

**PUBLIC NOTICE**  
**MINNESOTA STATE BOARD OF LAW EXAMINERS**

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[Rule 4A](#) of the Minnesota Rules for Admission to the Bar provides that an applicant has the burden to prove that the applicant meets eligibility requirements to practice law in Minnesota. Currently, eligibility includes good character and fitness as described in Rule 5, meeting the educational requirements outlined in Rule 4A(3), and demonstration of skill through attainment of a score of at least 260 on the Uniform Bar Examination, or practical experience in the practice of law in another U.S. jurisdiction for at least 36 of the past 60 months. The use of these criteria to judge qualification for licensure has previously served well to assess an applicant's competence to practice well in furtherance of the Board's purpose as stated in [Rule 1](#). The criteria also represent useful considerations to evaluate the efficacy of any alternative pathway, as every pathway should assure proper character, education, and skills or experience.<sup>1</sup>

Since June 2021, the Minnesota Board of Law Examiners (Board) has engaged in a comprehensive study on the bar examination and alternative non-exam pathways to measure attorney competence. As the Board concludes and winds down this study, the Board seeks commentary from the public and the legal community on the following recommendations before submitting its report to the Court.

Additional information on the background of these recommendations is available on the Board's website and in previous public notices.

Written comments may be submitted to the Board of Law Examiners, Attn: John Koneck, Board Chair, 180 E. 5<sup>th</sup> Street, Suite 950, St. Paul, MN 55101 or emailed to [ble@mbcle.state.mn.us](mailto:ble@mbcle.state.mn.us) and are requested by **May 1, 2023**.

Dated: 3/20/23

**Recommendation 1:** Propose Rule amendments to revise Rule 6E to permit the adoption of the [NextGen](#) exam, which will replace the Uniform Bar Examination ([UBE](#)) in July 2026. The development of the NextGen exam has been thorough and research driven. The exam will cover fewer subjects and refine the content scope based on the practice analysis conducted as part of the study and will place a greater emphasis on lawyering skills. Licensure portability is an important criteria in the decision. The Board recognizes that a significant number of graduates from Minnesota law schools apply for admission in other jurisdictions and that a significant number of applicants who sit for the Minnesota bar attend law school in other states.

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<sup>1</sup> The Board notes that the Court amended Rule 7A in [2018](#) to reduce the number of years of practice required following a comprehensive study by the Board and a Petition to the Court. The Court has amended the educational requirements twice in the last 15 years and the Board continues to study this issue to determine if the Board should propose additional future changes. ([2021](#) and [2011](#))

**Recommendation 2:** Participate in a Standard Setting exercise through the National Conference of Bar Examiners to determine the appropriate cut score for Minnesota. Currently Minnesota requires a 260. UBE jurisdictions range from 260 to 273. The score range for the NextGen exam has not yet been set. The Board recommends that prior to adoption of a cut score for the NextGen that the proposed cut score recommendation be put out for public comment. [Note: The timeframe for this important process will be closer to the date of implementation.]

During the study the Board heard both that Minnesota should retain a similar cut score to the current cut score and that Minnesota should review Rule 4A(3), which provides the educational requirements for admission. Minnesota has long had a high educational requirement with a lower cut score, as opposed to jurisdictions like California, which have a higher cut score and a lower educational requirement. This will be a policy determination that will need to be weighed by the Court at a later date.

**Recommendation 3:** Amend Rule 7B to sunset admission by motion based on transfer of MBE score of 145 or higher three years after the MBE is no longer a test component offered by the National Conference of Bar Examiners.

**Recommendation 4:** Amend Rule 7C to adopt transfer of NextGen scores, for a period of three years from the date of exam and based on the score set in Recommendation 2, consistent with the current provisions for acceptance of UBE scores.

**Recommendation 5:** Amend Rule 11B (d) of the Supervised Practice Rules to permit the Board to waive the provision that certification as a supervised practitioner terminates upon failure of the examination, provided that within 10 business days of examination results, the supervising attorney advises the Board that the supervising attorney is aware of the results and continues to accept the obligation of supervising lawyer.

**Recommendation 6:** Recommend that the Court create an Implementation Committee for the purpose of further exploring and developing an alternative assessment to the bar examination for adoption by the Court that could be completed while in law school. During the study, the Board reviewed compelling information that a comprehensive portfolio review, while more time consuming than administration of the bar examination, would provide increased assurances that the recent graduate possesses the competence necessary to succeed in the successful practice of law. The three Minnesota law schools already have in place robust clinic and experiential learning programs and have the skills and expertise to successfully move this concept forward. The Board agrees that additional experiential training would be beneficial to new lawyers.<sup>2</sup>

The Implementation Committee will be responsible for creation of rubrics, metrics, and measurements for the Board to evaluate participants in the program.

The Board recommends that the Implementation Committee include:

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<sup>2</sup> ABA Accreditation Standard 303(a)(3) currently requires six (6) experiential learning credits.

- At least two representatives from each of the Minnesota law schools;
- A representative from the Minnesota State Bar Association;
- A representative from any interested affinity bar;
- A member of the Minnesota Disability Bar Association;
- A representative from the New Lawyer Section, who sat for the Uniform Bar Examination (in any state) within the last five years;
- At least one member of the Board of Law Examiners;
- At least one member of the of the Board of Professional Responsibility;
- At least one member of the public;
- Members of the bar who supervise new lawyers, representing different fields of law.
- A national expert on alternative pathways.

The Implementation Committee should be charged with:

1. The development of assessment criteria, to include consideration of:
  - a. The skills and assessment measured in the [IAALS](#) study;
  - b. 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.
  - c. Equity and cost.
2. Identification and creation of pilot programs, noting the following:
  - a. 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.<sup>3</sup> 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.
  - b. The Board discussed that it would support collaboration on developing a similar program in Minnesota, but questioned whether it was realistic to believe that this program could be significantly expanded without a reduction in its efficacy or a significant increase in cost.

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<sup>3</sup> "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.

- c. 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 full participation by the Board in these discussions.
  - d. 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 is interested in the workability of a pilot project that would provide guidance on future expansion.
  - e. In reviewing the 2022 ABA 509 reports from the 3 Minnesota law schools, the Board notes each of the Minnesota law schools have significant seats allocated to clinics, field placements, and simulation based testing.<sup>4</sup>
3. Drafting a Rule for adoption by the Minnesota Supreme Court and incorporation into the Minnesota Rules for Admission to the Bar.

**Recommendation 7:** The Board carefully considered the recommendations of Working Group 3, supervised practice programs in other jurisdictions, and the testimony and written submissions of interested parties and national experts. The Board agrees that the public would benefit from a high-quality post-graduation pathway to licensure that would involve intense supervision by licensed practitioners. However, the Board has serious concerns as to whether the Board has the tools and resources to successfully develop and implement this program at this time, especially in light of the Board's potential resource commitment to Recommendation 6. Unlike the law school pathway, all elements of this program would need to be created and developed. An affirmative and robust commitment from Minnesota-licensed lawyers would be essential to designing and maintaining a program that could be implemented in a fair, equitable, and reliably accessible way. The program is likely to incur significant costs, and it is unclear the extent to which the program would increase access and diversity and/or create new challenges and/or unforeseen consequences. Adopting and developing Recommendation 6 would provide additional data and time for continued analysis, and may produce standards and tools that can be utilized in a post-graduation pathway. The Board would also need additional guidance on how to reduce subjectivity; recruit, evaluate, and train supervisors; and effectively administer such a program. The Board acknowledges and appreciates that national experts in this field have indicated that they would be willing to participate in this project on a pro bono basis. The Board recommends that if the Court determines that it is interested in pursuing this pathway that the Court create a Committee to design and provide additional guidance to the Court.

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<sup>4</sup> [https://law.umn.edu/sites/law.umn.edu/files/2022-12/Official\\_Guide2022%20-%20Std509InfoReport-100-12-15-2022%2014-10-45%20%281%29.pdf](https://law.umn.edu/sites/law.umn.edu/files/2022-12/Official_Guide2022%20-%20Std509InfoReport-100-12-15-2022%2014-10-45%20%281%29.pdf); <https://mitchellhamline.edu/admission/wp-content/uploads/sites/4/2022/12/ABA-2022-Standard-509-Information-Report.pdf>; <https://www.stthomas.edu/media/schooloflaw/pdf/Standard509.pdf>