STATE OF MINNESOTA

In Supreme Court

FILE NO.

In re: Amendment to the Rule Regulating Qualifications to Sit for The Minnesota Bar Examination.

PETITION OF FOUR LICENSED ATTORNEYS

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

At a critical moment of the civil rights struggle to open doors of opportunity, Senator Everett Dirksen announced his intention to vote for the Civil Rights Act of 1964 by saying, "no one can stop an idea whose time has come." It was time for the law to catch up with the times and more perfectly embody the American ideal of equal opportunity.

A different type of change has swept away shibboleths about effective educational methods with similar implications for expanding opportunity. Rapid developments in new information technology, most notably the microchip and the Internet, have created new ways "to get there from here." Traditional colleges and universities, whose unchallenged bloated budgets have caused tuition to spiral out of control at a pace far exceeding inflation and the ability of students and their families to pay for the education without incurring an enormous weight of debt, have been forced to adapt to the changing times by launching distance learning programs if they want to survive in the current

economic environment. More efficient, more cost-effective, and indeed more provably productive education has been the result.

In the wake of these developments, well-intentioned but increasingly archaic rules and restrictions have not caught up. Rules for admission to take bar examinations are a prime example. A creature of the 1920s, requirements in most states that an applicant taking the bar must have gone to a law school approved by the American Bar Association, no matter how intelligent or learned in the law the applicant might otherwise demonstrate himself or herself to be, was itself a change to centuries of admission practices that sought to verify that an applicant to the bar had learned the law, not the method he or she had chosen to learn it. Most "read law" with an experienced practitioner as did, for example, Abraham Lincoln. The attempt in the 1920s to force all who wanted to practice law through one funnel seemed a reasonable way to ensure uniformity and professionalism.

As is typical with well-intended rules, they become dogma. The focus shifts from the purpose of the rule, to have adequate assurance of a qualified practitioner, to the almost religious sanctity of the rule itself. Resistance to its increasingly archaic restrictiveness in light of a new and progressive learning environment seems heretical. Any proposed change is open to the charge, at least from those born after the 1920s, "we have never done it that way before."

New ideas on educational opportunity cannot be stopped. It does not take a Bob Dylan to tell us the "times they are a'changin'" and even in a profession as restive and resistant to change as the law, some very modest changes in admission practices can

provide new opportunities for highly qualified applicants, without any sacrifice of the quality, indeed potentially an enhancement of that quality, which is the purpose of the current requirements.

Petitioners are four attorneys licensed by the states of California or New York.[1] They respectfully ask this Court to adopt the proposed amendment to Rule 4(A) of the Rules for Admission to the Bar as set forth in its current version in Exhibit A to this petition and insert one phrase—allowing for licensed lawyers from other U.S. jurisdictions to sit for the Minnesota bar examination. A redline version of Rule 4(A) showing the proposed changes is provided as Exhibit B. The proposed amendment would remove an artificial and increasingly archaic barrier to enter the practice of law and increase opportunity by allowing qualified attorneys, already licensed to practice in another U.S. jurisdiction, to sit for the Minnesota bar examination regardless of their law schools' American Bar Association accreditation status. Moreover, the proposed rule change recognizes and addresses the problem of an unchangeable accreditation process that stifles innovation and forfeits opportunities. In support of this Petition, Petitioners would show the Court the following:

1. This Honorable Court has the exclusive and inherent power, as part of its duty to administer justice, to adopt rules of practice and procedure before the courts of this state, to establish the standard for regulating the legal profession, and to establish

[1] One petitioner, Valarie Wallin, is licensed in both California and Wisconsin.

mandatory ethical standards for the conduct of lawyers and judges. This power has been expressly recognized by the Minnesota Legislature.[2]

2. The current version of Rule 4(A) prevents many talented lawyers from sitting for the Minnesota bar examination. By adopting the modest change proposed in this petition, this Court would enrich the state bar by allowing some currently qualified, yet ineligible, licensed lawyers to join the practice of law in Minnesota, and would open the door to other such qualified lawyers in the future.

3. By granting this petition, this Court will increase opportunity for those who do not have the resources, in time or treasury, to sequester themselves within the somewhat inflexible programs of expensive traditional law schools. Technological advances which reduce cost and expand the availability of valid educational alternatives have been increasingly recognized and added in educational programs on all levels and in nearly all fields. Yet the same technology, and accompanying benefits, is largely unavailable in legal education due to the current crabbed accreditation standards.[3]

4. Distance learning is ubiquitous. Once derided as mere correspondence courses advertised in newspapers and in flight magazines, distance learning has been the beneficiary of technological advancements and has taken its place in a variety of disciplines as a bona fide and effective, and often superior, educational alternative. There are more than 2.6 million students enrolled in undergraduate and graduate distance learning programs across the country, and 90% of colleges in America offer distance

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[2] Minn. Stat. § 480.05 (2008)

[3] ABA Standard 306 allows students at ABA-accredited schools to enroll in no more than four credit hours in any term in their second or third year and not more than a total of 12 credit hours toward the J.D. degree.

graduates.[4] Even the venerable University of Oxford, whose founding is often thought to be in the 12th century, offers an online law degree in the form of a part-time, 22-month, distance-education program.[5]

5. Over the last 80 years, more than 350 academic studies have analyzed the effectiveness of alternative modes of education.[6] Overwhelmingly, these studies have shown no significant difference in student performance based on the means of course delivery: whether face-to-face in a classroom setting or via alternative methods at a distance. The medium used in delivering course material does not significantly alter the educational outcome. Modern education can, provably and effectively, leverage technology to meet a student's needs and reduce costs without sacrificing the quality of the education. But legal education wrongly fails to fully embrace technology.

6. Despite the availability and effectiveness of alternate methods of education, current accreditation standards constrict the path to practice to one way, the traditional way, a Conestoga wagon in an increasingly technological age, a way that allows for only minimal use of new technology. Students attending an ABA-accredited law school can earn no more than 12 credit hours total toward their J.D. in distance-learning classes.[7]

7. The cost of legal education is rising. *The Wall Street Journal* reports that tuition growth at law schools has almost tripled the rate of inflation over the past 20

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[4] Amir Efrati, Hard Case: Job Market Wanes for U.S. Lawyers, Sept. 24, 2007 at http://online.wsj.com/article/SB119040786780835602.html

[5] Oxford University, Masters in International Human Rights Law, http://humanrightslaw.conted.ox.ac.uk/MStIHRL/

[6] No Significant Difference, http://nosignificantdifference.wcet.info/index.asp, last visited on April 3, 2009.

[7] ABA Standard 306.

years.[8] The higher costs have caused graduates in 2006 of public and private law schools to borrow an average of $54,500 and $83,200, respectively, each up more than 17% from the amount borrowed by 2002. Today, the average tuition at the four law schools in Minnesota is $27,890. Exhibit C. That includes in-state tuition at the University of Minnesota. The cost increase can be attributed, in part, to existing accreditation standards. The mandatory in-classroom academic requirements, low student-to-faculty ratios, extensive libraries, and large campus requirements all increase the cost of providing, and receiving, a legal education.[9]

8. In contrast, by leveraging existing technology in creative ways, distance education schools have been able to provide a quality education at a fraction of the cost. The annual tuition, for example, at Concord is $9,250 per year[10] and at Oak Brook College of Law tuition is $3,500 per year.[11]

9. The current accreditation standards, while raising costs, do not represent the only means of receiving a quality legal education. This was the position taken by the deans of seven ABA-accredited law schools.[12] In the article, the deans state that, rather than focusing on the adequacy of legal education, current ABA accreditation standards enforce an educational methodology that creates a "one-size-fits-all" model for legal education. While claiming to be the only way to receive adequate legal training, the real

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[8] The average tuition at private law schools nationwide in 2006 was $30,520 per year—an increase of over 170%, not adjusted for inflation, from tuition of $8,225 per year in 1986.
[9] *See*, e.g., ABA Standards §§ 304, 402-2, 606, and 701.
[10] Concord Law School, http://info.concordlawschool.edu/Admissions/Tuition.aspx?ID=Tuition
[11] Oakbrook College of Law and Government Policy, http://www.obcl.edu/programs/jd/admissions.php#tuition
[12] Law School Deans Criticize the ABA, available at http://www.law.northwestern.edu/news/article_full.cfm?eventid=4063 and Exhibit D.

effect of this enforced methodology is increased costs and limited flexibility and innovation in legal education.

10. The inflexible educational methodology imposed by current accreditation standards, with its concomitant increased costs, has closed the door of law schools to many aspiring students of diverse backgrounds. Distance education, with its lower costs and flexible student-centered educational model, has increased opportunity for non-traditional students. In 2007, Concord Law School showed a 34% minority enrollment,[13] compared to the 22% minority enrollment average for students attending ABA-accredited schools.[14]

11. Moreover, the increased debt load of law school students reduces opportunities after graduation. Many newly licensed attorneys are forced to forfeit the idea of working in the non-profit or public service legal fields in order to pay off their student loans. In 2007 the Senate Judiciary Committee considered legislation that would provide a loan repayment program for prosecutors and public defenders.[15] The bill was designed to address the dearth of law school graduates entering legal practice as public servants due to their increased debt loads. In the committee report, Senators Kyl and Hatch evaluated the current status of legal education, and particularly the effect of the ABA accreditation requirement. The Senators concluded that while the proposed bill addressed a symptom—the large debt load of the average law school graduate—it did not address the cause, the ABA accreditation process which raised the costs of attending law

[13] *See,* http://about.concordlawschool.edu/Pages/Concord_Students.aspx
[14] *See,* http://www.abanet.org/abanet/media/release/news_release.cfm?releaseid=87
[15] S. REP. NO. 110-51 (2007)

school. They wrote that, while the bill was beneficial and even necessary in the short term, the long term solution for the legal profession was the removal of the accreditation requirement in legal education. Exhibit E.

12. By adopting the proposed change, this Court will help address, in part, the shortage of lawyers available to meet the demand of members of the public who cannot afford representation. A component of the high cost of representation is the attempt to recover the high cost of attending a traditional law school. Many law students are forced to abandon an initial interest in working for not-for-profit organizations or government because of the oppressive weight of student indebtedness.

13. Petitioners are four attorneys licensed by the States of California or New York.[16] While each had different reasons for being unable or unwilling to attend an ABA-accredited law school, all are qualified and talented attorneys who would enrich the Minnesota Bar. Yet, due to the current admission requirements, none is eligible to sit for the Minnesota bar examination.

14. Valarie Wallin graduated from Oak Brook College of Law and Government Policy, a non-ABA-accredited school in California, in 2001. She was admitted to practice law in California and Wisconsin after passing both states' bar examinations in 2002. Born in Brainerd, Minnesota, Wallin was looking to relocate to the Midwest, originally seeking to practice law in Wisconsin. However, she moved with her husband back to the Brainerd area where she now resides. Wallin chose not to attend an ABA-accredited school because of religious and financial reasons. Wallin is a professor of

[16] One petitioner, Valarie Wallin, is licensed in both California and Wisconsin.

legal writing and research at Oak Brook and wants to practice in Minnesota but is unable to sit for the state's bar examination. If admitted to practice, Wallin intends to focus her practice on family issues. She is passionate about assisting troubled teens and their families and would like to facilitate the adoption process for those teen mothers wanting to have their children adopted.

15. Ian Maitland is a professor at the Carlson School of Business at the University of Minnesota where he teaches business ethics and international business. Maitland is a chartered accountant who holds a Ph.D from Columbia University (1979), a B.A. from Oxford University (1966), and a J.D. from Concord Law School (2005). He is licensed to practice law in California. Maitland chose to pursue a legal education for many reasons, both academic and professional. Yet his teaching schedule in America and abroad prevented him from enrolling in a traditional school. Ultimately, Maitland decided to attend Concord Law School,[17] from which he graduated with honors in 2005. Maitland's depth of knowledge and experience would be an invaluable addition to the Minnesota Bar. Yet, despite his qualifications, the circumstances of his legal training prevent him from even sitting for the state's bar examination.

16. Henry Ongeri immigrated to the United States to fulfill its promise of opportunity. He is licensed to practice law by the State of New York (2006) and the High Court of Kenya (1996). He graduated with honors from the University of Nairobi with a Bachelor of Laws degree in 1995. He also holds a diploma in law from the Kenya School of Law in Nairobi and a Master of Laws in Taxation from William Mitchell College of

[17] *See*, http://www.concordlawschool.edu/

Law in St. Paul. An entrepreneur, Ongeri owns his own firm that consults to African immigrants in the Twin Cities on issues of business and taxation. He previously worked as a tax accountant for U.S. Bancorp in St. Paul and, before that, was an associate for a law firm in Nairobi. Although able to practice law in Kenya and New York, Ongeri cannot gain a license in Minnesota. Consequently, despite Ongeri's relationship of trust and respect with his clients, he must refer them to other attorneys when they need legal advice. Ongeri's ability to effectively meet his clients' needs is impaired and the situation results in additional time and expense to his clients who often do not have great resources. With a license to practice law in Minnesota, Ongeri will better serve the needs of immigrant and minority clients. Ongeri has spent the last 10 years in Minnesota, raising a family, starting a successful business, working in the community, and becoming a valuable addition to the Twin Cities. Moving to another jurisdiction, even one as close as Wisconsin, where Ongeri would be allowed to sit for the bar examination and practice law, is a daunting task. The cost and logistics, not to mention the loss of friends and business contacts, are prohibitive. Thus, for now, Ongeri remains in Minnesota, competent and qualified, yet unable to practice law.

17. Micah Stanley is a fourth generation Minnesotan with significant ties to the state. Born and raised here, and with the majority of his family and extended family residing in the southern part of the state, his desire to practice law in Minnesota is understandable. However, under the current rules he is unable to even sit for the bar examination. Stanley graduated from Oak Brook College of Law in 2007 and sat for the California Bar that year. At age 19 he became the youngest student to pass the state's bar

examination.[18] Wanting to begin his legal career and yet be closer to home, Stanley spent several months working as the Assistant Director of Legal Services for a major consulting firm in Chicago. But love of family and Minnesota ultimately brought him back here where he has been involved in numerous entrepreneurial and community activities. Stanley is a motivated, hardworking individual willing to think outside the box to accomplish his goals. He would be a valuable member of the state bar, yet the current rules keep this dynamic, qualified, young licensed lawyer from the practice of law in Minnesota.

18. Kent Schmidt is one who got away. He is a licensed attorney in California and partner of Dorsey and Whitney, LLP, working in the firm's southern California office in Irvine. Schmidt, a resident of Illinois, graduated from William Howard Taft University's Witkin School of Law in 1998. After being offered a position as an associate at Dorsey and Whitney, and quickly acquiring a reputation as one of the firm's top young associates, Schmidt was forced to relocate to California as he was ineligible to sit for the Minnesota bar examination. Schmidt has become a highly regarded litigation partner at Dorsey and Whitney and been named a Southern California Rising Star by Southern California Super Lawyers, 2005–2007. A qualified and talented individual, Schmidt would have been a valuable member of the Minnesota Bar, but was forced to relocate to another jurisdiction.

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[18] *See, The California Law Student Journal,* August 2007, available at http://www.clsj1994.com/pdf-issues/August2007Small.pdf.

19. The change that permits a lawyer licensed in another jurisdiction to sit for the Minnesota bar examination is, after all, hardly a radical proposal. Such lawyers can already appear in Minnesota cases pro hac vice, on the typically perfunctory motion of a Minnesota practitioner, and try the most complex case in any of the courts of this state. Indeed, they are routinely admitted to practice in the federal courts of the state in which they are licensed and may practice pro hac vice in every federal court in the nation. They can be admitted to all the federal circuit courts, and, last but not least, can be admitted to practice before the United States Supreme Court. What they cannot do under the current rule, of course, is even sit for the Minnesota bar examination, arguably a somewhat better test of competence than an oral motion by local counsel.

20. The addition of the proposed clause is eminently sensible. While it might be tempting to add additional hurdles for an applicant to clear, a minimum time of practice in another jurisdiction, for example, such hurdles are both unnecessary and unwise. Highly qualified applicants like Mr. Schmidt, a true star at a major Minnesota law firm, who are directed to practice for a year or more in another jurisdiction would almost inevitably never come to sit for the Minnesota bar examination, even if this jurisdiction had been their first choice, as it was with Mr. Schmidt. Once settling into another jurisdiction and, as Mr. Schmidt did, moving family, the need to pull up stakes yet again to come back to Minnesota is decidedly unattractive. Practically speaking, it gives no significant additional measure of competence and it would make the change requested in this petition essentially nugatory and defeat its purpose.

21. Minnesota is in the minority of states that offers no path for graduates of non-ABA-accredited law schools to become licensed to practice.[19] The rule change proposed by Petitioners represents the best solution for increasing opportunity while assuring competency.

22. The proposed rule creates opportunity by opening new paths for graduates of non-ABA-accredited law schools to sit for the Minnesota bar examination. Surprisingly, however, there is not a plethora of new paths. This is because there are only five "entry" states in which a graduate of a non-ABA-accredited school in the United States may sit for an initial bar examination. Four of the five states that allow a graduate of a non-ABA-accredited school in the United States to sit for the bar exam have within their boundaries non-ABA-accredited schools. They are California (39 schools), Massachusetts (2 schools), Alabama (2 schools) and Tennessee (1 school). The fifth, Connecticut, allows graduates of the non-ABA-accredited schools in Massachusetts to sit for its bar examination.

23. Thus, there are only five "entry" states where graduates of non-ABA-accredited law schools in the United States may meet the proposed rule's requirement of passing a bar examination and becoming licensed. In addition, each of those "entry" states only allows graduates of in-state non-ABA-accredited law schools to sit for the state's bar examination. In other words, graduates of non-ABA-accredited law schools in

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[19] *Comprehensive Guide to Bar Admissions Requirements 2009*, National Conference of Bar Examiners and the American Bar Association Section of Legal Education and Admissions to the Bar, available at http://www.ncbex.org/bar-admissions/stats/. Minnesota is one of 19 states that allow only graduates of ABA-accredited schools to become licensed in the state. The other 31 states and the District of Columbia allow licensed lawyers who have graduated from non-ABA schools to take their bar examination.

California can only sit for the California bar examination. Similarly, graduates of non-ABA-accredited law schools in Alabama and Tennessee may only sit for the bar examination in the state where their school is domiciled. Only graduates of the non-ABA-accredited schools in Massachusetts have a choice; they can immediately sit for the bar examination administered in either the Bay State or Connecticut.[20]

24. The state agencies responsible for regulating non-ABA-accredited schools in California, Massachusetts, Alabama and Tennessee have employed extensive reporting and disclosure requirements as part of their states' approval process. The schools in those states operate far from the buyer-beware preferences of devotees of unregulated free markets.

25. The proposed rule maintains the integrity of the legal profession by assuring minimum competency in applicants to the Minnesota Bar. The bar examination in each of the five "entry" states is more difficult to pass than in Minnesota. Whereas the pass rate in Minnesota is 88%, the pass rates are lower in each of the five states for graduates of both ABA-accredited and non-ABA-accredited law schools. Just focusing on the latter, graduates of non-ABA-accredited schools achieved in 2007, the latest statistics available from the National Conference of Bar Examiners, the pass rate is 27% in California, 32% in Massachusetts, 29% in Alabama, 58% in Tennessee, and 27% in Connecticut. Because these passage rates are low, it is clear that the examinations in these states successfully assure minimum competency.

[20] In the 26 other states that allow a graduate from a non-ABA school to sit for their bar examination, the candidate must have passed the examination and have become licensed in one of these five "entry" states -- just as that being proposed herein for Minnesota.

26. Moreover, it is likely that the vast majority of licensed lawyers wanting to take the Minnesota examination will be from California because it is the state with the largest number of non-ABA-accredited schools. There, all the graduates face the requirement of passing the most difficult bar examination in the country. Its passage rate is 36 percentage points lower for graduates of ABA-accredited law schools and 61 percentage points lower for graduates of non-ABA-accredited law schools than the passage rate in Minnesota. There is no tougher screen than the California bar examination.

27. Lawyers licensed in foreign countries have more options to meet the proposed rule's requirement of licensing from another U.S. jurisdiction but not one is easy. The typical means for licensed foreign lawyers to qualify to sit for their initial bar examination in an "entry" state can be characterized as (a) completing 1-2 years of additional education at an ABA-accredited school (12 states); (b) practicing in the foreign jurisdiction that has adopted English common law for a minimum of 3 to 5 years (6 states); or (c) presenting evidence to a state official of educational equivalency to the education received at an accredited in-state school (4 states). Thus, under the proposed rule, there are 22 states that could serve as "entry" states for lawyers licensed in a foreign jurisdiction to meet the first step of becoming licensed in a U.S. jurisdiction. All 22 jurisdictions have significant state-sponsored mechanisms to ensure competency, and additionally all have lower bar passage rates than the rate in Minnesota.

28. The proposed rule minimizes administrational overhead by creating a bright line test. Unlike a waiver program which requires an individual assessment of each

applicant, the State Board of Legal Examiners can determine an individual's eligibility to sit for the bar examination in essentially the same way it does now. In addition, the proposed rule avoids creating a special committee or board to assess the adequacy of each applicant's school.

29. Whereas some might advocate an even broader approach, letting 1,000 flowers bloom, the proposed rule is far more restrictive. That is because it recognizes only five "entry" states for graduates of non-ABA-accredited law schools in the U.S. and 22 "entry" states for graduates of foreign law schools to sit for a bar examination and meet the proposed rule's initial requirements for licensure in another U.S. jurisdiction. These entry states have either tough bar exams or stringent educational equivalency requirements which guarantee the minimum competency of individuals seeking to take advantage of the proposed rule. Thus, making the proposed change would simply allow an alternative path for qualified individuals to sit for the Minnesota bar examination without adding administrative overhead.

30. The rule change proposed by this petition is not new. It has been tried and tested by the State of Wisconsin. 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.[21] Wisconsin's change prompted some uproar ten years ago, but after a decade the change has proven to be rather unremarkable. Only 26 lawyers, or less than three per year, have taken advantage of the changed rule

[21] *In the Matter of the Amendment of Supreme Court Rules: SCR 40.04(1) – Law School Graduation*, Order 97-09, (WI, 1998). *See,* Exhibit F for 10-year comparison of passage rates of Wisconsin's bar examination for graduates of ABA-accredited law schools versus graduates of non-ABA-accredited schools.

and sat for the state's bar examination.[22] Of those who took the examination, 22, or 85% passed it, a higher rate than graduates of accredited schools.[23] Although statistically small, none of the 22 who became licensed has faced disciplinary action in Wisconsin.[24]

For the foregoing reasons, Petitioners respectfully request that the Court modify the Rules for Admission to the Bar as set forth in this Petition and expand opportunity by allowing lawyers licensed in other U.S. jurisdictions to sit for the Minnesota bar examination.

Dated: April 29, 2009

Respectfully submitted,

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[22] Petitioners expect 4 -6 licensed lawyers per year will seek to take advantage of this rule change in Minnesota. This estimate is based on the state of Wisconsin's experience of 2-3 licensed lawyers annually taking that state's examination and the fact that there are roughly twice as many attorneys in Minnesota as Wisconsin.

[23] Comparison of Wisconsin's bar results 1998-2007 from materials published by the National Conference of Bar Examiners. *See,* http://www.ncbex.org/bar-admissions/stats/

[24] Compiled from 2005-2007 reports issued by Wisconsin's Office of Lawyer Regulations. *See,* http://www.wicourts.gov/about/organization/offices/olr.htm

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Exhibit A

Current Rule

Rule 4. General Requirements for Admission

A. Eligibility for Admission. An applicant is eligible for admission to practice law upon establishing to the satisfaction of the Board:

(1) Age of at least 18 years;

(2) Good character and fitness as defined by these Rules;

(3) Graduation with a J.D. or LL.B. degree from a law school which is provisionally or fully approved by the American Bar Association;

(4) Passing score on a written examination or qualification under Rules 7A, 7B, 8, 9, or 10;

(5) A scaled score of 85 or higher on the Multistate Professional Responsibility Examination (MPRE); and

(6) Not currently suspended or disbarred from the practice of law in another jurisdiction.

Exhibit B

Proposed Rule

Rule 4. General Requirements for Admission

A. Eligibility for Admission. An applicant is eligible for admission to practice law upon establishing to the satisfaction of the Board:

(1) Age of at least 18 years;

(2) Good character and fitness as defined by these Rules;

(3) Graduation with a J.D. or LL.B. degree from a law school which is provisionally or fully approved by the American Bar Association or, for graduates of non-A.B.A. accredited law schools seeking admission by written examination, a valid license to practice law from another U.S. jurisdiction;

(4) Passing score on a written examination or qualification under Rules 7A, 7B, 8, 9, or 10;

(5) A scaled score of 85 or higher on the Multistate Professional Responsibility Examination (MPRE); and

(6) Not currently suspended or disbarred from the practice of law in another jurisdiction.

Exhibit C

Annual Tuition Analysis

Full Time Student

ABA Accredited Schools

University of Iowa	(Non-resident)	$	33,526
Saint Thomas		$	32,519
Marquette University		$	31,020
William Mitchell		$	30,650
Drake University		$	28,850
Hamline University		$	28,392
Univ. of Wisconsin	(MN Resident)	$	22,790
Univ. of Minnesota	(MN Resident)	$	20,000
Univ. of South Dakota	(MN Resident)	$	13,487
Average of 4 Law Schools based in Minnes		$	27,890

Non-ABA Accredited Schools			Minnesota Average Compared To Non-ABA Schools' Tuition
Concord		$ 9,250	3.0 times
Wm. Howard Taft		$ 6,000	4.6 times
Oak Brook		$ 3,500	8.0 times

Exhibit D

January 13, 2009

LAW SCHOOL DEANS CRITICIZE THE ABA

By Sherwood Ross

Seven law school deans have ripped the American Bar Association on a variety of accreditation issues, from opposing weekend law schools to imposing rules that suppress minority enrollment to blocking construction of inexpensive law schools.

At a time when law school tuitions at ABA-accredited schools have soared into the $30,000-to-$45,000-a-year range, Kent Syverud, dean of Washington University School of Law in St. Louis, asked his colleagues, "Can we all exist as Ritz-Carlton law schools?" Syverud's challenge was seconded by Richard Matasar, dean of New York Law School, who criticized the ABA for blocking law school initiatives that would drive down students' law school costs.

Another law school official, John Nussbaumer, associate dean of Cooley Law School in Lansing, Mich., said the ABA "fought us every step of the way" when Cooley attempted to start the country's first weekend law school for nontraditional students. "It took us over three years to do so."

Nussbaumer also charged that the ABA fights law schools seeking to open branch campuses. He said besides Cooley, the only other law school granted such permission was Widener Law of Wilmington, Del., "and there has been 17 years in between those two. That keeps the door to legal education closed in underserved geographic regions that are not currently served by an accredited law school."

Nussbaumer said the ABA pressured Cooley into raising its LSAT score requirements so that "our African American enrollment was cut roughly in half." Nussbaumer said Cooley had a five-year battle in which the ABA threatened not to renew its accreditation if it didn't comply.

David Van Zandt, dean of Northwestern University's School of Law in Evanston, Ill., speaking for the American Law Deans Association, said the ABA "***enforces a 'one-size-fits-all' model of legal education.***"

"The ABA standards should permit a law school to pursue its own mission in any way that it deems appropriate so long as it meets the minimum requirements of providing a sound legal education," he said. "ALDA does not believe that the standards should dictate that a law school have a particular mission or provide a legal education in a specified way as long as the legal education that the law school provides is a sound legal education."

Van Zandt said that, besides "restricting how the legal educators in each law school pursue their mission, ***the ABA requirements raise the cost of legal education to our students overall, a matter of great public concern.***"

Joe Harbaugh, dean of Nova Southeastern University Law Center in Fort Lauderdale, Fla., said the ABA's present standards "do not allow very much flexibility for innovativeness on the part of law schools." He said legal educators should be free to "innovate and create so that there are differences between and among schools and progress in education."

Jon Garon, dean of Hamline University School of Law in St. Paul, Minn., said the ABA's accrediting process "makes it difficult for schools to show any independence and creativity" and that the ABA has "driven most creativity out of legal education."

The law deans' complaints appear in the new book, The Gathering Peasants' Revolt in American Legal Education (Doukathsan Press), by Lawrence Velvel and Kurt Olson, dean and assistant professor of law, respectively, at Massachusetts School of Law at Andover, a longtime adversary of the ABA accreditation dominance.

Velvel and Olson write, "The stifling of all missions, but the one approved by the ABA, is, unfortunately, perfectly expectable when there is an accreditation process that focuses on enforcing expensive input requirements instead of on whether schools succeed in teaching the competencies needed by practitioners of law."

The co-authors said the federal Department of Education in Washington, D.C., which has renewed its recognition of the ABA's accrediting role, is "a thoroughly inept federal agency that pays no attention to the fact that the ABA enforces a single, high-cost template on all schools instead of allowing schools to carry out individualized missions, especially a mission to educate the less affluent minorities."

EXHIBIT E

THE VIEWS OF SENATORS KYL AND HATCH ON ABA ACCREDITATION

A summary of a congressional report on the benefits of recognizing alternative legal education

In 2007, The Senate Judiciary Committee considered a bill that would create a student loan repayment assistance program for public sector attorneys. Senators Kyl and Hatch opposed such a bill for the reasons below. The following is an excerpt from the Judiciary Committee's report on the bill in which Senators Kyl and Hatch describe the basis for their position:

While the bill reported by this Committee will help reduce the burden of the heavy law-school student loans borne by many young prosecutors and public defenders, this legislation treats only the symptoms, not the source, of this problem. The source of the problem— the cause of the excessive cost of becoming eligible to practice law in the United States today—was identified in testimony before this Committee by George B. Shepard, an associate professor of law at Emory University School of Law. In his testimony on February 27, Professor Shepard endorsed the John R. Justice Act, but went on to note that:

> we need to recognize that passage of the Act is necessary partly because of the [law-school] accreditation system; without the accreditation system, many more students would graduate from law school with no loans or much smaller ones, so that they would not need to use the benefits that the Act provides. With the accreditation system, the Act will, in effect, transfer much taxpayers' money from the federal government to overpriced law schools.

Professor Shepard went on to describe exactly how the American Bar Association's law-school accreditation rules substantially and unnecessarily increase the cost of becoming eligible to practice law:

> The ABA's accreditation requirements increase the cost of becoming a lawyer in two ways. First, they increase law school tuition. They do this by imposing many costs on law schools. For example, accreditation standards effectively raise faculty salaries; limit faculty teaching loads; require high numbers of full-time faculty rather than cheaper part-time adjuncts; and require expensive physical facilities and library collections. The requirements probably cause law schools' costs to more than double, increasing them by more than $12,000 per year, with many schools then passing the increased costs along to students by raising tuition. The total increase for the three years of law school is more than $36,000.
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> The impact of the increased costs from accreditation can be seen by comparing tuition rates at accredited schools and unaccredited schools. Accredited schools normally charge more than $25,000 per year. Unaccredited schools usually charge approximately half that amount. One example of the many expensive accreditation requirements is the ABA's requirement that an accredited school have a large library and extensive library collection. Insiders confirm that the ABA requires a minimum expenditure on library operations and

acquisitions of approximately $1 million per year. This is more than $4,000 per student in an averaged-sized school.

The second way that the ABA requirements increase students' cost of entering the legal profession is as follows. The ABA requires students to attend at least six years of expensive higher education: three years of college and three years of law school. Before the Great Depression, a young person could enter the legal profession as an apprentice directly after high school, without college or law school. Now, a person can become a lawyer only if she can afford to take six years off from work after high school and pay six years of tuition.

The requirement of six years of education is expensive. The sum of the tuition payments and foregone income can easily exceed $300,000, or more. For example, a conservative estimate is that attending a private college and law school for six years would cost approximately $25,000 per year for a total of $150,000. In addition, let's assume conservatively that a student who could qualify for college and law school would have earned only $25,000 per year if the student had not attended college and law school. The amount of income that the student sacrifices for six years to become a lawyer is $150,000. The total is $300,000.

In addition to the John R. Justice Act, there are two other means by which the problem of the excessive cost of becoming eligible to practice law in this country could be addressed. First, the states themselves could liberalize their law-school accreditation requirements. This would directly reduce the cost of becoming a lawyer in all cases, not just for prosecutors and public defenders. In his February 27 testimony, Professor Shepard recommended that:

the accreditation system's restrictions should be loosened. For example, law schools might be permitted to experiment with smaller libraries, cheaper practitioner faculty, and even shorter programs of two years rather than three, like business school. Or the requirements might be eliminated completely; students without a degree from an accredited law school would be able to practice law.

Removing the flawed, artificial accreditation bottleneck would not in fact be a drastic change, and it would create many benefits but few harms. The current system's high end qualities would continue, while a freer market for variety would quickly open up. To Rolls-Royce legal educations would be added Buicks, Saturns, and Fords. The new system would develop a wider range of talent, including lawyers at $60, $40, and even $25 an hour, as well as those at $300 and up. This would fit the true diversity of legal needs, from simple to complex. With cheaper education available to more people, some lawyers for the first time would be willing and able to work for far less than at present.

The addition of many more lawyers would produce little additional legal malpractice or fraud, and the quality of legal services decline little, it at all. Private institutions would arise within the market for legal services to ensure that each legal matter was handled by lawyers with appropriate skills and sophistication. For example, large, expensive law firms would continue to handle complicated, high stakes transactions and litigation. However, law companies that resembled H&R Block would open to offer less expensive legal services for simple matters. Accounting and tax services are available not only for $300 per hour at the big accounting firms, but also for $25 per hour at H&R Block. The new law companies would monitor and guarantee the services of their lawyer-employees.

Elimination of the accreditation requirement is a modest, safe proposal. It merely reestablishes the system that exists in other equally-critical professions, a system that worked well in law for more than a century before the Great Depression. Business and accounting provide comforting examples of professions without mandatory accreditation or qualifying exams. In both professions, people may provide full-quality basic services without attending an accredited school or passing an exam. Instead, people can choose preparation that is appropriate for their jobs. A person who seeks to manage a local McDonald's franchise or to prepare tax returns need not attend business school or become

> a CPA first. Yet there is no indication that the level of malpractice or fraud is higher in these fields than in law. Likewise, there is no indication that malpractice and fraud were any more frequent during the century before accreditation and the bar exam, when lawyers like Abraham Lincoln practiced. Lincoln never went to law school.

Second, in response to those who have turned to Congress to address this problem, I would note that Congress already *has* acted. It acted in 1868, by enacting the Privileges and Immunities Clause of the Fourteenth Amendment. That Clause was understood at the time of the nation's founding ''to refer to those fundamental rights and liberties specifically enjoyed by English citizens and, more broadly, by all persons.'' *Saenz* v. *Roe*, 526 U.S. 489, 524 (Thomas, J., dissenting)—a meaning that carried over to the Fourteenth Amendment as well, see id. 526—27. Legal scholars and civil-rights organizations such as the Institute for Justice have in the past presented compelling arguments that the fundamental rights and liberties protected by the Privileges and Immunities Clause include a right to pursue a career or profession. And that right is in clear tension with the apparently protectionist nature of the current accreditation regime. As Professor Shepard noted in his testimony:

> Strict accreditation requirements are a relatively recent phenomenon, having begun in the Great Depression. What seems normal now after 70 years was in fact a radical change from a much more open system that had functioned well for more than a century before then. Until the Great Depression, no state required an applicant to the bar to have attended any law school at all, much less an accredited one. Indeed, 41 states required no formal education whatsoever beyond high school; 32 states did not even require a high school diploma. Similarly, bar exams were easy to pass; they had high pass rates.
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> During the Depression, state bar associations attempted to eliminate so-called ''overcrowding'' in the legal profession; they felt that too many new lawyers were competing with the existing ones for the dwindling amount of legal business. They attempted to reduce the number of new lawyers in two ways. First, they decreased bar pass rates. Second, they convinced courts and state legislatures to require that all lawyers graduate from ABA-accredited law schools.

The protectionist nature of the current accreditation regime not only is at odds with the Privileges and Immunities Clause; it also has a disproportionate impact on the very minority groups that the Fourteenth Amendment was originally designed to protect. Several of the witnesses who testified before the Committee emphasized the negative effects that escalating tuition costs have on minority participation in the legal profession and on access to legal services in minority communities. Jessica Bergeman, an Assistant State's Attorney for Cook County, Illinois, stated:

> I truly believe that it is good for the communities of Chicago to see Assistant State's Attorneys of color. Unfortunately, it is often we who are most burdened with educational debt. People like me who are forced to leave the office because they cannot afford to stay cannot be categorized as just a personal career set-back, but rather it has the potential to further the divisions between the prosecutors and so many of the people they prosecute.

Professor Shepard seconded this point in his testimony, noting that ''the system has excluded many from the legal profession, particularly the poor and minorities. It has

raised the cost of legal services. And it has, in effect, denied legal services to whole segments of our society.''

Simple legal planning plays an important role in individuals' efforts to provide for their families, start businesses, and plan for their economic futures. Lower and middle-income citizens' lack of access to legal services makes it more difficult for them to make the informed choices that will improve their lives. And existing law-school accreditation requirements play a significant role in driving up the cost of legal services. Recognizing the significance of these phenomena, the Committee adopted an amendment to this legislation that will require the Government Accountability Office to report to Congress on the impact that law-school accreditation requirements have on law-school tuition, including the effect that the elevated cost of legal services has on members of minority groups.

The bill reported by this Committee addresses a real problem. It is a problem, however, that should also be addressed by other, more direct means.

Exhibit F

WISCONSIN'S BAR EXAMINATION

Comparison of Passage Rates
Graduates of ABA-Accredited Schools v. Non-ABA Accredited Schools

	ABA -Accredited Law Schools			Non-ABA Accredited Law Schools		
	Taking	Passing	Pct.	Taking	Passing	Pct.
2007	329	292	89%	5	5	100%
2006	327	257	79%	2	1	50%
2005	293	225	77%	5	4	80%
2004	255	201	79%	1	1	100%
2003	297	220	74%	0	0	0%
2002	294	218	74%	3	3	100%
2001	305	229	75%	4	3	75%
2000	245	192	78%	1	1	100%
1999	244	215	88%	3	2	67%
1998	288	241	84%	2	2	100%
Total	2,877	2,290	80%	26	22	85%