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THE SUPREME COURT OF MINNESOTA BOARD OF LAW EXAMINERS

180 E. 5th Street, Suite 950
St. Paul, Minnesota 55101
(651) 297-1857
(651) 297-1196 fax

BLE@mbcle.state.mn.us
www.ble.mn.gov

TTY Users – 711
Ask for 651-297-1857

Emily John Eschweiler
Director

May 20, 2020

Re: July 2020/September 2020 Bar Examination

The Minnesota Board of Law Examiners met on Friday, May 15, 2020 to discuss whether to move forward with the administration of the July 2020 Uniform Bar Examination (UBE). The Board carefully considered information provided by many sources both before the meeting and during the public meeting on May 15, 2020. The Board determined that it plans to administer the UBE as scheduled on July 28 and 29, 2020. In order to accommodate as many of the registered applicants as possible, the Board also plans to administer the UBE on September 9 and 10, 2020. This will permit the Board to provide adequate social distancing for all registered applicants. Applicants registered for the July 2020 examination will be provided with an opportunity to select their preference for the July or September administration of examination on or before June 3, 2020. Applicants registered for the July 2020 examination who do not wish to sit for the examination in July or September will be provided with additional options.

The Board has established protocols to ensure the exam is administered in as safe a way as possible for all examinees, staff, and proctors. These may change if the recommendations from the Minnesota Department of Health (MDH) change. The decision to proceed is based on the information available to date. As the situation evolves, information may change and the Board may be required to consider other options, including cancelling or postponing the exam. Applicants sitting for the examination will need to affirm their agreement to adhere to the established protocols and acknowledge that they understand the inherent risks that may be associated with sitting for the examination during this time period. Any applicant who does not wish to follow those protocols or who is uncomfortable with the risks will be provided the opportunity to carry-over their application to a later examination without additional cost and without the need to resubmit their application. Additional information will be provided to impacted applicants.

The Board has not made this decision lightly. The Board understands the significant impact of its decision and the difficult decision that applicants will now need to make. The Board has balanced its duty to ensure that those recommended to the bar are competent with the current unknowns related to the novel coronavirus. The Board has spoken to many interested parties, including the Court, Minnesota law school Deans, the Minnesota Department of Health, other jurisdictions, the National Conference of Bar Examiners, members of the MSBA, students at each of the law schools, and the proctors, graders, and staff that will be required to administer the exam.

Recognizing the uncertainty surrounding the July exam, the Board petitioned the Court on April 20, 2020 to amend the Student Practice Rules to provide additional opportunities that would permit recent graduates the ability to practice while waiting to take the exam. Included in the recommendations is a renaming of the rules to Supervised Practice Rules and the adoption of a “supervised practitioner” category to distinguish recent graduates from current students. Consistent with similar decisions made in other jurisdictions, the Board recognized that permitting lawyers to practice under the supervision of another lawyer with full disclosure to the client and the Court would appropriately balance the necessary public protection against the need of recent graduates to obtain employment. The Petition is currently out for public comment and the Court’s determination will follow.

The Board has received inquiry as to the timing of the Board’s determination on the July exam. The Board’s timing has multiple factors. First, the Board received information that most students begin bar preparations shortly after graduation. The timing of the Board’s May 15th meeting fits nicely with that time frame. Second, information on the novel coronavirus changes daily and we know more today than we did on April 17th. Third, the Board recognizes the significant consequence of not proceeding with a July exam and a decision to cancel the exam or postpone the exam is not a determination that the Board wants to make. Applications for the July exam are as high as they have been in previous years and the Board continues to receive inquiries from prospective applicants. There is a strong interest in the Board proceeding with the July exam despite potential health risks. Fourth, the Board administering an in-person July exam does bring with it health risks that do not typically exist during exam administration. The Board needed time to talk to the appropriate experts and to be confident in our ability to provide an exam setting that would have the appropriate safeguards to reduce risk. The Board understands that sitting for the July or September examination may not be the right choice for every applicant and has worked hard to provide additional options for those applicants.

The Board has been asked to provide additional information as to why it is not advocating that the Court grant an emergency diploma privilege for this year’s graduates. To do this would be contradictory to the Board’s mission. Since 1891, the Minnesota Board of Law Examiners has been administering the bar examination. In 1921, Minnesota eliminated the diploma privilege. The bar examination protects the public by establishing a minimum competency standard for those licensed to practice law in Minnesota. Attaining a successful score on the bar exam is a prerequisite for being licensed as a lawyer capable of appearing alone in court and representing legal concerns of the public. It provides the public with an assurance that the individual has met minimum competency standards. There is an assumption that if the lawyer is licensed, that the lawyer is competent. Successful passage of the bar provides assurances that people entering legal practice have shown that they possess a minimum level of legal knowledge and ability. The process of studying for the bar constitutes a review and synthesis of the prospective lawyer’s 3 years of legal education; such a review would not occur without a comprehensive exam following law school. The examination requirement for lawyers in Minnesota is similar to the examination requirements for other professions, including medicine, dentistry, nursing,

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and certified public accountants. Each of these professions require both graduation and a comprehensive examination. One of the fundamental duties of the Board is to determine attorney competence. The diploma privilege would not accomplish this purpose. Supervised Practice, as discussed above, would provide recent graduates with the opportunity to practice under the supervision of a Minnesota licensed lawyer while waiting to sit for the bar exam.

Finally, the Board has been asked to provide additional information on the protocols that will be in place for the administration of the July and September exams. Those criteria may be found [here](#). The protocols will be updated as additional information becomes available.

Thank you.