

STATE OF MINNESOTA

In Supreme Court

FILE NO. C5-84-2139

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

**PETITION FOR
RULE AMENDMENT**

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

Petitioner, the Minnesota State Board of Law Examiners (Board), respectfully petitions the Court to amend the Rules for Admission to the Bar (Rules) in order to designate the number of terms a Board member may serve as President of the Board; codify what constitutes a quorum for the Board; add honesty as an essential eligibility requirement; provide additional guidance for applicants on what evidence they should anticipate providing when seeking to prove rehabilitation from past misconduct; remove Administrative Law as a subject to be tested on the Minnesota Bar Examination; increase the period of time before an examination score becomes stale; revise Rule 7, admission without examination, in light of recent changes to the Minnesota Rules of Professional Conduct; remove

the re-issuance provisions in the temporary house counsel license; revise Rule 11, Foreign Legal Consultant License, to clarify and improve it; revise Rule 18 to give the Board additional flexibility in determining when an applicant who has been denied admission to the bar may reapply. The Board also respectfully petitions the Court to amend the Rules to make other minor revisions to improve the administration of the bar admission process or to improve the clarity of the 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.

Rule 3A Term Limits for Board President

3. At the request of the Court, the Board recommends amending Rule 3A to provide that the President of the Board may serve only two

terms as President, for a total of six years. The two terms as President may be served before or after serving as many as three terms as a Board member. This change will ensure that the President's position changes regularly. This change also makes the Board's rule consistent with the Lawyers Professional Responsibility Board rule that limits its Chair to serving two terms as Chair.

Rule 3C Quorum

4. The Board recommends an addition to Rule 3 specifying that a quorum is a majority of the sitting members.

Rule 4, Evidence of Graduation

5. One of the threshold eligibility requirements for applicants to the bar is that they have graduated from a law school approved by the American Bar Association (ABA). The applicant must have his or her law school submit documentation to the Board verifying that the applicant has graduated. The changes in Rule 4D clarify what the Board requires as documentation. The terminology "conferral of degree" is more precise than the term "graduation" and is the

language used in law schools when describing the granting of the Juris Doctor (JD) degree.

Rule 5, New Essential Eligibility Requirement

6. The Board lists the essential eligibility requirements for the practice of law in Rule 5A. Although the requirements currently include the “ability to use honesty and good judgment in financial dealings,” they do not include a requirement specifically addressing honesty alone. The Board believes the ability to be honest and candid with others, including clients, lawyers, courts, and the Board, is essential to the practice of law. The Board recommends placing honesty as the first of the essential eligibility requirements.

Rule 5, Evidence of Rehabilitation

7. Under Rule 5B, when an applicant has a history of relevant conduct that requires the Board to investigate further, the Board considers a number of factors in its investigation. One of these factors is “evidence of rehabilitation.” In order to codify what the Board considers to be evidence of rehabilitation, as well as educate applicants about such evidence, the Board recommends listing the

types of evidence of rehabilitation it might consider in evaluating character and fitness for admission. The Board hopes that this list will encourage applicants to engage in certain conduct in furtherance of their rehabilitation as well as document that conduct in their applications.

Rule 6, Removing Administrative Law as a Separate Topic and Re-naming the Business Entities Topic

8. The Board is recommending removing Administrative Law from the list of possible essay examination question topics in Rule 6, Admission by Examination. In the essay testing format, most Administrative Law questions constitute questions about due process, which is covered within the Constitutional Law topic. Because the Board understands that this proposed change may have an impact in the local law schools, it has already notified the Deans of the four Minnesota law schools about this proposed change.

9. The Board recommends re-naming the topic “Partnership, Proprietorship, and Corporations” as “Business Associations” to clarify that issues concerning all types of business associations, including limited liability companies (LLCs), may be tested on the essay examination.

Rule 6, Stale Examination Scores

10. Currently, a passing score on the Minnesota Bar Examination is valid for 24 months from the date of the examination. This deadline becomes important for applicants whose serious character and fitness issues require extensive Board investigation. In some instances the applicant is slow to respond to the Board's requests for information. In other cases an applicant may be serving a court-ordered probation. These circumstances apply to only a very small number of applicants. However, the issue arises often enough that the Board wants to prevent the scores from becoming stale before its investigation is complete. In order to do this, it is recommending an increase in the length of time the score is valid from 24 to 36 months.

Rule 7, Admission Without Examination

11. The Board is proposing to change its Rule 7, Admission Without Examination, to make it consistent with recent changes in the Minnesota Rules of Professional Conduct (MRPC) and the ABA Model Rule on Admission by Motion. The MRPC now permit lawyers licensed in another state to practice in Minnesota on a temporary

basis without a Minnesota license. The Board's current Rule 7A requires an applicant for admission without examination to have practiced for five (5) of the last seven (7) years in a state where he or she is licensed. The time a lawyer licensed in another state has spent practicing in a state on a temporary basis without a license cannot be counted toward the five (5) years of practice requirement.

12. The proposed changes to Rule 7A would permit the Board to count time spent practicing in Minnesota without a license, or in another state without a license, toward the required five (5) years of experience. In order for this time to count the applicant must already be licensed in some other state and the practice performed prior to licensure must have been permissible under the professional conduct and bar admission rules of the state where the practice was performed.

13. In its review of Rule 7, the Board worked with the Minnesota State Bar Association's (MSBA) Multijurisdictional Practice Task Force. The Board and the Task Force's Admission on Motion Subcommittee reviewed the ABA Model Rule on Admission by Motion prior to recommending changes to Rule 7. The recommended changes permit counting temporary practice and time spent practicing in a

state where the applicant is not licensed. These changes are consistent with the Model Rule on Admission by Motion's approach to practice outside of a state where the lawyer is licensed.

14. Other recommended changes to Rule 7, also consistent with the ABA Model Rule on Admission by Motion, include a provision requiring that the applicant be in good standing in all of the jurisdictions where admitted. The current rule presumes that the applicant will only be admitted in one other jurisdiction. The proposed amendments also replace the terms "sole practitioner" and "member of a law firm" with the word "lawyer." This will ensure that lawyers who are representing clients other than in a law firm or house counsel setting and all lawyers in law firms (not just partners) are clearly covered by the rule.

15. The Board recommends eliminating Rule 7G which provides that a lawyer practicing law in Minnesota without a license is ineligible for admission without examination. This provision is inconsistent with the Minnesota Rules of Professional Conduct which now permit temporary practice in Minnesota without a license.

Rule 9, Admission by Temporary House Counsel License

16. The proposed changes to Rule 9 would eliminate the possibility of a re-issuance of the temporary house counsel license. This option is currently available to a temporary house counsel license holder whose license expires due to termination of employment. The re-issuance is conditioned upon entering into new house counsel employment within 90 days of the employment termination. Given the extremely short duration of the temporary license (12 months) it would be more appropriate for temporary license holders who change jobs within the term of the temporary license to apply for the Rule 10 House Counsel License, rather than a re-issuance of the Rule 9 temporary license.

Rule 11, License for Foreign Legal Consultants

17. The Board licenses lawyers from foreign countries who seek to practice the law of their home country in Minnesota as Foreign Legal Consultants (FLCs). The Board began its review of Rule 11, License for Foreign Legal Consultants, at the request of the MSBA's Multijurisdictional Task Force, which was considering the ABA's

Model Rule on Licensing Foreign Legal Consultants (Model Rule on FLCs). The Model Rule on FLCs reflects the experience other jurisdictions have had in licensing foreign legal consultants. The Board is recommending changes to Rule 11 to bring it into conformity with the ABA's Model Rule on FLCs.

18. These changes include permitting the FLC applicant to use legal experience outside his or her home country to qualify for the license. This change would permit a FLC who has been practicing as a FLC in another state, for example, to use that practice experience to qualify for the FLC license here. The proposed amendments replace the age requirement with the requirement of a post-secondary degree in law, recognizing that possessing a law degree is more relevant than the applicant's age. The proposed amendments require that the FLC intend to practice in Minnesota and maintain an office here. This is to discourage all but bona fide applicants who intend to practice in Minnesota as a FLC. The proposed amendments also permit a FLC to provide advice on personal property, clarify permissible employment arrangements, allow the FLC to claim professional privileges such as the attorney-client privilege, and add provisions for revocation of the license if the Board determines that the FLC no longer meets the license requirement.

19. In addition, there are several existing provisions in Rule 11 that are not included in the Model Rule on FLCs. The Board is recommending keeping these provisions because it believes they enhance the FLC licensing process. Those provisions include the following:

- Requiring the FLC applicant to provide three letters of recommendation from attorneys in the foreign country where the applicant is admitted; and
- requiring the FLC to use written retainer agreements when rendering legal services and when holding any client funds or valuables.

20. The Board is also recommending several new provisions, not included in the Model Rule on FLCs, that it believes will enhance the FLC licensing process. Foreign legal consultants serving as house counsel will be permitted to have a broader scope of practice. House counsel FLCs will be able to practice Minnesota, federal, or other state law on behalf of their employer and will not be subject to the written retainer agreement when providing services or holding valuables. A FLC serving as house counsel may use the title “counsel” and will not have to use the title “Foreign Legal Consultant, Admitted to the Practice of Law in [Name of Country].” The recommended amendments also

provide for a three-year renewal cycle for all FLCs corresponding with the Continuing Legal Education reporting cycle.

Rule 15, Adverse Determinations and Hearings

21. The Board is recommending changes to Rule 15, Adverse Determinations and Hearings, to provide for a longer time prior to hearings in which to resolve any procedural issues that might arise. In Rule 15D the Board recommends adding language reiterating the fact that the applicant has the burden of proof in bar administration matters.

Rule 16, Conditional Admission

22. The Board is proposing to revise Rule 16, Conditional Admission, to enable the Board to recommend that an applicant be conditionally admitted without having to conduct an adversarial Rule 15 hearing. As it has gained experience in conditionally admitting applicants since the Rules were amended in September 2004, the Board has found that in certain instances applicants contact the Board and suggest that conditional admission may be appropriate given the history of conduct. In other instances the Board may notify an applicant of the

possibility of conditional admission. In both instances it is more efficient to proceed to a discussion of the terms of the conditional admission rather than to conduct an adversarial Rule 15 hearing to establish that conditional admission is warranted. When the terms have been agreed upon by the Board's staff and the applicant, a brief non-adversarial hearing is conducted in order to establish the record on which the conditional admission is based and in order to execute the consent agreement. These proposed rule revisions are designed to put applicants on notice that they may initiate a request for conditional admission. The revisions also set forth the appeal rights that an applicant has if the applicant's request for conditional admission is denied.

Rule 18, Reapplication

23. The proposed revisions to Rule 18, Reapplication, give the Board increased flexibility in determining the appropriate length of time before reapplication when an applicant is denied admission and conditional admission or has a conditional admission license revoked. Currently, the waiting period for reapplication is three years. Under the proposed changes, the Board may specify a shorter waiting period depending upon the applicant's circumstances. The Board

seeks greater flexibility in fixing the length of this waiting period because it has found that the circumstances vary significantly among applicants for whom the Board conducts a full hearing, makes findings of fact and conclusions of law, and renders a final decision.

Other Minor Rule Revisions

24. The Board recommends several minor rule changes to clarify the rule provisions. These minor changes are self-explanatory and are shown as changes to existing Rules 4, 5, 6, 9, 10, 11, 12, 16 and 19.

Two versions of the Rules are attached. **Exhibit A** is a copy of the Rules with mark-ups showing the proposed amendments. **Exhibit B** is a clean copy of the amended Rules as they would read if the proposed amendments are adopted.

Based upon the foregoing, 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.

Dated: _____

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