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THE SUPREME COURT OF MINNESOTA

Minnesota Board of Law Examiners

Report and Recommendation:

Admission on Motion

Based on Years of Practice Study

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Summary:

On May 18, 2017, the Minnesota Supreme Court (Court) issued an Order directing the Board to review Rule 7A, Admission Based on Years of Practice, which states that an applicant "engaged as a principal occupation in the lawful practice of law for 60 out of the 84 preceding months" may be admitted on motion into Minnesota without taking the bar examination. Consistent with the Board's purpose of ensuring that applicants admitted to the bar have the necessary competence to "justify the trust and confidence that clients, the public, the legal system, and the legal profession place in lawyers," the Board has generally interpreted "principal occupation" to mean "full-time or substantially full-time (at least 120 hours or more per month)." In 2013, the Board adopted this threshold as a formal policy and published this to the Board's website. The Court's May 18, 2017 Order requested that the Board review the rule and policy and consider whether and how to permit part-time legal work and periods of parental leave. The Court directed the Board to consider similar rules in other jurisdictions, solicit input from interested organizations and individuals, and file its report on or before June 1, 2018. Over the course of the last year, the Board has surveyed other jurisdictions, solicited input from various stakeholders, held a public meeting, and solicited diverse input. Based on the Board's review, the Board proposes modifications to Rule 7A as follows:

RULE 7. ADMISSION WITHOUT EXAMINATION

A. Eligibility by Practice.

(1) Requirements. An applicant may be eligible for admission without examination if the applicant otherwise qualifies for admission under Rule 4 (excluding applicants who qualify only under Rule 4A(3)(b)) and provides documentary evidence showing that for at least ~~60 of the 84 months~~ 36 of the 60 months immediately preceding the application, the applicant was:

(a) Actively l~~L~~icensed to practice law;

(b) In good standing before the highest court of all jurisdictions where admitted; and

(c) Engaged, as a principal occupation, and for at least 1000 hours per year, in the lawful practice of law as a:

i. Lawyer representing one or more clients (paid or pro-bono);

ii. Lawyer in a law firm, professional corporation, or association;

iii. Judge in a court of law;

iv. Lawyer for any local or state governmental entity;

v. House counsel for a corporation, agency, association, or trust department;

vi. Lawyer with the federal government or a federal governmental agency including service as a member of the Judge Advocate General's Department of one of the military branches of the United States;

vii. Full-time faculty member in any approved law school; and/or

viii. Judicial law clerk whose primary responsibility is legal research and writing.

For reasons that will be discussed further below, the Board concluded that 36 months of part-time practice within the 60 immediately preceding the application adequately ensures minimal competence and serves the Board's purpose of protecting the public. As to how much practice is required to meet the part-time threshold, the Board determined based on a review of other jurisdictions and comments from various stakeholders that 1000 hours per year is appropriate. The Board also determined that because lawyers may take off up to 24 months during the time period for any reason that no further provision needs to be made for periods of parental leave.

Attached as **Exhibit A** are the Board's proposed revisions to Rule 2A(13) and 7A showing the changes and attached as **Exhibit B** is a clean version of the proposed Rules.

Background:

On March 6, 2017, an applicant petitioned the Minnesota Supreme Court to overturn the Minnesota Board of Law Examiner's (Board's) February 13, 2017 final determination that she did not satisfy the requirements of Rule 7A (admission on motion based on years of practice).[1] The issues before the Court included whether the Board properly considered petitioner's part-time work, sufficiently accommodated her three 20-week maternity leaves, and erred by not applying Petitioner's interpretation of the "case-by-case" language in the policy notwithstanding the language of current Rule 7A. While the Petition was pending, the Minnesota State Bar Association and other Minnesota affinity bars filed two motions with the Court seeking leave to file and serve briefs as *amicus curaie* in the matter.

On May 18, 2017, the Court issued two Orders. The first Order denied the applicant's Petition for further review and the motions to file *amicus curaie*. Separate from but referencing that case, the Court issued a second Order directing the Board to review Rule 7A, the requirement that an applicant be engaged as a principal occupation in the lawful practice of law for 60 of the 84 preceding months and the Board's policy requiring full-time or substantially full-time practice, and to consider whether and if so how the Rules should treat part-time practice and periods of parental leave. The Court asked the Board to solicit input from interested organizations and to consider similar administrative rules and policies in other jurisdictions.

The Court requested that the Board file a report and recommendation to the Court regarding its review of Rule 7A on or before June 1, 2018.

This report is filed in response to the Court's Order.

[1] *In re Application for Admission to the Practice of Law of Kathleen Reilly*, No. A17-0377, Order (Minn. Filed May 18, 2017) (denying petition for review).

Admission to the Bar in Minnesota:

The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in the state of Minnesota. This power has been expressly recognized by the legislature.[2] Under the supervision of the Court, the Board administers the Rules for Admission to the Bar for the State of Minnesota and is responsible for ensuring that lawyers who are admitted in Minnesota 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."[3]

Applicants to the bar in Minnesota must demonstrate competency to safely practice law and adequately represent individuals. The Board ensures competency by requiring that applicants to the Minnesota bar 1) meet the educational requirements outlined in Rule 4A(3), and 2) either pass the bar examination or qualify for admission by motion based on years of practice. The Court recognized this two-prong approach to determining competency for admission to the bar in *In re Hansen*, 275 N.W.2d 790, 798 (Minn. 1978).

Applicants to the Minnesota bar may provide evidence of competency by:

- Obtaining a score of 260 or higher on the Uniform Bar Examination ("UBE"), which may be taken in Minnesota or another UBE jurisdiction. Applicants applying to take the bar examination in Minnesota may apply under Rule 6; the examination score is valid for 36 months from the date of the examination. Applicants may also transfer a UBE score into Minnesota by submitting evidence of the score and a complete application for admission to the Board within 36 months of the date of the qualifying examination used as the basis for admission.[4]

- Transferring into Minnesota a score of 145 or higher on the Multistate Bar Examination (MBE), which is the test instrument used on the second day of the bar examination. The applicant must be successful on the bar examination in which they obtained the MBE score, be admitted in that jurisdiction, and submit a completed application and evidence of the score within 24 months of the date of the examination in which the applicant obtained the score.[5]

- Providing documentary evidence that for at least 60 of the 84 months immediately preceding the application, the applicant has "engaged, as principal occupation, in the lawful practice of law" in one of the legal roles set forth in

[2] Minn. Stat. § 481.01.
[3] Minn. Rules for Admission to the Bar, Rule 1.
[4] Minn. Rules for Admission to the Bar, Rule 7C.
[5] Minn. Rules for Admission to the Bar, Rule 7B.

7A(1)(c).[6] Principal occupation is defined as an applicant's "primary professional work or business."[7]

The UBE, adopted by Minnesota and 30 other jurisdictions, is a two-day examination designed to test minimal competency in core subject areas. The exam is comprised of two 90-minute performance tests (MPTs), six 30-minute multi-state essay questions (MEEs), and a 200-point multiple-choice Multistate Bar Examination (MBE). The MBE score is scaled to adjust for differences in difficulty from administration to administration, producing a score that can be transferred from one jurisdiction to another, and allowing for comparison of applicants from one bar examination to another. The passing score in Minnesota is a total combined score (MBE and essay) of 260 (out of 400 points.) Minnesota's passing score ("cut score") is among the lowest quartile of cut scores in the United States.[8]

Applicants who have practiced for more than five years in another jurisdiction may prove competency by providing evidence of practice. Admission based on years of practice will be the primary focus of this report, but consideration of this issue also raised discussion by the Board of related issues which will be further addressed below.

Recent History of Rule 7A:

In September 2010, the Board filed a Petition with the Court seeking, among other requests, to add language to Rule 7A to require full-time practice and to define full-time practice as 130 hours per month. The Board sought this change to codify into the Rules the Board's current practice of determining how much time per week or month the Board required a lawyer to spend practicing in order to qualify as a "principal occupation" or as the "active and lawful practice of law." The Board noted that for "the public's protection and to ensure that applicants admitted on motion are competent to practice, the Board has determined that the practice of law must be the applicant's principal occupation and the practice of law must have been full time." The Board stated that the 130 hours requirement would provide a bright line rule by which applicants would know prior to applying whether they qualify and that including the language in the Rule would provide the potential applicant with adequate notice. Following a comment period and public hearing, the Court declined to adopt the Board's recommendation to incorporate full-time practice or a130 hours per month requirement into the Rule, but instead left discretion to the Board in determining the required number of hours.

Consistent with Rule 3B(8) that provides the Board authority to adopt policies and procedures consistent with the Rules and Rule 3B(11) that permits the Board to prepare and disseminate information to prospective applicants and the public about procedures and standards for admission to practice in this state, the Board adopted a Policy

[6] Minn. Rules for Admission to the Bar, Rule 7A.
[7] Minn. Rules for Admission to the Bar, Rule 2A(12).
[8] The other jurisdictions with a cut score of 260 are Alabama, Missouri, New Mexico, and North Dakota. Wisconsin's cut score is 258.

Statement in October 2013 to provide guidance to prospective applicants and later published that policy statement to the Board's website. The Board's current policy statement is attached as **Exhibit C**.

In exercising discretion under Rule 3B(8), the Board chose to adopt policy language that defined a clear standard for determining practice qualifications. Such a standard guards against arbitrary decisions and provides notice to prospective applicants. Given the importance of bar admission on motion considerations for practicing lawyers seeking to be admitted to Minnesota the Board, as foreshadowed in its decision in the *Reilly* matter, appreciates the Court's invitation to set the Minnesota standard by Court rule rather than by Board policy.[9]

Board's Current Process in Reviewing Rule 7A Applications:

All applicants to the Minnesota bar are required to submit their employment history for the 10-year period immediately preceding the application. For purposes of determining eligibility under Rule 7A, the Board looks at the 84 months (7 years) immediately preceding the application. Applicants applying under Rule 7A are also asked to submit a narrative providing additional information. Sections 7 and 8 of the Bar Application are attached as **Exhibit D**. Board staff reviews the submissions, requests additional information if needed, and makes a determination as to whether the applicant meets the requirements. Common issues that lead to further inquiry are when an applicant states that the applicant is employed in a J.D. preferred position (versus J.D. required) and when an applicant is practicing in a state other than the state in which the applicant is licensed. The Board office also seeks additional information if the applicant states in his or her application that the employment is part-time. The Board asks applicants to provide information on both billable and non-billable hours. If Board staff determines that the applicant does not appear to qualify under Rule 7A, the file is presented to the Board for determination. If the Board determines an applicant is ineligible, the applicant may transfer the application and sit for an examination within 15 months of the Board's determination, or the applicant may appeal the Board's determination and request a full hearing. Following the hearing, the Board will make a final determination. If the Board denies eligibility, the applicant may appeal that determination to the Supreme Court.

Study Process:

In May 2017, after receipt of the Court's Order, Douglas Peterson, President of the Board, appointed the following Board members to the Rule 7A Committee to carry out the Court's request: Barbara D'Aquila; Drew Hultgren; Shawne Monahan; and Pam Thein.[10]

[9] Although the current policy references case by case determination, the intent was to convey that each file is reviewed individually.

[10] Barbara D'Aquila served on the Committee through December 31, 2017, when her term on the Board completed.

The Committee met in July and August to discuss the study and begin the necessary research into the Rule 7A issues in Minnesota and other jurisdictions. Board staff surveyed the other 50 jurisdictions and compiled a chart detailing which jurisdictions permit admission on motion based on years of practice, and for those that do, whether the jurisdiction provides additional information on how much time is required to qualify. The Committee also recommended to the Board that the Board put the issue out for public comment, that the Board Director specifically reach out to the organizations that had requested to file *amicus* briefs on this issue, that the Board hold at least one public hearing, and that following the comment period and the hearing the Board release its initial recommendations and seek additional public feedback. The Board adopted the Committee's recommendations.

On September 12, 2017, the Board issued a public notice stating that in response to the May 18, 2017 Order issued by the Court, the Board was studying Rule 7A, including a review of whether and how the Board should treat part-time legal work and periods of parental leave. The public notice further stated that the Board was seeking comments from the legal community and the public as part of the study; the Board would survey other jurisdictions regarding this issue; and the Board would invite the Minnesota State Bar Association, and other entities who requested to provide *amicus* briefs to the Court on this issue, to provide written comments and oral testimony at public hearings. The Board asked that written comments and requests to present oral testimony be submitted by November 30, 2017. The public notice was circulated widely, including to those entities that submitted amicus briefs, and was posted to the Board's website. A copy of the public notice is attached as **Exhibit E**.

Receipt of Written Comments:

Six entitles filed public comments prior to the November 30, 2017 deadline. Four of the parties requested to present oral testimony to the Board. LaVern Pritchard filed a response dated September 20, 2017, attached as **Exhibit F**, in which he encouraged Minnesota to review the types of activities permitted as qualifying legal work to embrace non-traditional legal roles.

The Hennepin County Bar Association (HCBA) filed a response dated November 29, 2017, attached as **Exhibit G**, urging the Board to interpret "engaged, as principal occupation" to mean 80 hours or more per month. HCBA argued that 80 hours per month would still adequately protect the public and would not comprise the integrity of the profession, while still recognizing the changing practice realities. Reducing the number of hours required would promote diversity and also position Minnesota as a leader in recognizing the evolution of legal employment and flexible schedules. While HCBA recognized the value of a bright line test, it did also encourage the Board to review other factors on a case by case basis to determine competency if an applicant was not able to meet the 80 hours per month threshold.

Lawyers Concerned for Lawyers filed a response dated November 30, 2017, attached as **Exhibit H**, that provided information to the Board on disabilities and potential disability conditions impacting the legal community and the possible negative impact of the current interpretation on resolution of these issues. LCL encouraged the Board to adopt an interpretation of the rule that would promote lawyers seeking assistance and taking time off to address issues. LCL did not take a position on the number of hours, but stated that the "current interpretation has the potential to create a chilling effect on those who might need or desire to seek help for a mental health or substance use condition."

The Minnesota State Bar Association (MSBA) submitted a letter dated November 30, 2017, attached as **Exhibit I**, that cited information contained in the Board's 2015 annual report and noted that the Board's current interpretation is "far more stringent, and somewhat inconsistent with, the bar-examination based methods of establishing threshold competency." The MSBA stated that practice for 60 of 84 months reflects "far greater capability" than what is required to pass the bar examination. In addition, except for applicants initially admitted through Wisconsin's diploma privilege, most applicants to Minnesota have already taken at least one bar examination. Using the logic that the MBE score is valid for 24 months under the Rules and the UBE score is valid for 36 months, the MSBA noted that the relevant period that the Board should look to for competence should be the past two or three years. The MSBA also encouraged the Board to potentially consider a blended approach to competency so that a lawyer who achieved a satisfactory MBE score 30 months ago, but who has practiced law continuously, should be deemed at least as competent as an applicant who has achieved a satisfactory score within the last 24 months but never practiced.

The MSBA argued that the words of the rule did not support the Board's interpretation to require "full-time or substantially full-time" practice in order for the practice to qualify. The MSBA conceded that a lawyer who has worked a *de minimus* amount of hours per month may not be able to show competency. However, MSBA urged caution that the Board consider administrative tasks, marketing, continuing legal education, and similar non-billable activities when determining competency. The MSBA also cited that flexible schedules, including part-time employment, have become commonplace and should be considered. The MSBA also urged the Board to consider a provision that would permit applicants who did not meet strict compliance with the rule to be deemed eligible.

The Minnesota Women Lawyers (MWL) filed a response dated November 30, 2017, attached as **Exhibit J**, which was supported by the Hmong American Bar Association, the Minnesota Asian Pacific Bar Association, the Minnesota Association of Black Lawyers, the Minnesota Hispanic Bar Association, the Minnesota Mother Attorneys Association, and the Infinity Project. MWL urged the Board to eliminate the 120-hour rule and establish 80 hours per month as the minimum amount of time, eliminate job titles and settings from Rule 7A(1)(c) to define the practice of law by tasks instead of title, and to create a case by case determination to review competency where the

lawyer does not meet the minimum threshold due to family, medical, or disability-related reasons. MWL provided the Board with substantial information to support its recommendation.

Finally, the Ramsey County Bar Association filed a response dated November 30, 2017, attached as **Exhibit K**, that encouraged flexibility and a provision that would permit the Board to review competency on a case by case basis for lawyers who had not met the 120 hour per month threshold.

The public comments were posted to the Board's website.

Public Hearing:

On January 16, 2018, the Committee studying this hearing held a public meeting from 2:00 p.m. to 4:00 p.m. A copy of the notice that was posted to the Board's website is attached as **Exhibit L**. The four parties that requested to present were invited to appear and an open invitation to the meeting was posted to the Board's website. The Board Director informed each of the parties in advance of the hearing that the Board had read their written submissions and that each party would be given five minutes to provide any additional information followed by inquiry from the Board.

Board President Douglas Peterson started the public hearing by stating that Committee had reviewed each of the submissions, thanking the participants for their written responses and advising the participants that the Board hoped that the proceedings would be informal, providing the opportunity for genuine and thoughtful discussion.

President Peterson, Shawne Monahan (public Board member), and Pam Thein (Board member) attended the public hearing on behalf of the Board and the Rule 7A Committee. Director Emily Eschweiler and Natasha Karn, Managing Attorney, also attended the meeting. President Peterson informed the attendees that the Board's goal is to determine competence in a fair and consistent manner that protects the public without creating unnecessary obstacles to bar admission. With 30 jurisdictions having adopted the Uniform Bar Examination (UBE), bar examination scores are becoming more portable. Since applicants can transfer a UBE score into Minnesota for 36 months the Rules leave a time period between 36 months and 60 months that admission on motion is not available, unless the individual is going to work for a corporation and can then apply for a limited license. President Peterson explained that as part of this process, the Board was also looking at how the Board may resolve the issue of the 36 to 60-month gap for admission on motion that currently exists under the Rules. The focus of the Board's study on what should qualify for practice is what level of experience is a substitute for the bar examination. President Peterson also stated that once the Board recommends to the Court where the line should be drawn, the Board wants to make sure that the rule is not so flexible as to result in a Court delegation of authority that invites too much discretion or otherwise usurps the prerogative of the Court to grant exceptions to reasonable and clear rules. The Board is cognizant that although

decisions to deny eligibility may be appealed to the Supreme Court, decisions to determine an applicant eligible are not reviewed by the Court. President Peterson then turned the hearing over to Ms. Thein, who advised the participants that each of the four presenting organizations would be provided with five minutes to provide comments and 10 minutes to answer Committee questions following their respective presentations.

Joan Bibelhausen presented first, on behalf of Lawyers Concerned for Lawyers (LCL). Thomas Beimers also participated in the discussion. Ms. Bibelhausen stated that the number of individuals who might be impacted by the current interpretation is very, very small, but the impression that flexibility offers is "massive." Ms. Bibelhausen stated that LCL's main concern is the adverse effect that the current requirements could have on attorneys seeking help for mental health or substance abuse issues. LCL advocated that the rule and profession allow for the practice to "prioritize lawyer well-being," whether that means "staying home with children for a period of time, caring for aging parents, or dealing with an illness."

Ms. Bibelhausen discussed how some attorneys seek "recovery jobs" following treatment, and expressed concern that those jobs may not satisfy the Rule 7A requirements, but are critical to the success of those in recovery. LCL emphasized what a strong sober community we have here in Minnesota, and that we should be mindful of the various attorneys who come to Minnesota to seek treatment at Hazelden or the Mayo Clinic and choose to stay and apply for admission under Rule 7A. LCL asked that the rule leave room for a facts and circumstances analysis, to address these issues that may arise with attorneys in recovery. Ms. Bibelhausen stated that a "more flexible understanding of what constitutes the practice of law" will help to transform the legal profession's perception of regulators from police to partner.

The Committee asked LCL whether the 24 months currently permitted under the Rules for gaps in employment (Rule 7A requires 60 of 84 months) would meet the purposes discussed. Ms. Bibelhausen stated that the issue is more one of perception. In almost all cases, 24 months would suffice. She stated that LCL surveyed their Board members and people in recovery and that no one thought that 24 months was unreasonable, but noted there could be "extenuating circumstances." Ms. Bibelhausen also discussed the well-being report and noted that Minnesota was ahead of the nation in that Minnesota has already adopted essential eligibility requirements, conditional admission, and eliminated questions focusing on diagnosis from the application. She encouraged the Board to continue to be a leader in efforts promoting well-being.

Next, Thaddeus Lightfoot, President of the Hennepin County Bar Association (HCBA), provided testimony in support of the HCBA's written comments. The HCBA urged the Board 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[11]. The HCBA believes that

[11] The HCBA does not advocate for changing the definition of practice of law currently contained in Rule 7A, nor does it ask for a change in the 60 of 84-month practice requirement.

changing the number of hours required per month from 120 to 80 will promote diversity in the legal profession, yet will not jeopardize the quality of legal services available to the public. The HCBA believes that reducing the monthly requirement reflects the changing nature of the practice of law, with more attorneys working part-time for various reasons. The HBCA further stated that the 80 hour per month requirement should include both billable and non-billable hours, as the average solo-practitioner averages just 2.3 hours per day.

The Committee and the attendees engaged in a discussion about what activities count or should count toward the monthly practice hours requirement. The HCBA noted that CLEs, studying the law, "investment hours," and business development are crucial for solo-practitioners and other attorneys and suggested that time spent on this important work should count toward the Rule 7A hours requirement. Mr. Lightfoot further noted that if an attorney has only worked 70 or 75 hours per month preceding application, HCBA recommends that the Board should have the discretion to consider an exception to the bright-line 80 hour per month requirement, depending upon the nature of the work in which the attorney has been engaged.

Third, Kendra Brodin and Veena Iyer spoke on behalf of Minnesota Women Lawyers (MWL). First, MWL, like HCBA, stated that the monthly practice hours should be reduced from 120 to 80 per month. MWL stated that the practice of law has changed and will continue to evolve, such that reliance on hours of practice per month may not be the best measure of competence. Second, MWL recommends that the job titles and settings listed within Rule 7A(1)(c) to define "practice of law" be eliminated and instead the Board should look to tasks associated with the practice of law to define that phrase. MWL stated that it would be more accurate for the "practice of law" to be a verb, rather than a noun, to reflect the various duties that many lawyers undertake. Finally, MWL would like the Board to have the ability to allow a case-by-case competency evaluation for attorneys who do not meet the 80 hour per month threshold requirements due to family, medical or disability-related circumstances or conditions. MWL stated that parental leave should be excluded from the tolling of the 84 month look-back period. MWL did not provide a specific proposal regarding the reduced practice hours threshold that would be appropriate for attorneys with a chronic illness, disability, or other issue preventing them from practice.

The Committee expressed its concerns that MWL's recommendation to eliminate the job titles from Rule 7A(1)(c) may be problematic and could create a rule that may be arbitrary and capricious in its application. Moreover, broadening the definition of "practice of law" may be a slippery slope, and a definition that lists legal tasks could include paralegal work or other quasi-legal work that does not require a license to practice law.

Finally, Eric Cooperstein and Fred Finch presented on behalf of the MSBA. The MSBA, like the HCBA and MWL, advocates for a reduction in the 120-hour monthly practice requirement to 80 hours per month. Similar to other presenters, the MSBA stated that

the Board should broadly interpret those hours to ensure that all activities related to the practice of law are included in the calculation. The MSBA also stated that the most relevant period for the Board to review prior to application under Rule 7A is the two or three-year period immediately preceding application. The MSBA presenters commented that an individual who has practiced for a year is axiomatically more qualified to practice law than an individual who has just passed the bar examination. Moreover, the MSBA proposes alternative measures of competency, in addition to a review of practice hours and years of practice. Specifically, the MSBA believes that the Board can assess competency by conferring with attorneys and clients with whom the applicant has worked, looking at the applicant's income, and the specific area of practice in which the applicant specializes.

President Peterson concluded the meeting by informing the attendees that the full Board would continue to review the written comments and would have access to the transcript from the public hearing. The Board would also consider how other jurisdictions address admission on motion as the Board continues its comprehensive study of Rule 7A. President Peterson advised the attendees that after the Board had determined a proposed resolution to this issue, the Board intended to solicit additional feedback, either formally or informally from the participants. The participants expressed an interest in providing further feedback.

Post-Hearing:

Following the public hearing, the Committee made recommendations to the full Board. The full Board met by telephone in February and again during its March 15, 2018 Board meeting to discuss the issue. Following the March Board meeting, the Board published its initial recommendation to the Board's website on March 16, 2018. That information is attached as **Exhibit M**. Board Director Emily Eschweiler followed up with each of the entities that had presented at the public hearing to advise those parties that the initial recommendations had been posted to the Board's website. The Board provided a short comment period, ending on April 6, 2018.

The Board received one response from the MSBA dated April 6, 2018, attached as **Exhibit N,** stating that the MSBA "commends the Board" on the "open process" and looks forward to working with the Board using a similar process in the future. The MSBA believes the recommendations the Board is proposing "significantly improve" the requirements for admission. The MSBA also recognized that "a comprehensive definition of what constitutes the practice of law for purposes of assessing an applicant's eligibility for admission without examination is a difficult challenge, perhaps best left for another day."

The Board reviewed this report at the Board's May 18, 2018 meeting. The Board adopted the recommendations contained within this report and unanimously authorized the filling of this Report.

Admission on Motion Requirements in Other Jurisdictions:

The Rule 7A Committee conducted comprehensive research regarding which jurisdictions allow admission on motion and, if so, the number of month/years of practice required by each jurisdiction prior to application. Attached as **Exhibit O** is a chart detailing the jurisdictional admission on motion requirements in each of the 50 states and the District of Columbia.

Minnesota and 41 other jurisdictions nationwide, including Washington D.C., allow admission on motion without examination.

Of the 42 jurisdictions that allow applicants admission on motion:

- 22 require that the applicant have been engaged in the active practice of law for five of the seven years preceding application, including Minnesota.
- Ten states require the applicant to have practiced for three of the preceding five years.
- Four states have a longer look-back period, requiring an applicant to have actively practiced law for five of the last ten years.
- Three states require active practice for the last five years.
- One state requires active practice for five of six years
- One state requires four of five
- One state requires practice for four of the last six years.

In Minnesota, Rule 7A(1)(c) requires that the applicant has been "engaged, as principal occupation, in the lawful practice of law" for an applicant to be eligible for admission without examination. The other 41 admission on motion jurisdictions include various, but substantially similar, definitions regarding what constitutes the "practice of law" necessary to satisfy that jurisdiction's admission on motion requirements. For example, Wisconsin and Idaho require "substantial engagement" in the practice of law preceding application. New Hampshire, Arizona and Alabama require that the applicant have been "primarily engaged in the active practice of law." Michigan and Minnesota require that the practice of law was the applicant's "principal occupation," while Wyoming calls it "primary occupation." Minnesota's "practice of law" definition and practice time requirements (60 of 84 months) are shared by many of the admission on motion jurisdictions.

Although many jurisdictions have a similar definition of active practice of law, and similar requirements for months/years of practice preceding application, perhaps the state with admission on motion rules most similar to Minnesota is Texas. The Texas Board of Law Examiners (TBLE), similar to Minnesota, requires that an applicant has been actively and substantially engaged in the lawful practice of law as the applicant's principal business or occupation for at least five of the seven years preceding application to the Texas bar. Texas considers 30 hours per week sufficient to count toward the months/years practice requirement, as does Minnesota. The TBLE generally does not count periods of parental leave or FMLA toward the five-year requirement. The TBLE

explains to applicants that they have a seven-year period to accrue the five years of requisite legal experience, so that time for leaves, job transitions, etc. is already built into the time periods set forth in the rules. The TBLE has discretion to waive or reduce the five-year practice requirement, or expand the seven-year window, if good cause is shown.

Most jurisdictions nationwide allow admission on motion without the need for examination and the majority of these jurisdictions have the same look-back period for months/years of practice as Minnesota.

Jurisdictions Prohibiting Admission on Motion:

Nine jurisdictions prohibit admission on motion and require all applicants to take the bar exam in order to be admitted to practice law in that state. Those states include California, Delaware, Florida, Hawaii, Louisiana, Maryland, Nevada, Rhode Island, and South Carolina. Two of the nine states that require an exam, Maryland and California, offer the shorter "Attorney Exam" if the applicant is in good standing and has met the requisite years of practice requirement.

Full-time Practice vs. Part-time Practice:

Nearly half of the 42 jurisdictions that allow admission on motion require that attorneys have been practicing on a full-time or near-full time basis prior to application, or their rules are silent regarding whether full-time practice is required to meet the admission on motion rules in that particular state.

Very few states that require full-time practice define what constitutes full-time practice of law for admission on motion. For example, Idaho's rules state that the active practice of law means simply more than part-time practice for the majority of the relevant period. Pennsylvania requires 40 hours per week, while Virginia defines the full-time practice of law as 35 hours per week.

Approximately 22 jurisdictions currently allow an applicant's part-time practice of law to be applied to the length of practice requirements for admission on motion.[12] Some of these 22 jurisdictions do not define what constitutes part-time practice by hours or months, and instead review each application for admission on motion on a case-by-case basis. These jurisdictions include Colorado, Connecticut, Massachusetts, Nebraska, North Dakota, West Virginia, Washington D.C. and Wisconsin.

The other states' part-time requirements for admission on motion include the following range:

[12] Definitions of how many hours constitute part-time versus full-time practice vary from jurisdiction to jurisdiction.

- 300 hours per year (Wyoming);
- 750 hours per year (Alaska);
- 50% time (Iowa, New Jersey, Michigan, Pennsylvania);
- 1000 hours per year (Illinois, Indiana, Montana, New Mexico, and Oregon)

Washington may be the most accepting of part-time work in this context, allowing any amount of legal work done in a calendar year to count toward "active legal experience." The most common part-time threshold is 1000 hours per year, currently required by five states.

Periods of Leave and Counting Qualifying Practice:

Most jurisdictions have not yet addressed the issue of whether or how parental leave, or other FMLA leaves of absence should be included in the months/years calculation for admissions on motion.

Currently, this issue has not been addressed and is not specifically set forth in the rules in 28 of the 42 admission on motion jurisdictions. Six states do not allow periods of parental leave or FMLA to count toward the months/years required for admission on motion, including Alaska, Colorado, Oregon, Texas, Utah and Virginia.

The remaining jurisdictions have varied policies regarding whether the periods of parental leave should be counted in the months/years calculations. For example, Massachusetts and Maine examine this issue on a case-by-case basis, considering the individual circumstances and the length of any leave(s) taken. New Mexico may count parental leaves so long as the applicant has sufficient practice over the course of the entire seven-year period. In Pennsylvania, vacation and approved leave are counted if the applicant returns to work following the leave period. New Jersey is currently addressing its first issue involving parental leave and will be addressing this issue in upcoming months. New Jersey, thus far, has indicated a willingness to accept periods of parental leave as part of the required five of seven year years of required practice. Washington has a broad leave policy, counting years during which any periods of leave were taken, no matter the length, so long as the applicant worked some time during that calendar year.

Most jurisdictions have yet to address the issue of periods of parental leave in this context. Based upon our contact with several boards, it appears that the most common current approach to this issue is to examine each applicant on a case-by-case basis, by reviewing the totality of the circumstances, including the length of the leave and the total months of practice worked within the requisite time periods prior to application.

The Board discussed this issue at length. The biggest factor for the Board in considering this issue is that the rules already permit up to 24 months of time without any practice during the relevant period. FMLA provides up to 12 weeks of leave per 52 weeks. Even if a lawyer took the full leave period each of the seven years, the lawyer would still have enough time to qualify under Rule 7A, as the lawyer can have up to 24

months of time away from the practice (roughly 104 weeks) per look back period. For lawyers with seven years of practice who took an FMLA leave each year, the total number of hours covered by FMLA would be 84. Because of this flexibility under the Rules, the Board believes that the current Rules adequately cover periods of leave. The concern is that further accommodation would begin to undermine the value of requiring extensive practice experience as a substitute for taking a bar examination to assure the public of competence. Furthermore, allowing up to 24 months of time without further inquiry as to the reason is also consistent with LCL's recommendation that the Rules promote lawyer well-being and reduce stigmas associated with leaves. Additionally, the Board's recommendation of 1000 hours per year provides additional flexibility in that a lawyer could opt to work longer hours some months and less in others. For example, a lawyer could work 150 hours per month for 6 months, 100 hours in month 7 and, in theory, no hours for the remaining 5 months of the year and still reach the 1000 hours required. This flexibility provides another way to accommodate parental leave, military leave, and health issues.

The Board also recommends adding specifically into the Rule language that pro bono work qualifies towards the practice requirement. Although the Board has always provided credit for pro bono work, this is a question that does arise and adding the language into the Rule will provide further clarity.

Bar Examination:

As noted above, Minnesota's cut score is currently 260, which is the among the lowest cut scores in the country. This is the primary method of determining competency in Minnesota.[13]

The Board discussed that most of the applicants applying under Rule 7A have already sat for and passed the bar examination in another jurisdiction prior to practice. Of the 394 applicants who applied for admission on motion under Rule 7A between January 1, 2014 and December 31, 2017, 62 were from Wisconsin. Of those applicants, only 26 (6.6% of the overall total) had been admitted in Wisconsin on the diploma privilege and had not taken the bar examination in another jurisdiction. Some jurisdictions preclude applications on motion from individuals who were admitted through the diploma privilege. Minnesota is not one of those jurisdictions and with the small number of

[13] Admissions by Rule type in each of the past four years:

	Rule 7A (Admission on Motion)	Rule 7B (MBE score over 145 and admitted in jurisdiction where taken)	Rule 7C (UBE score of 260 or higher in other jurisdiction)	Rule 6 (260 on UBE taken in MN)
2014	75	125	48	754
2015	100	102	76	663
2016	100	70	89	602
2017	98	75	111	568

applicants impacted by this, the Board does not recommend at this time that the Court change this Rule.

ABA Standard on Admission on Motion:

Attached as **Exhibit P** is the August 2012 amendment to the ABA Model Rule for Admission by Motion. In 2012, the ABA reduced the practice requirement from five of seven years to three of five years. The ABA Rule requires that an applicant be "primarily engaged in the active practice of law" but does not specifically define what "primarily engaged" requires. The ABA lists qualifying practice "activities" that are functionally equivalent to Minnesota's job titles and similarly include representing clients in private practice, serving as a government lawyer, judge, judicial law clerk, or in-house counsel, and teaching at a law school.

Gap Period Between Examination and Motion Eligibility:

Although not part of the Order from the Court, the Board also reviewed the relationship between Minnesota's three admission on motion rules, outlined earlier in the report. The Board was concerned that the current Rules do not permit an applicant to waive in between the three-year expiration of their exam score and attaining five years of practice, even if the applicant has achieved a satisfactory score on the UBE and been engaged in the active and lawful practice of law on a continuous basis since admission. With 31 jurisdictions having now adopted the Uniform Bar Examination, the Board determined that it would be a good time to consider whether it makes sense to address the Rule that requires an applicant with more than three years but less than five years of practice experience to sit for the examination in Minnesota.

The Board considered the rules and practices of other jurisdictions. Of the 30 jurisdictions administering the UBE studied by the Board, [14] different jurisdictions handle this differently:

- Approximately half of the jurisdictions (14) are similar to Minnesota in that there is no current mechanism for admission on motion between the expiration of the UBE score and admission on motion based on years of practice.
- The UBE score is valid for 5 years in three jurisdictions (which covers the entire period before the admission on motion based on years of practice.)
- Five jurisdictions only require 3 years of practice.
- One jurisdiction (New York) permits applicants to appeal to the Court if it would be a hardship between 3 and 5 years.
- One jurisdiction has not yet determined the length of UBE score validity.
- One jurisdiction does not have admission on motion.
- Five jurisdictions have a hybrid approach that permits individuals with an expired UBE score AND practice to apply during the gap period.

[14] The 31 jurisdictions include the Virgin Islands. For purposes of this study, the Board looked at the 50 U.S. states and the District of Columbia.

Board Discussion and Recommendations:

The Board reviewed a draft of this report at its May 18, 2018 meeting. After careful consideration of the information provided by the various constituents and the information from the other jurisdictions, the Board adopted the following findings and recommendations:

1. The Board is responsible for ensuring that those who are admitted to practice law in Minnesota have the necessary competence to justify the trust and confidence that clients, the public, the legal system, and the legal profession place in lawyers.

2. In considering proposed amendments, the Board must consider whether the proposals to reduce the number of hours or years of practice adequately protects the public notwithstanding changes to the practice of law and the increase in the number of lawyers practicing on a limited or flexible basis.

3. Similarly, the Board must ensure that the practice of law or examination score is contemporaneous enough to the date of admission so as to ensure current competency.

4. The Board recognizes that just as all recent graduates must sit for the bar examination notwithstanding a high GPA or high likelihood of passage, some highly competent individuals may be required to sit for more than one bar examination if the individual does not meet the requirements for admission on motion.

5. After considering input from numerous entities, jurisdictional trends, and factors relevant to admission in Minnesota, the Board recommends to the Court that the requirements for admission on motion be amended.

6. The Board recommends that the Court close the gap between Rule 7C (admission based on UBE) and Rule 7A (admission based on years of practice). While some jurisdictions have adopted a hybrid approach and permit the UBE score plus years of practice for the gap period, or have adopted a longer period of validity for the UBE score, the Board recommends that the Court instead reduce the number of practice months required from 60 months of the past 84 months to 36 months of the past 60 months for all applicants to the Minnesota bar. This is consistent with the 2012 ABA Model Rule revision.

7. The Board recommends that the Court delete Rule 2A(11), “principal occupation” and instead incorporate into Rule 7A a requirement of 1000 hours per year. This recommendation recognizes the changing practice of law, while still protecting the public. The Board recognizes that in effect this will reduce the number of

hours required from 7200 to 3000, but the Board believes that the 3000 hours is sufficient to prove adequate competence.

8. The Board recommends that the Rule remain silent on the reason for leave and continue to permit all applicants up to 24 months of leave for any reason, including FMLA. This will promote well-being and reduce stigmas in the legal profession as no further inquiry will need to be made by the Board as to the reason for the leave. The maximum leave period permitted pursuant to FMLA is less than the leave lawyers are permitted to take under the proposed Rule and still qualify. Furthermore, the flexibility afforded practitioners by shifting from a monthly accounting of hours to a 1000 hour per year standard will also better accommodate those striving for an appropriate work-life balance against the ebb and flow of life's circumstances.

Attached as **Exhibit Q** are proposed changes to the Rule. The Board has also included the proposed changes to the policy as **Exhibit R**. The Board will incorporate into the policy any modifications that the Court makes to the proposed Rules.

Conclusion:

For the reasons set forth above, the Board recommends adopting the revised Rule 7A.