



November 29, 2017

VIA EMAIL (ble.cle.blc@mbcle.state.mn.us)
AND U.S. MAIL

Minnesota Board of Law Examiners
Attn: Douglas Peterson, Board Chair
180 E. 5th Street, Suite 950
St. Paul, MN 55101

Dear Chair Peterson and Minnesota Board of Law Examiners:

Thank you for this opportunity to provide comments on Rule 7A of the Minnesota Rules for Admission to the Bar and, specifically, the Board of Law Examiners' policy interpretation of the phrase "engaged, as principal occupation, in the lawful practice of law."¹ With over 8,000 attorney members, the Hennepin County Bar Association ("HCBA") is the largest district bar association in Minnesota² and is deeply interested in this matter.³ HCBA's goal in offering these comments is to provide useful input as the Board of Law Examiners complies with the Minnesota Supreme Court's directive to review Rule 7A.

HCBA's mission focuses on its members. The organization exists "to serve the needs of its membership by advancing professionalism, ethical conduct, diversity, competence, practice development, and collegiality in the legal profession."⁴ It also "strive[s] to ensure the fairness and accessibility of the legal system, promote[s] public

¹ Minnesota Board of Law Examiners' Policy Statement on Admission Without Examination, Eligibility by Practice (Rule 7A), <https://www.ble.mn.gov/wp-content/uploads/2016/09/Board-policy-re-Rule-7A.pdf> (last visited Nov. 21, 2017).

² HCBA's 8,000 members make it Minnesota's largest district bar association. *About the Hennepin County Bar Association*, Hennepin County Bar Association http://www.hcba.org/?page=About_HCBA (last visited Nov. 21, 2017). HCBA thanks Katherine A. McBride, an HCBA member and partner at Meagher & Geer in Minneapolis, for her assistance in preparing these comments.

³ See Lisa Buck, *Is a Part-Time Attorney Competent?*, Hennepin Lawyer, Sept./Oct. 2017, at 26-27, https://www.stinson.com/Resources/PDF_Files/Is_a_Part-Time_Attorney_Competent.aspx (last visited Nov. 21, 2017).

⁴ *Mission*, Hennepin County Bar Association <http://www.hcba.org/?page=Mission> (last visited Nov. 21, 2017).

understanding and confidence in our system of justice, and work[s] with the courts to improve the administration of justice.”⁵ Furthering diversity and inclusion in the local legal community is integral to the work of HCBA and core to its mission, its values, and the unique issues of the region it serves.⁶

Rule 7A requires an applicant for admission without exam be “engaged, as principal occupation, in the lawful practice of law” for at least 60 of the 84 months preceding the application. However, Rule 7A does not contain a specific hours-worked threshold. Consistent with its mission and recognizing the reality of legal practice today, HCBA urges the Board of Law Examiners to interpret the phrase “engaged, as principal occupation” to mean that one’s practice of law must be at least 80 hours or more per month. The settings for the “lawful practice of law” are as described in Rule 7A.

HCBA takes this position for four reasons. First, HCBA believes that admitting attorneys engaged in the practice of law for at least 80 hours per month will not jeopardize the quality of legal services available to the public. Rule 1 of the Minnesota Rules for Admission to the Bar states the Board of Law Examiners was established to “ensure that those who are admitted to the bar have the necessary competence and character to justify the trust and confidence that clients, the public, the legal system, and the legal profession place in lawyers.”⁷ The basis of Rule 1 and the function of the Board is to protect the public.⁸ HCBA believes that admission of attorneys who are engaged in the practice of law for at least 80 hours per month—essentially on a half-time or more basis—will not compromise the integrity of the legal profession or undermine the quality of legal services.

Second, HCBA believes interpreting “engaged, as principal occupation” to mean the practice of law for at least 80 hours per month will promote diversity. The legal profession and the public it serves benefit when members of historically under-represented groups enter and remain in the profession. As an organization, HCBA’s mission is to advance policies designed to achieve diversity in the profession and the 80-hour per month interpretation is such a policy.

Under-representation in the legal profession of women, persons of color, and those with disabilities is well documented. For example, a recent survey by the National Association for Law Placement (“NALP”) of law firm demographics illustrates the problem. According to the survey, “women and minorities continue to make small gains in their representation among law firm partners in 2016, [but] the overall percentage of

⁵ *Id.*

⁶ *Diversity and Inclusion*, Hennepin County Bar Association <http://www.hcba.org/?page=Diversity> (last visited Nov. 21, 2017).

⁷ Rule 1 of the Minnesota Rules for Admission to the Bar.

⁸ See *In re Murray*, 821 N.W.2d 331, 336 (Minn. 2012) (“We have consistently recognized an interest ‘in insuring that members of the bar are worthy of public trust with regard to their professional competence.’”) (quoting *In re Busch*, 313 N.W.2d 420, 421 (Minn. 1981)).

women associates has decreased more often than not since 2009, and the percentage of Black/African-American associates has declined every year since 2009, except for the small increase in 2016.”⁹ According to NALP Executive Director James Leipold, the study found that “[m]inority women and Black/African-American men and women continue to be the least well represented in law firms, at every level, and law firms must double down to make more dramatic headway among these groups most of all.”¹⁰

The 2016 Annual Report of the Minnesota Judicial Branch shows the Minnesota legal profession faces its own diversity challenges.¹¹ In January 2016, the Lawyer Registration Office began collecting race and ethnicity information in addition to gender data from attorneys during the lawyer registration process.¹² Data collected shows the demographics of bar members are not as diverse as the general population.¹³

Lawyers with disabilities also face challenges entering and remaining in the profession. A NALP survey of the class of 2007 showed that law school graduates with disabilities were less likely to be employed nine months after graduation from law school, were less likely to obtain private practice positions, and had lower starting salaries.¹⁴ Neither the Lawyer Registration Office nor the Minnesota State Bar Association collect information regarding the disability status of bar members. However, there is no reason to believe data, if available, regarding lawyers in Minnesota facing disabilities would differ materially from the data in the NAPL survey.

Women lawyers, although representing more than 50 percent of law school graduates, are not advancing or remaining in the profession at the same rate as their male counterparts.¹⁵ Moreover, women are more likely to work part-time. Of the 6.2

⁹ *2016 Report on Diversity in U.S. Law Firms*, National Association for Law Placement, Jan. 2017 at 3
<http://www.nalp.org/uploads/Membership/2016NALPReportonDiversityinUSLawFirms.pdf> (last visited Nov. 21, 2017).

¹⁰ *Id.*

¹¹ Minnesota Judicial Branch, *Report to the Community: The 2016 Annual Report of the Minnesota Judicial Branch*
http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/2016_AR_FINAL.pdf (last visited Nov. 21, 2017).

¹² *Id.* at 56.

¹³ *Age, Race, & Ethnicity*, Minnesota State Demographic Center
<https://mn.gov/admin/demography/data-by-topic/age-race-ethnicity/> (last visited Nov. 21, 2017).

¹⁴ American Bar Association Commission on Mental and Physical Disability Law at 16-17
https://www.americanbar.org/groups/disabilityrights/publications/conference_reports.html (last visited Nov. 21, 2017).

¹⁵ “On average, women lawyers bill fewer hours than men, earn lower incomes than men (even after controlling for a number of factors, including fewer billed hours), they are retained at lower

percent of lawyers working part-time in 2012, over 70 percent were women.¹⁶ Women, therefore, disproportionately bear the brunt of the Board of Law Examiners' current policy interpreting "engaged, as principal occupation" in the lawful practice of law as meaning at least 120 hours per month.

Given the statistics, HCBA believes the current 120-hour policy may act as a barrier to attracting and retaining a more diverse bar. The policy could inhibit those who are more likely to have been on a less traditional practice-of-law path from seeking to practice in Minnesota. Moreover, the 120-hour policy does not account for the changing nature of legal practice, which encourages flexible work assignments and a more balanced work-life existence. It also presents challenges for solo practitioners, attorneys with disabilities, and attorneys who had to retreat from a more traditional full-time practice to attend to family obligations or health issues.

The third reason that HCBA seeks a change to the 120-hour policy is that the organization believes Minnesota should lead on the issue rather than follow. If the Board of Law Examiners reduces the number of hours that constitute "engaged as principal occupation" to 80 hours per month, other states may follow. Minnesota lawyers who seek admission to practice in other jurisdictions would then benefit. Minnesota was the first state in the Union to require that practicing lawyers take continuing legal education courses—a requirement that is now common.¹⁷ If the Board of Law Examiners adopts an 80-hour policy for admission without examination, board examiners from other states might once again follow in Minnesota's footsteps. Indeed, it appears that of the eleven jurisdictions including Minnesota with stated minimum hour requirements or policies for admission without examination, only two—Minnesota and Vermont—set the requirement or policy at more than 1,000 hours per year, or approximately 83.33 hours per month.¹⁸ And most of the jurisdictions with minimum

rates, and ultimately, are much less likely to advance to partnership." Stanford Law School Women in Law Policy Lab Practicum 4 <https://law.stanford.edu/wp-content/uploads/2016/05/Women-in-Law-White-Paper-FINAL-May-31-2016.pdf> (last visited Nov. 21, 2017).

¹⁶ National Association for Law Placement, "Rate of Part-Work Among Lawyers Unchanged in 2012—Most Working Part-time Continue to Be Women" (Feb. 21, 2013), http://www.nalp.org/part-time_feb2013 (last visited Nov. 21, 2017).

¹⁷ 1 Legal Malpractice, *Continuing legal education—Outside the law firm—Introduction* § 3:8 (2017 ed.) ("In 1975, Minnesota became the first state to implement a mandatory continuing legal education program for attorneys and judges.").

¹⁸ Alaska Bar R. 2, § 2(a)(2), (c) (2017-18) ("active practice of law" at least "750 hours per year," or approximately 62.5 hours per month, for five of seven years before application), <http://www.courtrecords.alaska.gov/webdocs/rules/docs/bar.pdf#page=8> (last visited Nov. 21, 2017); Ill. Sup. Ct. R. 705(h) (2016) ("active and continuous" practice of law a "minimum of 80 hours per month and no fewer than 1,000 hours per year" during 36 of the 60 months before application), http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VII/artVII.htm#Rule705 (last visited Nov. 21, 2017); Ind. R. for Admission to the Bar 6, § 1(a) (2017) (practice of law "for at

hour requirements set those thresholds in the rules for admission; only Minnesota and Pennsylvania rely upon an hourly threshold in a policy interpretation.¹⁹

Fourth, HCBA understands the value of a bright-line test given the volume of Rule 7 applications that the Board of Law Examiners receives each year. An 80-hour policy provides a bright-line threshold that reflects the changing nature of the practice of law. A stated policy will also aid out-of-state lawyers who must evaluate whether they will be required to take the Minnesota bar examination should they seek to become licensed in the state.

Interpreting the phrase “engaged as principal occupation” to mean that one’s practice of law must be at least 80 hours per month will recognize the changing nature

least 1,000 hours per year” or approximately 83.33 hours per month for at least five of the seven years before application), http://www.in.gov/judiciary/rules/ad_dis/index.html#_Toc477259897 (last visited Nov. 21, 2017); Minn. R. for Admission to the Bar 7A (2017) (“principal occupation” in the “lawful practice of law” for 60 of the 84 months before application; Board of Law Examiners policy statement interpreting “principal occupation” as “at least 120 hours or more per month”); Mont. R. for Admission to Bar V(D)(2) (2016) (practice of law for “at least one thousand hours per year” or approximately 83.33 hours per month for at least five of the seven years before application), [https://c.ymcdn.com/sites/montanabar.site-ym.com/resource/resmgr/Admissions/Rules for Admission to the S.pdf](https://c.ymcdn.com/sites/montanabar.site-ym.com/resource/resmgr/Admissions/Rules%20for%20Admission%20to%20the%20Bar.pdf) (last visited Nov. 21, 2017); N.M. R. Governing Admission to the Bar 15-107 (2016) (practice of law “at least one thousand (1,000) hours per year” or approximately 83.33 hours per month for at least five of the seven years before application), [http://nmexam.org/wp-content/uploads/2015/11/NMRA2016 Ruleset15 unannotated.pdf](http://nmexam.org/wp-content/uploads/2015/11/NMRA2016_Ruleset15_unannotated.pdf) (last visited Nov. 21, 2017); Or. R. for Admission of Attorneys 1.05(8), 15.05 (2017) (practice of law “at least 1,000 hours . . . per annum” or approximately 83.33 hours per month for at least five of the seven years before application), <https://www.osbar.org/docs/rulesregs/admissions.pdf> (last visited Nov. 21, 2017); Pa. Bar Admission R. 204 (2015) (“major portion of time and energy” devoted to practice of law for at least five of the seven years before application; Board interprets “major portion of time and energy” as “every week in which an applicant practiced law more than 20 hours,” in *Interpreting Rule 204—Tips for a Successful Application*, http://www.pabarexam.org/non_bar_exam_admission/204_interpretation.htm), <http://www.pabarexam.org/pdf/rules.pdf> (last visited Nov. 21, 2017); Utah Sup. Ct. R. Professional Practice 14-701(t), 14-705 (2017) (“Full-time Practice” of law is no fewer than 80 hours per month not counting administrative work for 60 of the 84 months before application), https://www.utcourts.gov/resources/rules/ucja/index.htm#Chapter_14 (last visited Nov. 21, 2017); Vt. Sup. Ct. R. of Admission to the Bar 2(a), 15 (2016) (practice of law “at least 25 hours per week” for five of the ten years before application, with certain waivers for the five-year requirement), https://www.vermontjudiciary.org/sites/default/files/documents/900-00014_0.pdf (last visited Nov. 21, 2017); Wyo. R. & Procedures Governing Admission to the Practice of Law 302(f) (2017) (practice of law for a minimum of 300 hours per year for five of the seven years before application); [http://www.courts.state.wy.us/wp-content/uploads/2017/05/RULES AND PROCEDURES GOVERNING ADMISSION TO THE PRACTICE OF LAW.pdf](http://www.courts.state.wy.us/wp-content/uploads/2017/05/RULES_AND_PROCEDURES_GOVERNING_ADMISSION_TO_THE_PRACTICE_OF_LAW.pdf) (last visited Nov. 21, 2017).

¹⁹ *Id.*

of the practice of law. An 80-hour policy will also promote a more diverse bar. And it will do so without compromising the Board of Law Examiners' interest "in insuring that members of the bar are worthy of public trust with regard to their professional competence."²⁰

HCBA recognizes there may be some circumstances where applicants do not meet the 80-hour per month threshold but may nevertheless merit consideration for admission. For such applicants, HCBA urges the Board of Law Examiners to evaluate the applications for admission using case-by-case considerations to determine whether the applicant, although not meeting the 80-hour threshold, is professionally competent. The case-by-case evaluation should consider factors that demonstrate the applicant's significant connection to the law and are indicia of public trust, such as: (1) the total number of years the attorney has practiced; (2) the attorney's previous practice setting; (3) the attorney's likely practice setting in Minnesota; (4) the area(s) of law in which the attorney previously practiced; (5) the area(s) of law in which the attorney is likely to practice in Minnesota; (6) the type of clients the attorney has represented in previous practice; (7) the type of clients the attorney is likely to represent in Minnesota; (8) substantial activity in a bar organization; (9) legal scholarship; (10) the substance of other work that is significantly related to the practice of law; (11) pro bono legal work; and (12) other factors the Board of Law Examiners determines to be appropriate.

In summary, based on the comments above, HCBA encourages the Board of Law Examiners to interpret the phrase "engaged, as principal occupation, in the lawful practice of law" to mean that one's practice of law must be at least 80 hours per month. On behalf of and as the President of HCBA, I request the opportunity to provide oral testimony in this matter.

Sincerely,



Thaddeus R. Lightfoot
HCBA President, 2017-2018

²⁰ *In re Murray*, 821 N.W.2d at 336.