STATE OF MINNESOTA

IN SUPREME COURT

ADM-10-8008

OFFICE OF
APPELLATE COURTS

OCT 26 2010

FILED

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE RULES FOR ADMISSION TO THE BAR

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on January 26, 2011 at 2:00 p.m., to consider two proposals from the Board of Law Examiners to amend the Rules for Admission to the Bar. A petition addresses technical and administrative changes to the rules; a response to an order from this Court contains a proposed Rule 20 that permits lawyers who have not graduated from an ABA-approved law school to sit for the Minnesota Bar Examination. Copies of the petition and the response, which contain the proposed amendments, are annexed to this order.

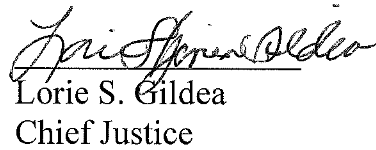
IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before December 27, 2010, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of the Appellate Courts together with 12 copies of a request to make an oral presentation.

Such statements and requests shall be filed on or before December 27, 2010.

Dated: October 26, 2010

BY THE COURT:



Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA
In Supreme Court

FILE NO. ADM-10- 8008

OFFICE OF
APPELLATE COURTS
SEP 15 2010
FILED

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 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

Rosanne Nathanson

Hon. Rosanne Nathanson
President
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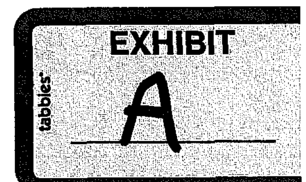

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* * *

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

* * *

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

* * *

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~~s~~ during the applicant's enrollment;

  ~~(5) The notarized affidavits of good character must address the following:~~

  ~~(a)~~(c) Describe ~~T~~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

  ~~(c)~~(e) Provide ~~O~~other information bearing on the applicant's character and fitness to practice law.

* * *

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) A~~n 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) A~~n 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) A~~n authentic~~ document from the proper authority in each other jurisdiction where admitted stating that the applicant is in good standing; and

(4) A~~n 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. ~~J.~~ 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 4~~J~~I; 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.

~~I.~~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 ~~9~~10C(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 ~~9~~10C(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 ~~9~~10C(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.

* * *

RULE 12. FEES

A. General. Applicants shall pay application ~~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 4~~G~~J.

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 ~~an~~the 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.

* * *

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 ~~issue~~subpoenas.

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:

Hon. Rosanne Nathanson
President
Minnesota State Board of Law Examiners
180 E. 5th Street
#950
St. Paul, MN 55101
Attorney No. 121204

Margaret Fuller Corneille
Director
Minnesota State Board of Law Examiners
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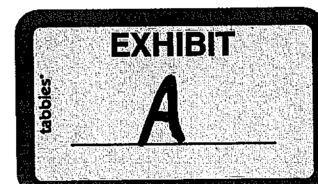

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RULE 12. FEES

* * *

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.

Hon. Rosanne Nathanson, *President*
Hon. Raymond R. Krause, *Secretary*
Hon. Ann L. Carrott
Barbara J. D'Aquila
Laura J. Hein
Kathleen M. Mahoney
Vivian Mason
James Nelson, Ph.D.
Douglas R. Peterson

THE SUPREME COURT OF MINNESOTA

BOARD OF LAW EXAMINERS

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Margaret Fuller Corneille, Esq.
Director

OFFICE OF
APPELLATE COURTS

DEC 27 2010

FILED

December 22, 2010

Mr. Fred Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Petition of the Minnesota State Board of Law Examiners for Amendment of the Rules for Admission to the Bar and Response to Order Directing the Board of Law Examiners to Propose an Amendment to the Minnesota Rules for Admission to the Bar, ADM 10 8008

Dear Mr. Grittner:

The following persons request permission to appear and make an oral presentation to the Court on January 26, 2011, in the above referenced matter: Hon. Rosanne Nathanson, President of the Board of Law Examiners; Kathleen Mahoney, Chair of the Rules Committee, and myself, Director of the Board.

We each request 5 minutes, for a total of 15 minutes. Judge Nathanson will present on behalf of the Board. Ms. Mahoney will address proposed Rule 20 which would permit lawyers who have not graduated from an ABA-approved law school to sit for the Minnesota Bar Examination. I will address the proposed technical and administrative changes to the rules.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS

Margaret Fuller Corneille
Director

EJE

cc: Hon. Rosanne Nathanson
Kathleen Mahoney

OFFICE OF
APPELLATE COURTS

DEC 27 2010

FILED

Mark B. Liedl
PO Box 284
Pequot Lakes, Minnesota 56472

December 21, 2010

Minnesota Supreme Court
c/o Frederick Grittner
Clerk of Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

RE: Petition Number: ADM-10-8008

To The Honorable Justices of the Minnesota Supreme Court:

I am writing concerning the petition before the Court that would allow attorneys licensed in other U.S. Jurisdictions and graduates of non-ABA accredited law schools to sit for Minnesota's Bar Examination. This letter is written to urge you to adopt the Wisconsin-styled rule and reject the proposal of the Board of Law Examiners.

I am a member of the Minnesota, Wisconsin and Pennsylvania State Bars, and am admitted in Washington, D.C. as well. I am writing this letter to give the Court the perspective of one admitted in two of the jurisdictions whose standards are being scrutinized—Minnesota and Wisconsin.

From my experience educational competence of an attorney depends on the character of the individual and the energy he or she applies to learning rather than the institution disseminating the education. Educational excellence should be emphasized, but it does not follow that non-ABA accredited law schools do not emphasize educational excellence simply because they do not choose to seek ABA-accreditation. ABA-accreditation, like bar examinations, assures a base-line or minimum competence expectation an ABA graduate can expect to obtain from such programs.

I became aware of the petition currently before the Court through one of the petitioners, Valarie Wallin. I became acquainted with Ms. Wallin while serving with her on Independent School Board #186 (Pequot Lakes). Ms. Wallin's commitment to excellence, her demonstrated ability to understand the issues before our Board, and her willingness to serve wherever needed has made her a valuable member of our Board. She has the ability to analyze an issue and focus attention on an appropriate resolution. This ability is a clear result of her competence as a lawyer. I have recommended her to professional organizations, and I would willingly sign a *pro hac vice* motion to bring a case before the Minnesota Courts.

Additionally, I would like to comment on Ms. Wallin's character and ethics. Ms. Wallin is committed to the highest standards—personally and educationally. I have observed first hand her uncompromising commitment to the educational excellence of the students of our district, and her desire to implement high academic standards in every classroom, encouraging every child to succeed to his or her highest potential. These observations, and my personal experience working with Ms. Wallin, have given me the highest regard for her abilities as an individual and as an attorney. I would not hesitate to recommend Ms. Wallin to the Court as someone who would be an asset to the Minnesota Bar.

Thank you for considering my comments. If I can be of further assistance in this matter, please feel free to contact me.

Very truly yours,

Mark B. Liedl

INSTITUTE FOR JUSTICE
MINNESOTA CHAPTER

OFFICE OF
APPELLATE COURTS
DEC 27 2010
FILED

December 27, 2010

BY HAND DELIVERY

Mr. Frederick K. Grittner
Clerk of Appellate Courts
25 Rev. Dr. Martin Luther King, Jr. Boulevard
Suite 305
St. Paul, Minnesota 55155-6102

Re: *In Re: Amendment to the rule Regulating Qualifications to Sit for the Minnesota Bar Examination*
No. ADM-10-8008; Formerly 98C5-84-2139

Dear Mr. Grittner:

Pursuant to the Court's Order dated October 26, 2010, enclosed for filing are 12 copies each of written statements prepared by 21 interested parties, including the original Petitioners, in connection with the captioned matter. See Exhibit 1 for a list of those submitting written statements.

Very truly yours,

Lee U. McGrath
Executive Director

LUM/md
Enclosures

cc w/enc.: Valarie Wallin
Ian Maitland
Henry K. Ongeri
Micah Stanley

1600 Rand Tower 527 Marquette Avenue Minneapolis, MN 55402 (612) 435-3451 (612) 435-5875 Fax
e-mail: General@ij.org Home Page: www.ij.org/minnesota

Exhibit I

STATE OF MINNESOTA
IN SUPREME COURT
Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

LIST PROVIDERS of WRITTEN STATEMENTS

December 27, 2010

1. Institute for Justice ——————— Oral Presentation on 01/26/11
2. William Estrada
3. Peter Fear
4. Sally Freeman
5. James M. Gammello
6. Harris Hollans
7. Kevin Koons
8. Roger Magnuson ——————— Oral Presentation on 01/26/11
9. Ian Maitland ——————— Oral Presentation on 01/26/11
10. Douglas McElvey
11. Ross Mitchell
12. Scott O'Dell
13. Henry Ongeri ——————— Oral Presentation on 01/26/11
14. Christopher Schweickert
15. Micah Stanley
16. Thomas Walker
17. William Wagner
18. Valarie Wallin ——————— Oral Presentation 01/26/11
19. Lael Weinberger
20. Scott G. Wood
21. Hudson Vanderhoff

OFFICE OF
APPELLATE COURTS

DEC 27 2010

FILED

STATE OF MINNESOTA

IN SUPREME COURT

Rules for Admission to the Bar

File No. ADM-10-8008

Formerly 98C5-84-2139

This Written Statement is offered in response to the Minnesota Supreme Court's order of October 26, 2010 inviting written statements on proposed amendments to the rules for admission to the State Bar of Minnesota.

Also pursuant to the Court's order, the authors Lee McGrath and Anthony Sanders of the Institute for Justice Minnesota Chapter request leave to make an oral presentation, based on this Written Statement, at the hearing to be held in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judiciary Center, on January 26, 2011 at 2:00 p.m.

Backgrounds and Interests of the Authors

The authors are attorneys for the Institute for Justice ("IJ"), a non-profit public interest law firm founded in 1991. IJ is headquartered in Arlington, Virginia and has state chapters across the country, including the Minnesota Chapter which opened in 2005. IJ has litigated over 25 cases on behalf of aspiring entrepreneurs who have been unable to pursue the occupation of their calling because of arbitrary and anticompetitive occupational licensing laws. The authors, Lee McGrath and Anthony Sanders, have both litigated on behalf of entrepreneurs against occupational licensing boards. In addition, Mr. McGrath has lobbied in the Minnesota legislature, and in other legislative bodies across the country, for less intrusive occupational licensing rules, and Mr. Sanders has authored several law review articles addressing occupational licensing and labor markets.

I. THIS COURT SHOULD ADOPT PETITIONERS' PROPOSED RULE AND REJECT THE BOARD'S ANTICOMPETITIVE ALTERNATIVE.

The Minnesota Board of Law Examiners ("Board") has proposed an anticompetitive rule that will continue to fence out qualified attorneys from Minnesota's legal marketplace. The proposed rule appears to allow some graduates of law schools not accredited by the American Bar Association ("ABA") to sit for the Minnesota bar exam if they are already licensed in another state. But, because the proposed rule would apply only to attorneys with more than 10 years experience—and even then place the burden on licensed attorneys to prove their competence before sitting for the exam—it would essentially keep the existing system in place, requiring examinees for the bar exam to graduate from an ABA-accredited law school.[1]

Instead of adopting the Board's proposed rule, this Court should adopt the rule that the four Petitioners have recommended. That rule, which the State of Wisconsin has successfully employed since 1998, allows attorneys who are licensed in another state to sit for the Wisconsin bar exam even if they have not graduated from an ABA-accredited law school. The Petitioners' proposed rule (hereinafter the "Wisconsin rule") would enrich Minnesota through allowing more qualified attorneys to come to and practice in the state with the security that those attorneys have already met the high standards of another state.

The Petitioners have already submitted persuasive documentation of why this Court should adopt the Wisconsin rule. In support, IJ submits this Written Statement to emphasize a fundamental point the Board has missed defending the present system: **Occupational licensing has costs.**

[1] An exception to this rule is available where an individual is licensed to practice in another country, has at least five years experience, and is solely employed as in-house counsel for a corporation or governmental entity. Rule 11 of the State of Minnesota Rules for Admission to the Bar.

We ask this Court to view the proposed rules in light of the reality of how occupational licensing works, and how the costs of an occupational licensing rule must be considered when the government makes it illegal for certain classes of people—such as graduates of non-ABA-accredited law schools—to work.

The following first addresses the specifics of the Board's proposed rule and the Wisconsin rule and how each rule should be addressed. Then, we review how occupational licensing functions, and how licensing rules are frequently instituted to protect established interests from competition, not to enhance public welfare. Much of this discussion relies on the work of Professor Morris M. Kleiner, the AFL-CIO Chair of Labor Policy at the University of Minnesota's Humphrey Institute of Public Affairs and one of the foremost authorities on occupational licensing in the world.[2] Finally, we discuss cases that IJ has litigated where established interests fought to protect occupational licensing rules even though the benefits to public welfare were nonexistent. Our analysis will demonstrate that if the Court views the Board with a healthy skepticism while scrutinizing the costs and benefits of the Board's proposed rule and of the Wisconsin rule, it will conclude that the Board's proposed rule is anticompetitive and will not enhance public welfare, and that it should instead adopt the Wisconsin rule.

II. THE COSTS OF THE BOARD'S PROPOSED RULE OUTWEIGH ITS BENEFITS AND THE BOARD'S FAILURE TO ASSESS THE COSTS SHOULD NOT BE SURPRISING GIVEN THE SELF-INTERESTED NATURE OF THE BOARD.

This Court's regulation of admission to the bar is an example of occupational licensing. In licensing an occupation, the government excludes certain prospective practitioners from that occupation. Public welfare suffers costs because of this exclusion, as do the excluded

[2] Professor Kleiner has authored over twenty books and articles on occupational licensing. *See, e.g.*, Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?* (2006); Morris M. Kleiner & Alan B. Krueger, *The Prevalence & Effects of Occupational Licensing*, 48 Brit. J. Indus. Rel., No. 4, 2010; Morris M. Kleiner, *Occupational Licensing*, 14 J. Econ. Persp., No. 4, 2000, at 189.

practitioners themselves, such as the Petitioners. Therefore, in assessing whether to adopt an occupational licensing rule, the rule maker must assess the benefits *and* the costs to public welfare of the proposed rule.

The Board has failed to do this. The Board discusses only the present system's benefits. It does not even acknowledge the costs that the system has on public welfare, such as higher prices for consumers, lower rates of competition, and talented individuals choosing to not enter the Minnesota bar. Further, the Board has failed to produce any evidence that its proposed rule, when compared to the Wisconsin rule, would lead to any benefits to public welfare. The Petitioners, however, have demonstrated that the costs of adopting the Wisconsin rule, *vis-à-vis* the present system, are negligible while the benefits are substantial. Therefore, in assessing the costs and benefits of the proposed rules this Court has an easy choice.

The direct cost of only allowing graduates of an ABA-accredited law school to sit for the Minnesota bar exam is that fewer lawyers will practice in Minnesota than otherwise would be the case. In turn, limiting the supply of practitioners will keep legal fees higher, and will discourage competent, and perhaps uniquely talented, lawyers, such as the Petitioners, from practicing in Minnesota. By contrast, the benefit to public welfare, if any, will be to exclude some individuals who might provide substandard or incompetent service.

The costs of refusing to adopt the Wisconsin rule, and instead adopting the Board's proposed rule, can be conceptualized by looking to the experience in Wisconsin. There, as the Petitioners point out, the state supreme court adopted a nearly-identical rule in 1998. Based on Wisconsin's experience, Petitioners estimate four to six attorneys would annually sit for the Minnesota bar exam under the Wisconsin rule.[3] As approximately 1,000 individuals sit for the

[3] Petition of Four Licensed Attorneys, C5-84-2139, p. 17 n.22.

exam in any one year,[4] exam takers like Petitioners would account for approximately a half percent increase in the number of Minnesota attorneys. Although modest, this would provide competitive pressure on billing rates and—especially over the course of several years—license more attorneys to whom Minnesota residents can turn when in need of legal services. This is not a large change, but enough to increase competitive pressures in Minnesota's legal services market. Adopting the Board's proposed rule—again, basically preserving the status quo—foregoes most of this improvement.

In addition to the costs to consumers, adopting the Board's proposed rule and rejecting the Wisconsin rule will impose high costs on individual attorneys. Lawyers who did not attend ABA-accredited law schools will be discouraged from moving to Minnesota, even if they are skilled and experienced attorneys. Attorneys who have already moved to Minnesota will be forced to work outside their chosen profession. For these individuals, the costs are profound.

Those are the costs of adopting the Board's proposed rule instead of the Wisconsin rule. The benefits are not as obvious. In theory, under the Wisconsin rule some individuals could graduate from a non-ABA-accredited law school, pass another state's bar exam, pass the Minnesota bar exam, and then commit malpractice, or at least provide substandard service. But the Board offers no evidence on how likely this is, such as what the nationwide rate of malpractice is for graduates of non-ABA-accredited law schools compared with the rate for graduates of ABA-accredited law schools, or customer service surveys on quality of service for the different categories. The Petitioners, however, do offer such a statistic. Of the 22 attorneys who have passed the Wisconsin bar exam since 1998 under the new rule, none have received discipline from Wisconsin's licensing authorities.[5] The Board does not dispute this and does not

[4] See statistics at Minnesota State Board of Law Examiners, *Bar Results*, http://www.ble.state.mn.us/bar-results/.
[5] Petition of Four Licensed Attorneys, C5-84-2139, p. 17.

offer any comparable statistic, let alone compare it with the costs of the present regime, despite its hours of public testimony and research.

Given Wisconsin's experience, the Board should demonstrate why Minnesota is so different from Wisconsin that the Court should not adopt the Wisconsin rule. It, of course, cannot. But, the Board's reticence to address the costs of licensing should not surprise the Court. The Board's proposal and behavior must be viewed in the context of the Board—and the ABA upon whom it relies for assurances of attorney quality—as a group of self-interested actors. The Board is an unelected body of seven lawyers and two others, all appointed by this Court. These members, especially the attorneys, have their own interests as established insiders. This is not to single-out the Board, its members, or the ABA as peculiar in this regard, or to use "self-interested" or "unelected" in a pejorative sense.[6] It is merely to state that these individuals and groups have an interest in proposing regulations that limit the entrance of new practitioners beyond what is optimal for public welfare. As John Dewey—no champion of limited government—observed: "Those concerned in government are still human beings. They still have private interests to serve and interests of special groups, those of the family, clique, or class to which they belong."[7] As self-interested actors their recommendations should not be given deference, but treated with the healthy skepticism that should be applied to any interest group.

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[6] One of the many insights of public choice theory is that a governmental body, like any body of individuals, has its own particular interests and agenda which are not necessarily in line with the welfare of the general public. *See generally* James M. Buchanan & Gordon Tullock, *The Calculus of Consent* (1962), *full text available at* http://www.econlib.org/library/Buchanan/buchCv3Cover.html. The same is true, of course, of the ABA, a private body which, like the Board, may act on the tendency to advance its members' interests even though they do not reflect that of the general public.
[7] John Dewey, *The Public & Its Problems* 76 (1927).

III. OCCUPATIONAL LICENSING IS A RAPIDLY EXPANDING PHENOMENON THAT IS GENERALLY DRIVEN BY INDUSTRY GROUPS, NOT CONSUMERS, AND OFTEN HAS NO POSITIVE EFFECTS ON PUBLIC WELFARE.

Occupational licensing has been around for centuries but has only become a wide-spread phenomenon in this country over the last few decades. For example, in the early 1950s only about 4.5 percent of workers in the United States required a license to work.[8] Now the number is approximately 29 percent.[9] Over 800 different occupations are now licensed by at least one state.[10] Attorneys, of course, have been licensed for well over a century, but barriers to entry in the legal profession were not always as high as they are now. For example, lawyers in the nineteenth century generally apprenticed instead of having to attend school, let alone four years of undergraduate work plus three years of law school.

Licensing laws are usually justified as needed to protect public health and safety. This would lead one to assume that consumer groups, or similar bodies, advance licensing restrictions. Generally, however, the impetus for new licensing laws comes not from consumers, i.e. those wronged by shoddy practices, but from professional groups asking the government to regulate them.[11] This should not be surprising. Stronger licensing rules allow established practitioners to derive economic rents from consumers, i.e. charge higher prices, because of a more limited labor supply.[12] Licensing causes wages for licensees, and therefore costs to consumers, to rise about 15 percent on average.[13] A regulated profession can suppress competition against established practitioners by using "political institutions such as state legislatures or city councils to control

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[8] Kleiner, *Licensing Occupations*, *supra* note 2, at 1.
[9] Morris M. Kleiner & Charles Wheelan, *Occupational Licensing Matters: Wages, Quality & Social Costs*, CESifo DICE Report, Mar. 2010, at 3, 3.
[10] *Id.*
[11] *Id.*
[12] *See* Kleiner, *Licensing Occupations*, *supra* note 2, at 9-10 ("The dominant view among economists is that occupational licensing restricts the supply of labor to the occupation and thereby drives up the price of labor and services rendered.").
[13] *See* Kleiner & Krueger, *supra* note 2, at 676.

initial entry and in-migration, thereby restricting supply and raising the wages of licensed practitioners."[14] Regulators can then further restrict entry controls, such as through tightening examination passage rates.[15] A result of this may be that less people enter an occupation and instead enter an unlicensed occupation requiring similar skills. This drives down wages in the unlicensed occupation through increasing supply, even though the more economically efficient result might be for more practitioners to enter the licensed profession.[16] Occupational licensing, therefore, leads to higher wages for licensed practitioners, higher prices for customers of licensed practitioners, less opportunity for would-be licensed practitioners to work, and lower wages and more competition for similar unlicensed occupations, all at inefficient levels from the standpoint of public welfare.

Balanced against the monopolistic profits and higher prices that occupational licensing creates must be set any gains in quality that licensing brings to consumers. However, evidence for such gains in quality is sparse. "The quality improvements of licensure are often overstated and may even lower the quality of service provided."[17] Various studies have found that, when scrutinized, licensing regimes often have no impact on quality of service. For example, more restrictive licensing laws for dentists had no impact on the quality of dental care as measured by that received by Air Force recruits who received their care under different dental licensing regimes around the country.[18] Similarly, tougher licensing laws for mortgage brokers had no impact on foreclosure rates.[19] Further, sometimes licensing requirements may even drive service

[14] *Id.* at 10.
[15] *Id.*
[16] *See id.*
[17] Kleiner & Wheelan, *supra* note 9, at 3.
[18] Morris M. Kleiner & Robert T. Kudrle, *Does Regulation Affect Economic Outcomes? The Case of Dentistry*, 43 J.L. & Econ. 548 (2000).
[19] Morris M. Kleiner & Richard M. Todd, *Mortgage Broker Regulations that Matter: Analyzing Earnings, Employment, & Outcomes for Consumers*, in *Studies of Labor Market Intermediation*, 183 (David H. Autor, ed., 2009).

quality down by dissuading "highly productive individuals (with the highest opportunity cost of time) from entering the profession or if the training mandated by lawmakers has no meaningful relationship to performance on the job."[20]

The consequence of having less professionals in a field can be that consumers, such as homeowners, attempt to perform the work themselves, resulting in higher rates of injury or even fatalities. In one study, researchers found that in areas where there were fewer electricians because of tougher electrician licensing laws there were statistically significant higher rates of deaths from electrocution.[21]

This is not to say that licensing never has a positive effect on quality of service. But, when it does it often constitutes a reverse "Robin Hood Effect" where higher income individuals receive better service and moderate and lower income individuals may not be able to afford service at all.[22] In short, as Milton Friedman famously observed, not every consumer wants to buy a Cadillac. When the law requires a consumer to purchase a Cadillac if she wants to buy a car, even when she would rather buy a Chevy, consumers will suffer through not being able to afford a car at all.[23] For example, the Federal Trade Commission found the cost of eye exams and eyeglass prescriptions was 35 percent more expensive in cities with more restrictive licensing for optometrists,[24] inevitably pricing some consumers out of needed services.

An example of how licensing laws deter individuals from entering the legal profession—and thus restrict the supply of lawyers and increase consumer costs—is the requirement that

[20] Kleiner & Wheelan, *supra* note 9, at 3.
[21] Sidney L. Carroll & Robert J. Gaston, *Occupational Restrictions & the Quality of Service Received*, 47 S. Econ. J. 959 (1981).
[22] Kleiner & Wheelan, *supra* note 9, at 5.
[23] Milton Friedman, *Capitalism & Freedom* 153 (3rd ed. 2002).
[24] Ronald S. Bond, et al., Federal Trade Commission, *Effects of Restrictions on Advertising & Commercial Practice in the Professions: The Case of Optometry* (1980).

lawyers attend three years of post-graduate law school.[25] The mandate has been required by the ABA for decades despite repeated calls for reform.[26] It requires potential lawyers to pay 50 percent more in tuition and defer another year of income in return for completing the education necessary to become licensed. It undoubtedly dissuades many productive individuals from entering the legal profession, limits the supply of lawyers, and increases the debt burden of lawyers who do enter the bar, thus raising the cost of legal services for the general public. The rule at issue in this matter—forbidding licensed attorneys from being able to take the bar exam—similarly dissuades productive individuals, such as the Petitioners, from entering the Minnesota legal market and thereby raises costs for Minnesota consumers.

IV. AS THE INSTITUTE FOR JUSTICE'S EXPERIENCE DEMONSTRATES, ESTABLISHED INTERESTS WILL DEFEND OCCUPATIONAL LICENSING RULES EVEN WHEN THERE UNDENIABLY ARE COSTS TO PUBLIC WELFARE WITH NO BENEFITS.

The Institute for Justice has litigated numerous cases involving occupational licensing regimes that protect established insiders from competition with little or no discernable public benefit. Two examples of these cases are offered here, not for the legal implications of the cases but as case studies of how industry groups will defend occupational licensing rules even in the face of overwhelming evidence that the only reason for the rule is to protect established practitioners. These experiences concretize the academic research discussed above by illustrating that licensing rules often have costs with little benefit to public welfare. They also support the case for a healthy skepticism toward the Board's recommendations.

[25] *See, e.g.*, Christopher T. Cunniffe, *The Case for the Alternative Third-Year Program*, 61 Alb. L. Rev. 85, 102-04 (1997) (contrasting the weakness of justifications for requiring a third year of law school with the large financial costs borne by law students for the third year).
[26] *Id.* at 87-94.

IJ represented retail entrepreneurs in Tennessee in *Craigmiles v. Giles*.[27] IJ's clients owned stores that sold caskets. They did not provide any funeral services, such as embalming bodies, holding wakes, etc., but merely sold caskets that their customers could then use for their deceased loved ones at separate locations. The law in Tennessee, however, required a funeral director's license to sell a casket.[28] To receive a funeral director's license an individual had to pass an exam and spend either two years apprenticing to a licensed funeral director, or one year apprenticing plus another year of education at a mortuary school.[29] Almost all of the classes taught at school, and questions on the exam, did not concern selling caskets.[30] These high barriers to the simple act of selling caskets had the effect of limiting the supply of persons licensed to sell caskets, and thus drastically increasing the cost of caskets.[31] The Sixth Circuit found the law to unreasonably violate the right to earn a living and struck it down as unconstitutional.

The Tennessee Board of Funeral Directors and Embalmers vigorously defended the law. Although the board arguably felt it had a duty to defend the law in court even if it thought the law was bad policy, it is instructive to ask why the board defended the law in any other context. And yet it did, stating when the lawsuit was filed, "Funeral directors have the best knowledge of the trade and can help buyers the most. A licensed funeral director is more educated about funeral merchandise than anyone else."[32] Although such a statement is defensible as a slogan in a competitive market—where casket stores compete with funeral directors for consumers and those consumers can evaluate such a claim—the statement is outrageous when non-funeral

[27] 312 F.3d 220 (6th Cir. 2002).
[28] *Id.* at 222.
[29] *Id.*
[30] *Id.*
[31] *Id.* at 224.
[32] Dave Flessner, *Casket Monopoly Under Attack*, Chattanooga Times/Chattanooga Free Press, June 6, 1999, at A1 (as quoted in IJ's backgrounder for the lawsuit, *available at* http://ij.org/about/component/content/836?task=view).

directors are banned outright from selling caskets, thereby drastically raising the cost of caskets for the general public. The Tennessee board was transparently not considering the cost of the law on the public, but instead merely protecting established funeral directors' economic rents. Similarly, the Board in the present matter is not considering the cost of excluding attorneys such as Petitioners.

Similar incentives were at play in *Cornwell v. Hamilton.*[33] There, the State of California restricted the braiding of hair to licensed cosmetologists. To acquire a cosmetology license, California law required individuals to complete 1,600 hours of education. Of that training time, very little had any relevance to what hairbraiders do, and no classes on hairbraiding itself were available.[34] IJ represented a hairbraider, JoAnne Cornwell, who wanted to offer hairbraiding services without wasting over a thousand hours in school, and spending thousands of dollars in tuition, learning skills irrelevant to her trade. As in *Craigmiles*, the state board vigorously resisted this effort to allow hairbraiders to work without a license. Cornwell prevailed, with the court finding the licensure rule an unconstitutional infringement on her right to earn a living.

In each of these cases the motivations of the licensing boards were clear: Established professionals resisted attempts to allow more competition even though the licensing rules clearly did not promote public welfare. We are not claiming that the exact motivations of the Board and the ABA are the same as the boards in these cases, but that as groups composed of established practitioners they have the same motivation to limit competition and preserve economic rents, public welfare notwithstanding. More importantly, just like the actors in these cases, the Board has not considered the cost to the public of excluding attorneys such as Petitioners in its calculus.

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[33] 80 F. Supp. 2d 1101 (S.D. Cal. 1999).
[34] *Id.* at 1109-1111.

That calculus, plus a healthy skepticism of the Board's analysis, is something the Court should engage in before it adopts a final rule.

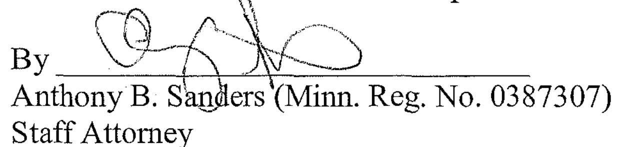
V. CONCLUSION.

As Petitioners have demonstrated in their filings in this matter, graduates of non-ABA-accredited law schools who are licensed in other states can add to the public welfare of Minnesota. They have in Wisconsin. Does that mean that if the Petitioners' proposed rule were adopted no such attorney would ever provide substandard service to a Minnesotan in need of legal services? Of course not. But, it does mean that the cost of not adopting the Wisconsin rule will outweigh the benefit of adopting the Board's proposed rule. The research on, and experience with, occupational licensing substantiates this claim. In short, the Board's proposed rule is transparently anticompetitive and does not benefit the people of Minnesota. Instead, this Court should adopt Petitioners' proposed Wisconsin rule.

Dated: December 27, 2010

Respectfully submitted,

By ____________________
Lee U. McGrath (Minn. Reg. No. 0341502)
Executive Director Minnesota Chapter



By ____________________
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Scott W. Somerville, Esq.
Of Counsel (VA, MD)

Mary E. Schofield, Esq.
Of Counsel (CA)

December 17, 2010

STATE OF MINNESOTA
IN SUPREME COURT
File No. ADM-10-8008
Associated with ADM-10-8027; Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

I am writing in support of the petition currently before the Minnesota Supreme Court that asks the Court to adopt the Wisconsin Rule, which, if approved by the Minnesota Supreme Court, would permit anyone licensed to practice law in any state to take the Minnesota bar exam and become licensed in Minnesota, notwithstanding the fact that the attorney had not graduated from an ABA-approved law school.

I graduated from Oak Brook College of Law (OBCL) in 2006. OBCL is a law school that is not ABA-approved. Since then, I passed the California bar exam, am a member in good standing of the California bar, am an attorney with the Home School Legal Defense Association, and am a registered federal lobbyist. My title at HSLDA is Director of Federal Relations.

I believe that my legal education at OBCL superbly prepared me to take and pass the California bar exam and to serve in a senior role at HSLDA. In 2008, I testified before the U.S. House of Representatives' Education and Labor Committee. I draft and review federal legislation, and work with the U.S. Congress and Administration to advance the interests of our approximately 85,000 member families of defending and protecting homeschool freedom at the federal level.

OBCL is primarily a "distance learning" law school. However, OBCL provides mandatory face to face classroom time. The professors are always available via phone and email to discuss legal questions. The legal education is top notch. And the students graduate able to successfully take and pass the California bar exam and practice law in a professional, competent, and ethical manner.

I chose OBCL for several reasons. The low cost of enrollment allowed me to work at HSLDA, a nonprofit national and international advocacy firm, without being saddled with high law school debt immediately upon graduation. I liked that the distance learning model gave me the

HOME SCHOOL LEGAL DEFENSE ASSOCIATION
National Office • P.O. Box 3000 • Purcellville, VA 20134 • 540-338-5600 • 540-338-1952 fax
Capitol Hill Office • 119 C Street, S.E. • Washington, DC 20003 • 202-547-9222 • 202-547-6655 fax
Express & Shipping • One Patrick Henry Circle • Purcellville, VA 20132

flexibility to intern with a local district attorney, intern on Capitol Hill with a U.S. Representative, and work for a law firm – all during my law school years. This enabled me to not only graduate with the legal training necessary to become a lawyer, but also to graduate with practical, real legal world experience.

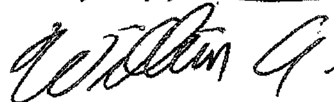
I believe that OBCL – and other law schools with nontraditional educational models – represent the future of legal education for many young men and women who seek to serve as lawyers. I certainly benefited from OBCL, and I believe it completely prepared me to serve as an attorney at HSLDA.

In closing, I would respectfully urge the Honorable Justices of the Minnesota Supreme Court to reject Rule 20 which has been proposed by the Board of Law Examiners in their letter dated September 30, 2010. This proposed Rule would in the main require that in order to sit for the Minnesota bar, an applicant who did not graduate from an ABA-approved law school would need to demonstrate that he or she had practiced law for 10 of the 13 prior years.

I respectfully submit that proposed Rule 20 would likely ensure that few or no attorneys who graduated from non ABA-approved law schools would avail themselves of this option. Attorneys have built up a client base after ten years. They are settled in their particular jurisdiction. Minnesota would lose out on otherwise fit, competent, and ethical attorneys who could represent clients in Minnesota. Proposed Rule 20 is unnecessary to meet the state of Minnesota's valid interest in ensuring the high ethical standards necessary to practice law in the state.

I would respectfully ask the Minnesota Supreme Court to adopt the Wisconsin Rule, and not adopt proposed Rule 20.

Very truly yours,



William A. Estrada, Esq.
Director of Federal Relations

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December 13, 2010

Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, Minnesota 55155

Re: Petition for Amendment to the Rule Regulating Qualifications to Sit for the Minnesota Bar Examination, File No. ADM-10-8008

Dear Court Clerk:

This written statement is submitted in response to the Court's order dated October 26, 2010 in the above-referenced matter. Specifically, I would like to address potential problems with the Court adopting a multi-year practice requirement.

By way of background, I was admitted to practice before the highest court in California in 2000, upon my graduation from Oak Brook College of Law (OBCL). OBCL is a non-accredited law school. I was raised in the state of Florida and all of my family lived in Florida. My father has practiced law in Florida for over 30 years. I would have preferred staying in Florida. However, Florida has a requirement that graduates from non-accredited schools must practice in another state for 10 years before they can be admitted to the Florida Bar. For me, this was essentially the same thing as a complete ban on ever practicing in Florida. I moved to California to begin practice. I married, began a family, and now, 10 years later, I have a thriving practice in California and there is almost no chance I would return to Florida.

While I am not necessarily disappointed that due to the Florida rules I did not end up in Florida, I think that I could have brought some energy and acumen to the bankruptcy bar in Florida. Following is a quick summary of my practice and professional involvements.

My practice is focused on bankruptcy and I primarily represent debtors. My practice is currently approximately equally split between business cases and consumer cases. Last year, I filed approximately 225 bankruptcy cases. I started my own firm in 2004 and currently employ one associate attorney and four other staff.

I have held multiple leadership posts in bankruptcy organizations and have worked to foster collegiality and education in our local bankruptcy bar. In 2005, I was elected to the board of directors for the Central California Bankruptcy Association (CCBA). The CCBA's goal is to foster education and cooperation among bankruptcy and insolvency professionals in Central California. The geographical range for CCBA runs from Bakersfield north to Modesto. The CCBA puts on a two-day CLE institute on bankruptcy every year, with an average attendance of approximately 150. In 2008, I organized the institute and have been heavily involved in it the last two years. In 2008, I was appointed to the board of directors for the California Bankruptcy Forum (CBF), a position which I have held through the present. The CBF is the preeminent statewide organization for bankruptcy professionals.

In addition, I currently serve on the Judicial Advisory Committee for the Eastern District of California and the Clerk's Advisory Committee for the Eastern District of California Bankruptcy Court. I have also served on the Chapter 11 Subcommittee for the Eastern District of California Bankruptcy Local Rules Committee.

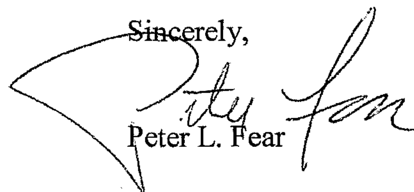
I am a frequent speaker on bankruptcy topics. Following are some recent speaking engagements:

Landlord-Tenant Law in California, "When the Tenant Files Bankruptcy" (2007, 2008, 2010)
Nuts & Bolts of Bankruptcy Law (2008-2010)
Central California Bankruptcy Institute, "Means Test or Mean Test" (2009)
Fundamentals of Bankruptcy Law, "Pre-Filing Considerations" (2009, 2010)

I have also been involved in various civic organizations. I served as chairperson of a citizen's committee studying future funding for the City of Clovis, California (a city just outside of Fresno with a population of about 100,000), and I served on the central committee for a county political party from 2004 to 2010.

I am sure there are other energetic and intelligent attorneys who have chosen an alternative educational path, and it would be a pity for the state of Minnesota to lose their talents by putting in place a draconian multi-year practice requirement.

Sincerely,



Peter L. Fear

SALLY FREEMAN
Attorney at Law

Admitted in Oregon and
California (inactive)

PO Box 3133
Pinedale, CA 93650

STATE OF MINNESOTA
IN SUPREME COURT
Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

I respectfully request that this Court adopt the "Wisconsin Rule" as advocated by the four petitioners. A ten-year practice requirement, the counterproposal from the Board of Law Examiners, is unduly onerous. It would be difficult to move to another state at that point in one's career, as the successful attorneys will have made partner and be unlikely or unable to leave a secure position, and their entire book, in another state.

Furthermore, it would penalize attorneys like me, who have scaled back their legal involvement while their children are very young.

My name is Sally (Kravik) Freeman and I was born and raised in Minnesota. When assessing law school options, I chose Oak Brook College of Law for three reasons: its independent study program which allowed me to simultaneously learn on the job; its tuition, which meant I graduated without crushing student loans; and its Christian worldview, which I found more compatible with my own. At that point, alternative and non-traditional learning programs were taking off, and I hoped that Minnesota would allow me to sit for the bar exam upon graduation.

In 2004, I graduated with my J.D. I subsequently passed the California Bar Exam and moved to California. Two weeks after my admission, I was hired by a small law office as an associate attorney and immediately began taking depositions and appearing at hearings. I was then recruited and hired by a large firm with eleven offices around California. I handled my own caseload of 50-100 files, took depositions, appeared at hearings, ran trials, and even authored an appeal to the Fifth District Court of Appeals.

While in school, I met my future husband. He also passed the California Bar Exam and was quickly hired by a large statewide firm, where he is currently employed. When we decided to start a family, I resigned my position, as my firm did not have flex-time jobs available and we had no family nearby to care for our son during our long working hours or in an emergency.

My husband and I decided to obtain admission in Oregon. We passed the bar exam on our first attempt and were recently admitted to the Oregon bar.

We are now considering relocating. We would appreciate the option of returning to family and friends in Minnesota. For the reasons presented above, I support the petition for this Court to adopt the rule that Wisconsin's Supreme Court has employed since 1998. Thank you for your attention to this matter. If you have any questions, please contact me.

Sincerely,

/s/ Sally Freeman
Sally Freeman
December 16, 2010

GAMMELLO & QUALLEY, P.A.
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JAMES M. GAMMELLO †
STEVEN R. QUALLEY

December 27, 2010

STATE OF MINNESOTA
IN SUPREME COURT

Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

Re: Valarie Wallin Bar Admission

To the Honorable Justices of the Minnesota Supreme Court:

I am pleased to recommend for consideration to the Minnesota Bar, Ms. Valarie Wallin.

Ms. Wallin worked for me in a title company previously owned by the undersigned located in Baxter, Minnesota. Ms. Wallin has the abilities required to perform as a lawyer in the State of Minnesota, and she is a very considerate, capable, and responsible person. Ms. Wallin is honest and hard working and has earned my respect and trust. I would be pleased to employ Ms. Wallin as an Associate in our law office once admitted to the Minnesota Bar. Ms. Wallin has the ability to analyze a problem, the initiative to work until the problem is resolved, and very high moral character.

I strongly believe Ms. Wallin would be a credit to the legal profession, if admitted to the Minnesota Bar.

Sincerely yours,

/s/ James M. Gammello
James M. Gammello

JMG\mdk

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AUBURN
UNIVERSITY

December 12, 2010

Minnesota Supreme Court
c/o Frederick Grittner, Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard,
St. Paul, Minnesota 55155

Re: State of Minnesota in Supreme Court
File No. ADM-10-8008
Associated with ADM-10-8027; Formerly 98C5-84-002139

Dear Justices:

Allow me this opportunity to express my support for the Minnesota Supreme Court's adoption of the Wisconsin Rule advocated by four licensed lawyers. I believe that my background provides a unique perspective, which I hope will provide a degree of clarity on the educational experience offered by the Oak Brook College of Law, a registered legal education provider in the State of California. Let me first state that my support comes without reservation, as I have been able to observe the effectiveness of the legal education provided by OBCL first hand. My experience with Oak Brook College has been brief, but the impact of that experience has been profound. August 2010, I matriculated with the class of 10B as a student in the Juris Doctor program at Oak Brook College of Law.

I currently serve as a tenure track professor in real estate at Auburn University. For the past 10 years, I have taught several thousand students at both the graduate and undergraduate level at both the University of Georgia and Auburn. During this time I was one of two faculty members responsible for creating a distance education program leading to the degree, Master of Real Estate Development. The MRED program is modeled on an executive education platform which uses a true distance learning model. Our current students are enrolled from as far away as Hawaii.

Over the years I have learned much about effectively structuring and delivering advanced education through distance learning. I can state without reservation that Oak Brook College of Law has developed a highly effective method of delivering an exceptional educational experience using the latest technology and pedagogical teaching methods. The interaction between instructor and student exceeds every standard one would have for such a program. The blending of synchronous and asynchronous learning platforms brings together a total learning experience that relies equally upon a student's personal motivation and instructional encouragement and individual tutoring. This method leads to an education that promotes a comprehensive learning experience. Some may attempt to classify the program as correspondence

College of Business • Department of Finance
303 Lowder Building • Auburn University, Alabama 36849

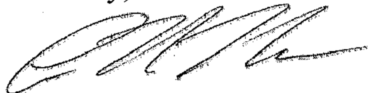
education, but this is far from accurate. The OBCL J.D. is a true and effective distance education experience, as evidenced by its long history of success in preparing students for the Bar exam.

After completing seven years of graduate education at two Universities, I maintained one final educational goal. The goal was to round out my previous study in the areas of economics and finance with a solid foundation in Law. My daily academic endeavors have included teaching in the areas of property law as well as writing peered reviewed academic papers on topics ranging from bank and financial services regulation to mortgage foreclosure, all the while doing so without formal training in law. One can easily see that a legal education would be of immense benefit in my chosen career. This is where OBCL fit my needs precisely. It should be obvious that one of my primary educational goals is learning for the sake of advancing my career. Given my background, I would not spend the extensive time and effort necessary to be successful in such a program if I believed it to be of little lasting value. This is not the case with an OBCL education. The training I have received to date has been exceptional and meets every expectation one might have in regard to the successful delivery of a high quality educational experience.

Let me summarize by stating that, from an experienced educator's perspective, the J.D. program offered by Oak Brook College of Law is neither a correspondence education nor an online degree program. It is in every sense of the term an effective and comprehensive "distance" degree curriculum that incorporates all of the necessary elements of an effective educational program. Please understand that distance learning is the future of education. It will play an increasingly important role in coming decades as the traditional rigid synchronous learning platforms become outmoded. Oak Brook College of Law is a pioneer in providing what is part of an emerging paradigm shift in the delivery of education. I am confident that some years from now we will look back in retrospect and see the critical role institutions like OBCL played in reshaping the educational landscape.

Should you have any questions regarding my support, please contact me at your convenience. I may be reached directly either by phone at (334)844-3009 or via email at hollalh@auburn.edu.

Sincerely,



Harris Hollans, PhD MAI
Assistant Professor of Finance

STATE OF MINNESOTA

IN SUPREME COURT

File No. ADM-10-8008

associated with ADM-10-8027; formerly 98C5-84-002139

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

In response to the Court's order of October 26, 2010, in the above-referenced matter, I am submitting this statement in **support** of the petition to adopt the "Wisconsin Rule" that would permit lawyers who have not graduated from an ABA-approved law school to sit immediately for the Minnesota Bar Examination.

As a licensed attorney who holds a J.D. from both a non-ABA law school as well as an ABA-approved law school, I am submitting this statement to offer the Court a first-hand perspective on the quality of legal education that non-ABA law schools provide, particularly the Oak Brook College of Law ("Oak Brook"), as compared to ABA-approved law schools.

I graduated from Oak Brook in 2003 and passed the California bar on my first attempt in February 2003. By comparison, Oak Brook's first-time takers passed that exam at a rate of 82 percent, while first-time takers from ABA-approved schools passed the exam at a rate of 55 percent. (See **Exhibit A**.)

After three years of practice in California, I applied and was accepted to the Indiana University School of Law-Indianapolis ("IU-Indy"), which is an ABA-approved school and ranked by U.S. News and World Reports as a Tier I law school. Although the U.S. News and World Reports' system is only one indicator of law school rankings, it

offers some level of comparison. At No. 86 on those rankings, IU-Indy currently ranks higher than three out of the four ABA-approved law schools located in Minnesota.

Based on my experience at the two schools, I believe that the academic rigors of Oak Brook were consistent with what I faced while attending IU-Indy. The curriculum and instruction at the two schools were comparable. Moreover, I believe the grading standards at Oak Brook were just as rigorous (if not more so) than at IU-Indy. For example, I graduated from Oak Brook *magna cum laude*, with a class rank at 1 of 20 and a 3.62 GPA. While at Oak Brook, I was single and worked a full-time job while taking approximately 11–12 credit hours per semester. By comparison, while at IU-Indy I took approximately 15 credit hours per semester, worked 20 hours per week, and juggled increased family responsibilities as a married father of two small children. Despite my increased outside responsibilities while at IU-Indy as compared to my time at Oak Brook, I graduated *summa cum laude* with a class rank at 1 of 300 and a 3.88 GPA. Thus, by comparison, it was more difficult to obtain higher grades at Oak Brook than at IU-Indy with similar efforts and under increased outside responsibilities. At IU-Indy, I also earned the 2008 Editor of the Year Award while serving on the Indiana Health Law Review, which later published my student note, *Physician Employee Non-Compete Agreements on the Examining Table: The Need to Better Protect Patients' and the Public's Interests in Indiana*, 6 IND. HEALTH L. REV. 253 (2009).

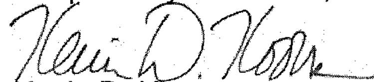
Although Oak Brook is primarily a distance-learning educational program, it offers hands-on learning opportunities that rivaled similar courses that I took at IU-Indy. For example, I participated in both a week-long intensive, onsite moot court course while attending Oak Brook, as well as a full-semester trial practice course that culminated in a

week-long intensive, onsite practicum. Although I did not repeat moot court while at IU-Indy, I took the trial practice course offered there and found my experience and the instruction to be comparable to my experience and the instruction I received during the trial practice course offered by Oak Brook.

Further, my post-graduate legal experience demonstrates that Oak Brook offers a quality legal education that not only prepares its students thoroughly for one of the nation's toughest bar examinations but also for the rigors and demands of law practice and life. In the course of my relatively short legal career, I have successfully litigated on behalf of private property owners challenging unlawful development restrictions, governmental entities defending their land use decisions, and both public and private employers defending against a variety of suits by former employees, including class actions. The legal education and training I received from Oak Brook helped to prepare me to handle these matters and more.

In conclusion, I believe that Oak Brook thoroughly prepares its graduates to serve the legal needs of their communities, and Minnesota citizens would be well-served by the quality and cost of the legal services offered by the graduates of Oak Brook and other schools like it. For these reasons, I respectfully urge you to grant the petition to adopt the "Wisconsin Rule" and permit graduates of non-ABA accredited law schools to sit immediately for the Minnesota Bar Examination.

Respectfully submitted,



Kevin D. Koons
Attorney at Law
California Bar No. 225867
Indiana Bar No. 27915-49

GENERAL STATISTICS REPORT
FEBRUARY 2003 CALIFORNIA BAR EXAMINATION*

OVERALL STATISTICS

	First-Timers			Repeaters			All Takers		
Applicant Group	Took	Pass	%Pass	Took	Pass	%Pass	Took	Pass	%Pass
General Bar Examination	1281	642	50.1	2911	922	31.7	4192	1564	37.3
Attorneys' Examination	225	149	66.2	149	78	52.4	374	227	60.7
Total	1506	791	52.5	3060	1000	32.7	4566	1791	39.2

GENERAL BAR EXAMINATION STATISTICS

	First-Timers			Repeaters			All Takers		
Law School Type	Took	Pass	%Pass	Took	Pass	%Pass	Took	Pass	%Pass
CA ABA Approved	434	249	57.4	1263	521	41.3	1697	770	45.4
Out-of-State ABA	177	86	48.6	442	174	39.4	619	260	42.0
Not Allocated* *	470	252	53.6	435	116	26.7	905	368	40.6
CA Accredited	126	28	22.2	543	89	16.4	669	117	17.5
CA Unaccredited	23	4	17.4	154	9	5.8	177	13	7.3
Correspondence	48	21	43.8	70	11	15.7	118	32	27.1
Law Office/Judges' Chambers	3	2	66.7	4	2	50.0	7	4	57.1
Total	1281	642	50.1	2911	922	32.7	4192	1564	37.3

* These statistics were compiled using data available as of the date results from the examination were released.

** Applicants in this category graduated from law school but were not allocated to a particular school because they did not take the California Bar Examination within one-year of graduation, which includes attorneys admitted in other jurisdictions less than four years who are required to take the General Bar Examination.

EXHIBIT "A"

FEBRUARY 2003 CALIFORNIA BAR EXAMINATION
GENERAL BAR EXAMINATION STATISTICS
CALIFORNIA CORRESPONDENCE LAW SCHOOLS

LAW SCHOOL	FIRST-TIMERS			REPEATERS		
	TOOK	PASS	%PASS	TOOK	PASS	%PASS
Abraham Lincoln University	11	3	27	14	2	14
British-American University School of Law	0	0	0	3	1	33
Concord University School of Law	10	6	60	0	0	0
Kensington Univ. College of Law*	0	0	0	7	1	14
La Salle Extension University*	0	0	0	1	0	0
Newport University School of Law	3	1	33	4	0	0
Northwestern California University School of Law	6	1	17	8	2	25
Oak Brook College of Law & Government Policy	11	9	82	4	1	25
Saratoga University School of Law	4	0	0	1	0	0
Southern California University For Professional Studies College of Law	0	0	0	4	0	0
Southland University*	0	0	0	1	0	0
University of Honolulu School of Law	0	0	0	2	0	0
William Howard Taft University	3	1	33	21	4	19
Total	48	21	44	70	11	16

*School is no longer in operation.

STATE OF MINNESOTA

IN SUPREME COURT

Rules for Admission to the Bar

File No. ADM-10-8008

Formerly 98C5-84-002139

PUBLIC COMMENT AND REQUEST FOR LEAVE TO MAKE ORAL PRESENTATION BY ROGER J. MAGNUSON

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

In law school, during the early 70's, it fell to me to do a writing project on Title VII of the Civil Rights Act of 1964. One of the cases I gave special attention to was *Griggs v. Duke Power*, then working its way through the lower courts but not yet decided by the Supreme Court.

The equities in the case seemed to be compelling. Duke Power had a strict segregation policy before the passage of the 1964 Act. African-Americans could only work in the Labor Department. Once the law went into effect, the company was able to achieve the same discriminatory result by requiring a satisfactory performance on an IQ test, or a high school diploma, for any employment outside the Labor Department, knowing that this facially neutral requirement would have a disparate impact on the minority applicants.

Duke Power staunchly defended its "neutral" test, regardless of an enormously disparate effect on minorities that deprived them of opportunities for better positions. The company argued that the law only prohibited disparate treatment, not disparate

impact. The Court disagreed. It held, of course, that such a test violated Title VII unless the company could demonstrate that the test was "reasonably related" to the skills necessary to do the job for which it tested.

While I would like to think that someone leaked to the Court a draft of my conclusion (it came to the same result, after all), the main takeaway for me was a heightened suspicion of allegedly job related requirements that create unnecessary roadblocks for, and deprive opportunities to, people who deserve better.

The staunch defense of the ABA law school status quo by the Minnesota Board of Law Examiners (say nothing of its curious proposal that only ten years of hard labor outside of Minnesota, substantial legal submissions culled from each year of practice, and $1,500 of seed money be provided to the Board for a painstaking review) seems to be no so much a serious proposal as a Duke Power style "over our dead body" approach to a modest change in the rules governing admission. It betrays no recognition that times change and a wooden "one size fits all" approach to legal education is increasingly an anachronism.

There is, to be sure, an interest in protecting the public. And it is not unreasonable to have standards reasonably calibrated to ensure that those seeking admission to the practice of law have both competence and character. But the embossing of a trade association "bug" on a bricks and mortar institution is a crude and sometimes illusory measure of the competence or character of its graduates. It surely need not be—as Wisconsin with its more progressive rule has successfully showed—the only measure. The Wisconsin rule, in place next door, has generated no problems anyone can discern.

There is not "scant evidence," there is "no evidence" of any harm to the public. The floodgates have not opened, no torrents of unqualified applicants have overwhelmed the system, and no discipline has needed to be administered.

The relentless assertion of an ideologically pure and increasingly marginalized "ABA only" rule has done, and is doing, two baneful things. It is depriving exceptionally worthy candidates of an opportunity to practice their profession in a state where they want to live and make a contribution using their legal skills. But it is also depriving the state of talented lawyers of great competence and integrity. It is doing so based on the most vacuous rationale, that there is some ineffable and indispensable quality conferred by being physically in an ABA-accredited institution—however marginal that school may be—that cannot be replicated by any other educational modality. The death grip of this shibboleth on the mind is seen in an insistence that a practicing lawyer, who has passed the toughest bar examination in the land (the California bar examination that one-half of ABA graduates typically fail) and has met the most rigorous character examination, is not qualified even to sit for the Minnesota Bar. He or she must first serve ten years of hard probation under some legal Laban elsewhere, a task that the Board knows full well no one will ever undertake.

The credentials of the Petitioners here speak for themselves. They have to, because the Board gave no indication in their report or their proposal that they paid any attention to the remarkable petitioners before them. The most superficial review of their resumés and accomplishments would lead an objective person to say, "of course these petitioners are eminently qualified to sit for the Bar. We are fortunate to have them."

Does the rule do well to protect the public from Ian Maitland, with his undergraduate degree from Oxford and Ph.D. from Columbia, his J.D. from Concord School of Law, and his California law license? Is he presumptively unqualified to take the Minnesota Bar exam? Were the African immigrants in Minnesota, with legal their needs, protected by forbidding Henry Ongeri from taking the Minnesota Bar exam, when he already had a law degree from the leading law school in Kenya, was admitted to the courts of England and New York, whose bar examination, the second hardest bar examination in the U.S., he passed without taking a bar review course? His desire to serve the poorest among his brethren in Minnesota was successfully frustrated for over a year. Were the immigrants grateful for this "protection"?

The same may be said of Professor Valerie Wallin, an extraordinarily articulate advocate admitted in California and Wisconsin—and unable to cross the river from Hudson, Wisconsin to practice regularly in her home state of Minnesota. And Micah Stanley's precociousness and achievements are remarkable even without the knowledge that he did many of them before he could vote.

But behind these petitioners are other examples. Kent Schmidt was part of the founding of the law school for which I am Dean, Oak Brook College of Law. He was hired by Dorsey & Whitney LLP. He wanted to practice in Minnesota. but was not allowed to sit for the Minnesota Bar. Consigned to California, he is now a leading lawyer in Dorsey's Southern California office. He was an extraordinary associate and now is a much-in-demand partner in the firm. Alas, though a true "star," he would still not be qualified under the Board's "ten-year probation" proposal to sit for the Minnesota Bar.

Joseph Perkovich is a leading associate in Dorsey's New York office, who has worked with me on a major matter before the New York Supreme Court. He studied at Oxford, got interested in the law while working in a non-legal capacity at O'Melveny and Myers in Manhattan and "read law" privately, before passing the New York Bar. He could not even consider coming to the home office. He is presumptively unqualified.

A woman wrote me upon hearing of this petition. She is in the capital markets group at Shearman and Sterling in New York City and said she would like to move to Minnesota to practice here when her husband moves here. Alas, she only got her law degree at the University of Paris. No ABA visiting committee has ever approved that obscure law faculty. Her New York law license and sophisticated firm experience do not matter.

Such examples suggest the kind of lawyers Minnesota might attract with a more progressive and rational process for admission: people who have chosen a different and harder route to get to Minnesota and tend to reflect those unique traits by being better and more interesting than the norm.

One can, of course, argue that the ABA requirement is more job-related than the tests in *Duke Power* and thus the archaic sounding, "one-way or the highway" approach is justified. But one can argue it is even less job-related, because it focuses on where one learned something rather than what one learned, and ignores the fact that the applicant has been found qualified by other regulatory regimes.

From years of experience evaluating arguments and briefs at Oak Brook College of Law and Government Policy, where our students routinely do much better than ABA

students in passing the California Bar, I know that whether in writing or oral advocacy or in assessing character, no member of a law admissions board could discern whether the law school they attended had the ABA bug on it, unless the applicant had it tattooed on his or her forehead. To say otherwise is pure fiction.

With the impressive skills in legal analysis and the broad understanding of the law reflected in their passing the California Bar, the good character and the superior diligence that they demonstrate, in running the gauntlet of a four-year program, to say nothing of being licensed lawyers who can already try cases here on a *pro hac vice* basis, could one please put a finger on what is lacking to be a good lawyer, much less simply to sit for the Minnesota Bar?

While judging appellate advocacy last year with two highly-regarded constitutional litigators as fellow "judges," I saw the best oral argument I had ever seen (or given myself) by a straight-A-student—a student who cannot consider Minnesota.

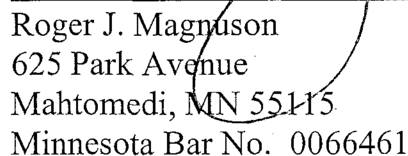
Perhaps the Duke Power IQ test applied to her, would be of additional comfort?

REQUEST FOR LEAVE TO MAKE ORAL PRESENTATION

Further to this Court's order of October 26, 2010, the undersigned requests leave to make an oral presentation to the Court based on this public comment.

Dated: December 27, 2010

Respectfully submitted,



Roger J. Magnuson
625 Park Avenue
Mahtomedi, MN 55115
Minnesota Bar No. 0066461

STATE OF MINNESOTA

IN SUPREME COURT

File No. ADM-10-8008

Formerly 98C5-84-002139

STATEMENT OF IAN MAITLAND IN OPPOSITION TO THE STATE BOARD OF LAW EXAMINERS' PROPOSED AMENDMENT TO RULE 20 OF THE RULES FOR ADMISSION TO THE BAR AND IN SUPPORT OF THE ADOPTION OF THE SO-CALLED "WISCONSIN RULE" TO ALLOW ATTORNEY GRADUATES OF NON ABA-APPROVED LAW SCHOOLS TO SIT FOR THE MINNESOTA BAR EXAMINATION

Ian Maitland
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TO THE HONORABLE JUSTICES OF THE

SUPREME COURT OF MINNESOTA

I write both in opposition to the Board of Law Examiners' proposed amendment to Rule 20 of the Minnesota Rules of Admission to the Bar, and in support of the adoption of the so-called "Wisconsin rule" to govern the admission to the Minnesota bar of out-of-state attorney graduates of non ABA-approved law schools. I am one such graduate and a petitioner in this matter.

1. There is no evidence that the Board's rule protects the public.

"The curious incident of the dog in the night-time."[1]

According to the Minnesota Board of Law Examiners Report[2] of June 2, 2010, at 31, the justification for ABA accreditation is that only ABA standards are sufficient to "protect the public from unsafe or incompetent practitioners." However, the Board presents no evidence that graduates of non-ABA accredited law schools are more likely than graduates of ABA schools to be unsafe or incompetent practitioners. To be sure, the Board recites facts about ABA-accredited schools and Internet schools, but none of this information bears on the critical question of whether the current rules that prevent licensed lawyers from California and elsewhere who graduated from state-accredited but not ABA-accredited law schools from sitting for the Minnesota Bar Exam are necessary

[1] "To the curious incident of the dog in the night-time." "The dog did nothing in the night-time." "That was the curious incident," remarked Sherlock Holmes. (It's from the short story "Silver Blaze".)

[2] Minnesota Board of Law Examiners Report and Recommendation: Legal Education Standard for Admission to the Minnesota Bar, dated June 2, 2010.

to protect the public from unqualified attorneys. The report offers only conclusory statements or the Board's intuitions about how only education at an ABA-accredited school can guarantee fitness to practice law (*See,* e.g., Report at 14).[3]

In its Report (at 6), the Board refers to the "56 standards" that are required of ABA schools. But these standards are inputs. They have not been validated by showing that they predict performance as an attorney. Some of the standards (like number of books in the school library) may be completely anachronistic in the Internet age.[4] Moreover, the relevance of the standards has long been a source of controversy. Fourteen prominent law school deans launched one protest, claiming that the accreditation process is "overly intrusive, inflexible, concerned with details not relevant to school quality and terribly costly in administrative time as well as actual dollar costs to schools." The result, they said, is to discourage variation in favor of a "one-size fits all" model of legal education.[5]

In my testimony to the Board of Examiners, I referred to the "je-ne-sais-quoi" that is supposedly obtained by law students at fixed facility schools and only such schools. It is some indefinable (or at any rate undefined) and/or mystical essence. Only those who

[3] The Report quotes a former president of the Board of Law Examiners as saying that "the public depends on the Board and the Court to ensure that licensed lawyers are competent to handle a client's most important life issues," but it offers no evidence bearing on the competence of people in petitioners' situation to do that (Report at 11). The report also quotes Dean Wippman of the University of Minnesota law school who is skeptical about of claims about the "transformative power of distance learning" (Report at 15), but with all due respect to my learned colleague, that is not the issue. Petitioners readily admit they do not walk on water. But they argue that their education and bar success show that they are competent to practice law in Minnesota and should be permitted to sit the Minnesota bar exam.

[4] SEE Ross E. Mitchell's submission.

[5] Cited in Deborah L. Rhode and David Luban, Legal Ethics (1981) at 993.

are anointed with it are fit to practice law. That is essentially the position the Board has espoused in its Recommendation to the Court. Its support for ABA accreditation is faith-based rather than evidence-based. The Board lacks solid evidence to justify its excluding attorneys who others states have licensed from sitting Minnesota's bar examination.

2. The experiences of Wisconsin and California don't support the Board's fears.

The experiences of Wisconsin and California provide natural experiments for predicting what is likely to happen (or not to happen) in Minnesota if petitioners sit the state Bar Examination and are admitted to practice there, but the Board ostentatiously ignores them.[6] Instead, the Board shifts the burden of proof to petitioners (Report at 31). In her submission, petitioner Valarie Wallin describes the Wisconsin experience. None of the 28 lawyers admitted under the Wisconsin Rule has been disciplined. In California, although many lawyers attended unaccredited law schools, "California does not appear to have higher levels of lawyer malpractice and dishonesty."[7] Granted, the absence of evidence of harm to the public is not the same thing as evidence of its absence, but it is hard to imagine that scholars in need of thesis topics have passed up this opportunity if such harm exists.

3. Possible bias in the Board's Recommendation

"Every profession is a conspiracy against the laity." (George Bernard Shaw)

[6] The Report (at 20) simply describes Wisconsin's educational eligibility requirements without discussing whether the skies have fallen since the requirements were liberalized.

[7] George B. Shepherd 659, Defending the Aristocracy: ABA Accreditation and the Filtering of Political Leaders, 12 Cornell J.L.& Pub. Pol'y 637, 659.

"[T]he best talent of the bar will always muster to keep Ins in and to man the barricades against the Outs." (Karl N. Llewellyn, The Bramble Bush: Our Law and its Study (New York, 1930), 144-5).

Over the past century, recurrent concern with raising the legal profession's admissions standards has tended to coincide with alarm about a perceived "glut" or excess supply of lawyers.[8] Restrictions on bar admissions have obvious economic benefits for members of the profession. Some scholars claim that prejudice played a part as well.[9] Today's debate over non-ABA-accredited law schools is in many ways a replay of the fight in the 1920s over night law schools. Back then too there were warnings of how the sky would fall if night schools were not curbed: "The dean of Wisconsin law school reminded his colleagues that night schools enrolled 'a very large proportion of foreign names. Emigrants [sic] ... covet the title [of attorney] as a badge of distinction. The result is a host of shrewd young men, imperfectly educated ... all deeply impressed with the philosophy of getting on, but viewing the Code of Ethics with uncomprehending eyes.'"[10] Harlan Stone argued that the profession was attracting the "undesirables and unfit"[11] Raising standards – for example by putting night schools out of business – became a means of turning this tide. The ABA (which excluded blacks from its membership until the 1940s[12]) led the charge against night schools.

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[8] Harry First, Competition in the Legal Education Industry (I), 53 N.Y.U. L. Rev. 311, 327-328, 358 (1978).

[9] Notably Jerold S. Auerbach, Unequal Justice (1976). SEE esp. pages 96-101, 108-129.

[10] Id. at 100.

[11] Id. at 123.

[12] Id. at 65-6.

The night schools and their supporters fought back:[13]

- One supporter asked 'What would this country have lost if Abraham Lincoln had been kept away from the bar…?" (96)
- Another asked "Shall we stop those men [sic] as they climb single-handed by the force of native will?" (97)
- Night students compensated for their deficiencies with "pluck, energy, perseverance and enthusiasm" (98).

The same arguments might be made today for survivors of the arduous programs at Internet law schools!

Today the sources of possible bias are different but no less harmful. No conspiracy theories are necessary to explain why the legal establishment is likely to oppose liberalizing admissions to the bar. Stanford Law Professor Deborah Rhode says that the "problem is not that bar policies are baldly self-serving. Lawyers and judges who control regulatory decisions generally want to advance the public's as well as the profession's interests. Rather, the difficulty is one of tunnel vision, compounded by inadequate accountability. No matter how well-intentioned, lawyers and former lawyers who regulate other lawyers cannot escape the economic, psychological, and political constraints of their position. Without external checks, these decision makers too often lose their perspective about the points at which occupational and societal interests conflict…."[14] In the circumstances, I urge the Court to take with a grain of salt the

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[13] Id. at 96-98.

[14] Deborah L. Rhode, "In the Interest of Justice," in Rhode & Luban. Legal Ethics (2004) at 124.

Board's intuitions about what it takes to make a good lawyer unless those intuitions are supported by hard evidence.

For all the above reasons, I respectfully urge this court not to adopt the onerous rule proposed by the Board of Law Examiners. I instead urge this court to adopt the Wisconsin Rule in its stead.

Additionally, I request the opportunity to make an oral presentation, based on this statement, at this Court's hearing on January 26, 2011.

STATEMENT OF IAN MAITLAND
12/27/10

Date: December 27, 2010

RESPECTFULLY SUBMITTED:

Ian Maitland

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FED I.D. #43-1981257

December 16, 2010

Minnesota Supreme Court
c/o Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, Minnesota 55155

Re: Petition Number ADM-10-8008

To The Honorable Justices of the Minnesota Supreme Court:

I understand that there is a petition to amend the Minnesota rules governing admission to the Minnesota State Bar which would allow attorneys who are admitted to practice in other jurisdictions to sit for the Minnesota bar exam, regardless of whether they graduated from an ABA accredited law school. I write to urge you to adopt the rule that the Wisconsin Supreme Court has used since 1998, and was proposed originally in the Petition Of Four Licensed Attorneys that was filed with this Court on April 29, 2009.

I am a professor of Oak Brook College of Law and became aware of the proposed change to the rules by a former student who has an interest in becoming a member of the Minnesota State Bar. I am also a former President of the Alabama State Bar Association and I have worked hard to enhance the image and quality of our profession. Over a period of many years as a professor at Oak Brook College of Law, I have had the privilege of meeting many students who have chosen a non-traditional approach to legal education.

Several years ago I attended a workshop in Indianapolis, Indiana sponsored by the American Bar Association. It was attended by professors and deans from Harvard, Cornell, Yale, and most of the top law schools in the nation. The general consensus at that time by the ABA and most of the law schools represented at the meeting was that there was hardly any place for non-residential on-line courses for ABA accredited schools. There have been many changes since that time, including top tier law schools offering on-line courses and on-line LLM degree programs. Since then, history has proven that non-traditional approaches to legal education can be successful and the students, certainly those that have graduated from Oak Brook, have excelled in many areas where they have been allowed to practice law.

Having worked closely with the students while teaching both Trial Advocacy and Alternative Dispute Resolution courses, as well as participation in many other activities with the students, I am convinced that our students lack nothing in either aptitude or character when compared to those who attend ABA accredited law schools.

Prior to being elected President of the Alabama State Bar, I also served on the Bar's Character and Fitness Committee. For several years I also served on Bar Disciplinary Panels. Most lawyers who came before the Disciplinary Panels and who came before the Character and Fitness Committee, were graduates or potential graduates of ABA accredited law schools. The vast majority of lawyers appearing before those committees were academically fit to practice law, but they possessed character deficiencies in much need of scrutiny.

Two years ago I was appointed by the Chief Justice of the Alabama Supreme Court as the Chairman of the Chief Justice's Commission on Professionalism. My role while President of the Alabama State Bar Association included promotion of the highest standards of professionalism among Alabama lawyers and judges, and it continues to remain a priority in my current role as Chairman of the Professionalism Commission. I have watched the Oak Brook students closely for several years and the vast majority of students possess the highest standards of character and moral virtue, and a true sense of the honesty and integrity required of those in our profession.

I encourage you to support the petition to amend the Minnesota Bar Admission Rules, and adopt the State of Wisconsin's rule. It is my belief that qualified attorneys, especially the graduates of Oak Brook College of Law, are denied the opportunity to practice law in Minnesota simply because they chose a different path than most. Most choose that path because of financial considerations or for other reasons, but most share the distinction of academic excellence and excellent moral character. The proposed changes would provide these individuals a chance to, once again, sit for a bar exam and thereby affirm their ability to practice law.

Thank you very much for allowing me to offer these comments and observations. Please let me know if I can provide further information. Thank you very much.

Very sincerely,

Douglas McElvy

JDM/mg

STATE OF MINNESOTA

IN SUPREME COURT

File No. ADM-10-8008

Associated with ADM-10-8027; Formerly 98C5-84-002139

STATEMENT OF ATTORNEY ROSS E. MITCHELL IN OPPOSITION TO THE STATE BOARD OF LAW EXAMINERS' PROPOSED AMENDMENT TO RULE 20 OF THE RULES FOR ADMISSION TO THE BAR AND IN SUPPORT OF THE ADOPTION OF THE SO-CALLED "WISCONSIN RULE" TO ALLOW ATTORNEY GRADUATES OF NON ABA-APPROVED LAW SCHOOLS TO SIT FOR THE MINNESOTA BAR EXAMINATION

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TO THE HONORABLE JUSTICES OF THE

SUPREME COURT OF MINNESOTA

I write both in opposition to the Board of Law Examiners' proposed amendment to Rule 20 of the Minnesota Rules of Admission to the Bar, and in support of the adoption of the so-called "Wisconsin rule" to govern the admission to the Minnesota bar of out-of-state attorney graduates of non ABA-approved law schools. I am one such graduate.

In 2000, I began online legal studies at Concord Law School, which is owned by Kaplan, Inc., which in turn is owned by the Washington Post Company. I studied for four years at Concord, passed the Baby Bar in 2001, and graduated in 2004 as the valedictorian of my class. Following graduation, I sat for and passed the July 2004 administration of the California bar examination, and was admitted to the California bar in November 2004. I was subsequently admitted to the bar of the Federal District Court for the Central District of California, the bar of the Court of Appeals for the First Circuit, sitting in Boston, and, in 2008 I became one of the first online-educated attorneys to be admitted to the bar of the United States Supreme Court in open court.

I have been a resident of Massachusetts for the past twenty-eight years, and I realized that my opportunities to practice law would be severely limited were I not a member of the Massachusetts bar. Massachusetts, like Minnesota, requires bar applicants to have graduated from an ABA-approved law school (although one can also have graduated from one of the two state-approved schools). My Concord degree did not meet the requirements for admission, and like the attorney petitioners in the matter before you, I was told that any application to take the bar examination would be denied.

I ultimately brought a successful suit in the Supreme Judicial Court (SJC) of Massachusetts in *Mitchell v. Board of Bar Examiners*, 452 Mass. 582 (2008). In my suit, I sought a change to the admission rule in Massachusetts similar to the one proposed by the petitioners here, that is, a rule entitling any graduate of a law school meeting the requirements of a sister state for admission to that state's bar, and who is in good standing in that state's bar, to be permitted to sit for the bar examination in Massachusetts. In November 2008 the Court granted me a waiver to take the bar examination while choosing to "await the results of the ABA's comprehensive review of its law school approval standards and evaluate [its rules of admission], in

light of any new standards the ABA may adopt as well as of ongoing developments in legal education and its delivery." 452 Mass. at 589. I subsequently took and passed the February 2009 bar exam, and am now a licensed member of the Massachusetts bar.

In the more than two years that have passed since the SJC issued its opinion in my case, the ABA has not come any closer to accrediting online law schools regardless of the quality of the education they provide. In fact, a number of unnecessary, irrelevant, and outdated criteria persist in the accrediting process that render any attempt at such accreditation futile.

For example, ABA Standard Interpretation 601-1 requires that an accredited law school maintain a physical (i.e., paper) law library. This standard "is not satisfied solely by arranging for students and faculty to have access to other law libraries within the region, or by providing electronic access."[1]

Concord's law library is comprised of a broad range of online resources. Each student is given an individual Westlaw account with unlimited access to West Publishing's legal databases throughout the student's four years at the school. Additionally,

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[1] Current ABA standards for admission are available at http://www.abanet.org/legaled/standards/standards.html

each student is provided access to Hein-On-Line, a comprehensive, fully searchable, image-based archive of more than 1,100 law journals with coverage dating back to the inception of each journal, as well as of U.S. treaties, the Federal Register, official U.S. reports, and numerous other databases. Students also are given accounts with Versuslaw, another online service that offers a collection of federal, state, tribal, and foreign court opinions. Thus, Concord students have at their fingertips virtually all of the information that can be found in any fixed-facility law library and the resources that meet nearly all the daily needs of practicing attorneys. Yet because of the basic incompatibility between an online school and the requirement of having a paper library, it is impossible for Concord or any online law school to meet this ABA accreditation standard. In short, were Concord to be required to have a paper-based physical library that would be accessible to all of its students, it would wholly frustrate the law school's purpose and ability to offer a legal education to its students located throughout the country and the world, without providing anything of substantial additional value to its students.

Another ABA Standard, 701, requires that a law school seeking accreditation must be housed in "physical facilities that are adequate both for its

current program of legal education and for growth anticipated in the immediate future." The Interpretation of the Standard makes clear that "[a]dequate physical facilities shall include . . . suitable class and seminar rooms in sufficient number and size to permit reasonable scheduling of all classes and seminars," offices for faculty members, space for conducting its professional skill courses and programs, as well as other requirements that may be necessary and appropriate in a fixed-facility environment, but which are entirely inapposite to the needs of a school operating in an online environment with faculty and student body dispersed throughout the country and the world, as is the case with Concord. Other ABA accreditation standards are equally incompatible with any program of online education.

Thus, under the current standards, no online law school can ever be accredited by the ABA regardless of the quality of the education the school provides.

Most state supreme courts have taken the view that they are ill equipped to evaluate the education provided by the multitude of law schools in the United States and that they, therefore, rely on the ABA to determine which schools provide an appropriate legal education. While it is certainly true that all schools approved by the ABA provide an acceptable level of legal education, the ABA, through its own

outdated policies, is substantially underinclusive in its accreditation process. Many fine institutions exist that do not fit the ABA accreditation mold.

Recognizing that requiring a degree from an ABA-approved law school is not the only way to ensure competency at the bar, most states have begun to adopt alternatives to ABA accreditation. In 2010, fully thirty-two states, the District of Columbia, and three other jurisdictions allow exceptions to the requirement of an ABA-approved law school degree, including study at a State approved out-of-State law school (nine jurisdictions); study at a State approved in-State law school (eight jurisdictions); law office study (seven jurisdictions); correspondence study (three jurisdictions); study at any law school (two jurisdictions); graduation from an unapproved law school combined with a certain number of hours at an ABA-approved law school (two jurisdictions); and study at an ABA-approved law school resulting in an LLM (one jurisdiction).[2]

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[2] National Conference of Bar Examiners and ABA Section of Legal Education and Admissions to the Bar, Comprehensive Guide to Bar Admission Requirements Chart III (2010), available at http://www.ncbex.org/comprehensive-guide-to-bar-admissions/.

Minnesota remains in the minority of states that still requires in all cases that applicants to the bar have graduated from an ABA-approved law school.

This need not be the case to ensure competency at the bar. Just as Minnesota can rightly expect that its attorneys will be acknowledged elsewhere as having achieved the degree of learning necessary to practice law, so can this Court, through principles of comity, rely on the considered judgment of the supreme courts of the various sister states who have determined that a particular course of education coupled with passing that state's bar examination ensures that a given applicant is qualified to be admitted to its bar. Such attorneys, having satisfied the admission requirements in these states, clearly possess the ability and training to practice law.

Yet, the petitioners here are not even seeking to be admitted on motion. Rather they are simply asking for the opportunity to demonstrate their qualifications by sitting for the Minnesota bar examination, just as I sought (and was granted) permission to sit for the Massachusetts bar examination.

It is well known that passing a bar examination is, in and of itself, a significant hurdle to bar admission. Yet, under the rule proposed by the petitioners, which has been operating successfully in

Wisconsin for well over ten years, these attorney graduates of non ABA-approved law schools would again be required to demonstrate their competence before practicing law in Minnesota by passing the Minnesota bar examination.

The Wisconsin rule retains the requirement that an attorney have received an American legal education to be permitted to take the bar examination. Additionally, applicants who would qualify under this rule would have already met all requirements for admission to a sister state including passing that state's bar examination, and having being admitted to that state's bar. The amended rule would provide that the applicant may have graduated from "[a] law school whose graduates are eligible to take the bar examination of the state, territory or District of Columbia in which the law school is located, provided the applicant has passed the bar examination of and has been admitted to practice in that or another state, territory or the District of Columbia." Wisconsin Supreme Court Rule (SCR) 40.04; Supreme Court of Wisconsin Order 97-09 (June 4, 1998) (amending SCR 40.04). Only those attorneys with law degrees from American schools authorized by sister states to grant the degrees of bachelor of laws or juris doctor, who subsequently pass the bar examination in at least one state, are admitted and in

good standing in that state, and who then go on to pass the Minnesota bar examination, would be admitted to the bar. Thus, the competency of these new members of the bar would be assured.

For all the above reasons, I respectfully urge this court not to adopt the onerous rule proposed by the Board of Law Examiners. I instead urge this court to adopt the Wisconsin Rule in its stead.

RESPECTFULLY SUBMITTED:

/s/ Ross E. Mitchell
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Date: December 19, 2010

STATE OF MINNESOTA
IN SUPREME COURT

Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

I write in support of the petition currently before this Court that asks the Court to adopt the Wisconsin Rule for Admission to Practice.

After graduating from the Oak Brook College of Law, I began my legal career as a Deputy District Attorney with the Kern County District Attorney's Office in Bakersfield, CA. After becoming the youngest deputy district attorney in Kern County to ever successfully prosecute an attempted murder trial or be assigned as co-counsel on a capital case, I co-founded Swanson O'Dell, a litigation firm.

As a practitioner with over 50 jury trials and 400 court trials in both civil and criminal practice, I can say that my education through Oak Brook was crucial in preparing me for the practice of law. Unfortunately, Oak Brook, despite having an ABA equivalent pass rate on the California Bar and an impressive list of successful graduates, continues to be locked out of the accreditation process because it is not a traditional brick and mortar school.

A good example of Oak Brook's success in teaching was my favorite class in law school, trial advocacy. Trial advocacy sounds extremely difficult to teach without a brick and mortar classroom. But professors' willingness to give feedback, use of modern technology to facilitate a cyber court room experience, and the intense four day in person session of trials was crucial to my development of trial skills. When I walked into the courtroom as a deputy district attorney, I

quickly discovered from fellow trial lawyers that I had received training on par or even better than top notch ABA-accredited schools.

The flexibility of the Oak Brook College of Law's program allowed me to work full-time in New York and Virginia while studying. The business skills that I learned during this time have contributed to my ability to begin a successful law firm. Since I was able to work during my years in school, I obtained my law degree debt-free and had the liberty to accept an unpaid internship as my first position with the Kern County District Attorney's office. Through that position at the age of twenty-three I was hired as the youngest deputy DA in the history of the office. Had I attended a traditional law school, I likely would not have had such freedom of pursuit through lack of financial burdens.

Adoption of the Wisconsin Rule would allow people like me to pursue their dream of practicing law. I believe that you will find the graduates of Oak Brook to be extremely gifted, diligent, and ethical in their practice of law in your state. The nature of a study program that requires a considerable amount of studying alone requires considerable commitment and character to complete. The proposed Rule needlessly requires graduates of schools not accredited by the ABA to practice for 10 of the prior 13 years before applying to sit for the Minnesota bar exam. Such a practice requirement would limit the effect of amendment to the point of making it nearly useless. Based on my experience, I believe few people have the luxury of moving a practice after ten or more years.

I respectfully urge the Honorable Justices of the Minnesota Supreme Court to reject Rule 20 as proposed by the Board of Law Examiners in their letter dated September 30, 2010.

Very truly yours,

/s/ Seth O'Dell

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STATE OF MINNESOTA

IN SUPREME COURT

Rules for Admission to the Bar

File No. ADM-10-8008

Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

I am an attorney licensed to practice before this Court and one of the petitioners in this matter. I request leave to appear before you on January 26, 2011 based on the following written statement.

Since petitioning this Court on April 29, 2009, I have been admitted to practice law in Minnesota, but I continue to support my fellow petitioners in seeking the relief stated in the petition.

I would like to share with the Court my personal story and legal career. In the end, I hope to show why this Court should reject the Board's proposed changes to Rule 4A (3) of the Rules of Admission to the bar and, instead, adopt the rule my fellow petitioners and I asked this Court to consider for the following reasons:

1. **Current Rule (and the proposed changes) Comes at Prohibitive Cost to Applicants**

I have been committed to law and the legal profession since my initiation into the profession back in Kenya. Because I could not sit for the bar examination despite an LLM from William Mitchell College of Law and being licensed in New York State, I enrolled at Hamline University School of Law, one of the local ABA-accredited law schools. After satisfying the requirements, I graduated with a J.D. degree, took the bar and was admitted this past May. This process added over $75,000 to my student loans. While I enjoyed my

experience at Hamline, the cost of getting to where I am today far outweighs the benefits. For example, mandatory first-year courses at Hamline – Torts, Contracts, Constitutional Law and Civil Procedure – cost me more than $36,000 in tuition. The curricular content of these courses was for me, a re-review of basic principles of law that I first encountered at the University of Nairobi in early 1991. Thereafter, I have had opportunities to review these courses during my studies at William Mitchell. I found no substantive differences between those required for a JD and my studies in Kenya or at William Mitchell.

2. The Board Proposal Sweeps Too Broadly and Ignores Applicants' Skills that Are Recognized Elsewhere.

I came to Minnesota having already been qualified and licensed to practice law before the High Court of Kenya. As an Advocate of the High Court of Kenya, I have had audiences before courts in the United Kingdom, Australia, Canada and other Commonwealth countries. Neither that license nor my LLM from William Mitchell College of Law suffices under Rule 4A(3). Thereafter, I took and passed the New York bar exam on the first attempt. I maintain both the Kenyan and New York licenses, remain in good professional standing and am not a subject of any complaints or disciplinary action. Under current and proposed rules, those accomplishments are insufficient to sit for the Minnesota bar exam.

The Board is wrong to dismiss my qualifications and background which other states such as New York have recognized. For one, New York conducts an extensive background check and requires an equivalency evaluation of non-ABA candidates. Only upon being satisfied that I had adequate educational preparation did New York permit me to take the bar exam. As with many aspects of law, comity is important. Comity should have allowed the Minnesota Board of Law Examiners to recognize New York's review of my education and experience sufficient for me to sit for Minnesota's bar examination.

2. Our Proposal Is Modest, Reasonable and Demonstrably Works

Under our proposal, only those applicants licensed to practice law in another U.S. jurisdiction will be eligible to sit for the Minnesota bar exam. In essence, we are asking the Court to add a couple more seats each year to the exam room. Our petition proposes no changes to any other requirement.

As professionals, we consider our proposal reasonable both in scope and taking into account the need to protect public interest. Few licensed lawyers would willingly subject themselves to a repeat bar exam. Having taken three of them now, I can confidently make this assertion.

Our petition seeks only to have this Court adopt the Wisconsin Rule. In 1998, the Supreme Court of Wisconsin adopted a rule similar to our proposal. Over 10 years later, the sky has not fallen, the public has not been overrun by incompetent lawyers and the legal profession has not collapsed in Wisconsin. In fact, there is evidence to the contrary. For example, by 2008, only 26 applicants had taken advantage of the rule and sat for the State's bar exam. Of the 22 who are currently licensed, none have faced disciplinary action. If the rule works for Wisconsin, there is no reason why it could not in neighboring Minnesota.

3. Minnesota Is My Adopted Home

Finally, my family and I are grateful for the welcome and opportunities we have found in Minnesota. We have established a business, bought a home, educate our eldest son in a great school and even enjoy winter now! After nearly 13 years in Minnesota, I cannot imagine living anywhere else. I live in Brooklyn Park with my wife Dorothy (a registered nurse at a local major hospital system) and our two sons, Baeddan (6) and Lawrren (1). My boys enjoy playing in the snow and only rarely visit Kenya. Minnesota is truly our home. For this reason, I am committed to my community and would do all I can to make it better than I found it.

Since 2003, I have owned and operated a small consulting firm in St. Louis Park. Over 75% of our clients are immigrants, small businesses and non-

profits. Prior to being licensed to practice law in Minnesota, many of my clients lacked funds to obtain culturally competent and affordable legal representation. As a consequence, many face such hazards as preventable deportations, tax audits and other challenges arising from being in a new land. I now offer pro bono legal services through community organizations, LegalCORPS and the Immigrant Law Center of Minnesota.

Like others in this predicament, I considered moving to another state. But I could not bring myself to do so. If I were to move, I would lose my network of relationships – both personal and business. My wife loves her job at the hospital, my sons love their schools and I would rather not start all over with a new business venture in another state.

I urge the Court to reject the Board's proposal as burdensome, and out of touch with the realities of otherwise competent legal practitioners like my co-petitioners.

Date: December 27, 2010.

Respectfully submitted,

/s/ Henry Mokua Ongeri
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December 21, 2010

Minnesota Supreme Court
c/o Frederick Grittner, Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155.

Re: File No. ADM-10-8008
Associated with ADM-10-8027
Formerly 98C5-84-002139

Dear Honorable Justices of the Minnesota Supreme Court:

I urge the Court to 1) adopt the Wisconsin Rule requested by the four licensed lawyers who petitioned this Court on April 29, 2009, and 2) reject the petition filed on September 30, 2010 by the Minnesota Board of Law Examiners regarding licensed lawyers sitting for the Minnesota Bar Examination.

Distance learning is not merely an adequate substitute for traditional law school. It brings unique advantages that can accelerate a lawyer's professional development in today's changing world. Following is how it did so for me.

I graduated from a distance learning law school, Oak Brook College of Law, in 2003. It was an affordable, enjoyable, and realistic experience. Oak Brook provided flexible distance learning anchored by intensive on-site classes, a teaching perspective informed by real-world practitioners (every professor practices law), and an extraordinary level of intra- and inter-class support. It also allowed me to spend more time on the ground in law firms. That exposure to practice substantially illuminated my formal legal training.

Upon graduation I took and passed the California Bar Exam on my first try, as did most of my classmates. Our group of Oak Brook first-time takers in February 2003 achieved 82% – better than any ABA group except three top California schools (Berkeley, Stanford, and UCLA). Upon admission I was at age 23 one of the five youngest lawyers in California. In addition to being admitted to various federal courts, I have also been admitted on motion to the District of Columbia Bar, the second-largest bar in the nation.

Because distance learning is affordable, I graduated without any debt and had the chance to devote a substantial amount of my time to public interest, government, pro bono, and other lesser-paying pursuits that brought a great deal of non-monetary enrichment to me and others that would otherwise have been missed. Since graduating seven years ago, I have made over a hundred court appearances; handled every stage of practice from transactional counsel to pre-litigation counsel, pleading, discovery, motions, trial, and appeal; third-chaired a fraud jury trial where we achieved a $1.2 million judgment; successfully resolved a variety of civil cases;

externed for a federal circuit court judge; handled pro bono civil rights cases that have made national news; and built an enjoyable small firm practice that doesn't usually make much news but handles the every-day legal needs of regular people without the pressure of school debt affecting my charges.

To keep overhead low, my practice applies the same technologies that made modern distance learning possible. I rely on a network of classmates across the nation to get work done. We don't use law libraries; we use Lexis/WestLaw and Google. We don't usually send paper letters; we send emails. We don't have to file paper briefs; we upload PDF's to ECF.

The last two decades have fundamentally changed the world's means of information exchange. Law practice has embraced this change. I respectfully suggest that bar admission standards should too.

I urge this Court to adopt the Wisconsin Rule advocated by four lawyers whose character and credentials have been recognized by California and New York.

Sincerely,

Christopher J. Schweickert, Esq.
CA SBN 225942
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STATE OF MINNESOTA
IN SUPREME COURT

Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

My fellow petitioners and I demonstrated that classes with online learning produce stronger results than classes with solely face-to-face instruction.[1] This is consistent with numerous academic studies and my own experience. Moreover, it is one of the reasons for this Court to reject the transparently anti-competitive recommendation of the Minnesota Board of Law Examiners that licensed lawyers accumulate 10 years of work product and pay an exorbitant fee and, instead, adopt the original petition of the four licensed lawyers that this Court modify and modernize its rules to allow, as Wisconsin and the majority of other states have, an alternative path toward licensure. I continue to support the original recommendation because technology makes for better education, as described below, and better education contributes to the making of better lawyers.

I was first introduced to distance education over ten years ago and have experience in a number of online and correspondence systems. I earned my high school diploma, paralegal diploma, and two bachelor's degrees through distance education. I earned my JD through a blend of distance and face-to-face instruction. I have also taken and passed a number of graduate level courses through distance education and served as a tutor for distance students at various undergraduate and graduate levels. Thus, I respectfully submit this analysis regarding distance education, both in general and specifically as a method of legal education.

[1] Petitioners' Response to the Minn. Bd. of Law Examiners' Report and Recommendation on July 30 at 7.

Distance education constitutes a growing market. In 2006-2007, 66% of traditional accredited colleges offered distance learning courses. By 2010, that number had grown to more than 85%. Online course enrollments have been and are continuing to grow much faster than residential or campus enrollments - 16.9% growth compared to 1.2%, respectively, in 2008.[2] Even Ivy League universities such as Columbia, Cornell and Harvard now offer extensive online programs. Graduate and postgraduate studies are available via distance.

The success of distance education is attributed to any number of factors, the most obvious being that current technology enables it. Taking internet and telephone communications into account, many Americans today communicate more across distance than face-to-face. Corporate use of software tools such as GoToMeeting and WebEx enable a complete audio/visual back-and-forth across multiple locations. While the mesh of culture and technology is not anything close to "location-free," communication and transmission of data across distance is continuing to flourish. Thus, it is no surprise that distance education is so rapidly growing.

However, technology only accounts for the "how" of distance education. The vital question is, "why?" The potential market for distance education is not limited to the market for traditional education - it is much larger. Because of the flexibility of time and place, people who would otherwise be too busy or too far away to attend a college or university can participate, learn, and earn credit without substantial disruption or change in lifestyle.

It is true that the low cost of distance education draws many who could not or would not pay the ever-increasing cost of traditional education, but this seems less of a factor when considering that nearly half of all full-time undergraduate college students attend a four-year

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[2] Sloan Foundation's *Learning on Demand: Online Education in the United States, 2009* at 1. http://sloanconsortium.org/publications/survey/pdf/learningondemand.pdf (last visited 12/10/10).

college that has published charges of less than $9,000 per year for tuition and fees[3] and the average cost at two-year colleges is less than $3,000.[4] In fact, colleges often charge more for courses taken through distance than on-site.

Ultimately, saying distance education is continuing to grow because it offers students education at a distance, at lower cost, or with less of a time commitment would all be a gross over-simplification. Indeed, the vital element of the distance education formula is *adaptability*. While traditional education conjures up the image of a room full of students listening to a professor's lecture, distance education tends to be a highly personalized experience. In other words, the student chooses how to learn. The system of self-study allows students with specific learning modalities (i.e. visual, auditory, and kinesthetic/tactile) to use resources tailored to them. Also difficult to implement in a traditional education setting is accelerated learning. Classes in traditional education, and even throughout most of distance education, are on fixed timelines. Assignments are due on particular dates, the final examinations are set for particular days and times, etc. regardless of each student's individual ability or schedule. With credit-by-examination, however, a student may study one week and take a three-credit examination the following week. Through accelerated distance learning, it is possible for a student to complete a four-year bachelor's degree program in less than a year.

Far from being a "wild frontier," colleges offering distance education are accredited by the same agencies that accredit traditional schools. In America, the gold standard in undergraduate accreditation is regional accreditation, which refers to six accrediting agencies -

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[3] The College Board, *What It Costs to Go to College*. http://www.collegeboard.com/student/pay/add-it-up/4494.html (last visited 12/10/10).

[4] *Id.*

each covering a different geographic region of the United States.[5] Each of these agencies is considered equal and grants full reciprocity to the others. This applies to both traditional and distance schools. For example, Harvard University is accredited by the New England Association while the University of Phoenix is accredited by the North Central Association.

There are many other accrediting agencies - some for specific fields, such as business or nursing. There are also national accrediting agencies, such as the Distance Education & Training Council. Policing the accrediting agencies are the U.S. Department of Accreditation and the Council for Higher Education Accreditation (CHEA), a national, non-governmental association of over 3,000 degree-granting institutions that recognizes over 60 accrediting organizations.[6] "In order for accreditation to have any meaning, it is important that your online college's accrediting agency be recognized by the Council on Higher Education Accreditation (CHEA) or the U.S. Department of Accreditation."[7]

Therefore, in terms of measurable quality, distance education and traditional education are held to the same standards and scrutiny.

The most substantial threat to the legitimacy of distance education is the advent of so-called "diploma mills": organizations awarding academic degrees with little to no academic study and without recognition by official education accrediting agencies. Such organizations often create their own accrediting agencies for credibility purposes, but these agencies are not recognized by the U.S. Department of Accreditation or CHEA. Diploma mills typically offer

[5] These agencies include 1) Middle States Association of Colleges & Schools, 2) Northwest Commission on Colleges & Universities, 3) North Central Association of Colleges & Schools, 4) New England Association of Schools & Colleges, 5) Southern Association of Colleges & Schools, and 6) Western Association of Schools & Colleges.

[6] CHEA, *Accreditation Serving the Public Interest.* http://www.chea.org/pdf/chea_glance_2006.pdf (last visited 12/10/10).

[7] GetEducated.com, *Distance Learning, College Accreditation & Online Degrees: The Facts.* http://www.geteducated.com/diploma-mills-police/college-degree-mills/203-what-is-online-college-accreditation (last visited 12/10/10).

degrees based on "life experience," but amount to nothing more than old fashioned scams in the eyes of the public, specifically targeted at the ignorant and those who do not anticipate their credentials will ever be vetted. GetEducated.com offers an online service, *The Diploma Mill Police*, to inform the public about such organizations.[8]

In spite of diploma mills continuing to muddy the waters, public acceptance of distance education is on the rise thanks in large part to the accreditation process and the quality of distance education graduates. In fact, many schools do not distinguish credits earned on-campus from those earned through distance on transcripts. For example, the Harvard Extension School "does not distinguish between on-campus and distance students; thus, the transcript does not specify if a course is completed via distance education or not."[9]

Distance education is ubiquitous in nearly all levels of higher education, from undergraduate to masters and doctorate levels. Professional education programs for medical and law students have been slow to accept distance learning - due in large part to licensing agencies such as the American Bar Association, which only allows for a maximum of 12 credit hours to be earned through distance learning in a Juris Doctorate program.[10]

There is a growing body of evidence that distance learning has a positive effect on legal education. Specifically, as detailed in Petitioners' Response to the Board of Law Examiners' Report and Recommendation on July 30, 2010, Petitioners reviewed the empirical data regarding distance education and the nature of distance education as applied in law schools.[11] According to

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[8] *See* http://www.geteducated.com/diploma-mill-police (last visited 12/10/10).
[9] Harvard University Extension School, *Frequently Asked Questions: What does the transcript say?* http://www.extension.harvard.edu/DistanceEd/faqs/#transcript (last visited 12/10/10).
[10] *See ABA Standard 306(d).*
[11] Petitioners' Response, at 6-9.

the U.S. Department of Education, the data show that classes with online learning produce stronger results than classes with solely face-to-face instruction.[12]

The Response also drew attention to the fact that much of the modern American practice of law, including legal research, the filing of documents, etc., is already being conducted across distance. This is very different from the practice of medicine, for example, where doctors must *physically* interact with patients. Therefore, in examining the issue of distance education law schools, the question must be asked, "What skills, abilities, or knowledge must a competent lawyer learn in law school that cannot possibly be instilled across distance?" Even the Board's Report in the present matter could not point to any.

Rather, the question is whether there is some benefit—definable or indefinable—to face-to-face instruction in law that is lost over distance; any benefit so vital to lawyer competency that it should be required by licensing agencies. If the history and nature of distance education are any indication, the answer must be "no." As noted in the Response, common sense dictates "the competence of every law student and lawyer depends far more on individual character than any external variable."[13]

/s/ Micah Stanley
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[12] *See* Petitioners' Response, at 7.
[13] Petitioners' Response, at 9.

STATE OF MINNESOTA
IN SUPREME COURT

Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

My name is Thomas Walker. I am 53 years old and a tribal member of a federally-recognized tribe, the Picayune Rancheria of Chukchansi Indians. Additionally, I am a descendent of non-federally recognized tribes of Dummna, Pitcatchee, Gashau, and Mono ancestry.

I am also a fourth-year law student at Oak Brook College of Law.

I write in support of the petition filed by four licensed lawyers in 2009 to change one of this Court's administrative rules. The petitioners' proposed rule will allow lawyers licensed in other states who graduated from non-ABA-accredited law schools to take the state's bar examination and apply to become licensed to practice in Minnesota.

Oak Brook has afforded me the opportunity to study law and brought me to the verge of taking the California Bar Exam in 2012. It is an opportunity I do not take lightly. I appreciate the door being opened after early experiencing so many significant obstacles.

Poverty troubled my early life in California, as central and northern California tribes experienced the termination of status in a failed policy intended to improve our lives. So I did what many of our people chose to do and joined the United States military. I faithfully served four years in the Navy. My purpose was two-fold. Not only did I want to patriotically serve my country but, like many, I also wanted to avail myself the opportunity to attend college. Thinking I could, I declined an offer to re-enlist. However, I knew nothing about the fine print of the Veterans Enlisted Educational Assistance Program (VEAP) of the 1970's. The program's aid was limited to $200 a month for full-time studies and $100 a month for part-time studies and that money would be deducted from eligibility to obtain non-veterans grant money.

My experience with the VEAP was a real and personal example of how lack of knowledge forfeits a desired outcome. For people of my tribal and heritage background, the lack of knowledge continues to detrimentally hold us back. Prior to our contact with non-indigenous cultures, we had no concept of private property, one of the bedrocks of non-indigenous cultures. But these different concepts of law and justice are not one of the biggest hurdles to advancing today in our country.

One of the biggest challenges is the access to quality education. This is a complex issue and there are many examples of the problem. But most relevant to what is before this Court is the incremental cost of attending a law school accredited by the American Bar Association. That added cost limits opportunities for many.

Minnesota is in the minority of states that requires applicants for licensure to attend only ABA-accredited law schools. Your rules close doors to qualified institutions that the State of California has determined offer education sufficient to produce skilled attorneys. Those institutions are less expensive and offer opportunity unavailable elsewhere to me and people like me.

Poverty among Indian tribes is not unique to California. Minnesota tribes beyond the two tribes closest to the Twin Cities suffer from poverty. It is not this Court's responsibility to solve these ancient problems but it is within the Court's power to create opportunity and to help tribal members realize dreams of practicing law in your state.

I paid my dues both patriotically and literally, as I have served my country and continue to work while attending law school. I am going to make it; I have no doubt. Yet I recognize that one of the remaining inequalities for people of my background are unnecessary and arbitrary barriers into professions, like the one in Minnesota, to practice law for their community. I know there is a better way and I hope, as Justices of the Supreme Court of Minnesota, you will knock this wall down that separates lawyers from practicing in the state where they wish to serve their fellow Minnesotans.

Respectfully,

/s/ Thomas Walker
Thomas Walker
Oak Brook College of Law
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(559) 650-7755

Office of Professor William Wagner

STATE OF MINNESOTA
IN SUPREME COURT
Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

In re: *Petition to amend to the Rule Regulating Qualifications to Sit For the Minnesota Bar Examination filed by Four Licensed Lawyers*

Dear Honorable Justices of the Minnesota Supreme Court:

My name is William Wagner. I currently serve as a tenured Professor of Law at an ABA-accredited law school. Prior to my academic appointment I served as a legal counsel in the United States Senate; senior Assistant United States Attorney in the Department of Justice, and United States Magistrate Judge in the United States Courts.

I write in support of the petition filed with this Court by four licensed lawyers in 2009.

Over the years I have had the opportunity to evaluate the legal capabilities of thousands of law students and lawyers. Some of these individuals received their legal training at top- ranked and lesser-known ABA-accredited law schools. Others received their legal training from non-traditional/non-ABA accredited law schools.

In the latter category, a number of impressive individuals come to mind. Always prepared, these individuals displayed excellent analytical abilities and a clear, effective style of writing. More importantly though, these individuals possessed many of the moral qualities to which our profession ascribes, yet too often falls short of reaching. Always considering ethical implications, they continually impressed me with their high level of personal integrity and good character.

To be sure, I have worked with some remarkable students and lawyers from ABA-accredited law schools as well. As a lawyer and a judge though, I also had enough disappointments over the years to conclude that graduation from an ABA-accredited school provides little, if any, measure of how capable or ethical a lawyer will be in the actual practice of law.

If individuals graduating from non-ABA law schools possess the moral character and fitness for the practice of law, along with the legal ability to pass the state bar exam, what governmental interest possibly exists to justify Minnesota denying them the opportunity?

None. The only interest that seems to emerge from the non-politically accountable bar is one that reeks solely of economic protectionism – a wholly improper objective.

For the above reasons, the Court should modify the Rules for Admission to the Bar as set forth in the Petition by the four licensed lawyers in April 2009.

Sincerely,

/s/ William Wagner

William Wagner
Professor of Law

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7 December 2010

STATE OF MINNESOTA
IN SUPREME COURT

Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

I write to update this Court on the recommendation that my fellow petitioners and I made in 2009 urging the Court to adopt the "Wisconsin Rule" and request leave to make an oral presentation on January 26, 2011 based on this written statement.

Twelve years ago, the Wisconsin Supreme Court enacted a rule change similar to the rule proposed originally by my fellow petitioners and me. Since 1998, attorneys who graduate from non-ABA accredited law schools but who are licensed to practice law in another jurisdiction have been allowed to take Wisconsin's Bar Examination.

Wisconsin's change prompted some uproar 12 years ago, as has the current proposal before this Court, but after more than a decade the change adopted in Wisconsin has proven to be rather unremarkable. Wisconsin's latest data show that only 32 lawyers, or less than three per year, have taken advantage of the changed rule and sat for the State's bar examination. Of those who took the exam, 28, or 88% passed it, a higher rate than graduates of accredited schools. Although statistically small, none of the 28 lawyers admitted under the Wisconsin Rule has been disciplined.

Clearly, the water has been tested in Wisconsin and found to be potable. In fact, the process works quite well: The public is protected, the quality of lawyers admitted has not suffered, and opportunity and employment have increased. Moreover, the process has allowed for graduates of non-ABA accredited law schools admitted in Wisconsin to reach heightened levels of responsibility including an Outagamie County circuit judge, a district attorney, and a state public defender.

My own experience evidences the fact that hard-working attorneys can provide valuable service to the public once they are admitted under the Wisconsin Rule. I graduated from Oak Brook College of Law in 2001, took the California July Bar Examination and passed the Bar on my first attempt. I was admitted to the California Bar in 2002. Subsequently, I applied to take Wisconsin's Bar Examination in July 2002. I learned that my score on the Multistate Bar Examination was sufficiently high that I would be required to take only one day of essay examinations instead of the standard two-day bar examination generally administered. I passed Wisconsin's Bar Examination and was admitted to that State's Bar in December 2002.

My qualifications have never been questioned in the professional realm of practicing law. The facts that I am admitted to the California Bar, the most difficult in the nation to pass, and hold active licenses have not only prepared me to produce quality legal work but also allowed me to earn the respect of my colleagues and clients. My character and my high work ethic standard have similarly gained the respect of those with whom I have worked.

In responding to the original petition by four licensed attorneys, the Minnesota Board of Law Examiners has the burden of proving why Minnesota is so different from Wisconsin that this Court should not adopt Wisconsin's rule. The Board fails to even attempt to identify and explain such a difference. Instead, the Board's counterproposal implies that crossing the St. Croix River from Hudson is a debilitating experience whereby one's qualifications are mystically reduced and one's character vanishes upon landing in Stillwater. Just as none of the 28 attorneys who have passed the Wisconsin bar examination have been disciplined, I will maintain the same outstanding educational foundation as when I took both the California and Wisconsin Bar Examinations. I am committed to ethically serve clients and the judicial system as my character will not change.

Moreover, the Board's counterproposal offers a rule requiring, among other things, evidence of ten years of work experience before I can sit for the bar examination. This offers no incremental opportunity at all. It is curious that the Board of Law Examiners proposal does not intentionally review the experience of the Wisconsin Court.

Another effect of the Board's proposal, while probably inadvertently imposed, the rule proposed by the Board of Law Examiners has the effect of restricting the diversity and minority base of the Minnesota Bar. It is well recognized that women and racial minorities are more greatly impacted by financial inequities and educational opportunities. Adopting the Wisconsin Rule would allow these groups to take advantage of alternative

educational experiences—without sacrificing educational quality—and increase the diversity and minority base of the Minnesota Bar.

I respect the Board, its distinguished members and its mission. But given the membership and that mission, it makes it all the more curious that in response to this Court's plain direction to suggest a reasonable proposal, the Board has instead offered a process that is not only unworkable and unreasonable, but arguably downright silly. The belief that ten years of practice in Wisconsin, subject to a painstaking and discretionary review of substantial work products from each of ten years, is necessary before a lawyer happily practicing in our neighbor state can be deemed minimally worthy even to sit for the Minnesota bar is unreasonable and impracticable. One can view this as a somewhat exalted view of Minnesota's superior lawyer milieu, but it looks to be—with all due respect to the Board—a non-proposal proposed in response to this Court's order. It is the functional equivalent of a "just say no" approach to a modest change of the existing rule. It appears, unfortunately, to be yet another example of how rules and traditions, long in place, resist change and acquire an almost religious significance.

Respectfully submitted,

/s/ Valarie L. Wallin
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STATE OF MINNESOTA
IN SUPREME COURT

Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

I write to this Court respectfully requesting that it adopt the rule originally proposed by four licensed attorneys in their petition in 2009 and that it reject in full the counterproposal of the Minnesota Board of Law Examiners.

My name is Lael Weinberger. I graduated from Oak Brook College of Law in December 2009. Oak Brook has been a pioneer in distance learning for legal education. I chose Oak Brook's program because of (1) the opportunity to gain a quality legal education, (2) the fact that I could get a legal education without debt, and (3) the flexibility it gave me to work, write, and pursue projects on the side that I very likely would not have been able to do at a traditional law school.

First, the feedback that I have received from others gives me no reason to doubt that I received a quality education. Having friends and coworkers who have attended a variety of traditional law schools, I do not feel that I am in any way lacking in my educational preparation for the practice of law due to the different course of study that I pursued.

Contrary to common misconception, the distance learning format is not an impersonal means of education—at least, it certainly was not in my experience. Thanks to the use of various forms of communication technology, along with the in-person classroom experiences Oak Brook creates during intensive seminar courses, I developed

close relationships with many of my professors and classmates. Distance learning is being successfully used by numerous academic institutions for education in a wide range of disciplines. I have not seen any reason that law should be excluded from this advance in educational methodology and technology.

Second, I was able to graduate without debt. That has given me a measure of financial stability and freedom that I greatly appreciate and do not take for granted; I am aware that many attorneys do not attain this for a number of years after graduation.

Third, my legal education gave me the opportunity to gather a range of extracurricular experiences. During law school, I was a student editor of the college's law journal and worked for a general practice law firm as a law clerk. I served as a contributing author to several chapters of a forthcoming treatise on corporate law. Before I was done with law school, I had also published three law review articles (in the law reviews of ABA-accredited law schools).

I believe that I was well-served by my legal education. Upon graduation, I passed the California bar examination in February 2010 and was sworn in as a member of the California bar. I was hired for the position of law clerk to Chief Justice Daniel Eismann on the Idaho Supreme Court, a position that I currently hold. I have also continued to write and publish on legal subjects. Another law review article that I authored is in press. I contributed a chapter on American legal history to a book, *Jurisprudence of Liberty*, an academic work edited by legal philosophers and published by LexisNexis. Other projects in the works include a coauthored article on church-state law in the U.S. and Australia, a coauthored book on church-state relations, and the first detailed historical article on the Illinois bar admissions procedures.

Successfully navigating the non-traditional educational path is in many ways a test of self-motivation and ability to manage many tasks at once. I have sought to pursue excellence in this effort. I believe that those who have successfully persevered through law school via a non-traditional path, and have passed the bar examination in California or in another state in the U.S., have just as much of a chance to succeed in the practice of law as a graduate of the traditional law schools that the ABA approves and accredits.

The people of Minnesota are the ones who lose out if qualified individuals continue to be prohibited from practicing law in your state. Only the original proposal from four licensed attorneys presents the means to modernize this Court's rule to reflect the reality of today's distance learning education, and to correct the anachronistic futility defended by the Board's counterproposal that changes nothing.

Sincerely,

/s/ Lael Weinberger
Lael Weinberger
451 West State Street
Boise ID 83702
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December 19, 2010

STATE OF MINNESOTA

IN SUPREME COURT

Rules for Admission to the Bar

File No. ADM-10-8008

Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

I write to urge this Court to adopt the petition filed in 2009 by Micah Stanley and three other licensed lawyers requesting a change in this Court's administrative rules to allow lawyers licensed in other states who graduated from non-ABA accredited law schools to sit for Minnesota's bar exam and apply for licensure.

My name is Scott G. Wood. I reside in Glenview, Illinois. For the past 25 years, I have been a Consultant, Coach and Senior Executive working with businesses, business owners, and individuals in the analysis and enhancement of financial, operational and personal performance.

I had the pleasure of working with Micah Stanley when I was the Assistant Managing Director of an international management consulting firm. Micah reported directly to me. Micah's responsibilities included negotiating and writing settlement and arbitration resolutions, reviewing client consulting files and evaluating compliance with company policies and working agreements, directing document production for both state and federal litigations, creating comprehensive client case files, as well as drafting numerous internal and external corporate and legal communications.

Micah's work ethic was impeccable and created a positive influence on his co-workers. One of Micah's strengths was his attention to detail, but he also had the ability to quickly grasp the complexity of the macro picture. His writing and communication skills were professional beyond his years. His dedication to learning and his determination to achieving the highest levels of quality in all of his work are evidence of his strong character.

I believe his skills, intuitive nature, respect for others and unwillingness to compromise his values will be the foundation of a long and successful career. I am very pleased to recommend Micah Stanley for any opportunity that requires superior intelligence, strong work ethic, honesty and a conviction for doing the right thing.

In closing, I respect Micah for who he is and what he has the ability to become, and I believe he holds himself to a high standard worthy of this Court's consideration.

Respectfully,

/s/ Scott G. Wood

Scott G. Wood

December 9, 2010

STATE OF MINNESOTA
IN SUPREME COURT
Rules for Admission to the Bar
File No. ADM-10-8008
Formerly 98C5-84-002139

To the Honorable Justices of the Minnesota Supreme Court:

I support this Court's adoption of the Wisconsin Rule advocated by four licensed lawyers. I attended and graduated from both a distance-based law school in California and an ABA-accredited law school in New Jersey. My experiences may give this Court insight into why it should adopt the Wisconsin Rule.

When I was considering law school, I was married, had four children, a full time job and significant budget constraints. I decided to attend a distance-based law school because it fit well with my work schedule and limited budget.

After my first year of study, I took California's First Year Law Student's Exam (FYLSX) that is administered by the State Bar to any student attending non-ABA-accredited law schools. I passed the exam, known as the "Baby-Bar" because of the excellent preparation and teaching I had received from Oak Brook. After the exam, I continued my studies and graduated with my JD degree in the spring of 2000. I passed the California Bar Exam in July 2000 and was admitted to practice in December 2000.

While a student, my wife gave birth to a son with a severe birth defect. While I had started with a plan to move to California after law school, my plan was no longer feasible due to the support my wife and I needed to care for our disabled son. That left me licensed as an attorney, but unable to work. I petitioned the NJ bar to sit for the state's bar exam, but was denied. After much consideration, and due to a change in my employment unrelated to my legal education, I decided to attend an ABA law school.

I was accepted at Rutgers University – School of Law (Camden, NJ). The school recognized the equivalent of a year and a half of credits from Oak Brook. I received my JD degree in January 2004. I sat for the bar exam in Pennsylvania and New Jersey in February 2004 and was admitted to practice in both states in the spring of 2004.

It is this history that makes me able to speak to the comparison of legal education at a distance-based law school and an ABA-accredited law school.

There is no significant difference in the quality of education. I took Torts and Professional Responsibility at both schools. My Torts professor at Rutgers was instrumental in ensuring that I received the maximum possible credits because of ***his***, not my, evaluation of my prior education. In fact, he thought it was unnecessary to repeat the class but the dean had already ruled otherwise.

Sitting in front of a professor in a classroom at an ABA-accredited law school was not always conducive to receiving a quality legal education. Many professors lectured on pet subjects allowing the students to learn the core elements and important cases on their own. In fact, many professors at Rutgers did not require attendance. In comparison the distance learning model focused on the core areas. The professors were readily available for me and interactive when I needed guidance.

At Rutgers, I was a commuter student. I did not gain any exceptional benefit from interaction with other students. In many ways, I was connected more to my classmates during my distance-based learning. We discussed via telephone, email or other means topics that were of interest or that we were exploring. The interaction and discussion were spirited. The relationships that were developed during that time have continued as friendships to this day.

I had access to Rutgers' full library, which I utilized only once for an assignment to familiarize myself with the library. After that, I did my research on the Internet. Today, my work as a practicing lawyer continues to bear that out. Books are rarely used, so that not having them at a distance-based school was not a detriment to my legal education but good preparation for how most lawyers work.

After graduation from Rutgers, I clerked with the New Jersey Office of Administrative Law. Next, I worked at Dechert, a large international law firm. I started as a staff attorney. The skills used in that job were obtained not from my ABA education but from my education at Oak Brook. My bosses at Dechert recognized my legal training, willingness to work hard and actual work. I was quickly promoted to senior staff attorney. During that time I managed a group of staff attorneys and contract attorneys in facilitating the regulatory aspect of a $3.6 billion transaction.

I was recruited to join the in-house staff of one of Dechert's clients. I now work as Assistant General Counsel for Golden Living, a national health care provider. The legal skills that I use on a daily basis are rooted in my education at Oak Brook. While my time at Rutgers was mostly positive, ultimately it was simply a costly and unnecessary burden put on me by New Jersey's Supreme Court. I was thoroughly prepared by my education at Oak Brook to face the challenges of the real world practice of law. The benefits of studying at an ABA-accredited law school did not exceed the incremental costs of tuition and delayed employment. Attending an ABA-accredited law school should not have been a requirement for me to take New Jersey's bar exam.

It should not matter what road one takes to gain knowledge of the law; it should only matter that one have mastered it sufficiently and demonstrated that mastery by passing a bar examination.

/s/ Hudson L. Vanderhoof
2031 Glassboro Cross Keys Road
Williamstown, NJ 08094-3328
December 22, 2010

OFFICE OF
APPELLATE COURTS

DEC 27 2010

FILED

STATE OF MINNESOTA
IN SUPREME COURT

ADM10-8008

HEARING TO CONSIDER PROPOSED AMENDMENTS
TO THE RULES FOR ADMISSION TO THE BAR

STATEMENT OF MINNESOTA STATE BAR ASSOCIATION
RULES OF PROFESSIONAL CONDUCT COMMITTEE
AND REQUEST FOR ORAL PRESENTATION

I. INTRODUCTION

Pursuant to the Court's October 26, 2010, Order, the Minnesota State Bar Association's Rules of Professional Conduct (RPC) Committee submits this written statement to comment on the proposals from the Board of Law Examiners to amend the Rules for Admission to the Bar. Specifically, the RPC committee presents comments regarding proposed Rule 20, permitting graduates of non-ABA approved law schools to sit for the Minnesota Bar Examination, and regarding the amendments to existing Rule 7A, amending the definition of the practice of law as an applicant's "principal occupation" during the years prior to an applicant's request for admission on motion.

With this statement, the undersigned also requests the opportunity to appear on behalf of the RPC committee to address the Court at its January 26, 2010 hearing.

A. Background of the RPC Committee's Consideration of the Admission Rules for Graduates of non-ABA accredited law schools.

In April 2009, four individuals petitioned the Minnesota Supreme Court for an amendment to the Minnesota Rules for Admission to the Bar to permit the admission to the Minnesota bar of a candidate who has not graduated from a law school accredited by the American Bar Association (ABA) but who has taken and passed the bar examination in another jurisdiction. The Minnesota Supreme Court directed the Minnesota Board of Law Examiners (MBLE) to study the issue and make a

recommendation to the Court. After a lengthy and thorough review process, MBLE recommended against permitting a graduate of a non-ABA accredited law school, who is admitted in another jurisdiction, to gain admission to the Minnesota bar solely by written examination. MBLE asked the Court to consider whether the additional requirement of successfully practicing law in another jurisdiction "for a substantial number of years" would be sufficient to offset the lack of a law degree from an ABA-accredited school.

The MSBA Rules of Professional Conduct Committee has considered this issue on multiple occasions since 2008, when the issue was directly presented to our committee by the proponents of the proposed rule. The committee also had an opportunity to meet with MBLE's executive director and representatives of the four ABA-accredited law schools in Minnesota. Following study of the issue, our Committee suggested to MBLE that the Admission Rules be amended to permit a graduate of a non-ABA accredited law school to apply for a law license in Minnesota by combining two of the current paths for admission to the bar, i.e. by combining the procedures for admission on examination and admission on motion, such that an applicant who has successfully practiced law in another jurisdiction for five of the last seven years would be allowed to sit for the Minnesota bar examination, and if successful, to be admitted to practice in Minnesota. Our committee recommended that the petition be otherwise denied.

In August, 2010, the Supreme Court considered the MBLE report and directed the Board of Law Examiners to submit a proposed rule to the Court that would permit a lawyer who is a graduate of a non-ABA accredited law school, but who has successfully practiced law in another American jurisdiction for a substantial number of years and is otherwise qualified, to sit for the Minnesota Bar Examination and, if successful, to be admitted to practice in Minnesota.

In response to the Supreme Court's order, the Board of Law Examiners has prepared an additional report and a proposed a new Rule 20. The rule would, as requested, permit a lawyer licensed in another jurisdiction who is not a graduate of an ABA-accredited law school to apply for and, if successful, sit for the Minnesota bar examination.

B. Summary of Proposed Rule 20

The following are the material provisions of the Board's proposed Rule 20, which would require an applicant to meet the following requirements:

1. The applicant must possess a bachelor's degree from an educational institution accredited by an agency recognized by the United States Department of Education. *See* Proposed Rule 20(A)(1).

2. The applicant must have received a Juris Doctor degree from a law school located within the United States or its territories. *See* Proposed Rule 20(A)(2).

3. The applicant must have received a scaled score of 85 or higher on the Multistate Professional Responsibility Examination. *See* Proposed Rule 20(A)(3).

4. The applicant must possess license in good standing to practice law in a state or territory of the United States or the District of Columbia. *See* Proposed Rule 20(A)(4); Rule 2(A)(7).

5. The applicant must provide evidence showing that the applicant has been engaged full-time and as a principal occupation in the lawful practice of law in a United States jurisdiction for at least ten of the thirteen years immediately preceding the application. *See* Proposed Rule 20(B)(1).

6. The applicant must submit examples of legal work prepared by the applicant during at least ten of the thirteen years immediately preceding the application. *See* Proposed Rule 20(B)(2). The work must 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.

   b. detailed narrative statement describing the type of practice or the positions the applicant held during the period when the work product was created; and the extent to which persons other than the applicant drafted or edited any of the submitted work product.

7. The applicant must submit a fee of $1,500. *See* Proposed Rule 12(O).

The rule provides that the applicant shall have the burden of proving that she or he possesses sufficient legal practice and other experience to sit for the Minnesota Bar Examination. *See* Proposed Rule 20(C). Following receipt of the application, the Board would undertake a review of the applicant's legal work product, practice, and experience. The rule provides that the Board be given "broad discretion" to determine whether the evidence submitted by the applicant establishes that the applicant has "sufficient legal proficiency" to sit for the bar examination. *See* Proposed Rule 20(D). The rule permits the Board to obtain "expert review" of the applicant's work product at the applicant's expense (presumably in addition to the $1,500 fee). *Id.*

If the Board determines that the applicant meets its standards for legal proficiency, the applicant will be authorized to sit for the Minnesota bar examination within eighteen months following the date of authorization. *See* Proposed Rule 20(E). If the applicant achieves a passing score on the examination, the Board shall make a determination about the applicant's character and fitness to practice law. If the board determines that the applicant possesses good character and fitness it will recommend the applicant to the Minnesota Supreme Court for admission to the bar.

II. DISCUSSION

The proposed rule raises significant questions about what the appropriate substitute is in the bar admission process for graduation from an ABA-accredited law school. The MBLE proposed rule suggests that the proper substitute is to double the

number of years of practice required (as compared to applications for admission by motion (without examination) under Rule 7), specify that the law practice experience must be full time, and review a sample of the lawyer's work product. The MSBA Rules of Professional Conduct Committee writes to express its concern with each of these provisions in the proposed rule.

A. The Requirement that the Applicant Have Practiced Law in Ten of the Previous Thirteen Years is Unnecessarily Onerous.

Under the current Rules for Admission to the Bar, a lawyer licensed in a jurisdiction other than Minnesota, who graduated from an ABA-accredited law school, may apply for admission to the Minnesota bar if the lawyer has "engaged, as principal occupation, in the active lawful practice of law" for at least five of the past seven years. *See* Rule 7(A), Minnesota Rules for Admission to the Bar. Proposed Rule 20 would require a graduate of an unaccredited law school to demonstrate that he or she had engaged in the practice of law for ten of the last thirteen years. The RPC Committee believes that this requirement is more onerous than is necessary to establish competency to sit for the Minnesota bar examination.

The reports that MBLE has submitted to the Court do not explain why imposing a practice requirement of ten of the last thirteen years is more likely to ensure competency to practice than the existing five of seven years requirement for admissions on motion. According to MBLE's June 30, 2010 Report and Recommendation, of the fifteen states permitting graduates of non-ABA-accredited

schools to sit for examination if they meet an additional practice requirement; only one state sets that requirement at ten-of-twelve years. *See* MBLE Report and Recommendation, Exh. B. The next longest practice requirement is five-of-seven years; six states impose only a three-of-five years practice requirement. *Id.* It appears that most other states that have considered this issue have not felt compelled to impose as lengthy a practice requirement as MBLE recommends.

MBLE's Response to the Court's Order (dated September 30, 2010) (hereafter "MBLE Response") explains that the practice requirement must be sufficiently "substantial" to stand in place of ABA accreditation. It is not clear, however, how MBLE concluded that ten years of practice is qualitatively different than five years of practice, or how the lengthier period of practice is related to the type of legal education the lawyer received. Indeed, MBLE's very thorough Report and Recommendation does not cite any data analyzing the correlation between the source of a law degree, bar exam passage, and competency to practice law. Our committee recognizes that this may be because such data does not exist.

The Committee is also concerned that the ten-of-thirteen years of practice requirement would disqualify many applicants who take leaves of absence for childrearing or military service, not to mention placing at a disadvantage lawyers who have been laid off from law firms, corporate legal departments or government positions because of lack of work, budgetary restrictions, or other factors unrelated to

their competency to practice law. In addition, the rule may have an adverse affect on the mobility of lawyers who pursue law as a second career later in life.

MBLE asserts that the proposed rule would not disqualify an applicant who has taken a leave of up to three years during the relevant practice period. MBLE Response, at ¶20. The penalty for a longer practice hiatus is severe: a lawyer who has not practiced for more than three years during the thirteen-year period must essentially start over and accumulate ten years of experience from the date the lawyer returned to practice. In other words, a lawyer who practiced for eight years and then left practice for four years, would have to practice another ten years before becoming eligible for admission under this rule, despite having practiced for eighteen of the previous twenty-two years. The RPC Committee finds the years of practice requirement unnecessarily burdensome on the applicants that the proposed rule is meant to serve.

B. The Amendment from "Principal Occupation" to the "Full-Time Practice" of Law is Too Restrictive.

In conjunction with proposed Rule 20, the Court is also considering MBLE's September 15, 2010 Petition to amend the language in Rule 7(A)(3) that describes the type of law practice that allows a lawyer licensed in another jurisdiction to move for admission in Minnesota without examination. This amendment would affect all lawyers licensed in other jurisdictions who seek admission to the bar in Minnesota, including lawyers who graduated from ABA-accredited law schools.

The current rule allows out-of-state lawyers to qualify for admission in Minnesota if they have been "engaged, as principal occupation, in the active and lawful practice of law" for five of the past seven years. *See* Rule 7(A)(3); Petition, at ¶3. MBLE states in its Petition that it has determined that this provision should be interpreted as meaning the full-time practice of law, which MBLE asks the Court to codify as 130 hours a month. Petition, at ¶5. This translates into 30 hours per week.

The RPC Committee cannot comment on the manner in which the practice requirement has been interpreted by MBLE in the past because admissions decisions are private matters that are not publicly reported. Nevertheless, it seems likely to our Committee that there are many attorneys who work less than full-time without any impact on their competency. Many government attorneys, in-house corporate attorneys, law firm associates and partners, legal services attorneys, and other attorneys work fewer than 30 hours per week without sacrificing their competency to practice law.

Indeed, such flexibility in working hours and schedules has been the focus of past and on going bar association efforts to improve the experience of women in the practice of law. The Self-Audit for Gender Equality (SAGE)(2003), compiled by the MSBA's Women in the Legal Profession Committee, identifies offering "equitable and viable alternative part time and flexible work schedules" as a best practices goal

for Minnesota law firms.[1] In 1993, the Hennepin County Bar Association Glass Ceiling Task Force Report recommended that legal employers "provide flexible benefit programs and flexible work schedules for lawyers," and noted that

> Further, to the extent such programs are used, the organization must support the employee against unfair charges of special treatment or lack of commitment. <u>It does no good to have such programs if people are fearful that their careers will be damaged by participation.</u> . . . What [women] may need most is a workplace that recognizes and respects the need for such flexibility.

HCBA Task Force Report, at 42 (emphasis added).[2] At least in Minnesota, such flexible work schedules, including part-time schedules, have become commonplace. *See* MSBA, Self-Audit for Gender and Minority Equity, at 52-53 (Sept. 2006).[3] While we have not researched the progress made in other states in gender fairness, it is unlikely that Minnesota is alone in this trend. The RPC Committee believes that the MBLE amendments to this rule may undermine efforts over nearly twenty years to encourage legal employers to address gender disparity by offering lawyers flexible work schedules while potentially penalizing lawyers who have taken advantage of those alternatives.

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[1] Available at www.mnbar.org/committees/women-in-profession/sage-best-practices.pdf (last viewed Dec. 20, 2010).

[2] Available at www.hcba.org/UserFiles/File/pdfs/Programs/Diversity/GlassCeilingReport1993pdf.pdf (last viewed Dec. 20, 2010).

[3] Available at www.mnbar.org/committees/DiversityTaskForce/Diversity%20Report%20Final.pdf (last viewed Dec. 20, 2010).

In addition, the proposed amendment to Rule 7(A)(3) speaks only to lawyers who work in an employment setting that is measured by the number of hours they report to an employer each week. The proposed rule provides little assistance for evaluating the work of solo and small firm practitioners, who comprise the majority of practicing lawyers in the United States. *See* American Bar Association, Lawyer Demographics (2009).[4] It is not clear whether the amended rule would require that the lawyers record 30 hours a week of billable time, whether the administrative and marketing requirements of operating a law firm would be included in the 30 hours a week, or whether attendance at Continuing Legal Education courses and other practice-related tasks would be included in the calculation. Lawyers whose practices operate predominately on a contingent or flat fee basis often eschew time-keeping. Similarly, the ups and downs of a law practice may not fit neatly into an hours-per-month model, despite the lawyer being actively engaged in the practice of law as a principal occupation.

The proposed amendment too strictly construes the concept that a lawyer licensed in another jurisdiction (whether the lawyer attended an ABA-accredited or an unaccredited law school) may demonstrate competency only through the "full-time" prior practice of law in another jurisdiction. The Committee recommends that the

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[4] Available at http://new.abanet.org/marketresearch/PublicDocuments/Lawyer_Demographics.pdf (last viewed Dec. 19, 2010).

Court reject the proposed amendment to Rule 7(A)(3) and retain the requirement that an applicant engage in the practice of law as a "principal occupation" for purposes of admission on motion.

C. The Review of Applicants' Work Product is Not Likely to Further the Court's Interest in Assuring Competency to Practice.

Proposed Rule 20 requires that graduates of non-ABA-accredited law schools submit "a representative compilation of the applicant's legal work product" produced during each of ten of the thirteen years immediately preceding the application. Petition, at ¶¶15, 22. The MBLE's stated rationale is reasonable: to devise some substitute for the rigorous standards imposed upon ABA-accredited law schools, so as to assure the Court, the bar, and the public that lawyers being considered for admission to the bar in Minnesota will be competent. Although the goal is laudable, the RPC Committee has identified several concerns with this proposal.

The proposal relies on a basic assumption that the "practice of law" can be defined in a way that makes it possible to reduce to a verifiable common denominator whether an applicant has successfully engaged in that practice in another jurisdiction for the requisite period. The problem is, of course, that the "practice of law" is as protean a concept as can be imagined. It embraces the traditional private practice of law (and its own infinite variety) as well as public sector practice, which can include service as a public prosecutor, handling civil suits, advising an agency as an "embedded" lawyer, drafting legislation, counseling a legislative body, or serving as a

neutral. Work as an in-house corporate lawyer may include a variety of roles including handling civil litigation, providing compliance advice, conducting internal investigations, and managing external litigation. A lawyer's practice could be devoted solely to processing claims or supervising other lawyers. A rule that turns on a lawyer's ability to provide written evidence of her work may be impossible to apply fairly to all types of law practices.

Furthermore, in many practice settings, much of a lawyer's work product is a collaborative effort. Some examples include preparing a securities registration statement, a bond indenture, a negotiated contract, an appellate brief, or an estate plan. More often than not, an individual lawyer's work product consists of contributing to a written document that is a modification of a prior work –perhaps of that same lawyer but also of the lawyer's predecessors– that is edited, supplemented, and revised by others before it is put into final form. It seems unlikely that MBLE could discern what portion of the work product could be attributed to the particular lawyer-applicant.

Similarly, the nature of a lawyer's work product itself may make it difficult for a third party to evaluate. Most states' confidentiality rules, including Minnesota, do not provide any exception for disclosing client confidential information for the purpose of a bar application to another state. *See* Minnesota Rules of Professional Conduct (MRPC), Rule 1.6. Setting aside obvious problems of attorney-client privilege and confidentiality, it is not clear how MBLE could determine that a marital termination

agreement represented the best outcome for a particular client, that all the appropriate provisions were included in a commercial lease, or that an estate plan properly carried out the testator's wishes.

Indeed, there are some practice settings where a competent, in fact, outstanding lawyer might generate little or no meaningful written work product. A trial lawyer, civil or criminal, frequently depends on her or his ability to "think on her/his feet," depending on others to do the preparatory work, such as drafting the jury instructions, trial briefs, and verdict forms necessary to try a case. Is that person unqualified to practice law if she or he rarely prepares a brief or other submission longer than 3-4 pages?

In addition, if the object is to determine if an applicant is *presently* qualified for admission to practice, it is not clear what the justification would be for requiring the submission of work product that is up to thirteen years old. Such work product would show the level of the applicant's skill and analysis thirteen years ago, at a time when the applicant would not have been eligible to apply for admission on motion even if she had graduated from an ABA-accredited school. Moreover, the requirement that the applicant produce work product from each year of practice for ten years, perhaps designed to be comprehensive or to test the depth of the applicant's experience, places a disproportionate emphasis on what the lawyer did many years ago rather than the work the lawyer is capable of producing at the time of admission. Further, lawyers frequently do not take their work product with them when they leave an employer

and many files more than six years old may be destroyed in the ordinary course of business.

From the perspective of the lawyer discipline system, competency is less often a concern than the ability to manage a law practice, which deficiencies are a frequent cause of lawyer discipline. The admissions process for graduates of unaccredited law schools would be better served by requiring additional references and devoting available MBLE resources to interviewing those references regarding a lawyer's competency and ethical conduct rather than attempting to evaluate written work product.

In the RPC Committee's assessment, the written work product requirement is cumbersome, unnecessary, and in many cases unrealistic. It places a substantial burden on the applicant and on the MBLE's staff. If the assessment is to be done by MBLE Board members themselves, it is even more onerous. If a "written work product" requirement is to be imposed, it should be limited to a relatively small number of recent examples. Perhaps a requirement of a number of total pages could be imposed, with the applicant able to supply work with a series of short pieces instead of one or two magnum opuses.

MBLE, in making its character and fitness determinations, relies on evidence from others. The applicant for admission is required to list references, people with a knowledge of the applicant's character and fitness. In the RPC Committee's assessment, the same process should be used to measure whether an applicant who

has graduated from a non-ABA accredited law school has demonstrated the ability to successfully practice law in another jurisdiction.

Toward this end, an applicant should be required to list a meaningful number of other people who have been in a position to observe the work of the applicant and assess and describe whether the applicant has the knowledge, analytical skills and character to successfully practice law. The application form should specify that the observers identified by the applicant can be supervisors, adversaries, subordinates, judges, administrators, court clerks or even law partners. If the applicant has been in private practice, the applicant's legal malpractice insurer should be a source of information. Since the bar disciplinary authority in the jurisdiction where the applicant has practiced will be contacted to determine whether the applicant has experienced disciplinary problems, an inquiry can be made as to whether issues have been raised as to the applicant's competence. The important criterion is that references be able to provide information about the applicant's legal work. MBLE staff, it its vetting of the applicant, should communicate directly with each person designated, both in writing and by telephone or in person to obtain a confidential assessment of the applicant's work and character.

III. CONCLUSION

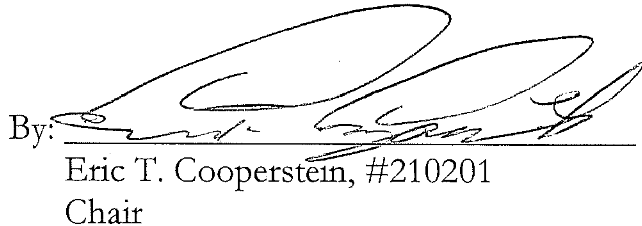
In reviewing proposed Rule 20 and the amendments to Rule 7(A), the RPC Committee has not taken lightly the gravity of the task assigned to MBLE: to devise a method of admission to the bar for lawyers lacking a qualification that, until now, has

been immutable and still carry out MBLE's mission to ensure that the public is protected from incompetent lawyers. Nevertheless, the RPC Committee believes that the present proposals are so restrictive that they risk preventing most or all such potential applicants from successfully applying for admission to the bar in Minnesota. The RPC Committee recommends to this Court that the years of practice requirement be reduced to five of seven years, that the work product requirement be curtailed or eliminated, and that the Court deny MBLE's request to amend the language of Rule 7(A)(3).

Respectfully submitted

MINNESOTA STATE BAR ASSOCIATION
RULES OF PROFESSIONAL CONDUCT
COMMITTEE

Dated: Dec. 23, 2010



By: ______________________

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Chair

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13 January 2011

OFFICE OF
APPELLATE COURTS
JAN 18 2011
FILED

Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

Re: File No. ADM-10-8008

Dear Mr. Grittner:

I write to comment on the proposed Rule 20 language submitted by the Minnesota State Board of Law Examiners (File No. ADM-10-8008); the Minnesota Supreme Court will have a hearing on the proposed Rule 20 on 26 January 2011. I appreciate that my comment is beyond the date established for comments, but I did not become aware of the proposed change and hearing until recently. I hope you will accept my comment.

Specifically, I request that the Court and the Board consider extending the scope of acceptability for admission further by removing the Board's requirement that the applicant graduate from a law school located within the United States. Alternatively, I would ask that the rule allow a petition for admission for candidates with outstanding credentials under exceptional circumstances.

While the proposed language takes an important step toward making it possible for graduates of non-ABA-accredited law schools to practice in Minnesota, it would exclude some talented and highly accomplished attorneys. This, in turn, would have adverse consequences for Minnesota and the quality of the Minnesota Bar. It is with reference to one such attorney, JaneAnne Murray, that I respectfully submit this request.

I bring this request in my capacity as Chair of the Department of Political Science at the University of Minnesota. We are attempting to recruit JaneAnne Murray's spouse, Professor Howard Lavine, to join our faculty as the Arleen Carlson Professor of Political Psychology. Professor Lavine is a leading scholar, currently on the faculty of the State University of New York, Stony Brook. If he were to join our faculty he would greatly strengthen our interdisciplinary program in Political Psychology, transforming what is already a highly esteemed program into arguably the best in the world. This is a fabulous opportunity for the Departments of Political Science and Psychology of the University of Minnesota and, in turn, the state of Minnesota. Professor Lavine wants to accept our offer,

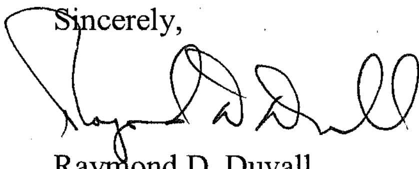
however he is reluctant to do so because his spouse, JaneAnne Murray, cannot be a candidate for practicing law in this state.

JaneAnne Murray received her Bachelor of Civil Law (B.C.L.) degree with First Class Honors (1st in the class of 70) from the University College Cork, Ireland, in 1989, and her Master of Laws (LL.M.) degree with First Class Honors (4th in the class of 160) from Cambridge University, England, in 1990. After graduating from Cambridge she was admitted to the bar of New York and joined the firm Paul, Weiss, Rifkind, Wharton, and Garrison LLP, in New York as a litigation associate. In 1993, she became a trial attorney for the Legal Aid Society of New York, initially in the Criminal Defense Division (1993-95) and then in the Federal Defender Division for the Eastern District of New York (1996-2001). In 1999, she took leave from her position in the Federal Defenders Office to serve as provincial advisor with the United Nations High Commissioner for Human Rights in Cambodia. From 2001 to 2005, Ms. Murray held the position of litigation counsel at O'Melveny & Myers LLP in New York. Since 2005, she has had her own practice, Murray Law LLC, New York. She has tried more than twenty jury trials as lead counsel, and has argued before New York state appellate courts and the United States Court of Appeals for the Second Circuit on several occasions. Ms. Murray is in excellent professional standing with the New York Bar and is currently a member of the Board of Directors of the New York State Association of Criminal Defense Lawyers and a member of the Criminal Law Committee of the New York City Bar.

In spite of her impressive resume, Ms. Murray would not be allowed to practice law in Minnesota under the current or Proposed Rule 20 because she did not graduate from a law school located within the United States. She has an impressive record as a practicing attorney in the New York state and federal justice systems and should have the opportunity to practice law in Minnesota. I certainly understand and respect the need to protect the public in this state, and, accordingly the necessity for the Board and the Court to maintain high standards of admission to the Minnesota Bar. However, exclusion based on solely geographic location of law school, as would occur in Ms. Murray's situation, is unnecessary to further this goal. The requirement is unwarranted based on the order of this Court and unfortunate when it has the effect of making it impossible for someone of JaneAnne Murray's ability and professional standing to practice law in Minnesota.

Thank you for considering this request.

Sincerely,



Raymond D. Duvall
Morse-Alumni Professor and Chair of the Department of Political Science.

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APPELLATE COURTS
JAN 27 2011
FILED

STATE OF MINNESOTA

IN SUPREME COURT

Rules for Admission to the Bar

File No. ADM-10-8008

Formerly 98C5-84-002139

SUPPLEMENTAL PUBLIC COMMENT BY ROGER J. MAGNUSON

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

At yesterday's hearing, the Court asked if Jane-Anne Murray would qualify under the Minnesota Board of Law Examiners' proposal for a ten-year practice requirement. I ask this Court for the opportunity to supplement my answer at the hearing, which I recall was, "I'm not sure she would."

Because Ms. Murray did not graduate from an undergraduate institution recognized by the U.S. Department of Education, the answer is no. Neither her B.C.L. from University College, nor her First Class Honours L.L.M. From Cambridge University, would suffice.

The same would be true of Catherine Kemnitz, whom I mentioned in my written submission and who was present in Court yesterday. Because the University of Paris is, like Cambridge University, not sufficient to satisfy the BLE's standard, and because her L.L.M. from NYU is not a first law degree, she cannot sit for the bar here, nor get "credit for time served" under the BLE.

This relates as well to the Court's inquiry about the wisdom of a requirement for a four-year undergraduate degree, generally. We believe a revised rule requiring a

four-year undergraduate degree is an unnecessary complication to the Wisconsin rule and duplicative of California's regulation.

The ABA itself does not include such a requirement in its standards. Section 502 (a), ABA Standards for Approval of Law Schools (2009-2010), permits a law school to require only three years of undergraduate education. And even this is not a firm requirement. Rule 502 goes on to say, in part (b), that schools may admit students who do not have a four-year undergraduate degree if the applicant's "experience, ability, and other characteristics" clearly show an aptitude for the study of law. The admitting officer is required in such instances to sign and place in the admittee's file a statement of the considerations that led to the decision to admit the applicant.

The State of California has created, and rigorously enforces, an extremely detailed regulatory environment for schools like Oak Brook, and its standards for admission requirements are not far different from those of the ABA. It requires two years of undergraduate work or the equivalent as demonstrated in the College Level Examination Program. This is true of other professional programs in California. Stanford, for example, allows its students to forego the full undergraduate program at Stanford if they are accepted into the Stanford Medical School. Wisconsin, in the spirit of comity, looks to the undergraduate and other requirements of the state in which the law school is located.

Going beyond what Wisconsin has done, by explicitly requiring more than either the ABA or California does, is an unnecessary complication and undermines the

recognition of alternative paths to initial competency that is at the heart of the petitioners' efforts.

I hope this is a useful addition to the Court's considerations.

Dated: January 27, 2011

Respectfully submitted,

Roger J. Magnuson
625 Park Avenue
Mahtomedi, MN 55115
Minnesota Bar No. 0066461