

PUBLIC NOTICE

MINNESOTA STATE BOARD OF LAW EXAMINERS

On November 9, 2019, the Minnesota State Board of Law Examiners posted a public notice seeking input from interested stakeholders on expansion of the Rules for Admission to the Bar to provide a pathway for qualified foreign-educated graduates to seek admission in Minnesota. The Board received 15 comments prior to the December 31, 2019 date requested for public comments, and continues to review additional input from interested parties.

On February 5, 2020, the Board invited interested stakeholders to a public meeting on this issue. The Board confirmed its genuine interest in this issue and acknowledged both that the world is increasingly connected and that applicants from other countries have the potential to increase the diversity of the bar. The presenters made a compelling case for the ways that a diverse and robust legal profession benefits Minnesota's legal community and strengthens Minnesota's position in the global market. The comments reinforced the reasons the Board is committed to studying this complex issue and the interest the Board has in exploring a pathway for well-qualified foreign-educated applicants to pursue admission.

This notice is intended to provide additional information on some of the challenges that have been identified as the Board assesses this multi-faceted issue, and to invite additional dialogue before the Board finalizes its position and submits its petition to the Minnesota Supreme Court.

As the Board addresses ways to recognize the valuable contributions foreign-educated lawyers can offer clients and the public at large, the Board must be mindful of its purpose, which, among other things, calls for the Board to ensure that all members of the Minnesota bar are knowledgeable in the law and well-equipped to represent clients in their most important affairs, a principal foundation for earning the trust and confidence of the public, the legal profession, and the judiciary.

Minnesota has traditionally had high educational standards for those seeking admission to the bar. In *In re Hansen*, 275 N.W.2d 790, 798 (Minn. 1978), the Minnesota Supreme Court emphasized that Minnesota "rel[ies] primarily on the educational process," and employs the bar examination to identify "the small number who are unfit to practice law despite their exposure to educational environments of high quality." The Court went on to say:

Cleary, it is reasonable for Minnesota to require proof that an applicant's legal education was of high quality as a general prerequisite for admission to the bar. Similarly, it is neither arbitrary nor capricious for us to measure the quality of legal education with the same standards as those utilized by the ABA. *Id.* at 796.

The Court has rarely granted a waiver of these high educational standards. *Dolan v. State Board of Law Examiners*, 483 N.W.2d 64 (1992); *See also In re Busch*, 313 N.W.2d 419 (Minn. 1981); *In re Hansen*, 275 N.W.2d 790 (Minn. 1978). As set forth in *Hansen* and *Dolan*, the Court does not undertake a substantive evaluation of law schools, but relies instead upon the ABA's expertise and accreditation process.

In August 2011, following submission of a comprehensive report by this Board, the Court amended Rule 4A(3) to include a provision for graduates of non-ABA accredited U.S. law schools to sit for the Minnesota bar examination if they have been licensed and practiced for five of the last seven years in another U.S. jurisdiction. The Court did not expand the rule to permit foreign-educated graduates to sit for the bar examination at that time. The Board advised the Court that it would continue to review the issue. Over the past eight years, the Board has received a handful of inquiries from foreign-educated lawyers interested in licensure in Minnesota. The Board has also met with foreign-educated lawyers interested in having the Board review this issue further and make additional recommendations to the Court.

At the public hearing, some speakers advocated for an LL.M. degree from an ABA-approved law school in the U.S. in order to sit for the bar exam. A number of states impose this additional requirement on foreign-educated lawyers. The committee asked presenters for additional input on how the Court could structure such a rule. At present, only J.D. degree programs, not LL.M. degree programs, are accredited by the ABA.¹ According to the ABA, there are currently 259 types of LL.M. programs throughout the United States, associated with both ABA and non-ABA accredited law schools. There is no uniformity as to what is required. There is also no nationally recognized standard for an LL.M. or other educational program that would offer training on the basics of U.S. law or the U.S. legal system. Many LL.M. degrees focus on a specific subject matter, such as compliance, federal taxation, or criminal law.

The Board discussed how the lack of LL.M. accreditation standards leaves the Board with the question of how to determine the type of high educational standard that ABA accreditation provides. As discussed above, *In re Hansen* noted that the high educational standard provided the Court with assurances of competence and the bar examination is intended as a guard against "only the truly unqualified." In other words, without being able to rely upon accreditation standards, the bar examination would presumably take on a more central role. That reliance, in turn, requires the Board to consider that of the 35 jurisdictions that administer the Uniform Bar Examination (UBE), Minnesota's cut score is one of only 5 jurisdictions with the lowest cut score (260) on a range between 260 and 280. Because Minnesota is a UBE jurisdiction that permits transfer of UBE scores, the Board needs to further evaluate how it may be impacted by applications from foreign-educated graduates achieving a UBE score insufficient for admission to the jurisdiction where the foreign-educated graduate sat for the exam. For

¹ Standard 313 of the ABA Standards and Rules of Procedure for Approval of Law Schools 2019/2020 states that the program cannot interfere with the ability of the law school to "operate in compliance with the Standards and to carry out its program of legal education." Interpretation 313-1 states, "Acquiescence in a degree program other than the J.D. degree is not an approval of the program itself and, therefore, a school may not announce that the program is approved by the Council."
https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf

example, the UBE score required in Minnesota is 260, compared to 266 in New York, a state that averages 5000 foreign-educated applicants per year.²

At the public hearing, there was also discussion about how prior admission and practice in a U.S. jurisdiction could be an additional path for foreign-educated lawyers to be licensed in Minnesota. The Board recognizes that foreign-educated lawyers who have successfully practiced in another U.S. jurisdiction (as well as foreign-educated house counsel licensed in Minnesota under Rule 11E(2)) provide the Board with another way to measure competence and ensure public protection. For this reason, the Board determined that it would be appropriate to immediately propose rule amendments that would provide a pathway to these individuals, while taking additional time to more fully examine the more complex issues of foreign-educated graduates without a U.S. educational degree and those foreign-educated graduates who possess an LL.M.

In balancing all of these considerations, the Board is prepared to recommend amendments to the Rules for Admission to the Bar that expand opportunities for foreign-educated lawyers with practice experience in a United States jurisdiction, but is not prepared at this time to recommend rule amendments for admission based upon an LL.M. degree alone. We welcome further input from interested stakeholders in light of the Board's current assessment as reflected here. The Board appreciates the thoughtful stakeholder commentary calling for a pathway for LL.M. graduates, and the Board looks forward to continuing that conversation. The Board views this proposal not as the conclusion of this issue, but as an interim way to expand admission opportunities for foreign-educated lawyers where the Board is prepared to proceed, while asking stakeholders and the Court for additional time to more fully develop the recommendation related to the additional issues warranting further study.

Accordingly, the Board intends to file a Petition with the Court seeking the following amendments to Rule 4A:

1. A provision that would permit a foreign-educated lawyer with 10 or more years of practice experience based on licensure in a U.S. jurisdiction the opportunity to apply under any Rule type for which the lawyer qualifies, including admission on motion; and
2. A provision that would broaden Rule 4A(3)(b) to permit foreign-educated graduates with five or more years of practice experience in a U.S. jurisdiction, the opportunity to sit for the bar examination (similar to the current provision for non-ABA graduates with a J.D. from a U.S. law school).

As discussed above, the Board also intends to advise the Court that the third issue -- a pathway without U.S. admission, either with an LL.M. or otherwise -- is more complex and the Board needs additional time to further review the issue. The ongoing work of the National Conference of Bar Examiners (NCBE) Testing Task Force has a bearing on this issue and its timing. The NCBE Testing Task Force anticipates completing its three year study of the bar exam at the end of 2020. That work could well shape the nature of the Uniform Bar Examination, and perhaps its scoring. In addition, a number of stakeholders have proposed that Minnesota adopt a process similar to New York.

² <https://www.nybarexam.org/ExamStats/Estats.htm>

The process in New York requires each school to have its curriculum evaluated by the Appellate Court. The Court provides additional information to the Board on the courses approved. Under this approach, the review process for individual applications takes additional time. The Board needs to evaluate its ability to undertake that type of review, and consider the potential role of the Court. Further, the Board needs to consider Minnesota's current passing score of 260 and the potential increase of foreign-educated students from other UBE states applying for admission, particularly where their scores do not meet the passing score in the state where they took the test. The Board anticipates that this additional study will take approximately a year, but recognizes that its timetable might be impacted by the current situation related to COVID-19.

The Board is grateful for the thoughtful analysis and careful consideration that so many stakeholders have invested in this issue and looks forward to further discussion both now and in the future. Those interested in providing further comments on this issue before the Board files its Petition are invited to submit those comments by June 1, 2020.

Written comments may be submitted to the Board of Law Examiners, Attn: Douglas Peterson, Board Chair, 180 E. 5th Street, Suite 950, St. Paul, MN 55101 or emailed to ble@mbcle.state.mn.us. Once the Board has received the written comments, it will carefully review stakeholder feedback before making recommendations to the Court.

Dated: April 24, 2020

Emily John Eschweiler Director Minnesota State Board of Law Examiners

RULE 4. GENERAL REQUIREMENTS FOR ADMISSION

A. Eligibility for Admission. The applicant has the burden to prove eligibility for admission by providing satisfactory evidence of the following:

(3) ~~Either~~ One of the following:

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

(b) (i) a bachelor's degree from an institution that is accredited by an agency recognized by the United States Department of Education or foreign equivalent;

(ii) a J.D. degree or equivalent from a law school attended following completion of undergraduate studies; located within any state or territory of the United States or the District of Columbia;

(iii) and that the applicant has been licensed to practice law in any state or territory of the United States or the District of Columbia in 60 of the previous 84 months, and

(iv) the applicant has been engaged, as principal occupation, in the practice of law for 60 of the previous 84 months in one or more of the activities listed in Rule 7A(1)(c).

(c) the applicant has been licensed to practice law in any state or territory of the United States or the District of Columbia for at least 10 years.

(4) Passing score on the written examination under Rule 6 or qualification under Rules 7A, 7B, 7C, 8, 9, or 10. An applicant eligible under Rule 4A(3)(b) but not under Rule 4A(3)(a) or 4A(3)(c) must provide satisfactory evidence of a passing score on the written examination under Rule 6 and is not eligible for admission under Rules 7A, 7B, 7C, 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 or any foreign jurisdiction.