considering applications. Currently, the language states that the Board’s determination not to recommend conditional admission would result in issuance of an adverse determination letter. The Board determines that by

referencing the Rule 15 and Rule 17 hearing rights, there is not a need to include the adverse determination language in Rule 16J.

## MINOR RULE CHANGES

24. The Board recommends the following minor changes to the Rules for the purpose of clarity:
  - a. Rule 3C is reorganized to clarify information about Board meetings.
  - b. The proposed definition of “quorum” in Rule 3C(4) is based upon the language of the Minnesota Business Corporation Act. The proposed language clarifies the fact that the Board may continue to transact business even if it loses a quorum during the course of the meeting, so long as three of the nine members are present.
  - c. Rule 4C(4) and Rule 4C(5) are combined into proposed amended Rule 4(C)(4), which details the required contents of the affidavits of good character applicants must provide.
  - d. The term “authentic” in Rule 4E has caused confusion among applicants. The proposed amendment strikes the term “authentic” and merely states that the documents must be from “the proper authority.” The Board will ensure that the documents are authentic.
  - e. Amendments to Rule 4E(1) clarify the requirement that the applicant provide copies of applications from all jurisdictions in which the applicant applied, not solely from those jurisdictions in which the applicant was admitted.
  - f. Rule 4G is added to clarify that additional information, not listed in Rule 4A through F, may be required.
  - g. Adding the continuing obligation language to Rule 4H alerts the applicant to the requirement that the application must be updated during the application’s pendency, and during any period of conditional admission. The continuing obligation language also appears in Rule 5B(6).
  - h. Rule 5A is amended to state that applicants must “be able to demonstrate” instead of “meet” the essential eligibility requirements.

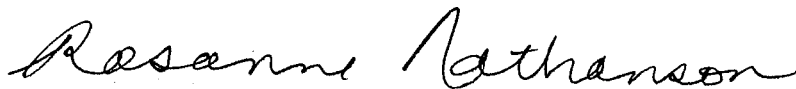
i. The Board recommends renumbering the following paragraphs to allow for insertion of additional paragraphs or to assist applicants to more easily locate the information requested. These changes are self-explanatory and are shown as ~~double strike-throughs~~/dotted underlining in the proposed amended Rules attached to this Petition. The following renumbering has occurred:

- Rule 2A(6) was renumbered to 2A(8)
- Rule 2A(7) was renumbered to 2A(9)
- Rule 2A(8) was renumbered to 2A(10)
- Rule 2A(9) was renumbered to 2A(11)
- Rule 4G was renumbered to 4J.
- Rule 4H was renumbered to 4K.
- Rule 4I was renumbered to 4L.
- Rule 4J was renumbered to 4I.
- Rule 6G was renumbered to Rule 6H.
- Rule 6H was renumbered to Rule 6I.
- Rule 6I was renumbered to Rule 6J.
- Rule 10C was renumbered to Rule 10D.
- Rule 10D was renumbered to Rule 10E.
- Rule 10E was renumbered to Rule 10F.
- Rule 10F was renumbered to Rule 10G.
- Rule 10G was renumbered to Rule 10H.
- Rule 10H was renumbered to Rule 10I.



The Board respectfully requests that the Court amend the current Rules for Admission to the Bar and adopt the proposed amended Rules attached to this Petition as Exhibit A.

Dated: *Sept 14, 2010*



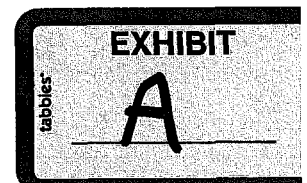
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## RULE 2. DEFINITIONS AND DUE DATE PROVISIONS

### A. Definitions. As used in these Rules:

(1) "Application file" means all information relative to an individual applicant to the bar collected by or submitted to the Board while the application is pending and during any conditional admission period.

(2) "Approved law school" means a law school provisionally or fully approved by the American Bar Association.

(3) "Board" means the Minnesota State Board of Law Examiners.

(4) "Court" means the Minnesota Supreme Court.

(5) "Director" means the staff director for the Board.

(6) "Full-time," as used in Rule 7A(3), means at least 130 hours per month for no fewer than 60 of the 84 months immediately preceding the submission of an application for admission.

(7) "Full-time faculty member," means a person whose professional responsibilities are consistent with the definition of "full-time faculty member" set forth in the *Standards for Approval of Law Schools*, published by the American Bar Association's Section of Legal Education and Admissions to the Bar.

~~(6)~~(8) "Good character and fitness" means traits, including honesty, trustworthiness, diligence and reliability, that are relevant to and have a rational connection with the applicant's present fitness to practice law.

~~(7)~~(9) "Jurisdiction" means the District of Columbia or any state or territory of the United States.

~~(8)~~(10) "Legal services program" means a program existing primarily for the purpose of providing legal assistance to indigent persons in civil or criminal matters.

~~(9)~~(11) "Notify" or "give notice" means to mail or deliver a document to the last known address of the applicant or the applicant's lawyer. Notice is complete upon mailing, but extends the applicant's period to respond by three days.

(12) "Principal occupation" means an applicant's primary professional work or business.

**B. Due Dates Provisions.** Due dates specified under these Rules shall be strictly enforced and shall mean no later than 4:30 p.m. on the date stated; if the date falls on Saturday, Sunday, or a legal holiday, the deadline shall be the first working day thereafter. Postmarks dated on the due date will be accepted.

### **RULE 3. STATE BOARD OF LAW EXAMINERS**

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#### **C. Board Meetings and Quorum.**

(1) Meetings. Board meetings are open to the public except when the Board is considering the following:

- (1)(a) Examination materials;
- (2)(b) Any information concerning an applicant, potential applicant, or conditionally admitted lawyer;
- (3)(c) Personnel matters;
- (4)(d) Any information that is confidential or private under Rule 14;
- (5)(e) Legal advice from its counsel.

(2) Minutes. Minutes of the public portions of Board meetings are available upon request from the Board office.

~~Board members may attend meetings in person or, in~~

(3) Meeting Attendance. In extraordinary circumstances, Board members may attend meetings by conference call.

(4) Quorum. A quorum of the Board shall be a majority of its sitting members. If there is a quorum when the meeting is called to order, the Board may transact business until adjournment, even if members depart the meeting and the remaining members do not constitute a quorum, so long as at least three members are in attendance. Minutes of the public portions of Board meetings are available upon request from the Board office.

### **RULE 4. GENERAL REQUIREMENTS FOR ADMISSION**

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**C. Application for Admission.** To be accepted as complete, an application must be submitted on a form prescribed by the Board together with the following:

- (1) A fee in an amount prescribed by Rule 12;
- (2) A notarized authorization for release of information form;

- (3) For applicants seeking admission by examination, a passport-style photo;
- (4) Two notarized affidavits of good character from persons who have known the applicant for at least one year. and who: To be acceptable, each affidavit shall:
  - (a) Be executed by a person who is Are unrelated to the applicant by blood or marriage and not living in the same household; and
  - (b) Be executed by a person who was Were not a fellow law students during the applicant's enrollment;
- (5) ~~The notarized affidavits of good character must address the following:~~
  - (a)(c) Describe ~~The~~ the duration of time and circumstances under which the affiant has known the applicant;
  - (b)(d) Describe ~~Details respecting the~~ what the affiant knows about the applicant's character and general reputation; and
  - (e)(e) Provide ~~Other~~ information bearing on the applicant's character and fitness to practice law.

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- E. Additional Filing When Admitted Elsewhere.** An applicant who has been admitted to practice in another jurisdiction shall also file or cause to be filed at the time of the application:
  - (1) ~~An authentic copy of the application for admission to the bar from the bar admissions authority in each jurisdiction in which the applicant was previously admitted~~ has applied for admission to the practice of law;
  - (2) ~~An authentic document from the proper authority in each other jurisdiction where admitted~~ showing the date of admission to the bar ~~in each other jurisdiction~~;
  - (3) ~~An authentic document from the proper authority in each other jurisdiction where admitted~~ stating that the applicant is in good standing; and
  - (4) ~~An authentic document from the proper authority in each other jurisdiction where admitted~~ indicating whether the applicant is the subject of any pending complaint or charge of misconduct.
- F. Applicant Without MPRE Score.** An applicant may file an application without having taken the MPRE. However, the applicant shall not be admitted until he or she has submitted evidence of an MPRE scaled score of 85 or higher. Such applicants must be admitted within 12 months of the date of a written notice from the Board or the application will be considered to have been withdrawn.
- ~~**G. Repeat Examinee.** An applicant who has been unsuccessful on a prior Minnesota Bar Examination may re-apply by submitting:~~
  - ~~(1) A new application for admission pursuant to Rule 4C;~~



- ~~(2) The proper fee under Rule 12;~~
- ~~(3) A notarized authorization for release of information on a form prescribed by the Board;~~
- ~~(4) A passport-style photo; and~~
- ~~(5) If the original application is more than two years old, new affidavits as described in Rule 4C(4) of these Rules.~~

~~H. **Incomplete Application.** An application determined to be incomplete shall be returned to the applicant.~~

~~I. **Withdrawal of Application.** An applicant may withdraw the application by notifying the Board in writing at any time prior to the issuance of an adverse determination.~~

**G. Additional Information Required.** At the request of the Board, an applicant will be required to obtain and submit additional information.

**H. Continuing Obligation to Update Application.** An applicant has a continuing obligation to provide written updates to the application. This obligation continues until such time as the applicant is admitted, the application is withdrawn, or there is a final determination by the Board or Supreme Court. Applicants conditionally admitted under Rule 16 must continue to update their application for the term of the consent agreement.

**I. Required Cooperation.**

- (1) An applicant has the duty to cooperate with the Board and the director by timely complying with requests, including requests to:
  - (a) Provide complete information, documents, and signed authorizations for release of information;
  - (b) Obtain reports or other information necessary for the Board to properly evaluate the applicant's fitness to practice;
  - (c) Appear for interviews to determine eligibility for admission or facilitate the background investigation.
- (2) An applicant shall not discourage a person from providing information to the Board nor retaliate against a person for providing information to the Board;
- (3) If the Board determines that an applicant has breached the duty to cooperate, the Board may deem the application withdrawn, may deny the applicant the opportunity to test, or may deny admission.

**J. Repeat Examinee.** An applicant who has been unsuccessful on a prior Minnesota Bar Examination may reapply by submitting:

- (1) A new application for admission pursuant to Rule 4C;
- (2) The proper fee under Rule 12;
- (3) A notarized authorization for release of information on a form prescribed by the Board;

- (4) A passport-style photo; and
- (5) If the original application is more than two years old, new affidavits as described in Rule 4C(4) of these Rules.

**K. Incomplete Application.** An application determined to be incomplete shall be returned to the applicant.

**L. Withdrawal of Application.** An applicant may withdraw the application by notifying the Board in writing at any time prior to the issuance of an adverse determination.

## **RULE 5. STANDARDS FOR ADMISSION**

**A. Essential Eligibility Requirements.** Applicants must ~~meet~~ be able to demonstrate the following essential eligibility requirements for the practice of law:

- (1) The ability to be honest and candid with clients, lawyers, courts, the Board, and others;
- (2) The ability to reason, recall complex factual information, and integrate that information with complex legal theories;
- (3) The ability to communicate with clients, lawyers, courts, and others with a high degree of organization and clarity;
- (4) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (5) The ability to conduct oneself with respect for and in accordance with the law;
- (6) The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- (7) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes, and any applicable order of a court or tribunal;
- (8) The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts, and others;
- (9) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and
- (10) The ability to comply with deadlines and time constraints.

**B. Character and Fitness Standards and Investigation.**

- (1) **Purpose.** The purpose of the character and fitness investigation before admission to the bar is to protect the public and to safeguard the justice system.
- (2) **Burden of Proof.** The applicant bears the burden of proving good character and fitness to practice law.
- (3) **Relevant Conduct.** The revelation or discovery of any of the following shall be treated as cause for further inquiry before the Board determines

whether the applicant possesses the character and fitness to practice law:

- (a) Unlawful conduct;
  - (b) Academic misconduct;
  - (c) Misconduct in employment;
  - (d) Acts involving dishonesty, fraud, deceit, or misrepresentation;
  - (e) Acts which demonstrate disregard for the rights or welfare of others;
  - (f) Abuse of legal process, including the filing of vexatious or frivolous lawsuits;
  - (g) Neglect of financial responsibilities;
  - (h) Neglect of professional obligations;
  - (i) Violation of an order of a court, including child support orders;
  - (j) Conduct that evidences current mental or emotional instability that may impair the ability to practice law;
  - (k) Conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;
  - (l) Denial of admission to the bar in another jurisdiction on character and fitness grounds;
  - (m) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
  - (n) The making of false statements, including omissions, on bar applications in this state or any other jurisdiction.
- (4) Considerations. The Board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors shall be considered in assigning weight and significance to prior conduct:
- (a) The applicant's age at the time of the conduct;
  - (b) The recency of the conduct;
  - (c) The reliability of the information concerning the conduct;
  - (d) The seriousness of the conduct;
  - (e) The factors underlying the conduct;
  - (f) The cumulative effect of the conduct or information;
  - (g) The evidence of rehabilitation as defined in Rule 5B(5);
  - (h) The applicant's candor in the admissions process; and
  - (i) The materiality of any omissions or misrepresentations.
- (5) Rehabilitation. An applicant who affirmatively asserts rehabilitation from past conduct may provide evidence of rehabilitation by submitting one or more of the following:
- (a) Evidence that the applicant has acknowledged the conduct was wrong and has accepted responsibility for the conduct;
  - (b) Evidence of strict compliance with the conditions of any disciplinary, judicial, administrative, or other order, where applicable;
  - (c) Evidence of lack of malice toward those whose duty compelled bringing disciplinary, judicial, administrative, or other proceedings against applicant;

- (d) Evidence of cooperation with the Board's investigation;
  - (e) Evidence that the applicant intends to conform future conduct to standards of good character and fitness for legal practice;
  - (f) Evidence of restitution of funds or property, where applicable;
  - (g) Evidence of positive social contributions through employment, community service, or civic service;
  - (h) Evidence that the applicant is not currently engaged in misconduct;
  - (i) Evidence of a record of recent conduct that demonstrates that the applicant meets the essential eligibility requirements for the practice of law and justifies the trust of clients, adversaries, courts, and the public;
  - (j) Evidence that the applicant has changed in ways that will reduce the likelihood of recurrence of misconduct; or
  - (k) Other evidence that supports an assertion of rehabilitation.
- (6) Continuing Obligation. The applicant has a continuing obligation to update the application with respect to all matters inquired of on the application. This obligation continues during the pendency of the application, including the period when the matter is on appeal to the Board or the Court, and during any period of conditional admission.
- (7) Determination. A character and fitness determination shall be made with respect to each applicant who is a successful examinee or who is qualified by practice for admission under these Rules. An adverse determination on character and fitness grounds may be appealed under Rule 15.
- (8) Advisory Opinions.
- (a) A law student may request a written advisory opinion from the Board with respect to his or her character and fitness for admission by filing a completed application for admission, a fee in the amount required under Rule 12L, two notarized affidavits as required by Rule 4C(4), and an authorization for release of information as required by Rule 4C(2).
  - (b) Advisory opinions will not be binding on the Board.

## **RULE 6. ADMISSION BY EXAMINATION**

- A. Dates of Examinations.** Examinations shall be held the last Tuesday and Wednesday of the months of February and July each year, at a place to be determined by the Board.
- B. Timely Filing Deadlines.** An application for admission by examination shall be filed in the office of the Board by October 15 for the February examination, or by March 15 for the July examination. Due dates shall be strictly enforced as specified in Rule 2B.
- C. Late Filing Deadlines.** Late applications will be accepted on or before December 1 for the February examination, or on or before May 1 for the July

examination but must be accompanied by the late filing fee pursuant to Rule 12. No applications shall be accepted after the late filing deadline. Due dates shall be strictly enforced as specified in Rule 2B.

**D. Denial of Opportunity to Test.** An applicant may be denied permission to take an examination:

- (1) When the applicant has failed to comply with the requirements of Rule 4C, 4D, or 4J; or
- (2) When the Board has determined the applicant has not satisfied the good character and fitness requirement of Rule 4A(2).

**E. Scope of Examination.** The Minnesota Bar Examination shall consist of six essay questions, the Multistate Bar Examination (MBE), and at least one performance test question.

- (1) Essay Questions. The essay questions may include any of the following subjects:

- Business Associations (partnerships, proprietorships, and corporations, including limited liability companies)
- Civil Procedure
- Constitutional Law
- Contracts
- Criminal Law and Procedure
- Ethics and Professional Responsibility
- Evidence
- Family Law
- Federal Individual Income Taxation
- Real Property
- Torts
- Uniform Commercial Code, Art. 1, 2
- Wills, Estates and Trusts.

- (2) Performance Test. The performance test shall include one or more questions testing the applicant's ability to perform a lawyering task using legal and factual materials provided.

**F. Testing Accommodations.** An applicant whose disability requires testing accommodations shall submit with the application a written request pursuant to the Board's testing accommodations policy and shall describe:

- (1) The type of accommodation requested;
- (2) The reasons for the requested accommodation, including medical documentation in a format set forth in the policy referenced above.

The Board shall notify the applicant of its decision. A denial or modification of a request for testing accommodations constitutes an adverse determination of the Board and may be appealed pursuant to Rule 15.

**G. Computer Use.** Any applicant requesting to use a laptop computer to write the essay and performance test portion of the bar examination shall submit a computer registration form with the application and pay the required fee.

**G.H. Examination Results.** The results of the examination shall be released to examinees by regular mail to the address listed in the files of the Board, and successful examination numbers will be posted at the Court, on the Board's website, and at each Minnesota law school. The date of the release shall be announced at the examination.

**H.I. Failing Examination Scores.** A failing score on the bar examination is a final decision of the Board and does not afford the applicant the appeal and hearing rights set forth in Rule 15.

**H.J. Stale Examination Scores.** A passing score on the Minnesota Bar Examination is valid for 36 months from the date of the examination. Applicants must be admitted within 36 months of the examination.

## **RULE 7. ADMISSION WITHOUT EXAMINATION**

### **A. Eligibility by Practice.**

(1) **Requirements.** An applicant may be eligible for admission without examination if the applicant otherwise qualifies for admission under Rule 4, and provides documentary evidence showing that for at least 60 ~~five~~ of the 84 ~~seven~~ years ~~months~~ immediately preceding the application, the applicant was:

- (a) Licensed to practice law;
- (b) In good standing before the highest court of all jurisdictions where admitted; and
- (c) Engaged, full-time ~~and~~ as a principal occupation, in the ~~active and~~ lawful practice of law as a:
  - i. Lawyer representing one or more clients;
  - ii. Lawyer in a law firm, professional corporation, or association;
  - iii. Judge in a court of ~~record~~law;
  - iv. Lawyer for any local or state governmental entity;
  - v. House counsel for a corporation, agency, association, or trust department;
  - vi. Lawyer with the federal government or a federal governmental agency including service as a member of the Judge Advocate General's Department of one of the military branches of the United States; ~~and/or~~
  - vii. A full-time faculty member ~~Professor teaching full-time in~~ any approved law school; and/or

viii. Judicial law clerk whose primary responsibility is legal research and writing

- (2) **Jurisdiction.** The lawful practice of law described in Rule 7A(1)(c)(i) through (v) must have been performed in a jurisdiction in which the applicant is admitted, or performed in a jurisdiction that permits the practice of law by a lawyer not admitted in that jurisdiction. Practice described in 7A(1)(c)(vi) through (viii) may have been performed outside the jurisdiction where the applicant is licensed.

~~To constitute the lawful practice of law, the above activities must have been performed in a jurisdiction in which the applicant is admitted, or performed in a jurisdiction that permits such activity by a lawyer not admitted to practice. Practice falling under (f) or (g) above performed outside a jurisdiction where the applicant is licensed shall be considered the lawful practice of law.~~

**B. Eligibility for Admission by Test Score.** An applicant may be eligible for admission without examination under Rule 4A(4) if the applicant has received a scaled score of 145 or higher on the MBE taken as a part of and at the same time as the essay or other part of a written bar examination given by another jurisdiction, was successful on that bar examination, and was subsequently admitted in that jurisdiction. The applicant shall submit evidence of the score and a completed application to the Board within 24 months of the date of the qualifying examination being used as the basis for the admission.

**C. Transfer of MBE Score.** An applicant seeking to transfer a MBE score achieved in another jurisdiction to Minnesota shall submit a written request for transfer to the National Conference of Bar Examiners.

**D. MBE Score Advisory.** Upon written request, the director will advise an applicant or potential applicant who took and passed a bar examination in another jurisdiction whether or not his or her MBE score satisfies the requirements of Rule 7B. Requests for score advisory shall include the following:

- (1) Complete name and social security number of the examinee; and
- (2) Month, year, and jurisdiction of test administration.

**E. No Waiver of Time Requirements.** The minimum time requirements and the timely filing requirements of this Rule shall be strictly enforced.

**F. Eligibility After Unsuccessful Examination.** An applicant may be eligible for admission without examination under this Rule notwithstanding a prior failure on the Minnesota Bar Examination.

\* \* \*

## **RULE 9. ADMISSION BY TEMPORARY HOUSE COUNSEL LICENSE**

**A. Practice by House Counsel.** A lawyer licensed in another jurisdiction shall not practice law in Minnesota as house counsel unless he or she is admitted to practice in Minnesota under this Rule, Rule 6 (Admission by Examination), Rule 7 (Admission Without Examination), or Rule 10 (Admission by House Counsel License).

**B. Eligibility.** A lawyer licensed in another jurisdiction may apply for and be admitted under a temporary house counsel license when the lawyer:

- (1) Is employed in Minnesota as house counsel solely for a single corporation (or its subsidiaries), association, business, or governmental entity whose lawful business consists of activities other than the practice of law or the provision of legal services; and
- (2) Has practiced law by engaging in one or more of the activities listed in Rule 7A, for at least three of the previous five years; and
- (3) Complies with the eligibility provisions of Rule 4A, with the exception of Rule 4A(5).

The practice of law during the qualifying period must have been in the performed in a jurisdiction where the applicant is licensed and ~~during the period of licensure~~ or performed in a jurisdiction that permits the practice of law by a lawyer not licensed in that jurisdiction, unless the applicant, during the qualifying period, was practicing as house counsel for a corporation, agency, association, or trust department.

**C. Requirements.** In order to qualify for the temporary house counsel license, the applicant shall comply with the requirements of these Rules and file the following with the Board:

- (1) An application for license to practice law in Minnesota as described in Rule 4C;
- (2) The documents listed in Rules 4D and 4E; ~~A certificate or certificates from the proper authority in each jurisdiction certifying that the applicant is in good standing and listing any complaint of professional misconduct pending against the applicant;~~
- (3) An affidavit from an officer, director, or general counsel of applicant's employer or parent company employer stating the date of employment and attesting to the fact that applicant is employed as house counsel



solely for said employer, that applicant is an individual of good character, and that the nature of the employment meets the requirements of Rule 9B(1); and

- (4) A fee consistent with Rule 12F; and
- (5) Other information, if requested by the Board.

**D. Limitation.** A license issued pursuant to this Rule authorizes the holder to practice solely for the employer designated in the affidavit required by Rule 9C(3).

**E. Issuance of Temporary House Counsel License.** ~~In order to facilitate issuance of the temporary license, an~~ An expedited character and fitness investigation will be conducted, and if the Board finds that the applicant's present character and fitness qualifies the applicant for admission, a temporary license will be issued.

**F. Duration and Expiration of Temporary License.** The temporary license shall expire 12 months from the date of issuance, or sooner, upon the occurrence of any of the following:

- (1) Termination of the holder's employment with the employer referenced in Rule 9C(3); or
- (2) Admission to practice law in Minnesota pursuant to Rule 6 (Admission by Examination), Rule 7 (Admission Without Examination), or Rule 10 (Admission by House Counsel License); or
- (3) Issuance of an adverse determination pursuant to Rule 15A.

After expiration of a temporary house counsel license, the former license holder, unless already admitted to practice law in Minnesota under another of these Rules, shall not practice law in Minnesota or otherwise represent that he or she is admitted to practice law in Minnesota.

**G. House Counsel License Without Time Limitation.** An applicant for or holder of a temporary house counsel license who anticipates practicing in Minnesota for more than 12 months should also apply for a house counsel license under Rule 10 or another license under these Rules.

**H. Notice of Termination of Employment.** A holder of a temporary house counsel license shall notify both the Board and the Lawyer Registration Office in writing within 10 business days of termination of employment with the employer referenced in Rule 9C(3).

**I. Credit for Admission Without Examination.** Time in the practice of law under the temporary house counsel license may be counted toward eligibility for admission without examination under Rule 7A.

**J. Professional Conduct and Responsibility.** A lawyer licensed under this Rule shall abide by and be subject to all laws and rules governing lawyers admitted to the practice of law in this state.

## **RULE 10. ADMISSION BY HOUSE COUNSEL LICENSE**

**A. Practice by House Counsel.** A lawyer licensed in another jurisdiction shall not practice law in Minnesota as house counsel unless he or she is admitted to practice in Minnesota under this Rule, Rule 6 (Admission by Examination), Rule 7 (Admission Without Examination), or Rule 9 (Admission by Temporary House Counsel License).

**B. Eligibility and Requirements.** A lawyer licensed in another jurisdiction or the holder of a temporary house counsel license issued pursuant to Rule 9B and 9C, who intends to practice in Minnesota for more than 12 months, may apply for a house counsel license ~~upon submission of evidence of when the lawyer:~~

- (1) Is employed in Minnesota as house counsel solely for a single corporation (or its subsidiaries), association, business, or governmental entity whose lawful business consists of activities other than the practice of law or the provision of legal services; Compliance with eligibility and other requirements set forth in Rule 9; and
- (2) Has practiced law by engaging in one or more of the activities listed in Rule 7A, for at least 36 of the previous 60 months; and
- (3) Complies with the eligibility provisions of Rule 4A.  
~~A scaled score of 85 or higher on the Multistate Professional Responsibility Examination.~~

**C. Requirements.** In order to qualify for the house counsel license, the applicant shall comply with the requirements of these Rules and file the following with the Board:

- (1) An application for license to practice law in Minnesota as described in Rule 4C;
- (2) The documents listed in Rules 4D and 4E;
- (3) An affidavit from an officer, director, or general counsel of applicant's employer or parent company employer stating the date of employment and attesting to the fact that applicant is employed as house counsel solely for that employer, that applicant is an individual of good character, and that the nature of the employment meets the requirements of Rule 10B(1);
- (4) A fee consistent with Rule 12F; and
- (5) Other information, if requested by the Board.

**C.D. Limitation.** A license issued pursuant to this Rule authorizes the holder to practice solely for the employer designated in the Rule 910C(3) affidavit.

- D.E. Expiration of House Counsel License.** The house counsel license shall expire upon termination of the holder's employment with the employer referenced in Rule 910C(3). After a house counsel license expires, the former license holder, unless already admitted to practice law in Minnesota under another of these Rules, shall not practice law in Minnesota or otherwise represent that he or she is admitted to practice law in Minnesota.
- E.F. Notice of Termination of Employment.** A house counsel license holder shall notify both the Board and the Lawyer Registration Office in writing within 10 business days of termination of employment with the employer referenced in Rule 910C(3).
- F.G. Re-issuance of House Counsel License.** At the director's discretion, a house counsel license that has expired due to termination of holder's employment may be reissued for the remainder of the period specified in Rule 9F if re-issuance is requested within 90 days of the expiration of the license, provided that the other requirements of this Rule are met at the time of the request for re-issuance. The fee for re-issuance shall be consistent with Rule 12M.
- G.H. Credit for Admission Without Examination.** Time in the practice of law under the house counsel license may be counted toward eligibility for admission without examination under Rule 7A.
- H.I. Professional Conduct and Responsibility.** A lawyer licensed under this Rule shall abide by and be subject to all laws and rules governing lawyers admitted to the practice of law in this state.

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## **RULE 12. FEES**

- A. General.** Applicants shall pay application fees or other fees required under these Rules shall be paid by personal check or money order made payable to the Board. At the Board's discretion, fees may be accepted by credit card or electronic funds transfer. The applicable fee is determined as of the date of filing of a complete application under Rule 4.
- B. Fee for Examination, Not Previously Admitted.** An applicant who meets the following criteria shall submit a fee of \$500:
- (1) Applying to take the Minnesota examination for the first time; and
  - (2) Not admitted to practice in another jurisdiction; and
  - (3) Filing on or before the timely filing deadline (October 15 for the February examination, or March 15 for the July examination).
- An applicant meeting the criteria in (1) and (2) above, who files after the timely filing deadline but before the late filing deadline (December 1 for the

February examination, or May 1 for the July examination) shall submit a fee of \$650. Applications will not be accepted after the late filing deadline.

- C. Fee for Examination, Prior Admission.** An applicant who meets the following criteria shall submit a fee of \$950:
- (1) Licensed to practice in another jurisdiction more than six months prior to the date of the applicant's Minnesota application; and
  - (2) Filing on or before the timely filing deadline (October 15 for the February examination, or March 15 for the July examination).
- An applicant meeting the criteria in (1) above, who files after the timely filing deadline but before the late filing deadline (December 1 for the February examination, or May 1 for the July examination) shall submit a fee of \$1100. Applications will not be accepted after the late filing deadline.
- D. Fee for Examination for Recently Admitted Applicants.** An applicant applying to take the Minnesota examination who has been licensed to practice in another jurisdiction fewer than six months prior to the date of the applicant's Minnesota application shall submit the fee for examination required by paragraph B of this Rule.
- E. Repeat Examinations.** An applicant who was unsuccessful on the Minnesota examination and is filing on or before December 1 for the February examination, or on or before May 1 for the July examination, shall submit a fee of \$500 and comply with Rule 4GJ.
- F. Fee for Admission Without Examination.** An applicant for admission without examination pursuant to Rule 7 (Admission Without Examination) or Rule 10 (Admission by House Counsel License) shall submit a fee of \$950. An applicant for admission pursuant to Rule 9 (Admission by Temporary House Counsel License) shall submit a fee of \$700.
- G. Fee for Temporary License for Legal Services Program Practice.** A fee in the amount of \$75 must accompany an application for Temporary License pursuant to Rule 8. Payment of an additional fee, as required by Rule 12B, will qualify applicants under Rule 6. Payment of an additional fee, as required by Rule 12C, will qualify applicants under Rule 7A or 7E.
- H. Transfer of Rule 8 Application to Rule 6 or Rule 7 Application.** Documents submitted in support of a Rule 8 (Temporary License for Legal Services Programs) application for license may, upon the written request of applicant, constitute application pursuant to Rule 6 (Admission by Examination) or Rule 7 (Admission Without Examination) of these Rules, provided additional fees required by Rule 12 are submitted.
- I. Refunds of Fees.** An applicant who submits a written request to withdraw an refund in the amount of \$150 shall be made when an applicant for the bar

~~examination application advises the Board in writing at least ten-15 or more days prior to anthe examination for which the applicant applied, shall receive a refund in the amount of: of the applicant's desire to withdraw the application. No other requests for refund will be granted.~~

- (1) \$150, if the fee was paid in amount as specified by either Rule 12B or Rule 12E;
- (2) \$300, if the fee was paid in an amount as specified by Rule 12C.

No other requests for refund will be granted.

**J. Carry-over of Fees.**

- (1) ~~Ineligible Rule 7 Applicants. From Rule 7 (Admission Without Examination).~~ The fee of an applicant declared ineligible under Rule 7 (Admission Without Examination) shall, upon the applicant's written request, be applied to
  - (a) ~~an~~ An examination held within the succeeding 15 months;  
or
  - (b) An application made under Rules 8, 9, or 10.at the ~~The written request of the applicant must be received by the Board~~ within 30 days of notice of the denial. No other ~~transfers~~ carry-over of fees, other than those provided for in the following paragraph, shall be granted.
- (2) Medical Emergencies. An applicant who is unable to ~~sit~~ take ~~for~~ the examination due to a medical emergency and who notifies the Board in writing or by telephone prior to the start of the examination, may request carry-over of the application fee to the next examination. Such requests must be made in writing, received in the Board office no later than 14 days following the examination, and be accompanied by written documentation of the medical emergency. The applicant shall submit a fee of \$50 when reapplying for the next examination.

**K. Copies of Examination Answers.** An unsuccessful applicant may request copies of the applicant's essay answers. The request shall be in writing, submitted within 60 days of the release of the examination results, and accompanied by a fee of \$20.

**L. Fees for Advisory Opinions.** An application filed for the purpose of receiving an advisory opinion from the Board must be accompanied by a fee in the amount of \$100.

**M. Fee for Reissuance of Temporary House Counsel or House Counsel License.** An applicant for re-issuance of a house counsel license under Rule 10F shall submit a fee of \$275.

**N. Other Fees.** The Board may require an applicant to bear the expense of obtaining reports or other information necessary for the Board's investigation. The Board may require applicants to pay a reasonable application processing fee. The Board may charge reasonable fees for collection and publication of any information permitted to be released. For matters not covered in these Rules, the director may set reasonable fees which reflect the administrative costs associated with the service.

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## **RULE 14. CONFIDENTIALITY AND RELEASE OF INFORMATION**

**A. Application File.** An applicant may review the contents of his or her application file with the exception of the work product of the Board and its staff. Such review must take place within two years after the filing of the last application for admission in Minnesota, at such times and under such conditions as the Board may provide.

**B. Work Product.** The Board's work product shall not be produced or otherwise discoverable, nor shall any member of the Board or its staff be subject to deposition or compelled testimony except upon a showing of extraordinary circumstance and compelling need and upon order of the Court. In any event, the mental impressions, conclusions, and opinions of the Board or its staff shall be protected and not subject to compelled disclosure.

### **C. Examination Data.**

(1) **Statistics.** Statistical information relating to examinations and admissions may be released at the discretion of the Board.

(2) **MBE Score Advisory.** The director may release individual MBE scores as provided in Rule 7D.

(3) **Transfer of MBE Score.** The score of an examinee may be disclosed to the bar admission authority of another jurisdiction, upon the examinee's written request to the National Conference of Bar Examiners (NCBE).

(4) **Release of Examination Scores and Essays to Unsuccessful Examinees.** The director may release to an unsuccessful examinee the scores assigned to each of the various portions of the examination; and, upon payment of the fee specified by Rule 12K, the director may release copies of an unsuccessful examinee's answers to the essay questions.

(5) Release of Examination Scores to Law Schools. At the discretion of the Board, the examination scores of an examinee may be released to the law school from which the examinee graduated.

**D. Release of Information to Other Agencies.** Information may be released to the following:

- (1) Any authorized lawyer disciplinary agency;
- (2) Any bar admissions authority; or
- (3) Persons or other entities in furtherance of the character and fitness investigation.

**E. Referrals.** Information relating to the misconduct of an applicant may be referred to the appropriate authority.

**F. Confidentiality.** Subject to the exceptions in this Rule, all other information contained in the files of the office of the Board is confidential and shall not be released to anyone other than the Court except upon order of the Court.

## **RULE 15. ADVERSE DETERMINATIONS AND HEARINGS**

- A. Adverse Determination.** When an adverse determination relating to an applicant's character, fitness, or eligibility is made by the Board, the director shall notify the applicant of the determination, the reasons for the determination, the right to request a hearing, the right to be represented by counsel, and the right to present witnesses and evidence.
- B. Request for Hearing.** Within 20 days of notice of an adverse determination, the applicant may make a written request for a hearing. If the applicant does not timely request a hearing, the adverse determination becomes the final decision of the Board.
- C. Scheduling of Hearing.** The Board shall schedule a hearing upon receipt of the applicant's request for a hearing. At least 45 days prior to the hearing, the Board shall notify the applicant of the time and place.
- D. Proceedings.** At the discretion of the Board president, the hearing may be held before the full Board, before a sub-committee of the Board appointed by

the president, or before a hearing examiner appointed by the president. The Board may employ special counsel. The hearing shall be recorded and a transcript shall be provided to the applicant on request at a reasonable cost. The applicant has the burden of proving by clear and convincing evidence that the applicant possesses good character and fitness to practice law and is eligible for admission.

- E. Pre-hearing Conference.** The Board president or designee shall conduct a pre-hearing conference at least 30 days prior to the hearing for the purpose of addressing procedural issues. Unless the president or designee orders otherwise, Board counsel and the applicant shall exchange exhibit lists; the names and addresses of witnesses; proposed findings of fact, conclusions of law, final decisions; or stipulations at least 15 days before the hearing.
- F. Subpoenas.** Upon written authorization of the Board president or designee, the applicant and Board counsel may subpoena evidence and witnesses for the hearing. The District Court of Ramsey County shall have jurisdiction over issuance of issuesubpoenas.
- G. Continuances.** A written request for a continuance of a scheduled hearing shall be heard considered and decided by the Board president or designee, who shall grant such request only upon a showing of good cause.
- H. Final Decision.** Following the hearing, the Board shall notify the applicant in writing of its findings of fact, conclusions of law and final decision.

## **RULE 16. CONDITIONAL ADMISSION.**

**A. Conditional Admission.** The Board, upon its own initiative or the initiative of the applicant, may recommend to the Court that the applicant be admitted on a conditional basis.

**B. Circumstances Warranting Conditional Admission.** ~~An applicant whose record shows conduct that may otherwise warrant denial, may consent to be admitted subject to certain terms and conditions set forth in a conditional admission consent agreement. Only an applicant whose~~ The Board may consider for conditional admission an applicant whose past conduct raises concerns under Rule 5, but whose current record of conduct evidences a commitment to rehabilitation and an ability to meet the essential eligibility requirements of the practice of law as set forth in Rule 5A may be considered for conditional admission. The Board shall prescribe the terms and conditions of conditional admission in a consent agreement entered into by the Board and the applicant.

**C. Consent Agreement.** The consent agreement shall set forth the terms and conditions of conditional admission, shall be signed by the president or designee



and by the applicant, and shall be made a part of the conditionally admitted lawyer's application file. The consent agreement shall remain confidential subject to the provisions of these Rules and of the Rules on Lawyers Professional Responsibility.

**D. Transmittal to the Office of Lawyers Professional Responsibility.** A list of conditionally admitted lawyers shall be transmitted each month to the Office of Lawyers Professional Responsibility (OLPR). In the event a complaint of unprofessional conduct or violation of the consent agreement is filed against the conditionally admitted lawyer, the application file shall be transmitted to the OLPR upon the request of that office.

**E. Length of Conditional Period.** The initial conditional admission period shall not exceed 24 months, unless a complaint for a violation of the consent agreement or a complaint of unprofessional conduct has been filed with the OLPR. The filing of ~~such a~~ any complaint with the OLPR shall extend the conditional admission until disposition of the complaint by the OLPR.

**F. Consequences of Failure to Fulfill the Conditional Terms.** Failure to fulfill the terms of the consent agreement may result in the suspension or revocation of the conditional admission license or such other action as is appropriate under the Rules on Lawyers Professional Responsibility.

**G. Monitoring of Consent Agreement by Conditional Admission Committee.** During the conditional admission period, the conditionally admitted lawyer's compliance with the terms of the consent agreement shall be monitored by a Conditional Admission Committee (CAC), a committee of no fewer than three Board members appointed by the president. The CAC shall conduct such investigation and take such action as is necessary to monitor compliance with the terms of the consent agreement, including, but not limited to, requiring the conditionally admitted lawyer to:

- (1) submit written verification of compliance with conditions;
- (2) appear before the CAC; and
- (3) respond to any requests for evidence concerning compliance.

**H. Procedure After Finding of Violation of Consent Agreement.** If the CAC finds that a term or terms of the consent agreement have been violated, the CAC may request that the President shall convene the Board for the purpose of determining whether to file a complaint with OLPR or take other action to address the violation. The Board shall notify the conditionally admitted lawyer of the Board's decision if a complaint is filed.

**I. Complaint for Violation of Consent Agreement; Disposition of Complaint.** Any complaint for violation of the consent agreement filed with the OLPR shall set forth the basis for finding that a term or terms of the consent agreement have been violated.

**J. Appeal.** ~~A Board decision not to recommend conditional admission shall be set forth in an adverse determination pursuant to Rule 15.~~ Appeal rights are limited to those set forth in Rule 15 and Rule 17.

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**STATE OF MINNESOTA  
In Supreme Court  
FILE NO. ADM-10-8008**

**RESPONSE TO ORDER DIRECTING  
THE BOARD OF LAW EXAMINERS  
TO PROPOSE AN AMENDMENT TO  
THE MINNESOTA RULES FOR  
ADMISSION TO THE BAR**

**TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:**

The Minnesota State Board of Law Examiners ("Board") respectfully submits this Response to the Court's Order dated August 5, 2010. The Order directed the Board to propose an amendment to the Minnesota Rules for Admission to the Bar to permit a licensed attorney who has successfully practiced law in another United States jurisdiction for a substantial and specified number of years to sit for the Minnesota Bar and, if successful and otherwise qualified, to be admitted to the practice of law in Minnesota, notwithstanding the fact that the attorney had not graduated from an ABA-approved law school.

The proposed Rule 20 language is consistent with the Board's June 2, 2010 Report to the Court in which the Board concluded that graduation with a J.D. degree from an ABA-approved law school is the appropriate educational standard in Minnesota, while acknowledging there may be limited circumstances in which a member of the bar in another U.S. jurisdiction with substantial practice experience for a significant number of years could prove legal proficiency, notwithstanding graduation from a law school not approved by the American Bar Association. In support of proposed Rule 20, the Board asserts the following:

1. The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in Minnesota. Minn. Stat. §481.01 (2009).
2. Under the supervision of the Court, the Board is responsible for ensuring that lawyers who are admitted to the Bar in Minnesota have the competence as well as the character and fitness required to maintain the trust and confidence of clients, the public, the legal system, and the legal profession. Rule 1 of the State of Minnesota Rules for Admission to the Bar (2008).
3. The touchstone for the Rules governing admission to the Bar is the protection of the public.
4. Minnesota has long followed a two-prong standard for admission to the Minnesota Bar. As this Court has previously held, graduation with a J.D. from an ABA-approved law school and the passage of a written bar examination are both indicators of competence that an applicant must demonstrate in order for the public to be adequately protected. See *Petition of Dolan*, 445 N.W. 2d 553, 554 (Minn. 1989). The Board's current rules reflect this dual requirement by requiring that all applicants to the Minnesota Bar must be graduates of an ABA-approved law school. An applicant with a J.D. degree from a law school meeting the ABA accreditation standards has satisfied the burden of proving that the applicant has received a high quality legal education and is trained in the skills and values of the profession. See also *In re Dolan*, 483 N.W.2d 64 (1992); *In re Hansen*, 275 N.W.2d 790 (Minn. 1978) (holding that graduation from an ABA-approved law school is an appropriate standard.)
5. On April 29, 2009, a petition styled *In re: Amendment to the Rule Regulating Qualifications for the Minnesota Bar Examination, Petition of Four Licensed Attorneys* (Petition), was filed before the Minnesota Supreme Court seeking to amend Rule 4A(3) to permit a lawyer possessing "a valid license from another

U.S. jurisdiction” who is a graduate of a law school not accredited by the American Bar Association (ABA) to seek admission by written examination to the Minnesota Bar.

6. By order dated August 10, 2009, the Court directed the Minnesota Board of Law Examiners to undertake a study to examine the issues raised by the Petition and to submit a report to the Court by June 1, 2010.
7. The President of the Board appointed a five member Committee of the Board to conduct the study. During the nine months following issuance of the Order, the Committee held seven public meetings at which it heard testimony from 26 witnesses including each of the four Petitioners, the deans of each of the four Minnesota law schools, the deans of two law schools that are not ABA-approved, the chair of the Minnesota State Bar Association Professional Conduct Committee, bar examiners and bar admission administrators from states which permit non-ABA graduates to sit for the state bar examination (including the states of California and New York), legal educators, representatives of the ABA’s accreditation body, and lawyers and judges who are recognized experts in legal education and admissions to the bar. The Committee solicited and reviewed written comments submitted to the Board in response to the Board’s request for commentary on the Petition, reviewed the admission rules and analyzed the admission processes of various jurisdictions, conducted independent research, and reviewed publications concerning legal education and admission to the bar.
8. In its June 2, 2010, Report to the Court, the Board described the admission process in Minnesota, the ABA’s law school accreditation process and the written standards utilized in that process, and analyzed how Board Rule 4A(3) provides the Board with assurances that applicants to the Minnesota Bar meet an appropriate educational standard. The Report analyzed the requirements of U.S. jurisdictions which permit the admission of graduates from non-ABA approved law schools and considered distance learning in legal education.

9. Included in the Board's Report were the following conclusions:
- a. The purpose of the Bar admission requirements is to protect the public. The Board's current Rules for Admission to the Bar strike an appropriate balance by placing a high emphasis on satisfying the high standards of legal education associated with an ABA-approved J.D. degree, while allowing the bar examination in Minnesota to eliminate those few who are unable to pass a test of minimal competency.
  - b. A degree from an ABA-approved law school demonstrates that a bar applicant has received a high quality legal education. The Board has not found any other type of education that is substantially equivalent to or an adequate substitute for graduation from an ABA-approved law school. While some states have created their own accreditation standards, the Board found that state accreditation models and educational equivalency determinations were not as comprehensive as the determinations made by the ABA in accrediting law schools. Having found no substantial equivalent to the ABA-approved degree, the Board concluded that graduation from an ABA-approved law school should continue as the educational standard in Minnesota.
  - c. The law school accreditation standards the ABA has developed and implemented constitute a valid process for accreditation of law schools and evaluation of the quality of legal education. The Board has neither the resources, nor the expertise, to replicate that system of accreditation.
  - d. Petitioners' proposed rule amendment, if adopted, would define Minnesota's standard for legal education to be whatever standard has been or will be adopted in any other state in the country. Requiring passage of two bar examinations (another state's exam and Minnesota's

exam) is not an adequate substitute for having obtained a comprehensive legal education.

- e. A legal education that is obtained in large part through distance learning is not an adequate substitute for legal education obtained at an ABA-approved law school.
10. The Board concluded that the Petitioners' proposed rule amendment would not adequately protect the public and recommended against its adoption.
  11. The Board's reliance on the ABA-approved degree permits it to devote its limited resources to other aspects of bar admission, rather than attempting to replicate the already proven ABA accreditation process.
  12. The Board acknowledged in the Report that there may be limited situations in which the public would not be adversely affected by admission of a lawyer from another U.S. jurisdiction who had successfully practiced law for a substantial number of years. The Board did not propose specific rule language to effectuate such a change, but stated that it would do so if requested by the Court.
  13. On August 5, 2010, the Court directed the Board to propose rule language that would permit a licensed lawyer who had successfully practiced law in another U.S. jurisdiction for a substantial number of years to sit for the Minnesota Bar Examination and, if successful and otherwise qualified, to be admitted to the Bar of Minnesota notwithstanding the fact that the lawyer had not graduated from an ABA-approved law school. The Court also directed the Board to submit the proposed rule language to the Court on or before September 30, 2010.
  14. In response to the Court's August 5, 2010 Order, the Board submits proposed Rule 20. See **Exhibit A**.

15. Rule 20 would permit an applicant with 10 years of licensed law practice in another state to apply to sit for the Minnesota Bar Examination. An applicant would need to submit with the application work product from each of the 10 years of practice to demonstrate that the applicant possesses the legal proficiency required to practice law in the state of Minnesota. The Board would then review the work product submitted to determine whether or not the applicant had demonstrated legal proficiency which could substitute for the educational achievement otherwise evidenced by a J.D. from an ABA-approved law school. In effect, the applicant would be permitted to augment any deficiencies in the legal education by providing the Board with evidence of a significant number of years of successful legal practice.
16. ABA-approved law schools educate law students in the values of the profession as well as legal skills in order to ensure that graduates are prepared to carry out their obligations as counselors at law as well as officers of the Court. Because the practice of law is a profession, not a trade, those who are licensed have special obligations to the client and to the courts. By reviewing the work product of the applicant, in addition to conducting a thorough character and fitness investigation of any charges or findings of professional discipline, the Board would require that the graduate from a non-ABA law school satisfies the same standard as ABA graduates.
17. Although the ABA-approved legal education is the preferred and, in most cases, the appropriate legal education standard, the public could be adequately protected by a Rule permitting the Board to review and make a determination as the quality of the work product of a lawyer who has been engaged in the licensed practice of law in another state for 10 or more years. The 10 years of legal practice requirement comports with the Court's August 5, 2010 Order which states that the Court will consider a Rule that requires the lawyer to have "successfully practiced law in another United States jurisdiction for a substantial number of years" before sitting for the Minnesota Bar Examination.



18. The Board agrees that the number of years of practice required must be substantial due to the potential that some law schools may offer a J.D. degree without delivering the basic educational components necessary to constitute an appropriate and acceptable legal education. It is ABA accreditation that guarantees that minimum threshold requirements for the education are met, such as the number of credit hours required to achieve a J.D. degree, the types of courses offered and required, whether correspondence or distance education is permitted or live attendance required, and the qualifications of the faculty. Law schools not accredited by the ABA have complete flexibility in designing their J.D. programs. As previously stated, the Board does not have the expertise to evaluate the quality of the legal education. As a result, the Board concluded that 10 years of successful practice is the minimum number of years that an applicant should practice before application.
19. Rule 20 would not limit or define the type of legal education that the non-ABA graduate must have had in order to qualify. A graduate of a law school based solely on correspondence or distance learning could qualify under this rule.
20. In order to ensure that the practice is sufficiently recent, Rule 20 would require that the 10 years must have occurred within a 13 year time period immediately preceding the application. The 13 year window of eligibility does not disqualify an applicant who may have taken a medical, parenting, or military leave for up to 3 years during the relevant practice period.
21. Rule 20 grants the Board broad discretion to determine whether the quality of the applicant's work product proves that the applicant possesses the legal proficiency to compensate for a non-ABA legal education and qualifies to sit for the bar examination in Minnesota. The burden of proof is on the applicant.

22. Rule 20 would require that the Board conduct a review of a representative compilation (sample) of the applicant's legal work product compiled over at least 10 of the 13 years immediately preceding the application.
23. The decision as to whether the applicant satisfies the requirement of legal proficiency under Rule 20 would be made by vote of the full Board. The Board would call upon its members' diverse legal experience and legal knowledge as well as upon its collective wisdom to determine whether the applicant's work product proves that the applicant has acquired a level of legal proficiency sufficient to compensate for the applicant's lack of a J.D. from an ABA-approved law school.
24. Should an applicant's practice be in a field of law with which the Board members are not familiar, the Rule would permit the Board to retain an expert in the applicant's field of law to assist the Board in determining the applicant's proficiency. The applicant would bear any costs associated with the expert review.
25. Applicants under proposed Rule 20 would be required to show graduation with a bachelor's degree from an accredited undergraduate institution recognized by the US Dept of Education; graduation with a Juris Doctor degree from a law school located within the District of Columbia (DC) or any state or territory of the United States (US); admission to practice law in DC or a US state or territory; documentary evidence of good standing in each state where admitted and proof that there are no disciplinary charges pending; achievement of a scaled score of 85 or higher on the Multi-state Professional Responsibility Examination; and proof that the applicant has met all other requirements of the Rules for Admission to the Bar, not otherwise modified by Rule 20.
26. Rule 20 anticipates that the Board's review and determination of the applicant's work product would be a threshold determination which would take place prior to

the applicant sitting for the Minnesota Bar Examination. An applicant determined by the Board to have demonstrated legal proficiency would be permitted 18 months from the date of the Board's determination to prepare for and take the examination. If the Board were to make a determination under Rule 20 that the applicant has not met the burden of proving legal proficiency, the applicant would be denied permission to sit for the examination, and therefore denied admission.

27. If a Rule 20 applicant did not receive a successful score on an examination taken within 18 months of the Board's determination, then the Board's determination on the adequacy of the work product would become stale and the applicant would be denied admission. This 18 month time period from application to admission would ensure that the applicant's practice experience is current, while giving applicant an adequate period of time to prepare for the examination.
28. Upon achieving a successful score on the exam, the Board would determine whether the applicant has met the requirement under Rule 5 of proving good character and fitness to practice law. A positive determination as to character and fitness would result in the Board recommending the applicant for admission.
29. A Rule 20 denial would be a final decision of the Board, which under Rule 17 is appealable to the Court by filing a petition for review with the Clerk of Appellate Courts.
30. An applicant under Rule 20 would pay a fee of \$1,500. This amount reflects the additional expenses the Board anticipates it would incur in reviewing the applicant's work product as well as the costs of the character and fitness investigation and the costs of administering the bar examination.

The Board respectfully submits the above in response to the Court's August 5, 2010, Order. The Board appreciates being given an opportunity to suggest Rule 20 as a limited alternative to requiring that all applicants to the Minnesota Bar have a J.D. degree from an ABA-approved law school. The Board is prepared to address any questions the Court may have regarding this proposed alternative Rule.

Dated:



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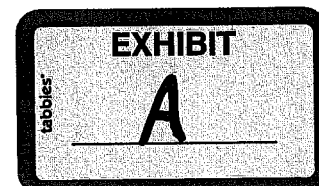
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## **RULE 12. FEES**

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**O. Fee for Rule 20 Applicants.** Applicants applying under Rule 20 shall pay a fee in the amount of \$1,500.

\* \* \*

## **RULE 20. APPLICANTS NOT MEETING EDUCATION QUALIFICATIONS OF RULE 4A(3)**

- A. **Application.** An applicant who does not meet the Rule 4A(3) requirement of graduation with a J.D. or LL.B. degree from a law school that is provisionally or fully approved by the American Bar Association may seek to qualify to sit for the Minnesota Bar Examination by providing a complete application and attaching evidence of the following:
1. A bachelor's degree from an institution that is accredited by an agency recognized by the United States Department of Education.
  2. A Juris Doctor degree from a law school located within the District of Columbia or any state or territory of the United States.
  3. A scaled score of 85 or higher on the Multistate Professional Responsibility Exam (MPRE).
  4. A license to practice law in a jurisdiction as defined by Rule 2A(7).
  5. From each jurisdiction where licensed, documentary evidence required by Rule 4E of the following:
    - a. Application for admission to the bar, if available;
    - b. Date of admission to the bar;
    - c. Good standing in the bar; and
    - d. Absence of any pending complaint or charge of professional misconduct.

**B. Practice and Work Product Requirements:** An applicant under this Rule bears the burden of proving qualification to sit for the Minnesota Bar Examination and shall submit the following along with the complete application:

1. Documentary evidence showing that the applicant was engaged, full-time and as a principal occupation, in the lawful practice of law, in a jurisdiction as defined by Rule 2A(7), for a duration of at least 10 of the 13 years immediately preceding the application; and
2. A representative compilation of the applicant's legal work product drafted during at least 10 of the 13 years immediately preceding the application, which the applicant considers illustrative of the scope and quality of the applicant's legal practice and experience during the relevant years of practice. The applicant may redact the work product as necessary to protect attorney client privilege. The work product shall include:
  - (a) documents such as pleadings, briefs, legal memoranda, contracts, or other legal documents drafted by the applicant and used in the applicant's practice; and
  - (b) A detailed narrative statement describing the following:
    - i. the type of practice, or the position(s) the applicant held during the period the work product was created; and
    - ii. the extent to which persons other than the applicant drafted and/or edited any document included within the work product.

**C. Burden of Proof.** An applicant under this Rule bears the burden of proving that applicant possesses sufficient legal practice and experience to sit for the Minnesota Bar Examination.

**D. Board Review of Applicant's Legal Work Product, Practice and Experience.** The Board shall undertake a review of the applicant's legal work product, practice, and experience. In undertaking this review, the Board has broad discretion to determine whether the applicant's legal work product, practice, and experience proves to the satisfaction of the Board that the applicant possesses sufficient legal proficiency to sit for the Minnesota Bar Examination, notwithstanding the applicant's lack of a J.D. or LL.B. degree from an ABA approved law school. At its discretion, the

Board may obtain expert review of the applicant's work product, the cost of which shall be borne by the applicant.

**E. Board Determination of Legal Proficiency through Legal Work Product, Practice and Experience.**

1. Upon the Board's determination that the applicant has proven sufficient legal proficiency under this Rule, the Board shall authorize applicant to sit for the Minnesota Bar Examination within the 18 months following the date of such authorization, provided that applicant submits written notification on or before the late filing deadline set forth in Rule 12 of the applicant's intention to sit for the next scheduled Minnesota Bar Examination.
2. Upon the Board's determination that the applicant has not proven sufficient legal proficiency under this Rule, the applicant shall be issued a summary denial. A denial under this Rule is a final decision of the Board.

**F. Character and Fitness Determination.** Following the applicant's achievement of a successful Minnesota Bar Examination score, the Board shall make a determination as to applicant's character and fitness for admission to practice law, and if the Board finds evidence of good character and fitness as defined by these Rules, the Board shall recommend the applicant for admission and licensure in the State of Minnesota.

**G. Applicable Rule Provisions.** All Rule provisions not specifically modified by Rule 20 are applicable to applicants under this Rule.