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THE SUPREME COURT OF MINNESOTA  
BOARD OF LAW EXAMINERS

OFFICE OF  
APPELLATE COURTS

h SEP 30 2010

FILED

September 30, 2010

Fred Grittner  
Clerk of the Appellate Courts  
Minnesota Supreme Court  
25 Rev. Dr. Martin Luther King Jr., Blvd.  
St. Paul, MN 55155

Re: Response to Order

Dear Mr. Grittner:

Enclosed is a fully executed original of the Response to Order directing the Board of Law Examiners to propose an amendment to the Minnesota Rules for Admission to the Bar along with 12 copies for the Court. Also attached as Exhibit A is a copy of the Rules for Admission to the Bar showing the proposed changes.

If you have any questions concerning this matter, you may contact me by calling 651.201.2706. Thank you for your assistance.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS

A handwritten signature in black ink, appearing to read "M. Corneille".

Margaret Fuller Corneille  
Director

Enclosure

**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 to 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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Hon. Rosanne Nathanson  
President  
Minnesota State Board of Law Examiners  
180 E. 5<sup>th</sup> Street  
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Attorney No. 121204



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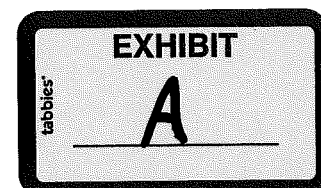
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## **RULE 12. FEES**

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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 America 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.