

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8008



**ORDER REGARDING MINNESOTA BOARD OF LAW EXAMINERS’
COMPREHENSIVE COMPETENCY STUDY REPORT AND
RECOMMENDATIONS**

On June 1, 2023, the Minnesota Board of Law Examiners (Board) filed a report and recommendations outlining the results of a comprehensive study it completed of the Minnesota bar examination and alternative approaches. We opened a public comment period and held a public hearing on October 25, 2023.

After thorough consideration of the proposed amendments and the public comments, and for the reasons explained below, we adopt, in part and as modified, the Board’s recommendations. We accept the Board’s recommendation to adopt the Next Generation of the Bar Examination (NextGen exam), recognizing that details related to implementation remain to be determined. We also create an Implementation Committee to further explore and develop a curricular-based pathway for assessment. Finally, although priority should be given to the curricular-based pathway, we also direct the Implementation Committee to further explore a supervised practice-based pathway for assessment.

IT IS HEREBY ORDERED THAT:

1. The recommendations made by the Board are referred to the Board or the newly created Implementation Committee for further consideration consistent with the accompanying memorandum.

2. Beginning on or before July 1, 2025, and at least annually thereafter, the Board must keep the court apprised as to proposed rule revisions and standard setting, and unless recommended otherwise by the Board, the first administration of the NextGen exam in Minnesota will occur in July 2027.

3. The Implementation Committee shall consist of 25 members, as follows:

- At least two representatives from each of the Minnesota law schools;
- At least two members of the Board of Law Examiners;
- At least one law student;
- Three representatives from the Minnesota State Bar Association, including at least one from greater Minnesota;
- A representative from the Minnesota Disability Bar Association;
- A lawyer licensed to practice law in Minnesota who sat for the Uniform Bar Examination in any state within the last 5 years;
- At least one member of the Lawyers Professional Responsibility Board;
- An expert on alternative pathways to licensure;
- An expert on assessment;
- At least one non-lawyer member of the public; and
- Lawyers licensed to practice law in Minnesota.

Names of all nominees seeking appointment to serve as a member on the Implementation Committee must be submitted by the law school, board, or bar association to the Clerk of Appellate Courts on or before April 5, 2024. Other persons interested in serving on the Implementation Committee must submit a letter of interest, resume, and if applicable, confirmation of an active Minnesota attorney license to the Clerk of Appellate Courts on or before April 5, 2024. The court seeks applicants with diverse backgrounds and experiences including, but not limited to, small- and large-firm practice as well as in-house counsel, lawyers from throughout Minnesota, as well as members of various communities, geographical and otherwise.

4. The Implementation Committee must file its report with recommendations for rule amendments related to an alternative curricular-based pathway for assessment on or before July 1, 2026.

5. The Implementation Committee must file its report with recommendations related to an alternative supervised practice-based pathway for assessment on or before July 1, 2027.

Dated: March 12, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read "Natalie E. Hudson".

Natalie E. Hudson
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8008

MEMORANDUM

PER CURIAM.

The Minnesota Board of Law Examiners (Board) is responsible for implementing measures to ensure the competence of applicants who seek admission to practice law in Minnesota. *See* Minn. R. Admission to the Bar 3B(2). On June 21, 2021, the Board announced that it would undertake a broad, 2-year study to comprehensively review Minnesota's bar examination process. This study analyzed the bar exam itself, as well as alternative models for evaluating competency, including a curricular-based pathway for assessment and a supervised practice-based pathway for assessment.

In October 2021, the Minnesota State Bar Association (MSBA) filed a petition asking that our court appoint a task force to study similar issues. We issued an order denying the petition, pointing to the work the Board was already doing, recognizing the broad input that the Board should be seeking, and encouraging contributions from the MSBA. *In re* Petition of the Minnesota State Bar Association Requesting Appointment of a Task Force, Order, No. ADM10-8008 (Minn. filed Jan. 21, 2022).

The Board sought broad input, and the MSBA, the three Minnesota law schools, and the public were involved in its process. After holding public meetings and soliciting public comment, three working groups with broad stakeholder involvement were created,

with separate working groups 1) looking at the bar exam and the planned move to the Next Generation of the Bar Examination (NextGen exam); 2) exploring a curricular-based pathway; and 3) looking at a supervised practice-based pathway. Each working group recommended that the Board move forward in its respective area. The Board conducted additional public listening sessions and solicited additional written input before issuing its final report and recommendations.

At the conclusion of this process, the Board issued its final report with the following recommendations:

- Recommendation 1: Minnesota should adopt the NextGen exam. Details related to implementation remain to be determined.
- Recommendation 2: The Board will file a petition to propose modest changes to the Supervised Practice Rules.
- Recommendation 3: Create an Implementation Committee to further explore and develop a curricular-based pathway for assessment.
- Recommendation 4: Table the proposal to create a supervised practice-based pathway for assessment, and revisit that proposal following further study and experience with the curricular-based pathway for assessment.

The Board's report is available on the public access site for the Minnesota Appellate Courts, under case number ADM10-8008 – Minnesota Board of Law Examiners Comprehensive Competency Study Report and Recommendations (filed June 1, 2023).

Public comment was broadly in support of the recommendations, with some commentators also urging that the court order the Board to simultaneously continue to actively explore a supervised practice-based pathway, rather than tabling that proposal.

We commend the Board’s work, as well as the contributions by the law schools, the MSBA, and all other interested persons and organizations. For reasons explained below, we adopt the Board’s recommendations—subject to some minor modifications and with one exception—and direct the Implementation Committee to further explore a supervised practice-based pathway for assessment, although the Implementation Committee should give initial priority to the curricular-based pathway for assessment.

BACKGROUND

We begin with some background. Currently, all new lawyers looking to practice in Minnesota must pass the bar exam. *See* Minn. R. Admission to the Bar 4, 6. Minnesota has used an exam produced by the National Conference of Bar Examiners (NCBE) since 1980 and has used the Uniform Bar Examination prepared by the NCBE since 2014. In addition to a written exam and fitness requirements, applicants for admission must provide confirmation from the applicant’s law school that the “law school has conferred a J.D. or LL.B. degree upon the applicant” at least 30 days before the exam. Minn. R. Admission to the Bar 4C(1). In the absence of a conferred degree, the applicant can provide confirmation that the applicant “has completed all coursework” and requirements for the degree and will be awarded that degree “within 120 days following that examination.” Minn. R. Admission to the Bar 4C(2).

This current mechanism for admission to the bar by way of a written bar exam has been in place for a century. Some form of bar exam has existed in the state since 1891, when the Board was created and promulgated its first set of Rules for the Examination and Admission of Attorneys. Minnesota adopted rules requiring a written bar exam for most

applicants effective October 1, 1921. Minn. R. Admission to the Bar 8–9 (1921) (requiring examination on various subjects over 3 days, “two . . . written and one . . . oral”).¹ Initially, even once written exams were introduced, applicants could still qualify for admission to the bar through a course of study in a law office, rather than graduation from a law school. *See* Minn. R. Admission to the Bar 5 (1921) (requiring an applicant who had “been a student in the office of a practicing attorney” to demonstrate that “his study and preparation has been adequate and under proper supervision”). In 1941, Minnesota added an additional requirement of graduation from an ABA-accredited law school.

Prior to the requirement of passing the bar exam, however, there were alternative pathways to attorney licensure in Minnesota. For example, prior to 1921, a diploma privilege existed, allowing graduates from law schools in the state to be admitted to practice within 2 years of graduation without needing to take the bar exam.² During this same time

¹ The rules permitted attorneys from other states who had been “actively engaged in practicing law” for 3 years to be admitted without an exam “in the discretion of the board.” Minn. R. Admission to the Bar 5 (1921). Legislative enactments that waived the bar exam for specific veterans of World War I, *see, e.g.*, Act of Mar. 3, 1925, ch. 39, 1925 Minn. Laws 38 (authorizing admission to practice law “without examination”), were eventually struck down by this court as unconstitutional special legislation. *See In re Humphrey*, 227 N.W. 179, 180 (Minn. 1929) (stating the court could not “conceive how the fact that the applicant has served in the World War and has been disabled . . . has any tendency to show that he possesses the qualifications necessary to fit him to practice law”).

² At present, Wisconsin is the only state that has a diploma privilege that grants admission to the bar based solely on graduation from an in-state law school. *See Wiesmueller v. Kosobucki*, 571 F.3d 699, 701 (7th Cir. 2009) (explaining that graduates of Wisconsin’s law schools are “admitted to practice law in Wisconsin without taking the Wisconsin bar exam,” but graduates of “law schools in states other than Wisconsin” who want to practice law in Wisconsin have to either practice “law for five years in another state or . . . pass[] the Wisconsin bar exam”).

period, as an alternative to attending law school, admission was permitted through apprenticeship at a law firm followed by exam.

In recent years, there has been a renewed call to consider changes and alternatives to the current bar exam. Some of these alternatives are proposed modifications to the format of the bar exam itself. In 2018, the NCBE began a 3-year study of the bar exam, and our court issued an order in 2019 permitting the Board to share records with the NCBE as part of its survey. Order Regarding Survey by National Conference of Bar Examiners, No. ADM10-8008 (Minn. filed July 22, 2019). As discussed more fully below, the NCBE has made the decision to debut the NextGen exam in summer 2026 and to sunset its current bar exam in the near future. The COVID-19 pandemic also increased demands for changes to the traditional bar exam in Minnesota. In June 2020, for example, a petition was filed with our court requesting a temporary waiver of the bar exam requirement (i.e., seeking temporary diploma privilege) for 2020 bar examinees. *See* Order Denying Petition for Proposed Temporary Waiver of Bar Examination Requirement and Provision of Emergency Diploma Privilege, No. ADM10-8008 (Minn. filed July 14, 2020). We rejected an outright waiver of the bar exam, *id.*, but we did order relief from minor administrative burdens for applicants and Board staff in light of the pandemic. Order Promulgating Amendments to the Rules for Admission to the Bar, No. ADM10-8008 (Minn. filed Sept. 27, 2021).

There has also been recent interest in exploring broader assessment alternatives. In June 2021, the Board publicly announced its plan to commence a 2-year study; that study is now before the court and is the subject of this order and memorandum. And the MSBA

has separately urged the exploration of alternative attorney licensing methods, including both the bar exam and other approaches to licensure, and was also an active participant in the Board's study. *See In re Petition of the Minnesota State Bar Association Requesting Appointment of a Task Force*, No. ADM10-8008 (Minn. filed Jan. 21, 2022).

We now turn to the Board's study and recommendations. We appreciate the active collaboration by the law schools in the state, the MSBA, and the three working groups formed to respectively study possible modifications to the bar exam, a potential experiential pathway to licensure during law school, and a potential supervised practice-based pathway to licensure.

ORDER ON RECOMMENDATIONS

The Board's study included four recommendations: 1) adopting the Next Generation of the Bar Examination (NextGen exam); 2) previewing forthcoming proposed changes to the Supervised Practice Rules; 3) creating an Implementation Committee to further explore and develop a curricular-based pathway for assessment; and 4) tabling a supervised practice-based pathway until after the curricular-based pathway is further studied. We address each in turn below, largely agreeing with and adopting the first three recommendations, subject to minor modifications. As to the fourth recommendation, although we agree that the curricular-based pathway should be given priority by the Implementation Committee, we direct further study of the supervised practice-based pathway to licensure as well, as discussed more fully below.

I. Adoption of the NextGen Exam

Since 1980, Minnesota has used bar exams produced by the National Conference of Bar Examiners. And since 2014, Minnesota has used the NCBE's Uniform Bar Examination (UBE). The UBE currently used in the state consists of three parts: 1) the Multistate Bar Examination comprises 50% of the test and is a 200-question multiple-choice exam; 2) the Multistate Essay Examination is 25% of the test and consists of six 30-minute questions; and 3) the Multistate Performance Test is 25% of the test and consists of two 90-minute sections examining the ability to solve a fictional client's legal problems.

In January 2018, the NCBE appointed a task force to conduct a comprehensive 3-year study of the UBE and ensure that the bar exam is testing the skills and knowledge new lawyers are expected to have and know. The result of that study was the development of the NextGen exam by the NCBE, which the NCBE anticipates will be ready for its first administration in July 2026. The Board has studied the NextGen exam and has identified four primary changes: 1) the three testing components (Multistate Bar Examination, Multistate Essay Examination, and Multistate Performance Test) will no longer be available for separate purchase but instead all components will be integrated into a single exam; 2) the NextGen exam will focus more heavily on skills; 3) the subject areas of trusts and estates and secured transactions will no longer be directly tested; and 4) the subject matter tested will focus more on core issues than deeper academic knowledge.

The UBE will eventually be phased out entirely and replaced by the NextGen exam. As a result, with the current UBE test no longer available in the near future, the choice is

to either move Minnesota to the NextGen exam in July 2026 (or sometime soon thereafter), develop another exam, or move entirely to alternative pathways to admission.

The Board, consistent with the working group, has recommended that the NextGen exam be adopted as a pathway to licensure. We agree. Although no method of examination is perfect, Minnesota has successfully used NCBE testing programs for decades, the NextGen exam has been developed through a thorough and research-driven process, and any effort by the Board to develop its own exam would be fraught with inefficiencies. In addition, and important to lawyers and clients, license portability is a critical factor. Adopting the NextGen exam facilitates the practical reality that a significant number of graduates from Minnesota law schools take the exam in Minnesota but apply for admission to practice law in other states, and conversely, a significant number of applicants who apply for admission to the Minnesota bar attend law schools outside Minnesota and take the UBE in other states.

Concerns have been raised about possible disparate impacts associated with the current UBE; the Board is cognizant of these concerns and we understand, and expect, those concerns will be considered and addressed by the Board not only generally, but also more specifically as the Board works through the necessary standard-setting exercises associated with the adoption of the NextGen exam.

The Board, at the public hearing held on the study filed by the Board, stated that the window for the first administration of the NextGen exam in the state is between July 2026 and July 2028. Today we order that the first administration of the NextGen exam in Minnesota occur in July 2027, subject to further communication from the Board. We are

also mindful that today's decision to adopt a move to the NextGen exam still leaves open other issues, including, but not limited to, adoption of appropriate standards and promulgation of conforming amendments to the Rules for Admission to the Bar. Setting the initial date for the first administration of the NextGen exam in 2027, rather than 2026 (the earliest date the exam will be available), will allow additional time for necessary preparations by the Board for the exam, will allow law schools additional time to prepare students for the revised exam, and will allow the Board and our court time to consider what specific language is required for revisions to Rules 6E, 7B, and 7C of the Rules for Admission to the Bar in light of the move to the NextGen exam.

The Board is ordered to pursue adoption of the NextGen exam, to prepare for a July 2027 administration of the NextGen exam, and to report to our court at least annually, and more frequently, if necessary, on the status of preparations for administration of the NextGen exam in July 2027, including proposed rule revisions and any other major developments associated with the adoption of the NextGen exam.

II. Forthcoming Petition Proposing Changes to the Supervised Practice Rules

The Board's second recommendation was an acknowledgment that it will be filing a petition with our court at a future time proposing changes to the Supervised Practice Rules. The Board stated that these proposed changes will be aimed at allowing the Board to waive the requirement that certification as a Supervised Practitioner terminates upon failing the exam, extending the eligibility duration from 18 months to 24 months, and requiring the supervising attorney to acknowledge that, although the individual has not passed the bar exam, the supervising attorney will continue in that role. No action is

required by our court on this matter now, and further consideration awaits a petition from the Board.

III. Implementation Committee to Further Explore and Develop a Curricular-Based Pathway for Assessment

There was strong consensus from the Board, along with the MSBA and the public comments received, that a curricular-based pathway for assessment should continue to be explored by a newly created Implementation Committee, as an alternative to the bar exam. We agree and adopt this recommendation. First, we emphasize what this recommendation entails: it is not a call for a diploma privilege option similar to the approach of Wisconsin in which graduates of in-state law schools are admitted to the bar without any other evaluation. The Board did not support such a proposal, and we do not adopt it here. Instead, the Board supports, and we adopt, a curricular-based pathway in which graduates of in-state law schools who have successfully completed the program are deemed to have satisfied the bar exam requirements. The working group appointed by the Board was clear, and we agree, that this alternative pathway is not to be “easier” or “less demanding” than the bar exam. Instead, it is to be grounded in the required competencies to practice law and should include experiential learning opportunities as well as a continued commitment to a strong academic understanding of the law. We agree with the Board’s assessment that a comprehensive portfolio review, although likely more time consuming than administration of the bar exam, would provide increased assurances that the recent graduate possesses the competencies necessary to succeed in the practice of law if the portfolio is methodically developed.

We recognize that an alternative curricular-based pathway will depend heavily on the cooperation and effort of our Minnesota law schools, working in collaboration with the Board. We are fortunate in that regard that, as the Board recognized, “[t]he three Minnesota law schools already have in place robust clinical and experiential learning programs and have the skills and expertise to successfully move this concept forward.” Although, of course, each law school would need to decide for itself whether to offer a curricular-based pathway to licensure, all of the law schools in Minnesota have expressed a willingness to consider and further evaluate this option, and at least one law school strongly supports the creation of an experiential pathway.

We also observe that programs in other states can be reviewed in further exploring, proposing, and establishing an alternative curricular-based pathway in Minnesota. Without endorsing any particular program, but for the purpose of citing examples, we note particularly the University of New Hampshire’s Daniel Webster Scholar Honors Program, which was reviewed by both the Board and the working group. That program was developed through a collaboration between the New Hampshire Supreme Court, that state’s law school, and its board of law examiners. The law school accepts 24 students into the program each year. Graduates of the program are highly sought after and are deemed to have passed the bar exam through the testing that occurred during the program, as well as a portfolio review process. In addition, other states, including Oregon, are actively exploring and proceeding with alternative experiential pathways to licensure.

The newly created Implementation Committee will have as its charge:

- 1) developing of assessment criteria; 2) identifying and creating pilot program(s); and

3) drafting a proposal for rule amendments to the Minnesota Rules for Admission to the Bar that could be adopted on a pilot basis.

We offer a few additional directives as to each. First, the development of assessment criteria should include consideration of studies and analyses identified in the Board's report and already conducted by the Institute for the Advancement of the American Legal System, the NCBE, the State Bar of California, and the Florida Board of Bar Examiners to aid in determining the threshold concepts new lawyers should know and how those would be assessed outside the bar exam setting. In addition, equity and cost are factors that the Implementation Committee should consider. Second, the identification and creation of pilot program(s) should consider programs like the Daniel Webster Scholar Honors Program, while also recognizing the need for flexibility, particularly as to whether that program could be significantly expanded without reducing its efficacy or significantly increasing the cost. The Implementation Committee should also collaborate closely with the three Minnesota law schools, who are in the best position to propose a rubric that meets appropriate assessment standards. Third, any alternative curricular-based pathway should first be explored on a pilot basis, which would provide guidance as to future expansion. The Implementation Committee shall draft, and file with our court, proposed amendments to the Minnesota Rules for Admission to the Bar for a pilot program.

The timeline we adopt for this next stage of the process is similar to the Board's timeline when it conducted its initial study. We anticipate that the Implementation Committee will be constituted by summer 2024; thus, a draft proposal for amendments to the Minnesota Rules for Admission to the Bar for a pilot program on an alternative

curricular-based pathway to admission should be submitted by July 1, 2026. Finally, we note that the participation of critical stakeholders is vital to the success of the Implementation Committee as the membership outlined in our order today makes clear.

IV. Implementation Committee to Further Explore and Develop a Supervised Practice-Based Pathway for Assessment

The Board in its report also explored an additional alternative path to licensure, a supervised practice-based pathway for assessment. The Board agreed that the public would benefit from a high-quality post-graduation supervised practice-based pathway. That pathway also received strong support from the working group that studied the issue, as well as from the MSBA and law professors. As identified by the working group, a supervised practice-based pathway provides an opportunity to assess the applicant's actual performance of legal skills, rather than testing knowledge within a timed test environment. Such an alternative could also help address disparate outcomes seen in bar exams based on gender, race, and economic status. And unlike the curricular-based pathway, a supervised practice-based pathway would provide an alternative means of assessment after graduation from law school.

That the supervised practice-based pathway would exist outside the law school environment, however, also raises concerns about the tools and resources needed to develop and administer the program. Unlike the curricular-based pathway, which has an infrastructure in place through participating in-state law schools, all elements of the supervised practice-based pathway would need to be created and developed. As the working group identified, developing such a plan would require determining the eligibility

requirements, the minimum competencies, the number of hours of supervised practice required, the nature of lawyering tasks that would be evaluated, the requirements to be a supervising attorney, the training for those supervising attorneys, the portfolio to be assembled for assessment, how portfolios would be assessed, and what oversight would be in place to ensure adequate progress and fair and effective supervision. Vital to the success of the supervised practice-based pathway is determining how to fairly, equitably, and reliably administer the program. And vital to the sustainability of a supervised practice-based pathway will be substantial commitment from Minnesota-licensed lawyers to serving as supervisors and evaluators.

It is these challenges unique to a supervised practice-based pathway that led the Board to recommend tabling this proposal until after further study and experience with the curricular-based pathway. We agree that the curricular-based pathway should take priority. But the experience of other states, particularly Oregon—which will be offering an alternative Supervised Practice Portfolio Examination option for law school graduates beginning May 2024—shows that there can be value in assessing both alternative pathways simultaneously.

We therefore direct the Implementation Committee to further explore a supervised practice-based pathway for assessment over the next 3 years, with a report to the court by July 1, 2027. To effectively manage its work, the Implementation Committee should focus first on a curricular-based pathway to licensure. We stress, however, that although the work of the Implementation Committee begins with the curricular-based pathway, it does not end there, and we look forward to the Committee's equally thorough and thoughtful

analysis of a supervised practice-based pathway for assessment. Our order regarding the timeline for the Committee's work should not be understood to suggest that a recommendation to proceed with the curricular-based pathway for assessment is a reason not to proceed with the supervised practice-based pathway for assessment. The Committee's recommendations regarding each of the alternative pathways should be based on the independent merits of each pathway.

Finally, we express our appreciation to the members and staff of the Board, the MSBA and its affinity associations, representatives from our law schools, and the legal community in general, along with many others, who collectively contributed significant time and effort to a study that resulted in the thorough report that forms the basis of the order and memorandum we issue today.

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