

**STATE BOARD OF LAW EXAMINERS
MINUTES OF THE COMPREHENSIVE COMPETENCY COMMITTEE MEETING**

Monday, November 8, 2021

Minnesota Board of Law Examiners - Committee

Present at the meeting via Zoom were the following members of the Committee: Tom Boyd, Committee Chair; Hon. Juan Hoyos, Board Secretary; Wilbur Fluegel; Patricia Beety and Shawne Monahan. Also present were staff members Emily Eschweiler, Director; Natasha Melchionne, Managing Attorney; AJ Dordel, Staff Attorney; Emily Corson, Bar Admission Administrator; and Mariah Colvard, Executive Assistant.

Also attending a portion of the meeting was Justice G. Barry Anderson.

Additional guests in attendance were representatives and guests from the three Minnesota law schools: University of St. Thomas: Dean Robert Vischer, Lisa Montpetit Brabbit, Monica Gould, Joel Nichols, and Scott Swanson; University of Minnesota: Carol Chomsky, Erin Keyes, and Kim Ronning; and Mitchell Hamline: Dean Anthony Niedwiecki; Lynn LeMoine, and Dena Sonbol.

Also in attendance were Landon Ascheman (MSBA BAAC representative); Nancy Mischel; MSBA Board President Jennifer Thompson; a caller from the 920 area code; Katherine; Jonathon Nelson; and Tim Wong.

Tom Boyd started the meeting at 1:32 p.m. by welcoming everyone and thanking the participants for the input today and throughout the process.

Justice Anderson also thanked everyone for their participation and the perspective brought to the project, noting that the Court finds this issue and this process very important. He recognized that there was still significant road to travel and indicated that he would be listening for the first part of the discussion but would need to drop off due to other commitments. He looks forward to hearing more as this matter proceeds.

ABA Accreditation Standards

Emily Eschweiler noted that historically competency in Minnesota had meant two components – ABA accreditation and passage of a bar examination. The process of ABA accreditation is rigorous and involves adherence to Standards and undergoing a periodic process of site visits. To assist in studying this issue, the Committee has been provided with components of the Standards most relevant to the study – specifically Standards 3 and 5.

Licensure Models

Emily Eschweiler provided an overview of the current landscape of determining competency, ranging from the bar examination to WI's model of requiring certain courses while in law school and then granting in-state students licensure upon graduation and character and fitness review. Additional options include pre-graduation or post-graduation apprenticeships with portfolio components. With the wide range of possibilities and the significant impact of any proposed change to the law schools, the law schools are a significant stakeholder in this process and the Board seeks information about any factors or criteria the schools want for the working groups and board to consider when making recommendations to the Court.

Discussion with the Law Schools (drawing on the accreditation standards and licensure models)

Tom Boyd thanked the law schools for making time to be present at the meeting and for their past input in this process. The parties discussed that there was no specific format for the discussion. A list of potential topics for discussion had been circulated to the law schools, but the Committee encouraged the law schools to address any information relevant to this process.

Dean Vischer spoke first and noted that he had reviewed the minutes from the prior meeting and encouraged the Board to look to Professor Chomsky as a real resource on these issues. He also noted that there are not easy issues to this issue. It is important to look at the aggregate data as well as the individual stories. He discussed a graduate who had been selected by the clinic faculty as the student of the year and had a job lined up. She failed the bar by one point. She was a student of color who now works as a paralegal. What was the impact to her and how did that protect the public? She was devoted and chose her practice of criminal defense work, and when it came to the bar exam, she simply just was not able to demonstrate knowledge in secure transactions. He stated that it is important to have accountability and standards and he is not saying that we should get rid of the exam and have law school but the only gatekeeper, but it is important that the Board takes seriously its obligations as the gate keeper and that the mechanisms in place are aligned with protecting the public and not just a reflection of how we have done this in the past. He encouraged the Board to be intentionally proactive on this issue and to come to the discussions with a frame of mind of engaging these questions. The current approaches have some costs at the systemic level and personal level.

Dean Nichols talked about the law schools process on professional formation, which relates to a pathway being proposed by Oregon. He advised the Committee that this was a very intentional at St. Thomas. The program emphasizes the skillsets needed to practice law, and some of those measures are different from what is measured by the bar. The experiential learning, clinics, externships are critical places for graduate students and current students. There are some curricular tradeoffs. The other thing is to add that IAALS has done more than one study on this and the importance of this. All first

year students take a course called Serving Clients Well where we look at IAALs report – what do clients want from attorneys, what do employers want from attorneys. This includes communication, integrity, time management, and problem solving. These are the under the surface things that contribute to your success, but not covered in the bar exam.

Lisa Brabbit suggested that the Board involve mental health experts in the conversation. Dean Keyes and Dean LeMoine agreed that this is an important issue in this conversation.

Erin Keyes stated that she agreed with everything that had been stated and the need to look at whether the exam provides the Board with sufficient information on whether applicants are capable of serving clients. The University of Minnesota also has classes on developing a professional identity and developing skills that are needed but are not always looked at in the admissions process. Law students need to have the theoretical mindset, but also enough experience (clinics, independent field placements) where they have had a chance on ground to prove their skills in a practice setting before being in a situation that would put a client at risk. Dean Keyes noted that she still has many questions about what the right answers are but she is glad that Minnesota is having this discussion. She is keeping a close eye on the NextGen exam to see if it is a closer assessment of skills versus recall of information.

Kim Ronning also expressed gratitude that the NCBE is looking at this issue and echoed Dean Vischer's comments that the Board should be mindful and thoughtful as to alternative processes to the examination for admission.

Professor Chomsky stated that from an institutional view, she does not believe that any of the law schools would want a mandate on what to teach or what subject matters students need to learn. Each school has different courses and standards. She advocated for the test focusing on the skill of learning and processing legal information (and not on recall.) The competency determination should consider whether the graduate can effectively practice law.

Dean Neidwiecki thanked the Committee for engaging in this process and was appreciative of Minnesota being proactive. He noted that he was curious about alternative pathways involving experiential learning. He liked Oregon's proposals. He stated that he worries about the amount of money spent to prepare students for a two-day examination and noted that COVID really highlighted some of the inequities in the examination. Mitchell Hamline spends around \$1 million dollars a year on bar examination preparation. He would rather spend the money to support preparing students for real legal work.

Dean LeMoine agreed that mental health should be a consideration in this process. Before COVID, the Court had a one-day seminar gathering leaders in the profession to address these issues. This is our chance to really view how the process affects the mental health of students.

Tom Boyd stated that it is really helpful to have this discussion and he appreciates the comments related to mental health. He agrees entirely about the profession and the leaders in the profession are trying to do to get to the right place. These are issues the Board is acutely aware of in the COVID era and the struggle students were having, and the stress the Bar created for students. One subject that came up during Professor Chomsky's presentation was feedback received from lawyers and law students in the IAALS study and what they are learning in the first year. Mr. Boyd wondered whether the ABA would alter accreditation requirements. There are differing viewpoints on the perceived value of preparing for and taking the bar examination.

Dean Sonbol noted that she supports a residency requirement because it will help the graduates and the legal profession. She also would like the process to look at specialized exams in the fields the graduates will practice following that residency. The examination should test ability and not memorization, and should look at skills a lawyer needs. She would encourage looking at alternative exams other than writing or multiple-choice. Maybe a mock client like the one they do in the medical licensure field.

Professor Chomsky noted in response to Tom Boyd's question that the ABA has added an experiential component. Creating learning outcomes and assessing learning outcomes is important. She stated that they are focused on the client part right now. Although resource heavy, making a mock client interview part of the testing process would be helpful. She thinks there is a value to a capstone experience/review course, but the process now of relying on a bar review company is not the best process. It needs to be framed differently and the level of stress associated with it decreased.

Kim Ronning stated that in her position, she has seen students become increasingly disappointed in the bar exam passage process and themselves. There seems to be a disconnect between open and closed book exams and multiple choice versus case study work. They are now adapting to a bar exam something they are not familiar with. She participated in a character and fitness session with Lawyers Concerned for Lawyers and stated that she has seen alumni experience an unreasonable amount of stress.

Tom Boyd agreed that the review process post law school should be meaningful and enhance the experience of joining the profession rather than discouraging it. Dean LeMoine added that it would be good to break down some of the competitive nature of the bar.

Tom Boyd noted that the plans proposed by Oregon would require substantial resources from licensed professionals as well as the law schools. He asked for the law schools reaction.

Lisa Brabbit pointed out that with the bar exam, you are either in or you are out. With a capstone process, they would be training the students throughout their experience providing better information on what they needed to pass. Dean Keyes agreed that the layers of complexity increase substantially with the exam versus real time feedback. She

noted that there would need to be a substantial number of practicing lawyers willing to assist the law schools in order for it to be a quality experience.

Landon Ascheman stated that he appreciates that the Board is looking at this and the MSBA is moving this study forward. There is a lot of significance in the voices of the newest lawyers who just went through this process. Also addressing the public's concerns will be important. A lot of the public does not have an accurate perception of the examination or know that the examination does not test Minnesota law. He appreciates being part of the process to review this and knows that there are many views. He shares the concerns related to mentorship. He wondered how the process would accommodate solo practitioners. Mandatory mentorship might continue to exclude the same individuals that the current process excludes. Individuals with diverse backgrounds who are first generation lawyers may need additional assistance finding quality mentors.

The law schools agreed that administration of mentorship programs is resource-intensive.

Dean Nichols stated that we have historically thought that one exam at the end of a set of courses is the right way to test the students. Is there a way to measure competence incrementally and not at the end of the three year period? The amount of lead time that schools need for changes depends on the changes. He appreciated that the time frame the Board has proposed would allow for the incoming class of 2023 to have a good idea of what the process would look like at their matriculation in 2026. Although 2026 feels like a long way off, it would be good to be able to provide clarity to students when they enter law school and the law schools will need time to implement changes if there are any.

Dean Neidwiecki reminded the Board that part-time students who will complete their course of study in 2026 begin the program even sooner. He stated that Mitchell Hamline is already doing a lot of experiential learning. The school has already started programs that improve Access to Justice and provide experiential learning at the same time that they are assisting the community.

There was additional discussion on potential timing and structure of an examination that would test skills, would provide real time feedback to students, and would assist the law schools in evaluating how they are teaching. It is so important to have law schools and bar examiners to have those conversations. How can we prepare students for practice and not an examination?

Wil Fluegel noted that he had a greater appreciation for the experiential learning components. He asked how the schools fit in all of the pieces and would there be a need to stop teaching certain aspects of the traditional law school curriculum to gain additional experiential opportunities. Dean Neidwiecki stated right now they are teaching a course in the third year on how to pass the bar and that schools already require six credit hours of experiential learning. Experiential learning is more expensive, but having a good mix is very helpful. Mr. Fluegel followed up by asking how Mitchell Hamline finds volunteers for their program. Dean Neidwiecki stated that it is manageable if enough individuals step

up to help. It would also benefit the public. Professor Chomsky stated that if there is a movement to create an option for a supervised practice pathway to licensure, part of the process would be creating guidelines and rubrics as to what will be expected to learn in that supervised pathway. Which is what we would want to do for a clinical pathway.

A comment in the chat section noted that the commenter had set up two independent externships for experiential learning during law school, one for a non-profit and one with a judge.

Emily Eschweiler asked whether the law schools had considered at all the impact of portability, noting that roughly 20% of the applicants for the bar examination in Minnesota are from out of state. She inquired as to the statistics of Minnesota law school graduates that took the exam out of state.

Dean Neidwiecki stated that 20% of the out-of-state Mitchell Hamline students remain in Minnesota. The online/hybrid program is comprised of roughly 20% in-state students and the in person program is roughly 80% in-state students. He noted it is important for small states who can actually practice/experiment with this before implemented to help larger states like New York. The UBE was initially adopted only by smaller states and has now grown to over 40 jurisdictions.

Dean Keyes agreed that portability is an important consideration. A discussion occurred that adding additional options did not necessarily mean eliminating the examination (and its portability) as an option. Additional discussion took place on the importance of educating the public should an alternative option be proposed. The Board's purpose is to protect the public; the public also needs to have confidence that lawyers are competent. Perception is important, but also managing perception is important.

Mr. Boyd concluded this section by noting that this had been an excellent discussion and he looks forward to future discussions on this issue.

Public Comments (overview of two public comments that have been received)

Emily Eschweiler advised that the Committee had so far received two public comments. One individual had noted that he was a Native American who did not pass the bar on his first attempt. He strongly opposed eliminating bar exam. The other correspondence provided a thoughtful reflection of the commenters experience in not passing the bar on the first attempt and suggested that seeking out comments directly from those who did not pass as to their experience would provide the Board with very helpful insights into the process. Tom Boyd also noted that the second submission contained a helpful summary of some of the risk factors in determining passage and challenges of the bar examination.

Summary:

Tom Boyd thanked the law schools for their participation in this process and expressed the Committee's gratitude for their time, opinions, input, and information.

The next meeting will be December 8, 2021.

The meeting adjourned at 3:00 p.m.