

FILED

January 21, 2022

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8008

**IN RE PETITION OF THE MINNESOTA STATE
BAR ASSOCIATION REQUESTING APPOINTMENT
OF A TASK FORCE**

ORDER

We have the inherent authority to regulate the practice of law, including by promulgating the rules that govern admission to the bar. *See In re Zbiegien*, 433 N.W.2d 871, 874 (Minn. 1988). In exercising that authority, we are responsible to ensure “that members of the bar are worthy of public trust with regard to their professional competence.” *In re Busch*, 313 N.W.2d 419, 421 (Minn. 1981); *see* Minn. R. Admission to the Bar 1 (explaining that those admitted to the bar must “have the necessary competence” that justifies the “trust and confidence” of the public, the legal system, and the legal profession). Historically, we have used a variety of methods to ensure competence in the practice of law, but for the last century we have relied on a law school education and a written examination to fulfill that responsibility. *See, e.g., In re Hansen*, 275 N.W.2d 790, 798 (Minn. 1978) (explaining that the “educational process” and a passing score on a written examination are the general standards for admission to the Minnesota bar).¹

¹ There are additional requirements for admission to the bar, related to the applicant’s character and fitness. *See* Minn. R. Admission to the Bar 5(B).

The validity of the written examination as a tool to measure competency to practice law and promote our public protection objectives has been the subject of debate and study, including recently. For example, the National Conference of Bar Examiners conducted a 3-year study focused on the content and design of the written examination, including how, when, and whether to assess particular competencies with a written examination. *Final Report of the Testing Task Force* (Apr. 2021). Task forces in New York and Oregon, among other jurisdictions, have evaluated alternative pathways to licensure that do not depend on a written examination, such as supervised practice and curriculum-based experiential models. *Report of the NYSBA Task Force on the New York Bar Examination* (Mar. 5, 2020); Oregon State Board of Bar Examiners, *Recommendation of the Alternatives to the Bar Exam Task Force* (June 18, 2021). Some jurisdictions have relied on pathways to licensure that do not depend on a written examination. *See* N.H. Sup. Ct. R. 42(XII) (allowing an applicant to be admitted to the New Hampshire bar upon successful completion of a program that “consist[s] of rigorous, repeated and comprehensive evaluation of legal skills and abilities” representing “more than the twelve hours of testing required for the conventional bar examination”);² Wisc. S. Ct. R. 40.03 (allowing an applicant who receives a degree “from a law school in” Wisconsin to “satisfy the legal competence requirement” without a written examination).

The Minnesota Board of Law Examiners (Board) is responsible for implementing measures to ensure the competence of applicants who seek admission to practice law in

² The applicant must also take and pass the Multistate Professional Responsibility Examination. *See* N.H. Sup. Ct. R. 42(IV)(a)(4).

Minnesota. Minn. R. Admission to the Bar 3(B)(2). The Board announced on June 21, 2021, that it would undertake a broad, 2-year study to comprehensively review Minnesota's bar examination.³ The Board's study will review alternative options and models for evaluating competency, including models such as those used in New Hampshire (supervised practice) and Wisconsin (diploma privilege). The Board, which "fully supports a comprehensive, inclusive, and transparent study" of Minnesota's bar examination and admission standards, will solicit input from law students and representatives of Minnesota's law schools, new lawyers, legal employers (public and private, large and small, and across the state), clients, the judiciary, the regulatory boards that govern Minnesota's legal profession, the Minnesota State Bar Association and Minnesota's affinity bar associations. Letter of Board of Law Examiners, No. ADM10-8008 (filed Oct. 14, 2021).

On October 6, 2021, the Minnesota State Bar Association (MSBA) filed a petition asking that we appoint a task force to study attorney licensing methods, the efficacy and fairness of the written examination, changes to the examination, and other approaches to attorney licensure. Petition for Task Force at 1, No. ADM10-8008 (filed Oct. 6, 2021). As an alternative to a task force, the MSBA asks that we appoint representatives from a range of stakeholders to the committee of the Board that is responsible for the Board's study. *Id.* Recognizing that an extensive study is required and the importance of a broad range of

³ In promulgating amendments to the rules that govern supervised practice, we acknowledged the need for "further review and study" by the Board on expansion of the scope and use of supervised practice. *See* Order Adopting Supervised Practice Rules, No. ADM09-8002 (Minn. filed June 5, 2020).

views and ideas to a diverse, equitable, and inclusive legal profession, the MSBA urges us to ensure that an “independent, cross-functional” group that can draw on “a broad set of expertise and resources” undertakes this critically important work.⁴ *Id.* at 26.

We have carefully considered the MSBA’s petition. We agree with the MSBA that the Board’s study is of the utmost importance and that a diversity of viewpoints, perspectives, and experiences must inform the Board’s work. Determining the standards by which we fulfill our responsibility for ensuring the competency of those admitted to practice in Minnesota must account for diversity in the age, race, ethnicity, gender, geographic location, and practices of the applicants and the clients who rely on Minnesota lawyers for their legal needs. In addition, the Board’s study should be informed by the work undertaken by other jurisdictions in recent years, as well as the different measures used by some jurisdictions to evaluate competency to be admitted to the practice of law.

The Board and the MSBA have identified the same groups and sectors from whom stakeholder input is needed. The Board has also established a public process that will allow for broad participation in this study. Thus, in response to the petition of the MSBA, we expect the Board to seek out and consider a broad and robust range of viewpoints, to study barriers to entry to Minnesota’s legal profession, and to thoughtfully evaluate alternatives to licensure in Minnesota. Our analysis of the Board’s study will include consideration of the input provided to the Board, the responsiveness of the Board to that input and public

⁴ Representatives of two of Minnesota’s law schools did not join the petition but support its core position that now is the time to take a “serious look” at Minnesota’s admissions standards. Letter on Behalf of Dean Gary Jenkins and Dean Robert Vischer, No. ADM10-8008 (filed Oct. 7, 2021).

concern, the steps taken to ensure broad and easy access to and participation in Board deliberations, and the transparency of the process.

Given these elements and the fact that the Board's work and study is underway, it is unnecessary for our court to appoint a separate task force to study this critically important issue. We also believe the more efficient strategy is to allow the Board to complete its work with its current members; thus, we do not see a need to expand the size of the Board to complete the study. We therefore decline to grant the MSBA's petition.

But to be clear: Nothing we have said here, nor our decision to deny the petition of the MSBA, should discourage the MSBA or other interested bar associations and legal practice organizations from separately evaluating Minnesota's methods for licensure or alternative pathways to licensure. Nor should anything we say here limit the scope of the Board's study or that of any other interested organization. We expect and encourage the deepest and broadest look at these issues, whether that work is done by the Board or by another interested organization.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of the Minnesota State Bar Association, to appoint a task force to study attorney licensing or to appoint additional members to the Board of Law Examiners to study the bar exam, is denied.

Dated: January 21, 2022

BY THE COURT:



Lorie S. Gildea
Chief Justice