

PUBLIC NOTICE
MINNESOTA STATE BOARD OF LAW EXAMINERS

The Minnesota Board of Law Examiners (Board) announces two additional public comment meetings to provide feedback and input to the Board on the bar examination and alternative non-exam pathways to measure attorney competence. These sessions will be moderated by John Phelps, Pathfinder Executive Consulting, LLC. Additional information and Zoom links will be posted to the Board's website by Tuesday, November 29, 2022.

- Monday, December 5, 2022 – 12 to 1 PM
- Thursday, December 15, 2022 – 8 to 9 AM

Written comments to the information provided below and requests to present oral testimony may be submitted to the Board of Law Examiners, Attn: John Koneck, Board Chair, 180 E. 5th Street, Suite 950, MN 55101 or emailed to ble@mbcle.state.mn.us. Notice is not required to attend the sessions.

Discussion:

The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in Minnesota.¹ One of the fundamental ways it does this is through the appointment of a Board of Law Examiners.² The Minnesota Board of Law Examiners (Board) is responsible for ensuring that those 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.”³ In furtherance of that responsibility, the Board administers the Rules for Admission to the Bar promulgated by the Minnesota Supreme Court, and from time to time, makes recommendations to the Court for rule amendments. The purpose of the Board's current study is to gather information and to file a comprehensive report with the Court in June 2023 with recommendations related to the bar examination, including any proposed rule amendments. The Board does not have independent authority to make changes to the Rules for Admission to the Bar.

In *In re Dolan*, the Minnesota Supreme Court stated that “[t]he standard for admission to the bar of this state has long been the passage of a written bar examination and graduation...from a law school which is approved, provisionally or fully, by the American Bar Association.” *In re Dolan*, 445 N.W.2d 553, 554 (Minn. 1989). The Dolan Court stated that the determination to grant a waiver of this requirement would “not be lightly

¹ Minn. Stat. § 481.01.

² Rule 3A of the Minnesota Rules for Admission to the Bar (“Rules”).

³ Rule 1.

made” and would “depend on, among other things, the demonstrated competence of the applicant in the years of practice following law school.” 445 N.W.2d at 557.

In June 2021, the Board issued a [public notice](#) advising members of the legal community and the public that the Board would be conducting a comprehensive two year study to look at the bar examination as well as to explore possible alternative approaches to assess an applicant’s competency.⁴ In the fall of 2021, a committee of the Board held four public meetings to gather additional information. Additional information and the agendas and minutes of these public meetings is available on the Board’s website.

In January 2022, the Board convened a Working Group of interested stakeholders to meet and make recommendations to the Board. The Working Group split into three separate subgroups, and between January and May, gathered additional information, and drafted three comprehensive reports that were published to the Board’s [website](#) in June. The Board extends its sincere gratitude to the Working Group members for the time invested in this process.

In June 2022, the Board met with the Bar Admissions Advisory Council (BAAC) to discuss the reports and to seek additional feedback and input. The BAAC is comprised of three representatives of the Minnesota State Bar Association (MSBA), members of the Minnesota law schools, and the members of the Board of Law Examiners. The purpose of the BAAC is to “discuss matters of general policy concerning admissions to the bar, amendments to the Rules, and other matters related to the work of the Board.”⁵

In July 2022, John Phelps, an independent consultant retained and funded by the MSBA, moderated two public listening sessions to solicit additional input on the working groups’ recommendations.

At the Board’s September retreat, the Board carefully reviewed all of the materials provided to date. Following comprehensive discussion, the Board made the following preliminary determinations. No final determinations on recommendations to the Minnesota Supreme Court have yet been made by the Board.

⁴ During the July 2022 listening sessions, questions were raised as to whether graduates from non-ABA law schools, both foreign and domestic, would be included. Minnesota utilizes a two-prong approach to determining attorney competence. In this study, the prong the Board is exploring is the examination. The Board continues to review Rule 4A(3), but it is not directly included in the scope of this study. The Board continues to welcome feedback and proposals on Rule 4A(3) for future consideration.

⁵ Rule 19.

The Board seeks further input of the legal community, the legal education community, and the public in providing further information in support or opposition of the following:

1. As a whole, the Board believes that Minnesota should continue to administer an exam as an option for determining competency. Based on what the Board knows to date, the Board plans to recommend that the Court adopt the [NextGen](#) exam, which is anticipated to replace the Uniform Bar Examination ([UBE](#)) in July 2026 and will allow for continued score portability. The Board discussed that the process that the NCBE has followed is thorough and has been supported by a practice analysis.
2. Licensure portability is an important criteria in the assessment. The Board recognizes that a significant number of examinees as well as a significant number of newly admitted lawyers attend law schools outside of the state of Minnesota.⁶
3. The Board's review and the Working Group reports both reference a University of New Hampshire program that allows for graduates to become licensed upon graduation without sitting for the New Hampshire bar exam. The [Daniel Webster Scholar Honors Program](#) is an impressive and highly competitive program. The school accepts 24 students into the program each year and integrates testing and evaluation into the process. The program was developed through a joint collaboration between the Court, New Hampshire's sole law school, and the New Hampshire Board of Law Examiners. At the conclusion of the program, the graduates are deemed to have passed the bar exam through the testing that takes place during the program and through a portfolio review process.⁷ The graduates are highly sought after and an independent study by the Institute for the Advancement of the American Legal System (IAALS) supported the quality of the education this program provides.
4. The Board supports collaboration to develop a similar program in Minnesota, but questioned whether the number of students admitted to this type of program could be significantly expanded without a reduction in its efficacy or a significant increase in cost.
5. The Board strongly supports continued discussions on a non-exam assessment for determining competency. The Board discussed that this might be best driven by the law schools with the full participation by the Board in these discussions. The Board supports innovation and the creation of a portfolio-based assessment model. As noted by the working groups, the law schools are in the best position to propose a rubric that meets the appropriate assessment standards. The Board

⁶ Out of the 805 lawyers admitted to Minnesota in 2021 (under all Rule types), 441 attended Minnesota law schools (54.78%). Of the 1068 applicants for the February and July 2021 exams, 667 (62.45%) attended Minnesota law schools. (The numbers for examinees reflect all applicants, including repeaters and those who withdrew from the examination.)

⁷ "Successful Webster Scholars pass a variant of the New Hampshire Bar exam during their last two years of law school and are sworn into the New Hampshire bar the day before graduation."
<https://law.unh.edu/academics/daniel-webster-scholar-honors-program>, last visited 10/30/22.

is interested in additional information on the workability of a pilot project that could provide guidance on future expansion.

6. In addition to the skills and assessment measures in the [IAALS](#) study, a non-exam pathway should consider the [practice analysis](#) completed by the NCBE, as well as the recent [California](#) and [Florida](#) practice analyses to determine the threshold concepts new lawyers should know and how those would be assessed in a non-exam assessment.
7. The Board agrees that additional experiential training would be beneficial to new lawyers.⁸
8. Access to justice should remain an important piece of the discussion. Other jurisdictions that have looked at this issue have collaborated with legal aid organizations outside of the metropolitan areas in their states to provide legal assistance. The Board will seek feedback from Minnesota legal services programs.
9. Both equity issues and cost remain important criteria.⁹
10. The Board remains interested in a post-graduation pathway, but to assess its efficacy, recommends that the Court prioritize Rule amendments to allow for the development of a law school pilot program first.
11. The Board does not currently have the staffing resources or expertise to take on the development or ongoing review of a post-graduation program. If the Court determines to move forward with the exploration of post-graduation pathway, the Board would support developing a partnership with the MSBA, the law schools, and/or legal organizations that could lead to the development of a post-graduation program in the future. The Board identified a number of challenges that would need to be addressed including finding and training supervising attorneys, ensuring that this type of program could be administered in an equitable way, and creating rubrics to assess portfolios that would both provide opportunity for a skills assessment and a determination of threshold knowledge in common legal areas.¹⁰
12. The Board discussed that one approach to both a law school pathway and a post-law school pathway could be the creation by the Court of an accreditation program that would define what the program would need to include and standards that participants would need to meet, then defer to the expertise of the law schools or other organizations to develop a program that meets the established criteria and ensures that their participants are able to demonstrate having satisfied the standards. Aspects of this approach would be similar the legal certification model followed by the Minnesota Board of Legal Certification. At specified times during participation in the program, the Board would review the created portfolios similar to the Daniel Webster program to verify that the candidates in these programs meet the standards.

⁸ ABA Accreditation Standard 303(a)(3) currently requires six (6) experiential learning credits.

⁹ Baseline criteria developed during the Working Group process may be found on page four (4) [here](#).

¹⁰ Alternatively, if the Court determined that creation of a post-graduation program should happen concurrently with the law school program, the Board would propose that the Court increase the Lawyer Registration Fees that Minnesota lawyers pay each year to fund the development, creation, and ongoing operations of a program.

13. The Rules already require graduation from an ABA accredited degree program; the Board did not support a proposal that would make graduation the sole requirement.¹¹
14. Although not directly part of this study, the Board discussed that the information provided supports Petitioning the Court to expand the Supervised Practice Rules to allow those who have failed the exam to participate (with proper notice to supervising attorney).

Members of the legal community and the public are encouraged to attend the listening sessions and to provide written feedback. While the Board will accept written comments at any time during this process, the Board would appreciate receiving comments by Friday, January 6, 2023 for further consideration by the Board at its January meeting.

Dated: November 14, 2022

¹¹ Wisconsin is the only jurisdiction that still permits “diploma privilege” and Wisconsin limits this “privilege” to graduates from in-state law schools. Graduates of ABA-accredited out-of-state law schools are required to sit for the Wisconsin bar examination.