STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8008

ORDER ESTABLISHING COMMENT PERIOD ON PROPOSED AMENDMENTS TO THE RULES FOR ADMISSION TO THE BAR

The Board of Law Examiners has filed a report that recommends amendments to the Rules for Admission to the Bar, specifically the rules that govern admission to the Minnesota bar by motion based on years of practice. *See* Minn. R. Admission to the Bar 7 (describing admission without examination). The recommended amendments are based on the Board's study of the standards for admission by motion based on years of practice. The Board's report, recommendations, and proposed amendments to the Rules for Admission to the Bar are attached to this order.

The court will consider the Board's recommendations and proposed amendments to the Rules for Admission to the Bar after providing for a public comment period.

IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or in opposition to the recommended amendments to the rules governing admission to the bar by motion based on years of practice shall file one copy of those comments with the Clerk of the Appellate Courts, using the appellate courts' electronic filing system if required to do so, *see* Minn. R. Civ. App. P. 125.01(a)(1). All comments shall be filed so as to be received on or before September 17, 2018.

Dated: July 19, 2018

BY THE COURT:

Lorie S. Gildea
Chief Justice

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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 she 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.

Exhibit List

RULE 2. DEFINITIONS AND DUE DATE PROVISIONS

A. Definitions. As used in these Rules:

~~(12) "Principal occupation" means an applicant's primary professional work or business.~~

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) Held a ~~L~~licensed to practice law in active status;

(b) Was ~~i~~in good standing before the highest court of all jurisdictions where admitted; and

(c) Was ~~E~~engaged, ~~as principal occupation,~~ in the lawful practice of law for at least 1000 hours per year as a:

i. Lawyer representing one or more clients, including on a pro bono basis;

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;

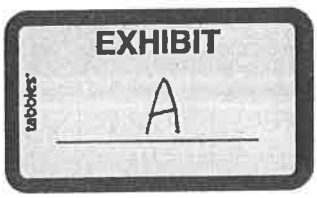
v. House counsel for a corporation, agency, association, or trust department;

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.

(2) Jurisdiction. The lawful practice of law described in Rule 7A(1)(c)(i) through (v) must have been performed in a jurisdiction in which the applicant is admitted, or performed in a jurisdiction that permits the practice of law by a lawyer not admitted in that jurisdiction. Practice described in Rule 7A(1)(c)(vi) through (viii) may have been performed outside the jurisdiction where the applicant is licensed.



RULE 2. DEFINITIONS AND DUE DATE PROVISIONS

A. Definitions. As used in these Rules:

(1) "Application file" means all information relative to an individual applicant to the bar collected by or submitted to the Board while the application is pending and during any conditional admission period.

(2) "Applicant portal" is a confidential password-protected electronic site used by applicants and Board staff to share information and to send and receive documents.

(3) "Approved law school" means a law school provisionally or fully approved by the American Bar Association.

(4) "Board" means the Minnesota State Board of Law Examiners.

(5) "Court" means the Minnesota Supreme Court.

(6) "Director" means the staff director for the Board.

(7) "Full-time faculty member" means a person whose professional responsibilities are consistent with the definition of "full-time faculty member" set forth in the Standards for Approval of Law Schools, published by the American Bar Association's Section of Legal Education and Admissions to the Bar,

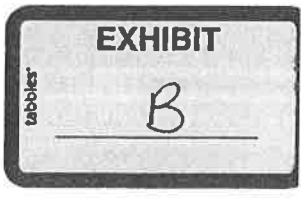
(8) "Good character and fitness" means traits, including honesty, trustworthiness, diligence and reliability, that are relevant to and have a rational connection with the applicant's present fitness to practice law.

(9) "Jurisdiction" means the District of Columbia or any state or territory of the United States.

(10) "Legal services program" means a program existing primarily for the purpose of providing legal assistance to indigent persons in civil or criminal matters.

(11) "Notify" or "give notice" means to mail or deliver a document to the last known address of the applicant or the applicant's lawyer. Notice is complete upon mailing, but extends the applicant's period to respond by three days.

(12)"Uniform Bar Examination" or "UBE" is an examination prepared by the National Conference of Bar Examiners (NCBE), comprised of six Multistate Essay Examination questions, two Multistate Performance Test questions, and the Multistate Bar Examination.B. Due Dates Provisions. Due dates specified under these Rules shall be strictly enforced and shall mean no later than 4:30 p.m. on the date stated; if the date falls on Saturday, Sunday, or a legal holiday, the deadline shall be the first working day thereafter. Postmarks dated on the due date will be accepted.



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 36 of the 60 months immediately preceding the application, the applicant:

(a) Held a license to practice law in active status;

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

(c) Was engaged in the lawful practice of law for at least 1000 hours per year as a:

i. Lawyer representing one or more clients, including on a pro bono basis;

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.

(2) Jurisdiction. The lawful practice of law described in Rule 7A(1)(c)(i) through (v) must have been performed in a jurisdiction in which the applicant is admitted, or performed in a jurisdiction that permits the practice of law by a lawyer not admitted in that jurisdiction. Practice described in Rule 7A(1)(c)(vi) through (viii) may have been performed outside the jurisdiction where the applicant is licensed.

Policy Statement on Admission without Examination, Eligibility by Practice (Rule 7A)

An applicant applying under Rule 7A must provide documentary evidence showing that for at least 60 of the 84 months immediately prior to filing the application, the applicant has been "engaged, as principal occupation, in the lawful practice of law" in one of the activities listed in Rule 7A(1)(c).

Hours Required:

Rule 7A permits lawyers licensed in another jurisdiction to be admitted without examination if they have engaged in the practice of law in another jurisdiction for 60 of the 84 months immediately preceding the application. The phrase "engaged as principal occupation" is interpreted to mean that one's practice of law must be full-time or substantially full-time (at least 120 hours or more per month).

The applicant has the burden of proving eligibility under Rule 7A. The Board determines eligibility on a case-by-case basis using the documentary evidence submitted by the applicant and information obtained during the investigation.

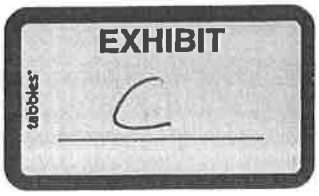
Type of Work and Jurisdiction:

The Board also reviews the type of work that the lawyer has performed. Generally, work that does not require a law degree will not qualify toward the Rule 7A practice requirement. In addition, unless the work meets the exceptions outlined in Rule 7A(2), the time will not qualify if performed in a jurisdiction in which the lawyer is not admitted.

Some positions require licensure in "any jurisdiction" but do not specifically require licensure in the jurisdiction in which the lawyer is practicing. For these positions, the Board will make additional inquiry as to the type of work performed and whether the work is considered to be the lawful practice of law in the jurisdiction in which it was performed. For example, document review work performed in Minnesota by a lawyer licensed in New York would not qualify if the position required a J.D. but not licensure, or if the work could be performed by a paralegal. However, if the lawyer was providing advice on New York law and was licensed in New York, then the time would likely qualify.

Converting to Rule 6:

If an applicant is unable to provide documentation showing that the applicant meets the requirements of Rule 7A, the Board will advise the applicant that the applicant must take and pass the Minnesota bar examination in order to be admitted in Minnesota. An applicant who applies under Rule 7A who is determined to be ineligible may convert his or her application to Rule 6 and sit for an examination within the succeeding 15 months. No additional fee is required. See Rule 12J.



DO NOT STAPLE

MINNESOTA BOARD OF LAW EXAMINERS
APPLICATION FOR ADMISSION

180 East 5th Street, Suite 950
St. Paul, MN 55101

7.00 10 YEAR EMPLOYMENT HISTORY

Start with your MOST RECENT employer or period of unemployment. List ALL employment and periods of unemployment in the past 10 years, including temporary and part-time work, unpaid work, self-employment, military service, time in school, internships, externships, etc.

Please complete your answers on this Form and attach additional copies of this Form if you need space to list additional employment.

If you are CURRENTLY, or have been a solo practitioner, complete FORM 9 in addition to this form.

If you are applying under Rule 7A, complete Section 8.00 in addition to this form.

7.01 Dates: From: To:

Status: Employed ☐ Unemployed ☐

If employed, answer additional questions below. If unemployed, answer the "Explain" question and then skip to next time period.

If Unemployed, Explain Why:

Title:

Name of Firm/Company:

Street Address: Street City State Zip

Immediate Supervisor: Daytime Phone: ( )

Was The Position: *(Check all that apply)* Full-time: ☐ Paid: ☐ J.D. Required: ☐

Part-time: ☐ # hrs/week ____ Volunteer: ☐ J.D. Preferred: ☐

If J.D. Required/Preferred, Were You: Solo: ☐ Partner/Shareholder: ☐ Associate: ☐ Other: ☐ _____

Nature and Extent of Your Duties or Practice:

Location Work Was Performed: City State Country

Reason For Leaving: Date Employment Ended:

7.02 Dates: From: To:

Status: Employed ☐ Unemployed ☐

If employed, answer additional questions below. If unemployed, answer the "Explain" question and then skip to next time period.

If Unemployed, Explain Why:

Title:

Name of Firm/Company:

Street Address: Street City State Zip

Immediate Supervisor: Daytime Phone: ( )

Was The Position: *(Check all that apply)* Full-time: ☐ Paid: ☐ J.D. Required: ☐

Part-time: ☐ # hrs/week ____ Volunteer: ☐ J.D. Preferred: ☐

If J.D. Required/Preferred, Were You: Solo: ☐ Partner/Shareholder: ☐ Associate: ☐ Other: ☐ _____

Nature and Extent of Your Duties or Practice:

Location Work Was Performed: City State Country

Reason For Leaving: Date Employment Ended:

EXHIBIT tabbies D

7.03 Dates: From: To:

Status: Employed ☐ Unemployed ☐

If employed, answer additional questions below. If unemployed, answer the "Explain" question and then skip to next time period.

If Unemployed, Explain Why:

Title:

Name of Firm/Company:

Street Address: Street City State Zip

Immediate Supervisor: Daytime Phone:

Was The Position: *(Check all that apply)* Full-time: ☐ Paid: ☐ J.D. Required: ☐
Part-time: ☐ # hrs/week ____ Volunteer: ☐ J.D. Preferred: ☐

If J.D. Required/Preferred, Were You: Solo: ☐ Partner/Shareholder: ☐ Associate: ☐ Other: ☐ _____

Nature and Extent of Your Duties or Practice:

Location Work Was Performed: City State Country

Reason For Leaving: Date Employment Ended: mm/dd/yy

7.04 Dates: From: mm/dd/yy To: mm/dd/yy

Status: Employed ☐ Unemployed ☐

If employed, answer additional questions below. If unemployed, answer the "Explain" question and then skip to next time period.

If Unemployed, Explain Why:

Title:

Name of Firm/Company:

Street Address: Street City State Zip

Immediate Supervisor: Daytime Phone:

Was The Position: *(Check all that apply)* Full-time: ☐ Paid: ☐ J.D. Required: ☐
Part-time: ☐ # hrs/week ____ Volunteer: ☐ J.D. Preferred: ☐

If J.D. Required/Preferred, Were You: Solo: ☐ Partner/Shareholder: ☐ Associate: ☐ Other: ☐ _____

Nature and Extent of Your Duties or Practice:

Location Work Was Performed: City State Country

Reason For Leaving: Date Employment Ended: mm/dd/yy

8.00 **RULE 7A ELIGIBILITY REQUIREMENT**

To be completed only by applicants applying to the Bar pursuant to Rule 7A.

In order to qualify for admission under Rule 7A, you must provide documentary evidence showing that for at least 60 of the 84 months immediately preceding this application you were engaged in the practice of law as your principal occupation by engaging in one or more of the following activities listed in Rule 7A:

i. Lawyer representing one or more clients;
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.

To qualify, activities listed in (i) through (v) must have been performed in a jurisdiction in which the applicant is admitted, or in a jurisdiction that permits the practice of law by a lawyer not admitted in that jurisdiction. Activities listed in vi through viii may have been performed outside of the jurisdiction where the applicant is licensed.

To assist the Board in determining your eligibility under Rule 7A, please submit a detailed narrative describing the following:

1. The employment or solo practice listed in Section 7.0 that you believe meets the Rule 7A definition of the practice of law;
2. The number of months and the date ranges for the each qualifying activity;
3. Your rationale for concluding the time qualifies;
4. Any additional information you believe would be helpful in determining your eligibility under Rule 7A.

You may be asked for additional information to verify eligibility.

Attach additional pages as necessary.

I affirm that I have read Rule 7A of the Rules for Admission to the Bar and that for at least 60 of the 84 months immediately preceding my application, I was licensed to practice law, in good standing before the highest court of all jurisdictions where admitted, and was engaged, as my principal occupation, in the lawful practice of law as outlined in Rule 7A.

Signature **Date**

PUBLIC NOTICE

MINNESOTA STATE BOARD OF LAW EXAMINERS

In response to a May 18, 2017, Order from the Minnesota Supreme Court, the Board of Law Examiners is studying Rule 7A (eligibility for admission based on years of practice) of the Rules for Admission to the Bar (Rules), including a review of whether and how the Board should treat part-time legal work and periods of leave.

The Board of Law Examiners is charged with ensuring "that those who are 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." (Rule 1)

Applicants may provide evidence of competence 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 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 being used as the basis for the admission. (Rule 7C)

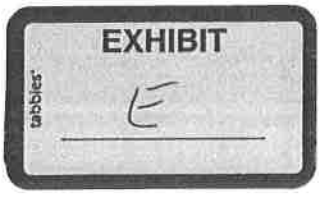
- Transferring into Minnesota a score of 145 or higher on the Multi-state Bar Examination (MBE), which is the test instrument used on the second day of the bar examination. The applicant must be successful on the bar examination in which they obtained the MBE score, be admitted in that jurisdiction, 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. (Rule 7B)

- Providing documentation 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 Rule 7A(1)(c). (Rule 7A) Principal occupation is defined as an applicant's "primary professional work or business." (Rule 2A(12))

  A Board policy published to the Board's website advises applicants that the "the phrase 'engaged as principal occupation' is interpreted to mean that one's practice of law must be full-time or substantially full-time (at least 120 hours or more per month)."

  Applicants unable to provide documentation that their practice qualifies under Rule 7A are permitted to transfer their Rule 7A application to Rule 6 and sit for a bar examination administered within the next 15 months without paying an additional application fee. (Rule 12J)

The Board seeks comments from the legal community and the public as part of its comprehensive review, including commentary on part-time practice and threshold requirements,



how to address periods of time in which an individual is not engaged in the practice of law, and whether 60 of the last 84 months is a reasonable look back period. The Board will survey other states and provide the entities who filed amicus briefs to the Court on this matter, including the Minnesota State Bar Association, the opportunity to present written comment and oral testimony. Others who wish to provide comments to the Board may provide written comments or submit a written request to provide oral testimony.

Written comments and requests to present oral testimony may be submitted to the Board of Law Examiners, Attn: Douglas Peterson, Board Chair, 180 E. 5th Street, Suite 950, MN 55101 or emailed to ble.cle.blc@mbcle.state.mn.us by November 30, 2017.

Once the Board has received the written and oral comments and studied the provisions in other jurisdictions, the Board will publish an initial recommendation on the issue and hold a public hearing to solicit feedback. The Board will compile the results of its study and provide feedback to the Court no later than June 1, 2018.

Notices of the dates, time, and locations of the Board's public meetings will be posted to the Board's website: www.ble.mn.gov

Dated: September 12, 2017

Emily John Eschweiler
Director
Minnesota State Board of Law Examiners

Emily Eschweiler

Subject: Comments: Admission Based on Years of Practice / : Board's Public Notice of September 12, 2017

From: LaVern Pritchard [mailto:lavern@lawmoose.com]
Sent: Wednesday, September 20, 2017 4:45 PM
To: BLE.CLE.BLC <BLE.CLE.BLC@mbcle.state.mn.us>
Cc: Tim Groshens <tgroshen@statebar.gen.mn.us>; Sonia Miller-Van Oort <soniamv@sapientialaw.com>; William Henderson <wihender@indiana.edu>
Subject: Comments: Admission Based on Years of Practice / : Board's Public Notice of September 12, 2017

I am responding to the Board of Law Examiners invitation to comment in connection with its plan to Study Rule 7A (Admission based on Years of
Practice) of the Minnesota Rules for Admission to the Bar.

https://www.ble.mn.gov/board-of-law-examiners-to-study-rule-7a-admission-based-on-years-of-practice/.

The notice focuses on part time legal work and periods of leave as that is the direction the Board has received from the Minnesota Supreme Court.

My comments go not to duration or intensity of an individual's experience but rather to the nature of qualifying "legal work" itself and legal career opportunities for law graduates in the early 21st century.

In the board's rule 7, https://www.ble.mn.gov/rules/, the enumerated categories of acceptability for one "engaged, as principal occupation, in the lawful practice of law" should, in my view, be supplemented with a separate set of examples for those who are engaged in the business or practice of legal knowledge management, legal services engineering, and the like - 21st century careers that will take us forward.

Your regulatory body should open to welcoming them to Minnesota for who they actually are, not based on outmoded concepts of the only way one can "be" a lawyer (in a broader sense of the word).

Who and what am I talking about?

Richard Susskind, for example, has written over the course of the last several years about new roles lawyers will be required to fill.

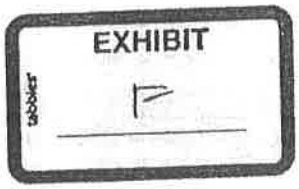
In The End of Lawyers? Rethinking the Nature of Legal Services (Oxford University Press 271-273 (Oxford University Press, 2008), Susskind identified "five types of lawyer in the future - expert trusted advisers, enhanced practitioners, legal knowledge engineers, legal risk managers, and legal hybrids (multi-disciplinary professionals genuinely expert in more than traditional lawyer skills).

More recently, in Tomorrow's Lawyers, An Introduction to Your Future (Oxford University Press 2013) Susskind elaborated 21st century roles into these categories:

expert trusted advisers,

enhanced practitioners,

legal knowledge engineers,



legal technologists ("they will build the foundations upon which legal service is built and the channels through which non-lawyers can can access the law."),

legal hybrids,

legal process analysts,

legal project managers,

online dispute resolution practitioners,

legal risk management consultants, and

legal risk managers.

See Tomorrow's Lawyers, Chap. 11, pp. 109 - 120.)

While Susskind is from the UK, he has widely lectured in the U.S.
including both at Minnesota law schools (Wm. Mitchell and most recently the University of St. Thomas) and at the nation's most prestigious law schools.

I cite him just because he is a prominent advocate, but someone on the order of William Henderson,http://law.indiana.edu/about/people/bio.php?name=henderson-william-d#profile-biography, advocates similar ideas,as do many other progressive legal writers and scholars inside and outside Minnesota.

U.S. institutional clients, bar associations, law firms, law schools, and government bodies increasingly want "nontraditional" lawyers capable of assuming one or more of these new roles.

But legal innovators do not necessarily fit within the Rules' existing categories for admission without taking the bar examination.

Legal innovators do more than start new law firms or teach at law schools. They start new businesses devoted to tackling the elephants in the room relating to how lawyers can remain relevant on a going forward basis. They promote new ideas; they engage with end users of not only services but products and systems.

As a matter of state policy, we should not be upholding artificial regulatory barriers to the easy transfer into our state of licensed lawyers in other jurisdictions who have devoted their careers to actually pursuing these new roles for law graduates and now want to make Minnesota their home or base of operations.

If the Minnesota legal sector is to remain vibrant, we need all of these categories of legal workers that we can import, since we have so few at the moment. I think it will not be very controversial to say Minnesota has not been regarded as an especially favorable venue for legal and law practice innovation, and that may in part be reflected in fact that out of state firms are more frequently acquiring Minnesota firms and turning them into outputs of national or international operations rather than vice versa.

Law schools are increasingly preparing their students and graduates for these new roles, locally and nationally.

And correspondingly, the Board of Law Examiners should lower the unintentional regulatory barrier to these professional lawyer "immigrants'" mobility. They are possessed with the skill sets and mindsets necessary to contribute to delivering access to justice in this state.

Whether someone does this work in a staff function inside a legal or other professional organization, a legal knowledge engineering organization, as a consultant, or as an independent professional (in the same way a solo practitioner is an independent professional) should not matter.

Such individuals' experience and involvement with legal problems and knowledge and/or engagement with the legal, client, and governmental communities, coupled with their previous admission to another state's bar, should put them on a par here in Minnesota with their more traditional/conventional local peers.

Some of these folks are the ones the ABA Journal profiles as "Legal Rebels." http://www.abajournal.com/legalrebels.

In the ABA's use of the term, "rebel" is all good, basically being a synonym of innovator or visionary.

Bottom line, I encourage you to get ahead of this curve in the evolution of what it means to have a fulfilling legal career without artificial restriction on interstate mobility.

I have no idea whether any other state has approached this in this way (yet). It doesn't matter. It's an issue we can lead on (just as Minnesota did on mandatory CLE decades ago.)

Opening up rule 7 for re-examination, reconsideration, and revision presents an opportunity to enrich our local legal community and announce to the world we aren't resisting change but embracing it.

Best regards,

LaVern A. Pritchard, Pritchard Law Webs
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November 29, 2017

VIA EMAIL (ble.cle.blc@mbcle.state.mn.us)
AND U.S. MAIL

Minnesota Board of Law Examiners
Attn: Douglas Peterson, Board Chair
180 E. 5th Street, Suite 950
St. Paul, MN 55101

Dear Chair Peterson and Minnesota Board of Law Examiners:

Thank you for this opportunity to provide comments on Rule 7A of the Minnesota Rules for Admission to the Bar and, specifically, the Board of Law Examiners' policy interpretation of the phrase "engaged, as principal occupation, in the lawful practice of law."[1] With over 8,000 attorney members, the Hennepin County Bar Association ("HCBA") is the largest district bar association in Minnesota[2] and is deeply interested in this matter.[3] HCBA's goal in offering these comments is to provide useful input as the Board of Law Examiners complies with the Minnesota Supreme Court's directive to review Rule 7A.

HCBA's mission focuses on its members. The organization exists "to serve the needs of its membership by advancing professionalism, ethical conduct, diversity, competence, practice development, and collegiality in the legal profession."[4] It also "strive[s] to ensure the fairness and accessibility of the legal system, promote[s] public

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[1] Minnesota Board of Law Examiners' Policy Statement on Admission Without Examination, Eligibility by Practice (Rule 7A), https://www.ble.mn.gov/wp-content/uploads/2016/09/Board-policy-re-Rule-7A.pdf (last visited Nov. 21, 2017).

[2] HCBA's 8,000 members make it Minnesota's largest district bar association. *About the Hennepin County Bar Association*, Hennepin County Bar Association http://www.hcba.org/?page=About_HCBA (last visited Nov. 21, 2017). HCBA thanks Katherine A. McBride, an HCBA member and partner at Meagher & Geer in Minneapolis, for her assistance in preparing these comments.

[3] *See* Lisa Buck, *Is a Part-Time Attorney Competent?*, Hennepin Lawyer, Sept./Oct. 2017, at 26-27, https://www.stinson.com/Resources/PDF_Files/Is_a_Part-Time_Attorney_Competent.aspx (last visited Nov. 21, 2017).

[4] *Mission*, Hennepin County Bar Association http://www.hcba.org/?page=Mission (last visited Nov. 21, 2017).

EXHIBIT
6

understanding and confidence in our system of justice, and work[s] with the courts to improve the administration of justice."[5] Furthering diversity and inclusion in the local legal community is integral to the work of HCBA and core to its mission, its values, and the unique issues of the region it serves.[6]

Rule 7A requires an applicant for admission without exam be "engaged, as principal occupation, in the lawful practice of law" for at least 60 of the 84 months preceding the application. However, Rule 7A does not contain a specific hours-worked threshold. Consistent with its mission and recognizing the reality of legal practice today, HCBA urges the Board of Law Examiners 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. The settings for the "lawful practice of law" are as described in Rule 7A.

HCBA takes this position for four reasons. First, HCBA believes that admitting attorneys engaged in the practice of law for at least 80 hours per month will not jeopardize the quality of legal services available to the public. Rule 1 of the Minnesota Rules for Admission to the Bar states the Board of Law Examiners was established to "ensure that those who are 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."[7] The basis of Rule 1 and the function of the Board is to protect the public.[8] HCBA believes that admission of attorneys who are engaged in the practice of law for at least 80 hours per month—essentially on a half-time or more basis—will not compromise the integrity of the legal profession or undermine the quality of legal services.

Second, HCBA believes interpreting "engaged, as principal occupation" to mean the practice of law for at least 80 hours per month will promote diversity. The legal profession and the public it serves benefit when members of historically under-represented groups enter and remain in the profession. As an organization, HCBA's mission is to advance policies designed to achieve diversity in the profession and the 80-hour per month interpretation is such a policy.

Under-representation in the legal profession of women, persons of color, and those with disabilities is well documented. For example, a recent survey by the National Association for Law Placement ("NALP") of law firm demographics illustrates the problem. According to the survey, "women and minorities continue to make small gains in their representation among law firm partners in 2016, [but] the overall percentage of

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[5] *Id.*

[6] *Diversity and Inclusion*, Hennepin County Bar Association http://www.hcba.org/?page=Diversity (last visited Nov. 21, 2017).

[7] Rule 1 of the Minnesota Rules for Admission to the Bar.

[8] *See In re Murray*, 821 N.W.2d 331, 336 (Minn. 2012) ("We have consistently recognized an interest 'in insuring that members of the bar are worthy of public trust with regard to their professional competence.'") (quoting *In re Busch*, 313 N.W.2d 420, 421 (Minn. 1981)).

women associates has decreased more often than not since 2009, and the percentage of Black/African-American associates has declined every year since 2009, except for the small increase in 2016."[9] According to NALP Executive Director James Leipold, the study found that "[m]inority women and Black/African-American men and women continue to be the least well represented in law firms, at every level, and law firms must double down to make more dramatic headway among these groups most of all."[10]

The 2016 Annual Report of the Minnesota Judicial Branch shows the Minnesota legal profession faces its own diversity challenges.[11] In January 2016, the Lawyer Registration Office began collecting race and ethnicity information in addition to gender data from attorneys during the lawyer registration process.[12] Data collected shows the demographics of bar members are not as diverse as the general population.[13]

Lawyers with disabilities also face challenges entering and remaining in the profession. A NALP survey of the class of 2007 showed that law school graduates with disabilities were less likely to be employed nine months after graduation from law school, were less likely to obtain private practice positions, and had lower starting salaries.[14] Neither the Lawyer Registration Office nor the Minnesota State Bar Association collect information regarding the disability status of bar members. However, there is no reason to believe data, if available, regarding lawyers in Minnesota facing disabilities would differ materially from the data in the NAPL survey.

Women lawyers, although representing more than 50 percent of law school graduates, are not advancing or remaining in the profession at the same rate as their male counterparts.[15] Moreover, women are more likely to work part-time. Of the 6.2

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[9] *2016 Report on Diversity in U.S. Law Firms*, National Association for Law Placement, Jan. 2017 at 3 http://www.nalp.org/uploads/Membership/2016NALPReportonDiversityinUSLawFirms.pdf (last visited Nov. 21, 2017).

[10] *Id.*

[11] Minnesota Judicial Branch, *Report to the Community: The 2016 Annual Report of the Minnesota Judicial Branch* http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/2016_AR_FINAL.pdf (last visited Nov. 21, 2017).

[12] *Id.* at 56.

[13] *Age, Race, & Ethnicity*, Minnesota State Demographic Center https://mn.gov/admin/demography/data-by-topic/age-race-ethnicity/ (last visited Nov. 21, 2017).

[14] American Bar Association Commission on Mental and Physical Disability Law at 16-17 https://www.americanbar.org/groups/disabilityrights/publications/conference_reports.html (last visited Nov. 21, 2017).

[15] "On average, women lawyers bill fewer hours than men, earn lower incomes than men (even after controlling for a number of factors, including fewer billed hours), they are retained at lower

percent of lawyers working part-time in 2012, over 70 percent were women.[16] Women, therefore, disproportionately bear the brunt of the Board of Law Examiners' current policy interpreting "engaged, as principal occupation" in the lawful practice of law as meaning at least 120 hours per month.

Given the statistics, HCBA believes the current 120-hour policy may act as a barrier to attracting and retaining a more diverse bar. The policy could inhibit those who are more likely to have been on a less traditional practice-of-law path from seeking to practice in Minnesota. Moreover, the 120-hour policy does not account for the changing nature of legal practice, which encourages flexible work assignments and a more balanced work-life existence. It also presents challenges for solo practitioners, attorneys with disabilities, and attorneys who had to retreat from a more traditional full-time practice to attend to family obligations or health issues.

The third reason that HCBA seeks a change to the 120-hour policy is that the organization believes Minnesota should lead on the issue rather than follow. If the Board of Law Examiners reduces the number of hours that constitute "engaged as principal occupation" to 80 hours per month, other states may follow. Minnesota lawyers who seek admission to practice in other jurisdictions would then benefit. Minnesota was the first state in the Union to require that practicing lawyers take continuing legal education courses—a requirement that is now common.[17] If the Board of Law Examiners adopts an 80-hour policy for admission without examination, board examiners from other states might once again follow in Minnesota's footsteps. Indeed, it appears that of the eleven jurisdictions including Minnesota with stated minimum hour requirements or policies for admission without examination, only two—Minnesota and Vermont—set the requirement or policy at more than 1,000 hours per year, or approximately 83.33 hours per month.[18] And most of the jurisdictions with minimum

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rates, and ultimately, are much less likely to advance to partnership." Stanford Law School Women in Law Policy Lab Practicum 4 https://law.stanford.edu/wp-content/uploads/2016/05/Women-in-Law-White-Paper-FINAL-May-31-2016.pdf (last visited Nov. 21, 2017).

[16] National Association for Law Placement, "Rate of Part-Work Among Lawyers Unchanged in 2012—Most Working Part-time Continue to Be Women" (Feb. 21, 2013), http://www.nalp.org/part-time_feb2013 (last visited Nov. 21, 2017).

[17] 1 Legal Malpractice, *Continuing legal education—Outside the law firm—Introduction* § 3:8 (2017 ed.) ("In 1975, Minnesota became the first state to implement a mandatory continuing legal education program for attorneys and judges.").

[18] Alaska Bar R. 2, § 2(a)(2), (c) (2017-18) ("active practice of law" at least "750 hours per year," or approximately 62.5 hours per month, for five of seven years before application), http://www.courtrecords.alaska.gov/webdocs/rules/docs/bar.pdf#page=8 (last visited Nov. 21, 2017); Ill. Sup. Ct. R. 705(h) (2016) ("active and continuous" practice of law a "minimum of 80 hours per month and no fewer than 1,000 hours per year" during 36 of the 60 months before application), http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VII/artVII.htm#Rule705 (last visited Nov. 21, 2017); Ind. R. for Admission to the Bar 6, § 1(a) (2017) (practice of law "for at

hour requirements set those thresholds in the rules for admission; only Minnesota and Pennsylvania rely upon an hourly threshold in a policy interpretation.[19]

Fourth, HCBA understands the value of a bright-line test given the volume of Rule 7 applications that the Board of Law Examiners receives each year. An 80-hour policy provides a bright-line threshold that reflects the changing nature of the practice of law. A stated policy will also aid out-of-state lawyers who must evaluate whether they will be required to take the Minnesota bar examination should they seek to become licensed in the state.

Interpreting the phrase "engaged as principal occupation" to mean that one's practice of law must be at least 80 hours per month will recognize the changing nature

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least 1,000 hours per year" or approximately 83.33 hours per month for at least five of the seven years before application), http://www.in.gov/judiciary/rules/ad_dis/index.html#_Toc477259897 (last visited Nov. 21, 2017); Minn. R. for Admission to the Bar 7A (2017) ("principal occupation" in the "lawful practice of law" for 60 of the 84 months before application; Board of Law Examiners policy statement interpreting "principal occupation" as "at least 120 hours or more per month"); Mont. R. for Admission to Bar V(D)(2) (2016) (practice of law for "at least one thousand hours per year" or approximately 83.33 hours per month for at least five of the seven years before application), https://c.ymcdn.com/sites/montanabar.site-ym.com/resource/resmgr/Admissions/Rules_for_Admission_to_the_S.pdf (last visited Nov. 21, 2017); N.M. R. Governing Admission to the Bar 15-107 (2016) (practice of law "at least one thousand (1,000) hours per year" or approximately 83.33 hours per month for at least five of the seven years before application), http://nmexam.org/wp-content/uploads/2015/11/NMRA2016_Ruleset15_unannotated.pdf (last visited Nov. 21, 2017); Or. R. for Admission of Attorneys 1.05(8), 15.05 (2017) (practice of law "at least 1,000 hours . . . per annum" or approximately 83.33 hours per month for at least five of the seven years before application), https://www.osbar.org/_docs/rulesregs/admissions.pdf (last visited Nov. 21, 2017); Pa. Bar Admission R. 204 (2015) ("major portion of time and energy" devoted to practice of law for at least five of the seven years before application; Board interprets "major portion of time and energy" as "every week in which an applicant practiced law more than 20 hours," in *Interpreting Rule 204—Tips for a Successful Application*, http://www.pabarexam.org/non_bar_exam_admission/204_interpretation.htm), http://www.pabarexam.org/pdf/rules.pdf (last visited Nov. 21, 2017); Utah Sup. Ct. R. Professional Practice 14-701(t), 14-705 (2017) ("Full-time Practice" of law is no fewer than 80 hours per month not counting administrative work for 60 of the 84 months before application), https://www.utcourts.gov/resources/rules/ucja/index.htm#Chapter_14 (last visited Nov. 21, 2017); Vt. Sup. Ct. R. of Admission to the Bar 2(a), 15 (2016) (practice of law "at least 25 hours per week" for five of the ten years before application, with certain waivers for the five-year requirement), https://www.vermontjudiciary.org/sites/default/files/documents/900-00014_0.pdf (last visited Nov. 21, 2017); Wyo. R. & Procedures Governing Admission to the Practice of Law 302(f) (2017) (practice of law for a minimum of 300 hours per year for five of the seven years before application); http://www.courts.state.wy.us/wp-content/uploads/2017/05/RULES_AND_PROCEDURES_GOVERNING_ADMISSION_TO_THE_PRACTICE_OF_LAW.pdf (last visited Nov. 21, 2017).

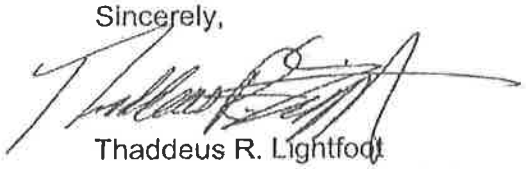
[19] *Id.*

of the practice of law. An 80-hour policy will also promote a more diverse bar. And it will do so without compromising the Board of Law Examiners' interest "in insuring that members of the bar are worthy of public trust with regard to their professional competence."[20]

HCBA recognizes there may be some circumstances where applicants do not meet the 80-hour per month threshold but may nevertheless merit consideration for admission. For such applicants, HCBA urges the Board of Law Examiners to evaluate the applications for admission using case-by-case considerations to determine whether the applicant, although not meeting the 80-hour threshold, is professionally competent. The case-by-case evaluation should consider factors that demonstrate the applicant's significant connection to the law and are indicia of public trust, such as: (1) the total number of years the attorney has practiced; (2) the attorney's previous practice setting; (3) the attorney's likely practice setting in Minnesota; (4) the area(s) of law in which the attorney previously practiced; (5) the area(s) of law in which the attorney is likely to practice in Minnesota; (6) the type of clients the attorney has represented in previous practice; (7) the type of clients the attorney is likely to represent in Minnesota; (8) substantial activity in a bar organization; (9) legal scholarship; (10) the substance of other work that is significantly related to the practice of law; (11) pro bono legal work; and (12) other factors the Board of Law Examiners determines to be appropriate.

In summary, based on the comments above, HCBA encourages the Board of Law Examiners to interpret the phrase "engaged, as principal occupation, in the lawful practice of law" to mean that one's practice of law must be at least 80 hours per month. On behalf of and as the President of HCBA, I request the opportunity to provide oral testimony in this matter.

Sincerely,



Thaddeus R. Lightfoot
HCBA President, 2017-2018

[20] *In re Murray*, 821 N.W.2d at 336.

LAWYERS CONCERNED FOR LAWYERS

Confidential Support for Legal Professionals

November 30, 2017

VIA EMAIL (ble.cle.blc@mbcle.state.mn.us)

Minnesota Board of Law Examiners
Attn: Douglas Peterson, Board Chair
Emily Eschweiler, Director
180 E. 5th Street, Suite 950
St. Paul, MN 55101

Dear Chair Peterson, Director Eschweiler and Minnesota Board of Law Examiners:

Lawyers Concerned for Lawyers (LCL) appreciates this opportunity to provide comments on Rule 7A of the Minnesota Rules for Admission to the Bar and to offer our perspective regarding the Board of Law Examiners' policy interpretation of the phrase "engaged, as principal occupation, in the lawful practice of law."[1] LCL serves as the Lawyer Assistance Program for the State of Minnesota and serves lawyers, judges, law students and their immediate family members on any issue that causes stress or distress.[2] We work to reduce stigma associated with mental health, including substance use issues. These are by far the most common disabilities and potentially disabling conditions in our profession. We anticipate that a change to the interpretation of this rule would provide a positive benefit for members of our profession and the clients they serve. LCL hopes these comments will be helpful as the Board of Law Examiners considers options and implications of the current interpretation of Rule 7A.

We understand that other organizations, including the Hennepin County Bar Association and Minnesota Women Lawyers, are including issues related to disability in their comments. We support this and wish to offer additional information.

LCL provides education to the profession regarding mental health and substance use issues – issues which impact a significant percentage of our colleagues. In 2016 a national study based on a collaboration of the ABA Commission on Lawyer Assistance Programs (CoLAP) and Hazelden Betty Ford revealed that 20.6% of lawyers engage in problem drinking and 28% of

[1] Minnesota Board of Law Examiners' Policy Statement on Admission Without Examination, Eligibility by Practice (Rule 7A), https://www.ble.mn.gov/wp-content/uploads/2016/09/Board-policy-re-Rule-7A.pdf (last visited Nov. 30, 2017).

[2] See www.mnlcl.org for information about LCL and it's services.

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respondents have experienced depression at least once in their careers.[3] A similar study of law students revealed troubling mental health and substance use figures.[4] Barriers to seeking help were many but primary among them for both studies were concerns about maintaining a law license or being admitted to the bar.[5]

Bar associations and others are addressing the interpretation of Rule 7A as a diversity and inclusion issue that includes disabilities. LCL concurs with this interpretation and as part of our efforts to reduce stigma in the legal profession we are addressing implicit bias against those with mental health issues in our profession. In 2016, ABA Past-President Paulette Brown delivered the keynote address at the ABA CoLAP annual conference. She stated, "Our colleagues do not feel safe revealing a mental health or substance issue. Many will not seek the assistance they need unless and until the stigma is removed. This can only begin to happen if we recognize and acknowledge our implicit biases in this area. Like other areas of diversity and inclusion, the legal profession is far behind many other professions in the manner in which it treats those who struggle with mental health and substance use issues."[6]

Lawyers who are impaired by mental health or substance issues, or who face debilitating stress, may cause harm to their clients and their organizations if they are unable to seek the help that they need. That help can include time off for treatment and rehabilitation and it may include reduced hours on a temporary or permanent basis. Individuals who seek and secure help and who then return to the practice of law will contribute to our profession and effectively serve their clients to a greater degree than those who fear asking for help.[7] Thus an

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[3] Krill, Patrick, Johnson, Ryan, Albert, Linda, The Prevalence Of Substance use and Other mental Health Concerns Among American Attorneys, Journal of Addiction Medicine: January/February 2016

[4] J.M. Organ, D. Jaffe, K. Bender, "Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns," 66 J. Legal Educ. 116 (2016)

[5] Id

[6] ABA Immediate Past-President Paulette Brown calls on the profession to help LAPs reduce stigma
November 30, 2016, https://abacolap.wordpress.com/2016/11/30/aba-immediate-past-president-paulette-brown-calls-on-the-profession-to-help-laps-reduce-stigma/, last visited November 30, 2017.

[7] "A study conducted in 1986, by the Oregon State Bar Professional Liability Fund (OSBPLF) showed the relationship of alcohol and drug problems with malpractice claims. OSBPLF reviewed the records of 100 consecutive lawyers who entered its lawyer's assistance program. Sixty percent of the lawyers had malpractice suits filed against them while suffering from substance abuse." G. Andrew H. Benjamin, et al.; The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers; 13 Intern'l. Jour. of Law and Psychiatry 233, at 244 (1990). A later study by the Oregon Lawyer Assistance Program looked at a sample of 55 lawyers in the 5 years before and after entering recovery. In the 5 years before recovery the

interpretation of the rule which would allow attorneys to seek the help they need and take the time required to fully recover could play a role in their willingness to seek help in the first place. Our profession and our clients would be better served as a result.

Lawyers Concerned for Lawyers does not take a position regarding the specific number of hours that would constitute "engaged, as principal occupation, in the lawful practice of law." We do, however, recognize 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, and has a potential adverse impact on those who do. We appreciate the opportunity to add our voice to this important discussion and request the opportunity to provide oral testimony.

Sincerely,

Thomas Beimers
Chair, LCL Board of Directors, 2017-2018

malpractice claim rate was 30% and the discipline complaint rate was 28% In the 5 years after beginning recovery the claim rates were 8% and 7% respectively. The study further showed that "In Oregon, the current annual malpractice claim rate for lawyers in private practice is 13.5 percent, compared to 8 percent for lawyers in recovery. The current annual discipline complaint rate for Oregon lawyers is 9 percent, compared to 7 percent for lawyers in recovery." Michael Sweeney, Lawyers in Recovery Have Low Claim Rates," Oregon Attorney Assistance Program *Insight*, April 2002, https://www.oaap.org/assets/in_sight_issues/Lawyers.pdf, last visited November 30, 2017.

MSBA

November 30, 2017

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Mr. Douglas Peterson, Chair
Minnesota Board of Law Examiners
180 E. 5th St., Suite 950
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RE: MBLE Request for Comments Regarding Rule 7A, Rule on Admission to the Bar

Dear Mr. Peterson,

The Minnesota State Bar Association submits this letter in response to the Minnesota Board of Law Examiners' September 12, 2017 public notice and request for comments regarding the interpretation of Rule 7A, Rules for Admission to the Bar. We are also requesting the opportunity to have a representative of our Rules of Professional Conduct Committee present oral testimony at one of the public meetings to be held by MBLE.

MBLE's public notice indicated that it is conducting a "comprehensive review" of Rule 7A, which includes MBLE's current interpretation of the phrase "engaged as a principal occupation" in the practice of law as being full-time or substantially full-time; whether that phrase should be measured as 120 hours or more of practice per month; whether 60 of the past 84 months is a reasonable look-back period regarding the practice of law; and how part-time employment and absences from employment should be addressed.

I. Establishing Equivalent Measures of Competency.

We begin our comments by recognizing that we are discussing just one of the two critical halves of the process of becoming admitted to the bar in Minnesota: competency and character and fitness. Only competency is at issue here. Regardless of whether MBLE and the Minnesota Supreme Court retain or modify Rule 7A, all applicants to the Minnesota Bar will continue to undergo a character and fitness evaluation.

The primary manner in which applicants to the Minnesota bar establish competency is through passage of the bar examination. According to MBLE's 2015 annual report, roughly 75% of lawyers admitted that year established their competency through successful passage of the bar examination. Most of the remaining 25% of admitted lawyers established competency through one of the three waive-in methods set forth in the Minnesota Rules for Admission to the Bar. Those applicants were roughly evenly divided between establishing they had practiced law in 60 of the past 84 months (Rule 7A);

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receiving a sufficient score on the Multistate Bar Examination within the previous two years (Rule 7B); or receiving a sufficient score on the Uniform Bar Examination within the past three years (Rule 7C). Only a handful of admittees established competency through the House Counsel or Legal Services waive-in provisions (Rules 8 to 10).

Our understanding of the purpose of the bar examination is that it is intended to establish, in conjunction with graduation from an ABA-accredited law school, minimal competency to practice law. It is not expected, for example, that a new admittee is competent to practice in all areas or to handle any legal matter simply by virtue of having passed the bar examination. There is an implicit understanding that newly admitted lawyers who passed the bar examination have developed a sufficient understanding of legal principles that they can then go forth and undertake additional training, self-study, and experience that allows them to adequately represent clients.

Rules 7B and 7C extend this concept of minimal or threshold competency to applicants who have received a designated score on either of two accepted bar examinations, the Multi-State Bar Examination (MBE) or the Uniform Bar Examination (UBE), within the past two years for the MBE or the past three years for the UBE. There is no practice-of-law requirement attached to either of these two provisions. Hence, the rules appear to assume that the competency established by passage of a bar examination may be valid for two or three years, depending on the examination for which the applicant sat, regardless of whether the applicant has practiced law within that time.

Rule 7A provides for an alternative to bar passage as a measure of competency: engaging in the practice of law as one's principal occupation for 60 of the 84 months preceding the lawyer's application. There are several ways in which Rule 7A is both far more stringent than, and somewhat inconsistent with, the bar-examination based methods of establishing threshold competency:

- The level of competency of a lawyer who has engaged in the practice of law as a principal occupation for 60 of the past 84 months establishes far greater capability to practice law than is reflected by the bar exam. For example, a new lawyer passing the bar examination may still need significant additional training to properly represent clients, whereas the attorney who has practiced law for 60 months may have represented dozens, perhaps hundreds, of clients; studied the law as a law professor; served as a judge and ruled on numerous cases; etc. In addition, these applicants at one time most likely took and passed a bar examination, except lawyers who were initially admitted in diploma-privilege states, such as Wisconsin.
- Under Rule 7B, MBE results are valid for 24 months but then become "stale." In the 25th month following a passing score, the applicant is

no longer eligible to waive-in under Rule 7B and must practice for at least 60 months from bar passage to establish the same level of competency as would have been assumed if the application had been submitted in the 24th month following the exam. The same concept applies to UBE results under Rule 7C, only those scores become stale in the 37th month following passage with a sufficient score. It is unlikely that the assumed decline in competency to practice can be measured on a strict scale of months and it is disproportionate that such a decline in competency, however speculative, can only be reestablished by practicing law for a minimum of 60 months.

- If bar exam results can remain valid for either two or three years, then the most important look-back period for establishing the competency of attorneys seeking admission on motion under Rule 7A, based on engaging in the practice of law as a principal occupation, should also be the past two or three years. In other words, a lawyer who has practiced law for the previous two years should be considered at least as competent as a lawyer who passed the MBE two years earlier and has never practiced law since passing the examination.

- The inconsistency between Rule 7A on the one hand and Rule 7B and 7C on the other, suggests that there should be more than one route for applicants under Rule 7A to establish competency and that a blend of factors should be acceptable. The applicant who achieved a passing score on the MBE thirty months ago but who has practiced law continuously during that time should be deemed as least as competent as the applicant who achieved a passing score 24 months ago but who has been unemployed during that entire time.

II. Determining the Minimum Threshold for Competency Through Practice

With this in mind, we turn to MBLE's current interpretation of the phrase in Rule 7A that an applicant must have "engaged, as principal occupation, in the lawful practice of law" for 60 of the past 84 months. As stated in the public notice, "A Board policy published to the Board's website advises applicants that "the phrase 'engaged as principal occupation' is interpreted to mean that one's practice of law must be full-time or substantially full-time (at least 120 hours or more per month)."

Hours-based guidelines. The words "principal occupation" suggest that the practice of law might not be the applicant's only occupation; otherwise the rule could have been written as the applicant's "sole" occupation. "Principal occupation" connotes that an applicant might have other occupations as well but that the practice of law would be the main focus of the applicant's work. Hence, a "principal" occupation could be one that occupies a majority of an

applicant's work, or the majority of time in a commonly-understood, 40-hour work week.

The words of the rule do not support an equivalence between "principal" and "full-time or substantially full-time." Moreover, because the essential question under Rule 7A should be whether an applicant can establish competency to practice law on a level comparable to passage of the bar exam, a requirement of full-time practice places an unnecessary burden on applicants. For most lawyers, the difference between full-time practice and half-time practice is one of volume, not competency. Put another way, as much competency is needed to serve clients half-time as would be needed to serve clients full time.

We agree that a lawyer who practices a *de minimus* amount of time, on the order of a few hours a week or per month, may not have sufficient practice experience to satisfy a competency requirement, except as may be suggested by other factors discussed below. We also agree that to comport with the existing "principal occupation" language of the rule, and in the absence of other indicia of competency discussed below, the amount of time an applicant devotes to law practice should be at least half-time, or over 80 hours per month.

We are concerned, however, that measuring hours worked is itself subject to interpretation. Solo and small firm attorneys, in particular, may bill fewer than 80 hours per month and still be engaged in the half-time or even full-time practice of law. The Clio Legal Trends Report 2017[1] aggregated data of 60,000 solo and small firm attorneys and found that the average lawyer billed only 2.3 hours out of an eight hour day. The remainder of time is absorbed by administrative tasks, marketing, continuing legal education, and similar non-billable activities. Similarly, a law professor might have a full-time contract but only teach six or nine credit hours a week, using remaining time for research and writing, grading student work, etc.

To the extent that the question of whether the practice of law is an applicant's principal occupation will be based on evidence of a specific number of hours worked, MBLE should broadly interpret the "work" to ensure that it encompasses all of the activities that are related to and a necessary part of the practice of law, even if every hour does not involve the consideration of legal issues.

In addition, there are many attorneys who work less than full-time without any impact on their competency. Many government attorneys, in-house corporate attorneys, law firm associates and partners, legal services attorneys, and other attorneys work fewer than 30 hours per week without sacrificing their competency to practice law. Encouraging legal employers to allow

[1] https://www.clio.com/2017-legal-trends-report/ (last visited Nov. 26, 2017).

flexibility in working hours and schedules has been the focus of past and ongoing bar association efforts to improve the experience of women in the practice of law. The Self-Audit for Gender Equality (SAGE)(2003), compiled by the MSBA's Women in the Legal Profession Committee, identifies offering "equitable and viable alternative part time and flexible work schedules" as a best practices goal for Minnesota law firms.[2]

In Minnesota, such flexible work schedules, including part-time schedules, have become commonplace. *See* MSBA, Self-Audit for Gender and Minority Equity, at 52-53 (Sept. 2006).[3] It is important that however MBLE interprets the phrase "engaged, as a principal occupation" in the practice of law, that MBLE recognize that leaves of absence and flexible work schedules have become mainstream elements of the legal profession that are not likely to have any impact on a lawyer's competency to practice law.

Length of look-back period. MBLE's public notice also encouraged comments regarding "whether 60 of the last 84 months is a reasonable look back period." As alluded to in Section I, above, the most relevant period of time for establishing competency should be the two or three-year period immediately preceding the application, similar to the length of time bar examination results are currently regarded as reflecting competency. Indeed, if an applicant could engage in the practice of law as a principal occupation for even the one year preceding the application, that itself likely establishes competency equivalent to passing the bar examination. Guidelines that look at the past 60 of 84 months, for applicants who have not recently practiced law, should be considered as alternative measures of competency, as discussed below.

In addition, it is not clear what effect leaves of absence, such as parental leaves or FMLA leaves to deal with an illness or care for ailing relatives, have on MBLE's calculation of whether an applicant has met the current 60 of 84 months requirement. If Rules 7B and 7C provide any measure of the longevity of a lawyer's competency, then parental and FMLA leaves of up to six months, bookended by practicing law before and after the leave, should not be deducted from the time requirement because a lawyer's competency is not likely to decline during such periods. Indeed, we are not aware of any legal employers who require special training or competency testing for employees who are returning from leaves of absence; such requirements might be viewed as illegal penalties against employees who take leaves. As with the number of hours of work considered necessary to be "engaged, as a principal occupation, in the practice of law," We are concerned that if a

[2] Available at http://www.mnbar.org/docs/default-source/diversity-msba/2003-sage-best-practices.pdf?sfvrsn=2 (last visited Nov. 26, 2017).

[3] Available at http://www.mnbar.org/docs/default-source/diversity-msba/2005-sage-diversity-report-final.pdf?sfvrsn=2 (last visited Nov. 26, 2017).

waive-in formula continues to be based on a certain number of recent months of practice and excludes parental or FMLA leaves, the rule could have a discriminatory effect on women and people with disabilities.

III. Reasonable Alternative Measures of Competency.

Whatever interpretation MBLE adopts to assess whether an applicant has engaged in the practice of law as a principal occupation, MBLE should also allow applicants who do not strictly meet that criterion to provide other evidence of competency. By doing so, MBLE would recognize that lawyers increasingly use their law degrees in non-lawyer roles and shift back and forth between the practice of law and other endeavors, from operating non-legal businesses, to caring for children and aging relatives, to holding elective office, without a loss of competency to practice law.

Multi-factor tests are common in various areas of the law. For example, the IRS uses a nine-factor test to determine whether a taxpayer's expense deductions relate to a business or a hobby.[4] To establish competency under Rule 7A, such criteria could include:

1. Extensive practice history. The duration of practice by the applicant prior to the periods set forth in Rules 7A(1), 9B(2) and 10B(2) bears on that applicant's competency. A lawyer who has not practiced for 60 of the last 84 months but has practiced law for 20 of the past 25 years does not likely present a competency risk to the public. In addition, a lawyer with extensive experience likely has practiced in a niche that would not be tested by the bar examination.

2. Practice area. The similarity between the applicant's law practice in another jurisdiction and the applicant's anticipated practice in Minnesota is relevant to the lawyer's competency. Also, whether the applicant's anticipated practice in Minnesota involves a discrete or specific area of law as opposed to a more general practice of law also bears on competency.

3. Supervision. Whether the applicant's past law practice, while not meeting the "principal occupation" threshold, was supervised or observed by a practicing attorney who can attest to the applicant's competency. The observers identified by the applicant could be supervisors, adversaries, subordinates, judges, administrators, court clerks, or law partners.

4. Income. Whether the applicant's past law practice generated more than half the applicant's annual income. For example, a lawyer might work only ten hours per week for a corporate client on a continuous

[4] https://www.irs.gov/faqs/small-business-self-employed-other-business/income-expenses/income-expenses (last visited Nov. 15, 2017).

contract basis but that work could be sufficient to constitute the lawyer's principal occupation and demonstrate competency to practice law. A client's satisfaction with the regular work of a lawyer, even if performed for fewer than 80 hours a month, should be a significant factor in determining a lawyer's competency to continue practicing law, albeit in Minnesota.

5. Law-related Businesses. MBLE should consider whether the applicant's principal occupation in a law-related business provided the applicant with regular exposure to and experience with specific areas of law, such as providing tax advice within an accounting firm; serving as a compliance officer in a health care business; providing human resources outsourcing services; working as a financial planner; or working in other "JD preferred" occupations.

We appreciate the opportunity to comment on Rule 7A and look forward to the opportunity to meet with MBLE to discuss these issues further.

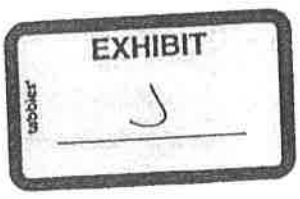
Sincerely,

Sonia Miller-Van Oort

STATE OF MINNESOTA
BOARD OF LAW EXAMINERS

REQUEST FOR COMMENTS ON THE REVIEW OF RULE 7A
OF THE RULES FOR ADMISSION TO THE BAR
PURSUANT TO MINNESOTA SUPREME COURT
ORDER ADM10-8008 (MAY 18, 2017)

STATEMENT OF MINNESOTA WOMEN LAWYERS
AND REQUEST FOR ORAL TESTIMONY



JOINING AND AFFIRMING THIS

STATEMENT OF MINNESOTA WOMEN LAWYERS

HMONG AMERICAN BAR ASSOCIATION

MINNESOTA ASIAN PACIFIC BAR ASSOCIATION

MINNESOTA ASSOCIATION OF BLACK LAWYERS

MINNESOTA HISPANIC BAR ASSOCIATION

MINNESOTA MOTHER ATTORNEYS ASSOCIATION

THE INFINITY PROJECT

I. Introduction

Minnesota Women Lawyers ("MWL") submits this comment pursuant to a public notice[1] issued by the Board of Law Examiners ("the Board") dated September 12, 2017.

In a May 18, 2017, order,[2] the Minnesota Supreme Court directed this Board to review Rule 7A of the Rules for Admission to the Minnesota Bar ("Rule 7A").[3] This order specified that the Board review:

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[1] Minnesota State Bd. of Law Exam'rs, Public Notice (Sept. 12, 2017), https://www.ble.mn.gov/wp-content/uploads/2017/09/Public-Notice-Rule-7A-September-2017.pdf.

[2] Order Regarding the Rules for Admission to the Minnesota Bar, ADM 10-8008, 1-2 (Minn. May 18, 2017), *available at* https://www.ble.mn.gov/wp-content/uploads/2017/09/Administrative-Order-5-18-17.pdf.

[3] Rule 7 applies specifically to Admission Without Examination and provides in relevant part:

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 immediately preceding the application, the applicant was:

(a) Licensed to practice law;

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

(c) Engaged, as principal occupation, in the lawful practice of law as a:

i. Lawyer representing one or more clients;
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.

Minn. R. Adm. to the Bar 7A(1), *available at* https://www.revisor.mn.gov/court_rules/rule.php?type=pr&subtype=admi&id=7.

- the requirement that an applicant be engaged as a principal occupation in the lawful practice of law for 60 of the 84 preceding months;[4] and
- the Board's policy that "engaged, as principal occupation" requires that the practice of law "must be full-time or substantially full-time (at least 120 hours or more per month)."[5]

The court elaborated that the Board should consider "whether and if so how these requirements and policies should treat part-time legal work and periods of parental leave."[6]

Subsequently this Board issued the public notice seeking comments from the legal community and the public as part of its review.[7] The Board requested comment on the part-time practice and threshold requirements, the proper method for treating periods during which an individual is not engaged in practice, and the reasonableness of the 60/84-months rule.[8] Notably, the Board's consideration of "periods of time in which an individual is not engaged in the practice of law" is broader than what was directed by the supreme court.[9]

The rule's requirement of engagement in the practice of law for 60 out of 84 of the preceding months will be referred to as the "60/84-months rule." The Board's policy that the practice of law be at least 120 hours per month will be referred to as the "120-hours policy" or "120-hours threshold."

[4] *See* Minn. R. Adm. to the Bar 7A(1).

[5] *See* Minnesota State Bd. of Law Exam'rs, Policy Statement on Admission without Examination, Eligibility by Practice (Rule 7A) (Jan. 2014), https://www.ble.mn.gov/wp-content/uploads/2016/09/Board-policy-re-Rule-7A.pdf.

[6] ADM 10-8008 at 2, https://www.ble.mn.gov/wp-content/uploads/2017/09/Administrative-Order-5-18-17.pdf.

[7] Public Notice at 1, https://www.ble.mn.gov/wp-content/uploads/2017/09/Public-Notice-Rule-7A-September-2017.pdf.

[8] *Id.* at 1-2.

[9] *Cf. id.* at 2 and ADM 10-8008 at 2.

This process follows a petition for review of a decision of the Board denying a motion for admission without examination, which motion involved the application of Rule 7A and the Board's policy.[10] MWL and numerous other bar associations sought to participate as amici curiae in the appeal.[11]

MWL and many of the state's bar associations have a long history of service to the legal profession and have particular experience working—both independently and collaboratively—to ensure that the profession not only includes, but also advances, lawyers who are members of historically underrepresented groups, including women, people of color, and persons with disabilities. MWL is uniquely interested in and qualified to advise the Board on Rule 7A, including how the Board should treat part-time legal work and periods of leave as related to the rule.

The Minnesota Supreme Court has "consistently recognized an interest 'in insuring that members of the bar are worthy of public trust with regard to their professional competence.'"[12] Rule 7A is one procedure used by the Board to protect that interest. However, in the view of MWL, Rule 7A(1)(c) should be amended to modify the criteria by which lawyers from other jurisdictions may demonstrate their competency and obtain admission without examination in our state.

MWL urges the board to:

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[10] *See* Order, *In re Appl'n for Adm'n to Pract. of Law of Reilly*, No. A17-0377 (Minn. May 18, 2017) (denying petition for review).

[11] Request for Leave to File Amicus Brief in Support of Petitioner, *In re Appl'n for Adm'n to Pract. of Law of Reilly*, No. A17-0377 (Minn. Mar. 31, 2017).

[12] *In re Murray*, 821 N.W.2d 331, 336 (Minn. 2012) (quoting *In re Busch*, 313 N.W.2d 419, 421 (Minn. 1981)).

1) eliminate the 120-hours policy and establish 80 hours per month[13] as the minimum amount of time one must work to be engaged in the practice of law as one's principal occupation;
2) eliminate the job titles and settings that are listed within Rule 7A(1)(c) to define the "practice of law," and instead use the responsibilities and tasks associated with "lawyering" and the "practice of law," to define that phrase; and
3) create a provision permitting a case-by-case evaluation of the competency of lawyers who do not meet an 80-hours threshold under the updated definition of the practice of law due to family, medical, or disability-related circumstances or conditions.

[13] The proposal that the threshold be 80 hours per month will hereinafter be referred to as the "80-hours threshold." We will not use the "80-hours policy," as we recommend that the threshold be incorporated into the rule rather than provided for in a separate policy.

II. The Minimum Hours Policy

A. Proposal

Regarding the application of an hours threshold demonstrating eligibility to practice, MWL urges the Board to:

1) decrease the minimum number of hours practiced in a month from the 120-hours threshold to an 80-hours threshold; and
2) incorporate the threshold into Rule 7A, rather than maintaining it as an internal policy.

B. Rationale for the Change

Combined, the 60/84-months rule and the 120-hours policy operate to narrowly constrict what it means to be engaged in the practice of law as one's principal occupation. These minimum requirements do not account for how both the practice of law and our understanding of the practice of law have changed over the years, and how the practice of law continues to evolve. Indeed, that evolution calls into question the reliance on hours alone as the best measure of professional competence and success.

The flaw with the 120-hours policy is that it simplistically and ineffectually equates time spent practicing law with competence to practice law. Anecdotes or other data is not necessary to establish that more hours spent practicing law does not have a direct correlation to more competence; nor does fewer hours spent practicing law equate to less competence.

This shortcut for evaluating competence is not new. In traditional law firm settings, time took on important symbolic meaning, becoming a proxy for other qualities and being used as a primary method of evaluation in place of less quantifiable metrics.[14] However, that is changing as practice settings move from traditional "large firm" settings to many different practice settings and formats, including smaller firm settings and increased flexible and part-time work structures. "One of the ways in which large law firms have sought to increase gender equity is through the introduction of part-time and flexible work structures. Broadly speaking, part time and flexible work policies have had positive impacts on employee quality of life in contexts outside of the law firm."[15] Even as early as 1998, 92% of the law firms polled by the National Association for Law Placement offered part-time work arrangements.[16]

The 120-hours policy likely has a disparate impact on historically underrepresented groups, particularly women and people with disabilities, because it offers only one method for applicants to prove that they have engaged in the practice of law as a principal occupation – i.e., showing that they practiced law "full-time or substantially full-time" for "at least 120 hours or more per month." However, in the current work environment, an 80-

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[14] *See* Cynthia Fuchs Epstein & Carroll Seron, "The Symbolic Meaning of Professional Time," Legal Professions: Work, Structures and Organization, 79-94 (Jerry Van Hoy ed., 2001).

[15] Anna Jaffe et al., "White Paper: Retaining & Advancing Women in National Law Firms," Stanford Law School Women in Law Policy Lab Practicum 22 (May 2016), *available at* https://www-cdn.law.stanford.edu/wp-content/uploads/2016/05/Women-in-Law-White-Paper-FINAL-May-31-2016.pdf.

[16] The Women's Bar Ass'n of Mass., "More than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms," (Emp't Issues Comm. of the WBA of Mass., ed., 2000), *available at:* https://www.americanbar.org/content/dam/aba/migrated/women/resources/More_Than_Part_Time.authcheckdam.pdf.

hours threshold – or 20 hours per week – is a well-reasoned suggestion for an hours-requirement for one's primary occupation since it equals half of one's professional 40-hour working week. Practicing "full time" does not alone equate to competence to practice law. Indeed, many well-respected attorneys have noted that, in the course of their own practice, they would struggle to meet a 30-hours-per-week threshold. Oftentimes, these attorneys work in solo or small firm practices.[17]

Additionally, of Minnesota's 29,000 licensed attorneys, approximately 11,000 (more than one-third) are women.[18] According to a 2012 report by the National Association of Law Placement, women also account for about 70% of attorneys who take advantage of part-time and flexible working arrangements in law firms.[19] Thus, using an hours threshold to measure competence that is too high to be reached by an attorney, male or female, who chooses to practice part-time for whatever reason, causes a disparate impact on women since women are much more likely to work part-time.

This current 120-hours policy not only has a disparate impact on women, it also has a disparate impact on those attorneys with chronic illnesses or disabilities. As Joan Bibelhausen of Lawyers Concerned for Lawyers has stated, "[t]his issue affects not only

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[17] *See* Carolyn Elefant, "Study Finds that Solo Lawyers Bill Only Two Hours a Day ... But What Does that Mean?," myshingle.com Web & Tech Blog (Sept. 21, 2016), https://myshingle.com/2016/09/articles/web-tech/study-finds-solo-lawyers-bill-two-hours-daybut-mean/ (last visited Nov. 20, 2017).

[18] Minnesota Judicial Branch, "Report to the Community: The 2016 Annual Report of the Minnesota Judicial Branch" at 56 (Mar. 7, 2017), http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/Documents/2016_AR_FINAL.pdf (last visited Nov. 20, 2017).

[19] Press Release, Nat'l Ass'n of Law Placement, Rate of Part-Time Work Among Lawyers Unchanged in 2012—Most Working Part-time Continue to Be Women (Feb. 21, 2013), https://www.nalp.org/part-time_feb2013 (last visited Nov. 20, 2017).

attorneys taking time off for parental leave but also attorneys with a chronic illness or disability where a part-time schedule is part of their after-care or accommodations." [20]

An 80-hours threshold would minimize the disparate impact of 120-hours threshold on women and those with chronic illness and disabilities. Additionally, it would better reflect the changing nature of the practice of law, assisting those who are not members of historically underrepresented groups who also work less than 120 hours per month. And while there is a basis to be skeptical that the number of hours worked directly correlates to competence to practice law, MWL does support – indeed propose – a lower hours threshold. Those reasons include MWL's recognition of the following: (1) some period of time must be spent practicing law (at least according to the definition provided below in part III) to obtain and maintain competence; and (2) the Board needs to have a threshold standard that is easy to administer. For these reasons, MWL proposes an 80-hours threshold.

III. The Definition of "Practice of Law"

A. Proposal

MWL urges the Board to define the "practice of law" in the Rules for Admission to the Minnesota Bar as follows:

> A person is engaged in the practice of law for purposes of this Rule 7 if he or she is rendering services for another person or entity that call for the educated ability to relate the general body and philosophy of law to a specific legal

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[20] Lisa Back, "Is a Part-Time Attorney Competent?" The Hennepin Lawyer, Sept./Oct. 2017, at 26-27 (quoting Joan Bibelhausen), *available at* https://cloud.3dissue.com/75702/119928/140516/THL-2017-Sep-Oct/index.html.

problem or concern.[21] To achieve this objective, a person engaged in the practice of law may perform a variety of activities including, but not limited to, the following on behalf of another person or entity:

(a) Representing, including advocacy, investigation, drafting and negotiating, for pending or prospective proceedings before courts, administrative tribunals, judicial or quasi-judicial bodies, governmental agencies, mediators, arbitrators or other adjudicatory bodies; [22]
(b) Giving legal advice and counsel relating to rights and obligations under the law and regarding future development of the law;
(c) Examining, preparing or approving legal instruments by which legal rights are obtained, secured, documented or transferred;[23]
(d) Interpreting laws, rulings, and regulations for the benefit of another person or entity;
(e) Teaching students attending an accredited law school about the law; [24]and
(f) Engaging in those administrative and managerial activities reasonably necessary to support doing the activities listed above.[25]

B. Rationale for the Change

As part of updating the standards under Rule 7A, a more contemporary definition of what it means to be engaged in the practice of law is needed. The current Rule 7A defines this concept by using job titles rather than by defining the activities that comprise the practice of law.[26] Accordingly, the current definition sets out five job titles as follows: (1)

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[21] *See* definitional language contained in Iowa Code of Prof'l Responsibility EC 3-5.
[22] *See, e.g.,* La. R. Prof. Conduct 5.5; *see also* R.I. Gen. Laws § 11-27-2 (1956).
[23] *Id.*
[24] *See, e.g.*, Minn. R. Adm. to the Bar 7A.
[25] CLIO, Executive Summary to Legal Trends Report 3 (2017), https://files.goclio.com/marketo/ebooks/2017-Legal-Trends-Report-Executive-Summary.pdf (last visited Nov. 20, 2017) (acknowledging the data shows that lawyers spend only 2.3 hours of a day on billable work).
[26] Rule 7A (1)(c) currently states:
Engaged, as principal occupation, in the lawful practice of law as a:
i. Lawyer representing one or more clients;
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;

"**lawyer** [representing a client, working in a firm, working for a governmental unit, *etc.*];" (2) "full-time **faculty member** of an approved law school;" (3) "**judge** in a court of law;" (4) "judicial **law clerk**" primarily doing legal research and writing; and (5) "**house counsel**."[27]

The current approach relies on job titles as a proxy for demonstrating that one is engaged in the practice of law. However, it is one's day-to-day activities – not one's title – that actually constitute the practice of law. The definition of the practice of law in Rule 7A should therefore focus on whether an applicant has engaged in the activities of lawyering that have enabled him or her to develop the competence to practice law, rather than presuming that individuals with a particular job title are or are not engaged in the practice of law.

Additionally, the present Rule 7A is too narrow for the 21st century understanding of the practice of law. Virtually every job title in the current definition fails to account for what practicing law means today.

For example, the current definition states that one is engaged in the practice of law if he/she is a lawyer representing one or more clients.[28] But this is too limited. It says a lawyer is only "lawyering" when he/she is acting on behalf of a client(s). This does not account for the reality that most lawyers spend considerable hours of time performing activities necessary to running a law practice in order to represent clients. A recent study

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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.

[27] *Id.* (emphasis added).

[28] Rule 7A(1)(c)(i).

by CLIO revealed that "*lawyers spend only 2.3 hours (29% of an 8-hour workday) on billable tasks.*"[29] Presumably the remaining 7.7 hours of a day are spent engaging in the administrative, marketing and managerial activities reasonably necessary to represent clients in a law practice. Thus, the current definition of engaged in the practice of law in Rule 7A is under-inclusive of what practicing lawyers do.

Another way in which the current Rule 7A definition is under-inclusive is in how it describes being a "judge in a court of law."[30] In the modern world, judging-related activities occur in much broader contexts than just presiding over a trial in a court of law.[31] A judge might be hearing cases in an administrative tribunal rather than a "court of law." Moreover, there are new roles for both judges and lawyers that function outside of a traditional courtroom. The legal system now embraces other systems of conflict resolution such as mediation and arbitration. Judges or lawyers who conduct mediations or arbitrations would likely fall outside the current definition in Rule 7A. The rule needs to encompass these other types of judging activities –especially where the judicial system has come to rely so heavily on alternative dispute resolution (ADR) systems.[32]

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[29] 2017 Legal Trends Report Exec. Summ. at 3.

[30] Rule 7A(1)(c)(iii).

[31] *See, e.g.*, Wood R. Foster Jr., "How 'Trial Lawyer' Became an Oxymoron: A Lament for the Disappearance of Civil Jury Trials," Bench & Bar of Minn., Oct. 2017, at 16 (citing statistics that as of 2012 fewer than two percent of federal cases went to trial with less than one percent being tried to a jury), *available at* http://mnbenchbar.com/wp-content/uploads/2017/10/1017-Digital-Edition.pdf.

[32] *See Onvoy, Inc. v. SHAL L.L.C.*, 669 N.W.2d 344, 359 (Minn. 2003) (Gilbert, J., concurring) ("In recent times, the importance of ADR has grown and has not only continually been favored by both Congress and the Minnesota legislature for a number of years, but the Minnesota courts also adopted rules of practice to institutionalize ADR within the judiciary.").

These are just two ways in which the current definition needs an update. Because of this MWL respectfully suggests that any attempt to revise Rule 7A also include an update to the definition of "[e]ngaged ... in the lawful practice of law."

To provide a proposed definition, MWL undertook to research where the definition of practice of law is found at present.

We began with Minnesota law. The Minnesota Supreme Court has been reluctant to define the practice of law as a matter of common law, holding that such a definition is difficult to establish or was not required in the case before the court.[33] Additionally, when a task force of the MSBA attempted to provide such a definition (as part of working on rules governing multidisciplinary practice),[34] the court did not accept the proposed definition.[35]

There are two places where the practice of law is defined in Minnesota. The first is in Rule 7A which has already been described. The second is in Minnesota's statute proscribing the unauthorized practice of law.[36] That statute defines what is impermissible

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[33] *See Cardinal v. Merrill Lynch Realty/Burnet, Inc.*, 433 N.W.2d 864, 867-68 (Minn. 1988) ("The line between what is and what is not the practice of law cannot be drawn with precision. Lawyers should be the first to recognize that between the two there is a region wherein much of what lawyers do every day in their practice may also be done by others without wrongful invasion of the lawyers' field."); *see also Fitchette v. Taylor*, 191 Minn. 582, 254 N.W. 510 (1934).

[34] Petition for Amendment of the Minnesota Rules of Professional Conduct, *In re Amend. of Minn. R. Prof. Conduct*, No. C8-84-1650 (Minn. Jan. 2002) ("Practice of law" denotes the following activities: 1. Rendering legal consultation or advice to a client; 2. Appearing on behalf of a client in any hearing, proceeding or related deposition or discovery matter or before any judicial officer, court, public agency, referee, magistrate, commissioner or hearing officer, except where rules of the tribunal involved permit representation by nonlawyers; 3. Engaging in other activities that constitute the practice of law as provided by statute or common law.).

[35] Order, *In re Amend. of Minn. R. Prof. Conduct*, No. C8-84-1650 (Minn. Sept. 17, 2002) (denying petition).

[36] Minn. Stat. § 481.02, subd. 1.

for a non-lawyer to do.[37] In the view of MWL, the definition in the unauthorized practice of law statute is unduly narrow for the purpose of Rule 7A. For instance, it fails to account for activities such as mediation and arbitration. But more fundamentally, the language in the unauthorized practice of law statute does not affirmatively define the broad contours of what it means to be engaged in the practice of law. That statute is narrowly defined to put non-lawyers on notice of what would be illegal conduct. It is not designed to define what it means to be engaged in the practice of law. In short, such a criminal statute is insufficient as a means of defining what it means to be engaged in the practice of law.

Outside of this state, there have been many efforts to provide a suitable definition of what is the practice of law. The ABA appointed a task force regarding a model definition of the practice of law.[38] While the task force created a "discussion draft definition," ultimately the task force decided instead, because the considerations in defining the practice of law in

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[37] The statute provides:

> It shall be unlawful for any person or association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, to appear as attorney or counselor at law in any action or proceeding in any court in this state to maintain, conduct, or defend the same, except personally as a party thereto in other than a representative capacity, or, by word, sign, letter, or advertisement, to hold out as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor at law, or in furnishing to others the services of a lawyer or lawyers, or, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services, or, for or without a fee or any consideration, to prepare, directly or through another, for another person, firm, or corporation, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or, for a fee or any consideration, to prepare for another person, firm, or corporation, any other legal document, except as provided in subdivision 3.

[38] Task Force on the Model Definition of the Practice of Law, Am. Bar Ass'n, Report 2 (August 2003), *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/taskforce_rpt_803.authcheckdam.pdf.

each jurisdiction required it, to recommend a procedural framework for jurisdictions to follow for determining who should be permitted to provide services that are included within the definition of the practice of law.[39] In that effort the ABA generated a state-by-state listing of efforts by states to define the practice of law.[40] The task force put together a proposed draft definition.[41] We reviewed the ABA definition as well as the definitions from the state-by-state listing and compiled a proposed definition that is a composite of several of the definitions that we found most useful[42] and contemporary.[43]

Two approaches seemed common. Some states attempted to develop an overarching, narrative definition of the practice of law.[44] Other states used a listing approach – setting out the various activities that would qualify as practicing law.[45] Upon review, we felt that a combination of both a general definition and a listing would be the more sensible approach.

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[39] *Id.* at 2-3.

[40] *Id.* at 4 n.8 (referencing Appendix A: State Definitions of the Practice of Law, *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/model_def_statutes.authcheckdam.pdf).

[41] Task Force on the Model Definition of the Practice of Law, Am. Bar Ass'n, Definition of the Practice of Law Draft (Sept. 18, 2002), *available at* https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition.html.

[42] Some state supreme courts have taken the approach that defining the practice of law is too difficult to do. *See, e.g., Arkansas Bar Ass'n v. Black*, 323 S.W.2d 912, 914 (Ark. 1959); *State ex rel. the Florida Bar v. Sperry*, 140 So.2d 487, 591 (Fla. 1962); *Board of Overseers of the Bar v. Mangan*, 763 A.2d 1189 (Me. 2001).

[43] Several states adopted a definition of what it means to be engaged in the practice of law that were developed some time ago and were unrepresentative of what the contemporary career involves.

[44] *See, e.g., People v. Merchants Protective Corp.*, 209 P. 363, 365 (Cal. 1922); *Koscove v. Bolte*, 30 P.3d 784, 786 (Colo. App. 2001); *Delaware State Bar Ass'n v. Alexander*, 386 A.2d 652, 661 (Del. Supr. 1978).

[45] *See, e.g.*, Colo. R. Civ. P. 201.3(2); D.C. Ct. App. R. 49; La. Rev. Stat. § 212.

The general definition used by the Iowa Supreme Court was rather lengthy.[46] But within that definition was a shorter definition that was inclusive and elegant. We use that as our basic definition.[47] Then we drew from those states that use a listing approach to add the examples of practicing law.

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[46] In *Comm. on Ethical Pract. & Conduct of Iowa State Bar Ass'n v. Baker*, Iowa's Supreme Court defined the practice of law as follows:

> [T]he practice of law includes, but is not limited to, representing another before the courts; giving of legal advice and counsel to others relating to their rights and obligations under the law; and preparation or approval of the use of legal instruments by which legal rights of others are either obtained, secured or transferred even if such matters never become the subject of a court proceeding. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of professional judgment of the lawyer is the educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, nonlawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional judgment is required.

492 N.W.2d 695, 701 (Iowa 1992) (quoting Iowa Code of Prof. Resp. EC 3-5).

[47] "Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of professional judgment of the lawyer is the educated ability to relate the general body and philosophy of law to a specific legal problem of a client." *Id.* (quoting Iowa Code of Prof. Resp. EC 3-5).

IV. Limited Case-by-Case Evaluations

A. Proposal

MWL urges the Board to carve out limited exceptions to the proposed 80-hours threshold for engaging in the practice of law during 60 of the last 84 months to accommodate those who take family and medical leaves, as well as those who have chronic illnesses or disabilities.

B. Rationale for the Change

Even if the Board adopts a lower hours threshold, there will still be competent attorneys who cannot reach that threshold due to life circumstances or health conditions. The updated definition of the practice of law that we have proposed coupled with the reduced hours threshold should create a bright-line threshold for the Board to use in evaluating competence for most attorneys. However, there are still some that will need a case-by-case evaluation.

The following circumstances necessitate a case-by-case evaluation by the Board to evaluate the competence of attorneys who have not otherwise met the threshold requirements listed in the revised Rule 7A and updated definition. We urge the Board to carve out exceptions to the hours and/or the look back period for lawyers who have taken leaves from work due to the following life circumstances, which are modeled on the Family and Medical Leave Act of 1993:[48]

1. The arrival of a new child in the family, whether by birth, adoption or foster care, applying equally to both parents or legal guardians;
2. The care of a family member with a serious health condition; or

[48] Pub. L. 103-3; 29 U.S.C. § 2601; 29 C.F.R. § 825.

3. The attorney's own serious health condition that prevents the attorney from performing essential job duties at the same rate as more able-bodied attorneys;

any one or more of which prevent the attorney from reaching the 80-hours threshold.[49]

For parents who have taken parental leave during the prior 84 months, the time of the parental leave should be excluded from the tolling of the 84 months. The amount of parenting exempted from the tolling of the 84 months may vary from attorney to attorney based on specific circumstances in each individual case, and parenting time should be excluded from the 84 months regardless of the sex of the child's caregiver. It could also apply to grandparent caregivers when they are the primary caregiver and/or legal guardian for the child.

For individuals with chronic illness or disabilities, we urge the Board to conduct a case-by-case analysis of what number of hours per month would constitute a primary occupation in the law. We leave it to the Board to determine what number of reduced hours should be the threshold based on the individual circumstances of the attorney applicant with a chronic illness or disability.

These rare, but important, exceptions to the requirements of the revised Rule 7A acknowledge the life circumstances that would unduly prevent otherwise capable, competent attorneys from reaching the thresholds set out in the rule.

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[49] *See* 29 U.S.C. § 2612(a)(1).

V. EXECUTIVE SUMMARY: Amended Rule 7A as Proposed by MWL

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 80 hours per month for at least 60 of the 84 months immediately preceding the application, the applicant was:

(a) Licensed to practice law;
(b) In good standing before the highest court of all jurisdictions where admitted; and
(c) Engaged, as a principal occupation, in the lawful practice of law. A person is engaged in the practice of law for purposes of this Rule 7 if he or she is rendering services for another person or entity that call for the educated ability to relate the general body and philosophy of law to a specific legal problem or concern. To achieve this objective, a person engaged in the practice of law may perform a variety of activities including, but not limited to, the following on behalf of another person or entity:

i. Representing, including advocacy, investigation, drafting and negotiating, for pending or prospective proceedings before courts, administrative tribunals, judicial or quasi-judicial bodies, governmental agencies, mediators, arbitrators or other adjudicatory bodies;
ii. Giving legal advice and counsel relating to rights and obligations under the law and regarding future development of the law;
iii. Examining, preparing or approving legal instruments by which legal rights are obtained, secured, documented or transferred;
iv. Interpreting laws, rulings, and regulations for the benefit of another person or entity;
v. Teaching students attending an accredited law school about the law; and
vi. Engaging in those administrative and managerial activities reasonably necessary to support doing the activities listed above.

The following life circumstances create exceptions to the foregoing hours threshold:

1. The arrival of a new child in the family, whether by birth, adoption or foster care, applying equally to both parents or legal guardians;
2. The care of a family member with a serious health condition; or
3. The attorney's own serious health condition that prevents the attorney from performing essential job duties at the same rate as more able-bodied attorneys, thus preventing the attorney from reaching the 80 hours per month threshold.

VI. Conclusion

The Board of Law Examiners is tasked with an important role: "insuring that members of the bar are worthy of public trust with regard to their professional competence."[50] The Rules play a pivotal role in the ability of the Board to perform their duty. It is of utmost importance that the Rules, specifically Rule 7A, lay out a clear way by which attorneys who are competent to practice law in the State of Minnesota are admitted after reaching a threshold designed to demonstrate competence without creating an artificial or discriminatory barrier that disparately impacts some attorneys.

Rule 7A should include a specific hours threshold that an attorney could meet to be admitted to the profession in Minnesota. This hours threshold should be 80 hours/month for 60 of the last 84 months. This threshold accommodates and acknowledges the many kinds of practice forms and settings in which attorneys now find themselves as they practice law as their primary occupation. The hours threshold should be specifically enumerated in the Rule itself, leaving no question as to the threshold that will be applied by the Board. Additionally, Rule 7A should account for how the practice of law has changed in recent years and how the profession's understanding of the practice of law has changed. This evaluation as to the activities associated with practicing law, not simply titles and practice settings, creates a clearer and more appropriate way by which to measure professional experience and competence to practice law.

Finally, the Board can alleviate the disparate impact on historically underrepresented groups, particularly women and people with disabilities, by offering a rare case-by-case analysis of competence for those that otherwise fail to meet the hours threshold based on

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[50] *Murray*, 821 N.W.2d at 336 (quoting *In re Busch*, 313 N.W.2d 419, 421 (Minn. 1981)).

the refined definition of the practice of law. While rare, these individualized analyses are critical to reviewing the unique life circumstances facing a small percentage of attorneys that would prevent otherwise exceptional and competent attorneys from meeting the hours threshold.

We understand and appreciate the challenge the Board faces when evaluating applications for admission in a fair and efficient way. For that reason, and with great thought and care, we have crafted this recommendation that addresses the concerns we have heard and identified with the current rule and its application. We respect the Board's desire to avoid arbitrary and capricious decision making, and our sole purpose in submitting this comment is to aid the Board in creating rules and applications that lend credence and reliability to this important process. We stand with the Board in desiring that all attorneys in the State of Minnesota share a competence to practice that protects and serves the public. A refined Rule 7A accomplishes that goal, and, for that reason, we request that the Board accept and adopt the changes to Rule 7A that we have recommended.

In addition to submitting this statement, MWL requests the opportunity to provide oral testimony.

Dated: November 30, 2017

Respectfully submitted,

MINNESOTA WOMEN LAWYERS
Committee on Review of Rule 7A
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RCBA
RAMSEY COUNTY BAR ASSOCIATION

November 30, 2017

Mr. Douglas Peterson, Chair
Minnesota Board of Law Examiners
180 E. 5th St., Suite 950
St. Paul, Minnesota 55101

Re: Rule 7A Review

Dear Mr. Peterson,

The Ramsey County Bar Association (RCBA) submits this letter in response to the Minnesota Board of Law Examiners' (Board) request for comments regarding the Board's interpretation of Rule 7A of the Rules for Admission to the Bar.

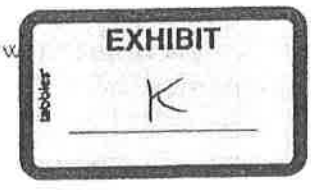
The RCBA supports a change to the Board's Policy Statement on Admission Without Examination, Eligibility by Practice (Rule 7). The current policy states:

> Rule 7A permits lawyers licensed in another jurisdiction to be admitted without examination if they have engaged in the practice of law in another jurisdiction for 60 of the 84 months immediately preceding the application. The phrase "engaged as principal occupation" is interpreted to mean that one's practice of law must be full-time or substantially full-time (at least 120 hours or more per month). The applicant has the burden of proving eligibility under Rule 7A. The Board determines eligibility on a case-by-case basis using the documentary evidence submitted by the applicant and information obtained during the investigation.

No provision is made for lawyers engaged in the practice of law less than 120 hours per month or for fewer than 60 months. The RCBA encourages the Board to change its policy to allow case-by-case evaluation of the competency of lawyers who do not meet these thresholds.

The Board of Law Examiners is charged with the important task of protecting the public by ensuring that "those who are 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." Rule 1, Minnesota Rules for Admission to the Bar. The RCBA urges the Board to adopt a new policy that protects the public, while at the same time acknowledges the varying circumstances facing practicing lawyers and the changing nature of the practice of law.

Under the current policy, lawyers who have chosen or been forced to work part-time in another jurisdiction must take the Minnesota bar exam in order to gain admission to the Minnesota bar,



regardless of the number of years they have practiced law in another state. Many lawyers choose to work less than full-time to be able to care for young, elderly, ill or disabled family members. Some lawyers practice fewer than 120 hours per month due to their own disability or illness. Furthermore, many lawyers simply seek more work-life balance by utilizing flexible or part-time work schedules. The RCBA therefore encourages the Board to introduce flexibility into the number of monthly hours required to qualify for admission without examination in Minnesota, particularly in situations where the total number of years the lawyer has practiced outside of Minnesota exceeds 60 months.

The policy also does not take into account the fact that many solo or small firm attorneys may have a difficult time billing 120 hours in a month. The Clio Legal Trends Report from 2017 found that solo and small firm lawyers bill, on average, 2.3 hours per day. The policy does not specify whether all of the hours spent in administrative tasks required to manage a small law office may be counted toward the 120-hour threshold. The RCBA encourages the Board to adopt a new policy that will ensure that all activities that are related to the practice of law count toward any threshold number of hours.

The RCBA also encourages the Board to introduce flexibility into its policy of requiring lawyers to have practiced for 60 of the previous 84 months when applying for admission in Minnesota. Competent lawyers who have taken parental, medical or disability leave may not meet that threshold. In addition, lawyers who frequently move because they are in the military or have a spouse in the military may not meet that threshold. We encourage the Board to evaluate such applications on a case-by-case basis.

In summary, the RCBA urges the Board to adopt a new policy interpreting Rule 7A that will allow lawyers applying for admission to the Minnesota bar who have not met the threshold 120 hours of work per month for 60 of the previous 84 months to be evaluated on a case-by-case basis to determine whether they have demonstrated competency to practice law.

Thank you for the opportunity to comment on interpretation of Rule 7A.

Sincerely,

Paul D. Peterson
President

Public Hearing Agenda for January 16, 2018 meeting.

On September 12, 2017, the Minnesota Board of Law Examiners published a public notice seeking comments to Rule 7A. The public notice outlined the ways that Applicants to the Minnesota bar may provide evidence of competence under the Board's current Rules and provided information on the scope of the Board's current review. Additional information is available by viewing the public notice.

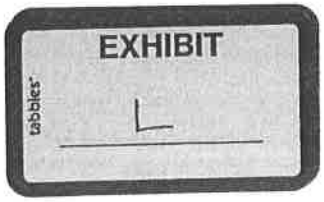
The Board received 6 written comments:

1. LaVern Pritchard – dated September 20, 2017
2. Hennepin County Bar Association (HCBA) – dated November 29, 2017
3. Lawyers Concerned for Lawyers (LCL) – dated November 30, 2017; see also: https://www.mnlcl.org/wp-content/uploads/2012/03/ThePathToLawyerWellBeingReportFINAL.pdf
4. Minnesota State Bar Association (MSBA) – dated November 30, 2017
5. Minnesota Women Lawyers (MWL) – dated November 30, 2017
6. Ramsey County Bar Association (RCBA) – dated November 30, 2017

In addition, four parties requested to present at the Board's public hearing. The agenda and directions for the public meeting may be found here.

The meeting will take place on Tuesday, January 16th from 2-4 P.M. on the 2nd floor conference room at 180 E. 5th Street, St. Paul, MN 55101.

In addition to the public comments, Board staff has also surveyed other jurisdictions for a comprehensive comparison chart addressing how other jurisdictions handle admission on motion based on years of practice.



THE SUPREME COURT OF MINNESOTA
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Emily John Eschweiler
Director

March 16, 2018

Dear Interested Parties:

On September 12, 2017, the Board published a public notice requesting written comments and soliciting oral testimony on Rule 7A, Eligibility for Admission Based on Years of Practice. The Board received six written comments and four requests to provide oral testimony at the Board's public hearing. The written comments have been posted to the Board's website.

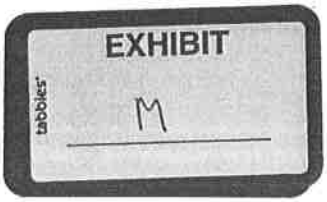
Board staff also surveyed other U.S. jurisdictions. The comprehensive comparison chart addressing how other jurisdictions handle admission on motion has been published to the Board's website.

The Board held its public hearing on January 16, 2018, and provided each party in attendance with five minutes to present additional information. Following each presentation, the Board members asked additional questions and invited informal discussion between the participants.

The Board would like to thank those who provided written comments in advance of and oral testimony at the January 16, 2018 public hearing regarding the Rule 7A study. The Board of Law Examiners appreciates the important feedback provided and has carefully considered all information.

The Committee brought the recommendations to the full Board for further review and discussion. After carefully considering the comments provided, the Board's purpose to ensure that those who are admitted have the necessary competence to justify the trust that is placed in lawyers by clients, the public, the legal system, and the legal profession, and the information obtained from other jurisdictions, the Board intends at this time to make the following recommendations to the Court for Rule and policy amendment:

1. Recommend that the Court reduce the number of months required for admission on motion based on years of practice from 60 of 84 months to 36 of 60 months immediately preceding the application. This will recognize that individuals may transfer a UBE score into Minnesota for up to 36 months and remove the period of time that individuals currently are ineligible to apply on motion.



2. Remove from the Board's policy the requirement that an individual must have practiced full-time or close to full-time (at least 120 hours per month) and instead recommend that the Court adopt a 1000 hour per year requirement in the Rules.

3. Continue to permit up to 24 months of time where no practice would be required. The Board carefully considered whether to make additional exceptions for FMLA and determined that the current Rule is broad enough to permit an FMLA leave during each of the 5 years in the look back period and still qualify under the Rules.

4. Modify the policy to include additional information about the types of activities that qualify towards the 1000 hours per year.

5. Remove the definition for principal occupation.

Attached you will find the Board's initial drafts of proposed revisions to Rule 2A(12) and Rule 7A of the Rules for Admission to the Bar together with a revised Policy Statement on Admission without Examination, Eligibility by Practice (Rule 7A).

The Board has not included a provision for exceptional circumstances within the draft rule or policy. The Board is hopeful that the reduction in practice hours and years of practice required will sufficiently accommodate more applicants, and allow sufficient time for FMLA and other periods of leave.

The letter and attachments have also been posted to the Board's website to solicit additional feedback from interested entities before the Report is due to the Court. Please provide any additional written comments to ble@mbcle.state.mn.us or the address above by **April 6, 2018.**

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS

Emily Eschweiler
Director

Enclosure

EJE: NK

RULE 2. DEFINITIONS AND DUE DATE PROVISIONS

A. Definitions. As used in these Rules:

***

~~(12) "Principal occupation" means an applicant's primary professional work or business.~~

***

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) Held a ~~l~~Licensed to practice law in active status;

(b) Was ~~i~~in good standing before the highest court of all jurisdictions where admitted; and

(c) Was ~~e~~engaged~~, as principal occupation,~~ in the lawful practice of law for at least 1000 hours per year, as a:

i. Lawyer representing one or more clients, including on a pro bono basis;

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.

(2) Jurisdiction. The lawful practice of law described in Rule 7A(1)(c)(i) through (v) must have been performed in a jurisdiction in which the applicant is admitted, or performed in a jurisdiction that permits the practice of law by a lawyer not admitted in that jurisdiction. Practice described in Rule 7A(1)(c)(vi) through (viii) may have been performed outside the jurisdiction where the applicant is licensed.

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An applicant applying under Rule 7A must provide documentary evidence showing that for at least ~~60 of the 84~~ 36 of the 60 months immediately prior to filing the application, the applicant has been "engaged~~, as principal occupation,~~ in the lawful practice of law for at least 1000 hours per year" in one of the activities listed in Rule 7A(1)(c).

~~**Hours Required:**~~

~~Rule 7A permits lawyers licensed in another jurisdiction to be admitted without examination if they have engaged in the practice of law in another jurisdiction for 60 of the 84 months immediately preceding the application. The phrase "engaged as principal occupation" is interpreted to mean that one's practice of law must be full-time or substantially full-time (at least 120 hours or more per month).~~

The applicant has the burden of proving eligibility under Rule 7A. The Board determines eligibility ~~on a case-by-case basis using~~by reviewing the documentary evidence submitted by the applicant and information obtained during the investigation.

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The Board also reviews the type of work that the lawyer has performed. Generally, work that does not require a law degree or licensure will not qualify toward the Rule 7A practice requirement. In addition, unless the work meets the exceptions outlined in Rule 7A(2), the time will not qualify if performed in a jurisdiction in which the lawyer is not admitted.

The type of work that may count toward the practice requirement includes, but is not limited to the following: billable hours, pro-bono legal work, non-billable hours directly related to the practice of law, and professional development work, including training and completion of continuing legal education courses.

Some positions require licensure in "any jurisdiction" but do not specifically require licensure in the jurisdiction in which the lawyer is practicing. For these positions, the Board will make additional inquiry as to the type of work performed and whether the work is considered to be the lawful practice of law in the jurisdiction in which it was performed. For example, document review work performed in Minnesota by a lawyer licensed in New York would not qualify if the position required a J.D. but not licensure, or if the work could be performed by a paralegal. However, if the lawyer was providing advice on New York law and held an active license to practice law ~~was licensed~~ in New York, then the time would likely qualify.

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If an applicant is unable to provide documentation showing that the applicant meets the requirements of Rule 7A, the Board will advise the applicant that the applicant must take and pass the Minnesota bar examination in order to be admitted in Minnesota. An applicant who applies under Rule 7A who is determined to be ineligible may convert his or her application to Rule 6 and sit for an examination within the succeeding 15 months. No additional fee is required. See Rule 12J.

MSBA

April 6, 2018

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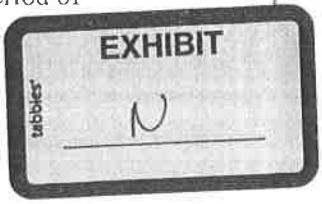
RE: Proposed Amendments to Rule 7A, Minn. R. Admission to the Bar
Notice dated March 16, 2018

Dear Ms. Eschweiler:

The Minnesota State Bar Association submits this letter in response to the proposed amendments to Rules 2 and 7A, Minn. Rules for Admission to the Bar, and the proposed Policy Statement on Admission without Examination, Eligibility by Practice (Rule 7A), as included in your Notice dated March 16, 2018. The MSBA has the following comments on the proposals contained therein:

1. The MSBA commends the Board of Law Examiners on its open process in considering the proposed changes to Rule 7A and its corresponding policy. We believe that an open process increases the confidence of applicants, the public and the bar that the Board has fully considered relevant factors in developing its rules and policy statements. We look forward to working with the Board using a similar process in the future when possible rules amendments and significant policy changes arise.

2. The MSBA believes that the proposed amendments to Rules 2 and 7A, together with the accompanying policy statement, significantly improve the requirements for admission to practice without examination based on prior practice and we urge their adoption. We feel that the Board gave full consideration to the concerns raised by the MSBA and others who offered comments. The proposals reflect the Board's thoughtful resolution of the issues. In particular, removal of "principal occupation" as an element of Rule 7A and the reduction in the practice requirement to three of the past five years go far toward aligning the standards for competency of Rule 7A applicants with the realities of modern legal practice. Hence, the proposals make it possible for qualified attorneys admitted in other jurisdictions to transition their practices to Minnesota without unnecessary delay and expense while providing adequate assurance that they are qualified to do so. The proposals also reduce the burden on applicants who find it necessary to leave the practice of law for a period of



time because of family responsibilities, health issues or other significant life needs.

The proposed rules retain the job titles deemed to constitute the practice of law for purposes of assessing whether an applicant has engaged in the practice of law. As a technical point, we suggest that the Board might consider removing "Full-time," from Rule 7(A)(1)(c)(vii) regarding law school faculty, to conform that portion of the rule with the 1,000-hour requirement and the removal of "principal occupation" from Rule 7(A)(1).

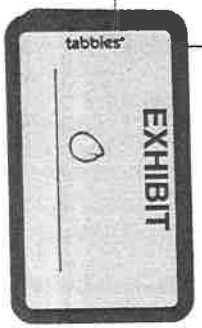
The MSBA shares the concerns, expressed by other organizations that provided comments to the Board, that the listing of job titles or categories of practice risks being under-inclusive, particularly in a time of rapid change in the way law is practiced. Were the MSBA drafting the rule amendments, we might have preferred to incorporate language in Rule 7A(1)(c) to indicate that the listing is not exclusive and that other professional work that includes substantial legal analysis and legal decision-making would also qualify. Indeed, we might have avoided the use of job titles altogether. But we recognize 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. We urge the Board to continue to study this issue for possible future action.

We appreciate the opportunity to comment on proposals advanced in your March 16, 2108 Notice and look forward to the opportunity to continue to work with the Board as it carries on its important work.

Sincerely,

Sonia Miller-Van Oort
President

State	Allow admission on Motion	Years required	Does part-time practice count?	If part-time counts, how much?	What is considered full-time?	Do jurisdiction count maternity leave, FMLA, etc.?	Comments
Alabama	Yes	5 of last 6 years	No, requires active practice of law.	No minimum provided by rule.	Not defined	Not in rule.	Must have been primarily engaged in the active practice of law for five of six years. Certification of Juridictional Reciprocity states - "engaged in active practice of law without interruption as a member of the bar from..."
Alaska	Yes	5 of 7 yrs	Yes	750 hours per year.	Not defined	Not counted because of the minimum of 750 hours per year requirement.	No guidelines.
Arkansas	Yes	5 of 7 yrs	Not in rule.			Not in rule.	"Active practice of law" includes: representation of clients, teaching at a law school, service as judge, judicial law clerk, or corporate counsel (Is a box on application re: whether employment was full-time).
Arizona	Yes	3 of 5 yrs	"active practice of law"		Not defined	Not in rule (further inquiry to AZ BLE referred me to Admission on Motion Rule 34 (f), which just refers to active practice for 3 years.)	Must have been primarily engaged in the active practice of law for three of five years.
California	No						If applicant has an active license and has been certified as in good standing for at least 4 years before taking CA bar, may take the one-day Attorneys' Exam.
Colorado	Yes	3 of 5 yrs	Yes	No established criteria	No	No	If part-time, asks approximate number of hours.



State	Allow admission on Motion	Years required	Does part-time practice count?	If part-time counts, how much?	What is considered full-time?	Do jurisdiction count maternity leave, FMLA, etc.?	Comments
Connecticut	Yes	5 of 10 years (counted by month)	Yes	Do not inquire	NA	Applicant must have been lawfully engaged in the practice of law as his or her principal means of livelihood for the required five of the last 10 years.	No. There is a question on the application that asks if someone has been absent for more than 10 consecutive work days other than a regularly scheduled vacation.
D.C.	Yes	5 years licensure	Yes			Not in rule.	Does not count practice time, just must have maintained a membership in good standing in a U.S. jurisdiction or territory for five years immediately preceeding application.
Delaware	No						
Florida	No						
Georgia	Yes	5 of 7 yrs	Has primarily engaged in the "active practice of law"		No definition	Not in rule.	Rule defines "active practice of law" to include representation of clients, teaching at law school, serving as judge or judicial law clerk.
Hawaii	No (except FT faculty at U or H law school, judge advocates)						If actively practiced for 5 of last 6 years, may apply for examination and admission.
Idaho	Yes	3 of 5 yrs; unless recipricol jurisdiction requires more	No		See notes	Not in rule.	"Substantially engaged in the active practice of law"; interepreted to mean more than part-time for the for majority of relevant period.

State	Allow admission on Motion	Years required	Does part-time practice count?	If part-time counts, how much?	What is considered full-time?	Do jurisdiction count maternity leave, FMLA, etc.?	Comments
Illinois	Yes	3 of 5 yrs	Yes	80 hours/ month or 1000 hours per year.	NA	Has not come up.	If applicant does not meet rules, must Petition court for waiver.
Indiana	Yes	5 of 7 yrs	Yes	At least 1000 hours per year.		Not in rule.	
Iowa	Yes	5 of 7 yrs	Yes	20 hours (informally)	No	Has not come up.	
Kansas	Yes	5 of 7 yrs	"active practice of law"		Not defined	Not in rule.	
Kentucky	Yes	5 of 7 yrs	"Engaged in the active practice of law"		No definition	Further inquiry to KY Office of Bar Admissions - see notes.	"If an applicant dicloses that he/she has had a leave of absence, we do require them to make up that time to calculate into the 5 of 7 years of practice. If they don't tell us, there is no way for us to know."
Louisiana	No						
Maine	Yes	3 of 5 yrs	No		Case-by-case analysis.	Usually, but would depend on how long.	
Maryland	No						Out-of-state attorneys must take one-day (3 hour) Out-of-State Attorney Exam (open book), rather than the two-day exam.
Massachusetts	Yes	5 of 7 yrs	case by case	"full-time active practice"	Case-by-case	Depends on circumstances and amount of time.	Consider on a case by case basis.
Michigan	Yes	3 of 5 yrs	Yes	50% time		Not in rule.	Principal Occupation or business.

State	Allow admission on Motion	Years required	Does part-time practice count?	If part-time counts, how much?	What is considered full-time?	Do jurisdiction count maternity leave, FMLA, etc.?	Comments
Minnesota	Yes	5 of 7 yrs (calculated by month)	Yes	120 hours per month	Yes	Has not become an issue in calculation because Rule allows for 24 months of no practice for any reason.	Yes, applicant must disclose whether prior experience is full or part-time.
Mississippi	Yes	Not less than 5 yrs	Not defined in Rule	Not defined	No definition	Not in rule.	Laws of the state from which applicant comes must grant similar privileges to attorney applicants from Mississippi. (Board determiniation)
Missouri	Yes	5 of 10 yrs	No		No definition	Has not come up.	Rule requires full-time practice but does not define.
Montana	Yes	5 of 7 yrs	Yes	At least 1000 hours per year for each of the 5 years	Not defined	Not in rule.	
Nebraska	Yes	3 out of 5 yrs	Yes	Not defined	Not defined	Yes	No
Nevada	No						
New Hampshire	Yes	5 of 7 yrs	Not defined; primarily engaged in active practice of law	Not defined	Not defined	Not in rule.	Rules requires applicant have been primarily engaged in the active practice of law for 5 of 7 years, no full-time/part-time definition.
New Jersey	Yes	5 of 7 yrs	Yes	More than 20 hours.	Not defined		

State	Allow admission on Motion	Years required	Does part-time practice count?	If part-time counts, how much?	What is considered full-time?	Do jurisdiction count maternity leave, FMLA, etc.?	Comments
New Mexico	Yes	5 of 7 yrs	Yes	More than 1000 per year.	At least 1000 hours per year and at least 50% of non-investment income comes from practice of law.	It depends - see notes.	Parental leave counts "so long as the person had sufficient practice of law over the entire seven-year period."
New York	Yes	5 of 7 yrs	Not defined.	Not defined.	Not defined.	Not defined.	Applicant must be currently admitted to bar in a jurisdiction which would similarly admit an attorney licensed in NY.
North Carolina	Yes	4 of 6 yrs	Current rule requires full-time. See Notes	NA	Does not define	Has not come up.	Current rule requires full-time. Effective 6/30/18 "full-time" language will be removed and the requirement will be "active and substantial"engagement in the practice of law for the required period."
North Dakota	Yes	4 of 5 yrs		No	No	Have not addressed.	Rules changed to remove full-time. Rule states: "actively engaged, to an extent deemd by the Board to demonstrate competency in the practice of law"
Ohio	Yes	5 of 10 yrs	No			Not in rule.	Rules require full time, but do not define full time practice of law by hours.
Oklahoma	Yes	5 of 7 yrs	No, requires "active and continuous"	n/a/	"active and continuous"	Not in rule.	

State	Allow admission on Motion	Years required	Does part-time practice count?	If part-time counts, how much?	What is considered full-time?	Do jurisdiction count maternity leave, FMLA, etc.?	Comments
Oregon	Yes	5 of 7 yrs	"Active practice of law" or "actively engaged in the practice of law" means law-related professional activities.	1000 hours of legal work within a year for the year to be counted.		No. See notes.	Must be "active members of the bar in qualifying jurisdiction...who have lawfully engaged in the the active, substantial and continuous practice of law."; Correspondence from OR state bar indicates that the only time when the requirements are tolled is military service. Otherwise 1000 hours required each year. Employment leave (FMLA or otherwise) does not add additional time to the 1000 hour requirement.
Pennsylvania	Yes	5 of 7 yrs	Yes	20 plus hours per week	40 hours/week	Vacation and approved leave are counted if individual returns to work afterwards	Asks percentage of time practing law; http://www.pabarexam.org/non_bar_exam_admission/204_interpretation.htm
Rhode Island	No						
South Carolina	No						
South Dakota	Yes	Last 5 yrs	"as principal occupation... actively, continuously, and lawfully enged in the procative of law..."	Not defined	Not in rule.	Not in rule.	To the extent that states that allow SD attorneys substantially similar admission w/o exam have additional requirements for SD lawyers seeking admission w/o exam, the Board may impose the same additional requirements for applicants seeking admission in SD w/o exam.
Tennessee	Yes	5 of 7 yrs	No		Not defined.	Not in rule.	Full-time private or public practice, teaching law FT, judicial law clerk or staff attorney, judge, AG, etc. Board may also consider other FT employment requiring interpretation of law.

State	Allow admission on Motion	Years required	Does part-time practice count?	If part-time counts, how much?	What is considered full-time?	Do jurisdiction count maternity leave, FMLA, etc.?	Comments
Texas	Yes	5 of 7 yrs	"active and substantial"	30 hours per week		No. See Notes.	TX generally does not count parental leave/FMLA toward the 5 year requirement. TX tells applicants they have 7 years to accrue 5 years of experience, so time for leave, job transition, etc. is already worked into the rule. Board has discretion to reduce or waive the 5-year practice requirement or expand the 7- year window for "good cause." See also: https://ble.texas.gov/policy-statement-on-practice-requirements ;
Utah	Yes	5 of 7 yrs (calculated by month)	Yes.	80 hours of legal work per month.	80 hours of lega work per month.	No, but the rule was designed to permit an attorney to take a leave of absence up to 24 months within the 84 month period.	
Vermont	Yes	5 of 10 yrs	"actively engaged in the practice of law"	Not defined	Does not define	Has not come up.	Active engagement in the practice of law for five of the 10 years immediately preceding the application (if NH or ME, no less than 3 years).

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Virginia	Yes	3 of 5 yrs	No	n/a/	Does not define	No	The Supreme Court of Virginia has assigned to the Virginia Board of Bar Examiners the responsibility to assess the information furnished by an applicant for admission without examination and to determine, from the information so furnished, whether the applicant's experience in the practice of law is sufficient to demonstrate his or her current competence, good character, and fitness to practice law in Virginia. In order to guide the Board in its determinations, the Court adopted criteria to be applied by the Board in assessing applications for admission to the bar of Virginia without examination. These criteria are in the form of regulations, which were adopted and promulgated by the Court on December 13, 2013 (and as amended on October 31, 2014). See: http://barexam.virginia.gov/motion/motionrules.html
Washington	Yes	3 of 5 yrs	Yes	Any legal work done in a calendar year, however minimal, counts. No minimum provided by the rule	Not in rule	Generally yes; as long as the attorney has worked some of that calendar year, the entire year counts.	"Active legal experience" means either in the active practice of law, or as a teacher at an approved law school, judge, or combination. Washington is most concerned with applicants having maintained active licenses during the 3 of 5 years, not how many hours worked. More broad/liberal approach.

State	Allow admission on Motion	Years required	Does part-time practice count?	If part-time counts, how much?	What is considered full-time?	Do jurisdiction count maternity leave, FMLA, etc.?	Comments
West Virginia	Yes	5 of 7 yrs	Case by case basis; requires "on a substantial basis" and "active and continuous."	No minimum provided by rule	No	Does not inquire.	
Wisconsin	Yes	3 of 5 yrs	Case by case basis.	No minimum provided by rule.	Not defined	Has not come up. "As long as someone could establish that he/she actively practiced for 3 of 5 years, we would likely admit."	Applicant must have "been substantially engaged in the practice of law in a state or territory...for 3 years within the last 5."
Wyoming	Yes	5 of 7 yrs	Yes	Minimum of 300 hours per year.	Not defined	Not in rule. See notes.	"Active, authorized practice of law" refers to "as a significant and primary occupation, serving as an attorney..."; Further inquiry - applicant can request waiver to ask that the leave time period not be excluded from calculation; Board needs clear and convincing evidence as to why the rule should be waived.

September 13, 2012

ABA Model Rule on Admission by Motion

(As amended August 6, 2012)

1. An applicant who meets the requirements of (a) through (g) of this Rule may, upon motion, be admitted to the practice of law in this jurisdiction. The applicant shall:

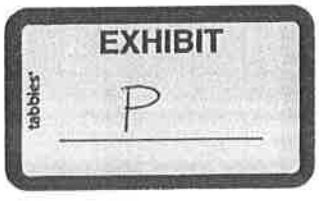
    (a) have been admitted to practice law in another state, territory, or the District of Columbia;
    (b) hold a J.D. or LL.B. degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the applicant matriculated or graduated;
    (c) have been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for three of the five years immediately preceding the date upon which the application is filed;
    (d) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
    (e) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any jurisdiction;
    (f) establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and
    (g) designate the Clerk of the jurisdiction's highest court for service of process.

For purposes of this Rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted and authorized to practice, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted in that jurisdiction; however, in no event shall any activities that were performed pursuant to the Model Rule on Practice Pending Admission or in advance of bar admission in some state, territory, or the District of Columbia be accepted toward the durational requirement:

    (a) Representation of one or more clients in the private practice of law;
    (b) Service as a lawyer with a local, state, territorial or federal agency, including military service;
    (c) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
    (d) Service as a judge in a federal, state, territorial or local court of record;
    (e) Service as a judicial law clerk; or
    (f) Service as in-house counsel provided to the lawyer's employer or its organizational affiliates.

3. For purposes of this Rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

4. An applicant who has failed a bar examination administered in this jurisdiction within five years of the date of filing an application under this Rule shall not be eligible for admission on motion.



FURTHER RESOLVED: That the American Bar Association urges jurisdictions that have not adopted the Model Rule on Admission by Motion to do so, and urges jurisdictions that have adopted admission by motion procedures to eliminate any restrictions that do not appear in the Model Rule on Admission by Motion.

RULE 2. DEFINITIONS AND DUE DATE PROVISIONS

A. Definitions. As used in these Rules:

***

~~(12) "Principal occupation" means an applicant's primary professional work or business.~~

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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) Held a ~~L~~licensed to practice law in active status;

(b) Was ~~i~~in good standing before the highest court of all jurisdictions where admitted; and

(c) Was ~~E~~engaged~~, as principal occupation,~~ in the lawful practice of law for at least 1000 hours per year, as a:

i. Lawyer representing one or more clients, including on a pro bono basis;

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;

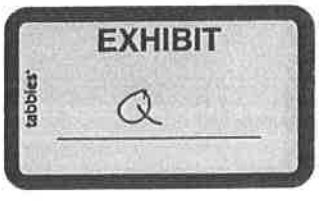
v. House counsel for a corporation, agency, association, or trust department;

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.

(2) Jurisdiction. The lawful practice of law described in Rule 7A(1)(c)(i) through (v) must have been performed in a jurisdiction in which the applicant is admitted, or performed in a jurisdiction that permits the practice of law by a lawyer not admitted in that jurisdiction. Practice described in Rule 7A(1)(c)(vi) through (viii) may have been performed outside the jurisdiction where the applicant is licensed.



Policy Statement on Admission without Examination, Eligibility by Practice (Rule 7A)

An applicant applying under Rule 7A must provide documentary evidence showing that for at least ~~60 of the 84~~ 36 of the 60 months immediately prior to filing the application, the applicant has been "engaged~~, as principal occupation,~~ in the lawful practice of law for at least 1000 hours per year" in one of the activities listed in Rule 7A(1)(c).

~~**Hours Required:**~~

~~Rule 7A permits lawyers licensed in another jurisdiction to be admitted without examination if they have engaged in the practice of law in another jurisdiction for 60 of the 84 months immediately preceding the application. The phrase "engaged as principal occupation" is interpreted to mean that one's practice of law must be full-time or substantially full-time (at least 120 hours or more per month).~~

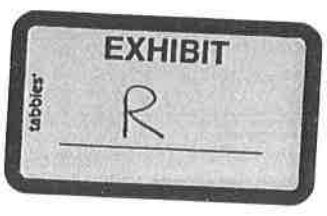
The applicant has the burden of proving eligibility under Rule 7A. The Board determines eligibility ~~on a case-by-case basis using~~by reviewing the documentary evidence submitted by the applicant and information obtained during the investigation.

Type of Work and Jurisdiction:

The Board also reviews the type of work that the lawyer has performed. Generally, work that does not require a law degree or licensure will not qualify toward the Rule 7A practice requirement. In addition, unless the work meets the exceptions outlined in Rule 7A(2), the time will not qualify if performed in a jurisdiction in which the lawyer is not admitted.

The type of work that may count toward the practice requirement includes, but is not limited to the following: billable hours, pro-bono legal work, non-billable hours directly related to the practice of law, and professional development work, including training and completion of continuing legal education courses.

Some positions require licensure in "any jurisdiction" but do not specifically require licensure in the jurisdiction in which the lawyer is practicing. For these positions, the Board will make additional inquiry as to the type of work performed and whether the work is considered to be the lawful practice of law in the jurisdiction in which it was performed. For example, document review work performed in Minnesota by a lawyer licensed in New York would not qualify if the position required a J.D. but not licensure, or if the work could be performed by a paralegal. However, if the lawyer was providing advice on New York law and held an active license to practice law ~~was licensed~~ in New York, then the time would likely qualify.



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