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Report and Recommendation to the MSBA Regarding an Amendment to Allow for an Early Bar Examination

MSBA Early Bar Exam Committee

April 25, 2017

RECOMMENDATION

RESOLVED, that the MSBA petition the Supreme Court to amend the Rules for Bar Admission as outlined on page 11 to allow law students to sit for the Minnesota bar exam during their third year of law school.

REPORT

Background

In June of 2015, the MSBA's Future of Legal Education Task Force submitted [recommendations and a report](#) to the MSBA Assembly. One of the recommendations pertained to an early bar examination:

In order to reduce the cost of law student living expenses and provide earning opportunities immediately upon graduation, the MSBA should consider petitioning the Minnesota Supreme Court to amend the Rules for Admission to the Bar to provide the option for law students to complete the bar examination during their last year in law school, for those law schools that offer a curriculum designed to accommodate early examination.¹

This recommendation was adopted by the Assembly. To further implement the recommendation, in October of 2015, the MSBA Council requested the New Lawyers Section provide their perspective on whether the MSBA should make a recommendation that the Rules for Admission to practice in Minnesota be amended to allow for qualifying law students to sit for the February bar exam during their final year of law school. In response, the New Lawyers Section formed a Bar Rules Committee. The report and recommendation of the Bar Rules Committee to support the pursuit of such a rule change was adopted by the New Lawyers Section and communicated to the MSBA Council.

¹ [Appendix A, page 17](#)

Subsequently, the MSBA President appointed an Early Bar Exam Committee (Committee) consisting of members of the New Lawyers Section, a representative from the Board of Law Examiners and staff for the Board, administration and student body representatives from each of the three law schools, and some MSBA members not in the New Lawyers Section.² The Committee's charge was to determine whether to recommend the MSBA pursue changes to the Rules of Bar Admission to allow for an early bar examination, and if so, the specific rule changes proposed. The Committee met from May of 2016 through April of 2017.

Review of Other States Offering an Early Bar Exam

The Committee reviewed the extensive research the New Lawyers' Bar Exam Committee compiled regarding the Arizona model and other states that have, or had, an early bar examination.

Arizona

The process Arizona went through, where those initially opposed to an early bar exam eventually became supporters, is illustrative and summarized in a recent article in [The Bar Examiner](#).³ In December of 2012, the Arizona Supreme Court adopted a [temporary rule](#), effective through 2015, to allow third year law students to take the bar exam prior to graduation.⁴ According to an article by Sally Rider and Mark Miller, published in the [September 2013 edition of The Bar Examiner](#), the proposed benefits of such a change were perceived as follows:

- Jump start on practice;
- Increased employment opportunities; and
- More practical education in the third year.⁵

In crafting the eventually adopted rule, Arizona appears to have taken into consideration the pitfalls experienced in Georgia⁶. The [amendment to Rule 34](#) required several conditions be met for a student to sit for early examination.⁷ Not only must the student be in good standing at an ABA-approved law school, they must be expected to:

- graduate within 120 days of the first exam day;

² Appendix J

³ [Appendix L, pages 50-55](#). *The Bar Examiner* is a quarterly publication produced by The National Conference of Bar Examiners and covers current issues in bar admissions, including annual bar examination and admission statistics.

⁴ [Appendix B](#)

⁵ [Appendix C, pages 15-16](#)

⁶ As recently as the mid-1990's, Georgia law students could sit for the February bar exam in their third year. Georgia law schools supported the rule change abandoning the early testing reporting "students sitting for the bar exam in February were neglecting their studies, that it was disruptive to the third-year curriculum, and that such students missed out on clinical experiences.

⁷ [Appendix D](#)

- satisfy all requirements for graduation with no more than eight semester hours remaining at the time of the exam administration;
- not be enrolled in more than two semester hours of courses during the month of early bar examination testing and the immediately preceding month;
- have been deemed by their school to be “academically prepared” to sit for early examination.⁸

As part of the rule amendment process, the rule change petition was opened for comments. The State Bar of Arizona filed a letter in support of the petition.⁹ The Attorney Regulation Advisory Committee to the Arizona Supreme Court (ARC) was opposed to the petition.¹⁰ The ARC was concerned about the following: 1) the curtailment of the Arizona Supreme Court’s oversight of bar admission candidates; 2) the risk of compromising students’ ability to study for the bar exam while in school; 3) the negative experience of law schools in Georgia and other states that had allowed early testing; and 4) the fact that early passage of the bar exam would not guarantee immediate admission to bar¹¹—this was due mainly to the fact the rule change was referred to as “early admission” rather than the more accurate “early examination.”¹²

The petitioners met with the ARC in an attempt to allay some of these concerns and eventually agreed to propose the rule as a pilot program.¹³ However, the ARC remained bitterly divided and voted 4-3 to support the petition, though their letter of “support” delineated in detail the reasons behind their reluctance.¹⁴

ARC has been tracking the results of the early examinations since the rule was adopted. In their [Annual Report of April 30, 2015](#), the ARC revealed that in February 2014, 37 early examinees tested with a passage rate of 89%.¹⁵ The passage rate for regular testers was 64%. By May of 2014, 65% of early examinees were admitted, having completed all other requirements, while only 33% of regular examinees were admitted.¹⁶

Feedback was solicited from the examinees involved, and published in an [interim report](#) put forth by the ARC in December of 2014.¹⁷ In a survey taken in January of 2014 (prior to the exam), more than a quarter of the respondents participating

⁸ Id.

⁹ Appendix E

¹⁰ Appendix F

¹¹ [Appendix C](#)

¹² Appendix F

¹³ Appendix G

¹⁴ Id.

¹⁵ [Appendix I](#)

¹⁶ Id.

¹⁷ [Appendix H](#)

in the adjusted curriculum indicated that they would not recommend it to others.¹⁸ However, in a subsequent survey in May, all respondents indicated they would recommend the program, with one respondent attaching a value of \$40,000 to the early examination —citing earning income earlier and not needing to borrow living expenses between May and the exam in July.¹⁹

Based on bar passage and admittance rates for early test takers, as well as survey results from participants, the ARC recommended that the Arizona Supreme Court extend the pilot program for at least two years to collect more data. The Court agreed to allow the pilot to continue through the February 2017 Uniform Bar Examination.²⁰

Data through February of 2016 continues to show that the passage rate for early testers is better than the overall average of testers. In addition, [the most recent survey of participants](#), conducted in June of 2016, indicated that 78% of the respondents who were admitted found employment requiring a J.D. within one month of admission. 95% indicated they would test early again, rather than waiting for the July exam. In its [Supplemental Report issued in June of 2016](#), the ARC recommended the Court codify the temporary rule amendments as permanent changes. In September 2016, the Court approved the use of the early bar exam on a permanent basis.²¹

New York

The Committee heard a presentation from court personnel in New York responsible for administering their [Pro Bono Scholars program](#). The Pro Bono Scholars program allows a student who completes 500 hours of pro bono service to take the February bar exam. Students spend January and early February studying for the exam and then complete required pro bono hours from March to May.

The program began in 2014 through the efforts of a judge who wanted to make the third year of law school more meaningful, something akin to medical residency where students gain practical skills. Another motivation was to increase pro bono legal services to address the access to justice gap. Finally, there was a desire to allow students to enter the job market sooner in order to begin paying down debt.

There are 15 law schools in New York and all of them participate, with an average of six students per school. Six or seven law schools outside of New York also participate. Students from those schools can do placements in their home

¹⁸ Id.

¹⁹ Id.

²⁰ [Appendix I](#)

²¹ [Appendix L, page 54](#)

state or in New York. Feedback from students who participate is extremely positive; they enjoy the practical experience and camaraderie of the program.

Slightly more than 100 students participate each year, with an 86% bar passage rate. Students study for the bar in January/February, take the bar in February and then work full-time for 12 weeks at a placement. Professors supervise the academic component and law schools are in charge of the placements. Students receive credit for 12 weeks and must pay tuition. Over 60% of early bar examinees are admitted to the bar in June and the remainder are generally admitted by October. Those who take the bar exam in July are admitted by mid-January. (New York has 10,000 people take the July bar exam while Minnesota has about 630. This may explain why it takes longer for admittance in New York.)

The court regulates admission. Law schools set their own restrictions on the program. For example, students on law review may be prohibited from participating in the program. The majority of students prepare for the bar by taking traditional bar prep classes. In addition, schools select strong students for the program who are highly motivated.

The requirement for Pro Bono Scholars is 450 hours of pro bono service and 50 hours of academic work. There are more organizations interested in hosting Pro Bono Scholars than there are scholars. The program generally requires students provide direct representation for identifiable clients, although a few scholars work on public policy issues.

Other States

Per the ABA's [Comprehensive Guide to Bar Admission Requirements 2017](#), there are 16 states that allow law students to take the bar exam prior to graduation. The majority of these are for students who graduate in 2.5 years, since they require graduation within a very limited time following the exam (30-60 days). However, there are at least three states that provide for an early bar exam similar to that in Arizona and New York. Indiana allows for an early bar exam which students can take if they have less than five credit hours to complete, are within 100 days of graduation, and have taken Professional Responsibility. Beginning in February, 2016, Oregon allowed students to take the bar prior to graduation if they met certain requirements similar to Arizona's, including graduation within 120 days.²² In 2016, Vermont adopted an early bar examination for students who have completed five semesters of full-time study. The student must graduate within six months of sitting for the exam.²³

²² <http://www.osbar.org/docs/rulesregs/admissionsJune30.pdf>

²³ https://www.vermontjudiciary.org/sites/default/files/documents/900-00014_0.pdf

Committee Deliberations

The Committee's identification of the positives and negatives of an early bar exam were very similar to those raised by the Bar Rules Committee of the New Lawyers Section.

Potential positive outcomes:

- Earlier employability and earning potential;
- Ability to practice upon graduation;
- Reduces need to take out additional loans post-graduation

Potential negative outcomes:

- Unprepared to take the bar exam;
- Conflicts with or distracts from law school curriculum;
- Loss of opportunity for clinical experience.

Law student representatives on the Committee reported that the students they spoke with at their respective schools believe more options are better. Students with families, or those coming from other careers, seemed the most interested in the idea of an early bar exam. One concern raised was the possibility of having to pay twice to take the bar exam if a person does not pass the first time. However, this could occur whether one takes the bar exam early or not. Most students would know after their first year whether they are capable of undertaking an early bar exam program.

While offering an early bar exam will not greatly reduce the number of graduates with high debt, it will help some to forego additional borrowing earlier and begin payments sooner due to earlier access to gainful employment. Law students continue to graduate with serious debt loads that impede their ability to take certain positions in the legal field.²⁴ Recent survey results from successful early test takers in Arizona indicate a vast majority are employed within one month after graduation.

The Committee agreed students should not be put in a situation where they are not going to succeed and that an early bar exam will not be best for every student. Law schools will need to counsel students interested in this option to ensure they are a good fit. With appropriate planning, students should still receive the full advantage of the law school curriculum, including the ability to participate in a clinical experience. The passage rates in Arizona for early bar exam takers indicates they are highly motivated and have an overall higher passage rate than regular exam takers.²⁵ This is encouraging, as is the fact that

²⁴ <https://www.nasfaa.org/news-item/7911/As-High-Debt-Among-Law-Students-Increases-So-Do-Stress-and-Anxiety>

²⁵ [Appendix I](#)

early exam takers had a higher admittance rate to the bar than regular exam takers.²⁶

While Minnesota law schools already offer the ability for students to graduate in 2.5 years by taking the February bar exam, this option is not well advertised. Some students do this because they want to alleviate their debt load by entering employment earlier, taking summer classes and/or J term courses to increase their credits. However, this is a more rigorous option than offering an early bar exam where a student would take the February bar but not graduate until spring.

Reaction from the Committee's law school administration representatives to the idea of an early bar exam was mixed. Mitchell Hamline School of Law (MHSL) favored the proposal, believing it will help address the debt issue and prevent students from losing momentum by moving them into practice earlier. The school estimates that 25-30 students would be initially interested in pursuing such an option, should it be made available. It will likely be of particular interest to those who plan to move into small firm or solo practice and who struggle to support themselves during the period between graduation and successful admission to the bar. The University of St. Thomas School of Law (St. Thomas) and the University of Minnesota Law School (U of M) were opposed. The main opposition was the additional administrative burden and cost to the law schools for a program they believe would benefit very few law students. However, the schools predicted that if an early bar exam were available, they would want to offer it to their students.

Committee Support for the Recommendation

A majority of Committee members were convinced the potential benefits to successful early exam takers outweighed any potential negative consequences. It was persuasive that similar concerns to those discussed during Committee meetings were also raised in Arizona. Those concerns led the Arizona Attorney Advisory Committee to barely support the proposal. However, that same Committee has now become a champion of the early bar exam, requesting that the Arizona Supreme Court codify the rule changes as permanent.

Because at least one law school plans to offer an early bar exam if the necessary rule changes are approved, the resistance of the other schools, however well-intentioned, should not preclude the bar from moving forward with a petition to the Court. The bar needs to support incoming members of the profession by providing options to decrease student debt by allowing them to enter the workforce earlier.

The Committee's recommendation allows students to sit for the bar exam in their third year of law school upon certification by their law school that they are on

²⁶ Id.

track to graduate within 180 days following the exam, and otherwise meet the graduation requirements of the school. Exam results for any student who fails to graduate within 180 days will be void. The specific rule amendments are set forth below.

RULES FOR ADMISSION TO THE BAR

RULE 1. PURPOSE

The Board of Law Examiners is 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.

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) “Principal occupation” means an applicant’s primary professional work or business.
- (13) “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 3. STATE BOARD OF LAW EXAMINERS

A. Composition. The Board shall consist of nine members, including a president. Seven of the members shall be lawyers having their principal office in this state and two shall be non-lawyer public members, each appointed by the Court for a term of three years or until a successor is appointed and qualifies. With the exception of the president, Board members may serve no more than three successive three-year terms. The president shall be appointed by the Court and shall serve as president, at the pleasure of the Court, for no more than six years. The terms of office may be staggered by the Court by any method it deems appropriate. The Board shall select a secretary from among its members.

B. Authority. The Board is authorized:

- (1) Subject to the approval of the Court, to employ a director on a full-time or part-time basis, to prescribe duties, and to fix compensation;
- (2) To secure examination questions and other testing instruments that the Board finds valid and reliable in measuring the competence of applicants to practice law, and to pay reasonable compensation for them;
- (3) To employ examination graders;
- (4) To establish a minimum passing score for the examinations;
- (5) To conduct investigations of applicants' backgrounds as may be reasonably related to fitness to practice or eligibility under the Rules, and to require applicants to pay the costs of the investigations;
- (6) To delegate to its President the authority to appoint former Board members to assist the Board by joining one or more current Board members in conducting character and fitness interviews of applicants;
- (7) To recommend to the Court the admission and licensure of applicants to practice law in Minnesota;
- (8) To administer these Rules and adopt policies and procedures consistent with these Rules;
- (9) To delegate to its president and director authority to make necessary determinations to implement the Board's policies and procedures and these Rules;
- (10) To administer the Student Practice Rules of the Minnesota Supreme Court;

(11) To prepare and disseminate information to prospective applicants and the public about procedures and standards for admission to practice law in this state.

C. Board Meetings and Quorum.

(1) Meetings. Board meetings are open to the public except when the Board is considering the following:

- (a) Examination materials;
- (b) Any information concerning an applicant, potential applicant, or conditionally admitted lawyer;
- (c) Personnel matters;
- (d) Any information that is confidential or private under Rule 14;
- (e) Legal advice from its counsel.

(2) Minutes. Minutes of the public portions of Board meetings are available upon request from the Board office.

(3) Meeting Attendance. Board members may attend meetings in person or, in extraordinary circumstances, by conference call.

(4) Quorum. A quorum of the Board shall be a majority of its sitting members.

RULE 4. GENERAL REQUIREMENTS FOR ADMISSION

A. Eligibility for Admission. The applicant has the burden to prove eligibility for admission by providing satisfactory evidence of the following:

- (1) Age of at least 18 years;
- (2) Good character and fitness as defined by these Rules;
- (3) Either of the following:
 - (a) Graduation with a J.D. or LL.B. degree from a law school that is provisionally or fully approved by the American Bar Association; or
 - (b) (i) a bachelor's degree from an institution that is accredited by an agency recognized by the United States Department of Education;
 - (ii) a J.D. degree from a law school located within any state or territory of the United States or the District of Columbia;
 - (iii) and that the applicant has been licensed to practice law in any state or territory of the United States or the District of Columbia in 60 of the previous 84 months, and
 - (iv) the applicant has been engaged, as principal occupation, in the practice of law for 60 of the previous 84 months in one or more of the activities listed in Rule 7A(1)(c).
- (4) Passing score on the written examination under Rule 6 or qualification under Rules 7A, 7B, 7C, 8, 9, or 10. An applicant eligible under Rule 4A(3)(b) but not under Rule 4A(3)(a) must provide satisfactory evidence of a passing score on the written examination under Rule 6 and is not eligible for admission under Rules 7A, 7B, 7C, 8, 9, or 10;
- (5) A scaled score of 85 or higher on the Multistate Professional Responsibility Examination

(MPRE); and

(6) Not currently suspended or disbarred from the practice of law in another jurisdiction.

B. Application for Admission. To be accepted as complete, an application must be submitted on a form prescribed by the Board together with the following:

- (1) A fee in an amount prescribed by Rule 12;
- (2) A notarized authorization for release of information form;
- (3) For applicants seeking admission by examination, a passport-style photo;
- (4) Two notarized affidavits of good character from persons who have known the applicant for at least one year. To be acceptable, each affidavit shall:
 - (a) Be executed by a person who is unrelated to the applicant by blood or marriage and not living in the same household;
 - (b) Be executed by a person who was not a fellow law student during the applicant's enrollment;
 - (c) Describe the duration of time and circumstances under which the affiant has known the applicant;
 - (d) Describe what the affiant knows about the applicant's character and general reputation; and
 - (e) Provide other information bearing on the applicant's character and fitness to practice law.

C. Evidence of Graduation (Conferral of Degree). At least 30 days prior to the examination, each applicant shall file, or cause to be filed, an original document from the applicant's law school, signed by the dean or other authorized person stating:

- (1) That the law school has conferred a J.D. or LL.B. degree upon the applicant; or
- (2) That the applicant has completed all coursework 30 days prior to the examination for which the applicant has applied, fulfilled all requirements for conferral of degree, and will be awarded a J.D. or LL.B. degree within 120 days following that examination.

An applicant filing evidence of conferral of degree pursuant to Rule 4C(2) shall cause to be filed a certified transcript verifying the award of the degree within 120 days following the examination.

(3) An applicant may be allowed to sit for the Minnesota uniform bar examination prior to the award of a J. D. degree if the applicant:

- (i) is a currently enrolled student in good standing at an approved law school;
- (ii) is expected to graduate with a J.D. degree within one hundred eighty (180) days of the first day of early exam administration;
- (iii) has been determined by their school to be academically prepared for early testing;
- (iv) is currently or will be enrolled in an appropriate course load of study that will adequately support preparation to take the bar exam as determined by their school; and
- (v) provides by the deadline to the Board of Law Examiners, on a form provided by the Board of Law Examiners, an affidavit attested to by the applicant and the dean of the law school that they meet the above criteria. A law school's decision not to certify that the student meets the criteria is final.

An applicant filing evidence of conferral of degree pursuant to Rule 4C(3) shall cause to be filed a certified transcript verifying the award of the degree within 180 days following the examination.

D. Additional Filing When Admitted Elsewhere. An applicant who has been admitted to practice in another jurisdiction shall also file or cause to be filed at the time of the application:

- (1) A copy of the application for admission to the bar from the bar admissions authority in each jurisdiction in which the applicant has applied for admission to the practice of law;
- (2) A document from the proper authority in each other jurisdiction where admitted showing the date of admission to the bar;
- (3) A document from the proper authority in each other jurisdiction where admitted stating that the applicant is in good standing; and
- (4) A document from the proper authority in each other jurisdiction where admitted indicating whether the applicant is the subject of any pending complaint or charge of misconduct.

E. Applicant Without MPRE Score. An applicant may file an application without having taken the MPRE. However, the applicant shall not be admitted until he or she has submitted evidence of an MPRE scaled score of 85 or higher. Such applicants must be admitted within 12 months of the date of a written notice from the Board or the application will be considered to have been withdrawn.

F. Additional Information Required. At the request of the Board, an applicant will be required to obtain and submit additional information.

G. Continuing Obligation to Update Application. An applicant has a continuing obligation to provide written updates to the application. This obligation continues until such time as the applicant is admitted, the application is withdrawn, or there is a final determination by the Board or Supreme Court. Applicants conditionally admitted under Rule 16 must continue to update their application for the term of the consent agreement.

H. Required Cooperation.

- (1) An applicant has the duty to cooperate with the Board and the director by timely complying with requests, including requests to:
 - (a) Provide complete information, documents, and signed authorizations for release of information;
 - (b) Obtain reports or other information necessary for the Board to properly evaluate the applicant's fitness to practice;
 - (c) Appear for interviews to determine eligibility for admission or facilitate the background investigation.
- (2) An applicant shall not discourage a person from providing information to the Board or retaliate against a person for providing information to the Board;

(3) If the Board determines that an applicant has breached the duty to cooperate, the Board may deem the application withdrawn, may deny an opportunity to test, or may deny admission.

I. Repeat Examinee. An applicant who has been unsuccessful on a prior Minnesota Bar Examination may reapply by submitting:

- (1) A new application for admission pursuant to Rule 4B;
- (2) The proper fee under Rule 12;
- (3) A notarized authorization for release of information on a form prescribed by the Board;
- (4) A passport-style photo; and
- (5) If the original application is more than two years old, new affidavits as described in Rule 4B(4) of these Rules.

J. Incomplete Application. An application determined to be incomplete shall be returned to the applicant.

K. Withdrawal of Application. An applicant may withdraw the application by notifying the Board in writing at any time prior to the issuance of an adverse determination.

RULE 5. STANDARDS FOR ADMISSION

A. Essential Eligibility Requirements. Applicants must be able to demonstrate the following essential eligibility requirements for the practice of law:

- (1) The ability to be honest and candid with clients, lawyers, courts, the Board, and others;
- (2) The ability to reason, recall complex factual information, and integrate that information with complex legal theories;
- (3) The ability to communicate with clients, lawyers, courts, and others with a high degree of organization and clarity;
- (4) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (5) The ability to conduct oneself with respect for and in accordance with the law;
- (6) The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- (7) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes, and any applicable order of a court or tribunal;
- (8) The ability to act diligently and reliably in fulfilling one's obligations to clients, lawyers, courts, and others;
- (9) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and
- (10) The ability to comply with deadlines and time constraints.

B. Character and Fitness Standards and Investigation.

- (1) **Purpose.** The purpose of the character and fitness investigation before admission to the bar

is to protect the public and to safeguard the justice system.

(2) **Burden of Proof.** The applicant bears the burden of proving good character and fitness to practice law.

(3) **Relevant Conduct.** The revelation or discovery of any of the following shall be treated as cause for further inquiry before the Board determines whether the applicant possesses the character and fitness to practice law:

- (a) Unlawful conduct;
- (b) Academic misconduct;
- (c) Misconduct in employment;
- (d) Acts involving dishonesty, fraud, deceit, or misrepresentation;
- (e) Acts which demonstrate disregard for the rights or welfare of others;
- (f) Abuse of legal process, including the filing of vexatious or frivolous lawsuits;
- (g) Neglect of financial responsibilities;
- (h) Neglect of professional obligations;
- (i) Violation of an order of a court, including child support orders;
- (j) Conduct that evidences current mental or emotional instability that may impair the ability to practice law;
- (k) Conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;
- (l) Denial of admission to the bar in another jurisdiction on character and fitness grounds;
- (m) Disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
- (n) The making of false statements, including omissions, on bar applications in this state or any other jurisdiction.

(4) **Considerations.** The Board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors shall be considered in assigning weight and significance to prior conduct:

- (a) The applicant's age at the time of the conduct;
- (b) The recency of the conduct;
- (c) The reliability of the information concerning the conduct;
- (d) The seriousness of the conduct;
- (e) The factors underlying the conduct;
- (f) The cumulative effect of the conduct or information;
- (g) The evidence of rehabilitation as defined in Rule 5B(5);
- (h) The applicant's candor in the admissions process; and
- (i) The materiality of any omissions or misrepresentations.

(5) **Rehabilitation.** An applicant who affirmatively asserts rehabilitation from past conduct may provide evidence of rehabilitation by submitting one or more of the following:

- (a) Evidence that the applicant has acknowledged the conduct was wrong and has accepted

responsibility for the conduct;

(b) Evidence of strict compliance with the conditions of any disciplinary, judicial, administrative, or other order, where applicable;

(c) Evidence of lack of malice toward those whose duty compelled bringing disciplinary, judicial, administrative, or other proceedings against applicant;

(d) Evidence of cooperation with the Board's investigation;

(e) Evidence that the applicant intends to conform future conduct to standards of good character and fitness for legal practice;

(f) Evidence of restitution of funds or property, where applicable;

(g) Evidence of positive social contributions through employment, community service, or civic service;

(h) Evidence that the applicant is not currently engaged in misconduct;

(i) Evidence of a record of recent conduct that demonstrates that the applicant meets the essential eligibility requirements for the practice of law and justifies the trust of clients, adversaries, courts, and the public;

(j) Evidence that the applicant has changed in ways that will reduce the likelihood of recurrence of misconduct; or

(k) Other evidence that supports an assertion of rehabilitation.

(6) **Continuing Obligation.** The applicant has a continuing obligation to update the application with respect to all matters inquired of on the application. This obligation continues during the pendency of the application, including the period when the matter is on appeal to the Board or the Court.

(7) **Determination.** With the exception of applications who have withdrawn, or have been deemed to have withdrawn, a character and fitness determination shall be made with respect to each applicant who is either a successful examinee or otherwise qualified by practice for admission under these Rules. An adverse determination on character and fitness grounds may be appealed under Rule 15.

(8) **Advisory Opinions.**

(a) A law student may request a written advisory opinion from the Board with respect to his or her character and fitness for admission by filing a completed application for admission, a fee in the amount required under Rule 12L, two notarized affidavits as required by Rule 4B(4), and an authorization for release of information as required by Rule 4B(2).

(b) Advisory opinions will not be binding on the Board.

RULE 6. ADMISSION BY EXAMINATION

A. Dates of Examinations. Examinations shall be held the last Tuesday and Wednesday of the months of February and July each year, at a place to be determined by the Board.

B. Timely Filing Deadlines. An application for admission by examination shall be filed in the office of the Board by October 15 for the February examination, or by March 15 for the July examination. Due dates shall be strictly enforced as specified in Rule 2B.

C. Late Filing Deadlines. Late applications will be accepted on or before December 1 for the February examination, or on or before May 1 for the July examination but must be accompanied by the late filing fee pursuant to Rule 12. No applications shall be accepted after the late filing deadline. Due dates shall be strictly enforced as specified in Rule 2B.

D. Denial of Opportunity to Test. An applicant may be denied permission to take an examination:

- (1) When the applicant has failed to comply with the requirements of Rule 4B, 4C, or 4H; or
- (2) When the Board has determined the applicant has not satisfied the good character and fitness requirement of Rule 4A(2).

E. Scope of Examination. The Minnesota Bar Examination shall be the Uniform Bar Examination prepared by the National Conference of Bar Examiners, comprised of six Multistate Essay Examination (MEE) questions, two Multistate Performance Test (MPT) questions, and the Multistate Bar Examination (MBE).

(1) Essay Questions. The essay examination is comprised of six 30-minute MEE questions, covering any one or more of the following subjects:

Business Associations (Agency and Partnerships; Corporations; and Limited Liability Companies)

Conflict of Laws

Constitutional Law

Contracts (including contracts under the Uniform Commercial Code (UCC))

Criminal Law and Procedure

Evidence

Family Law

Federal Civil Procedure

Real Property

Secured Transactions under the UCC

Torts

Trusts and Estates (Decedents' Estates; Trusts and Future Interests)

(2) Multistate Performance Test. The performance test shall include two 90-minute questions testing the applicant's ability to perform a lawyering task using legal and factual materials provided.

F. Testing Accommodations. An applicant whose disability requires testing accommodations shall submit with the application a written request pursuant to the Board's testing accommodations policy and shall describe:

- (1) The type of accommodation requested;
- (2) The reasons for the requested accommodation, including medical documentation in a format set forth in the policy referenced above.

The Board shall notify the applicant of its decision. A denial or modification of a request for testing accommodations constitutes an adverse determination of the Board and may be appealed pursuant to Rule 15.

G. Computer use. Any applicant requesting to use a laptop computer to write the essay and performance test portion of the bar examination shall submit a computer registration form with the application and pay the required fee.

H. Examination Results. The results of the examination shall be released electronically to each examinee via the examinee's applicant portal. The date of the release of examination results shall be announced at the examination.

I. Failing Examination Scores. A failing score on the bar examination is a final decision of the Board and does not afford the applicant the appeal and hearing rights set forth in Rule 15.

J. Stale Examination Scores. A passing score on the Minnesota Bar Examination is valid for 36 months from the date of the examination. Applicants must be admitted within 36 months of the examination.

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 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.

(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.

B. Eligibility for Admission by MBE Score. An applicant may be eligible for admission without examination under Rule 4A(4) if the applicant has received a scaled score of 145 or higher on the MBE taken as a part of and at the same time as the essay or other part of a written bar examination given by another jurisdiction, was successful on that bar examination, and was subsequently admitted in that jurisdiction. The applicant shall submit evidence of the score and a completed application to the Board within 24 months of the date of the qualifying examination being used as the basis for the admission.

C. Eligibility for Admission by UBE Score. An applicant may be eligible for admission without examination under Rule 4A(4) if the applicant has received a scaled score of 260 or higher earned in another jurisdiction on the UBE and the score is certified as a UBE score by the National Conference of Bar Examiners. The applicant shall submit 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.

D. Transfer of MBE or UBE Score. An applicant seeking to transfer a MBE or UBE score achieved in another jurisdiction to Minnesota shall submit a written request for transfer to the National Conference of Bar Examiners.

E. MBE Score Advisory. Upon written request, the director will advise an applicant or potential applicant who took and passed a bar examination in another jurisdiction whether or not his or her MBE score satisfies the requirements of Rule 7B. Requests for score advisory shall include the following:

- (1) Complete name and social security number of the examinee; and
- (2) Month, year, and jurisdiction of test administration.

F. No Waiver of Time Requirements. The minimum time requirements and the timely filing requirements of this Rule shall be strictly enforced.

G. Eligibility After Unsuccessful Examination. An applicant may be eligible for admission without examination under this Rule notwithstanding a prior failure on the Minnesota Bar Examination.

List of Appendices

- Appendix A: MSBA Future of Legal Education Task Force Report
- Appendix B: Arizona Supreme Court Order No. R-12-0002
- Appendix C: Rider-Miller Article, The Bar Examiner, September 2013
- Appendix D: Excerpt of Arizona Supreme Court Rule 34
- Appendix E: Arizona State Bar Comment on Petition to Amend Rule 34, Ariz. R. Sup. Ct.
- Appendix F: ARC Letter May 8, 2012
- Appendix G: ARC Letter November 9, 2012
- Appendix H: ARC Early Testing Report December 10, 2014
- Appendix I: ARC Annual Report April 30, 2015
- Appendix J: Roster of Early Bar Exam Committee Members
- Appendix K: ARC Supplemental Report June 2016
- Appendix L: Bales Article, The Bar Examiner, March 2017

1 John A. Furlong, Bar No. 018356
2 General Counsel
3 STATE BAR OF ARIZONA
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5 Phoenix, Arizona 85016-6266
6 Telephone: (602) 252-4804
7 Email: John.Furlong@staff.azbar.org

8
9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

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PETITION TO AMEND RULE 34
OF THE ARIZONA RULES OF THE
SUPREME COURT

Supreme Court No. R-12-0002
**Comment of the State Bar of
Arizona on Petition to Amend
Rule 34, Ariz. R. Sup. Ct.**

The State Bar of Arizona supports Petition No. R-12-0002, which would amend Rule 34, Ariz. R. Sup. Ct., to allow third-year law students to take the bar examination.

If adopted, the rule, which was proposed by the deans of the three Arizona law schools, would require the schools to certify that those students are enrolled in a course of study that, if satisfactorily completed, will result in graduation within 120 days following the bar examination, and that the students otherwise satisfy the law school's certification requirements. If a student does not graduate within 120 days, then the examination results would be void.

According to the National Conference of Bar Examiners, fourteen jurisdictions currently allow third-year students to take the bar examination prior to receiving their degrees, although they have varying restrictions:

- Six states – Kentucky, Missouri, New York, Vermont, Virginia, and West Virginia – allow students to take the examination as long as they

1 have completed their degree requirements, even though the degree may
2 not have been conferred.

- 3 • Six states allow students to take the examination as long as they will
4 receive their degrees within a specified time afterward:
- 5 o 60 days for Mississippi, Nebraska, and Wisconsin;
 - 6 o 45 days for Iowa; and
 - 7 o 30 days for North Carolina and Kansas.
- 8 • Texas allows students who are within four credit hours of completing
9 graduation requirements to take the examination.
- 10 • Indiana allows students to take the examination if they have fewer than
11 five credit hours to complete, are within 100 days of graduation, and have
12 completed two hours of professional responsibility training and all
13 requirements for bar admission.

14 At least one state formerly allowed law students to take the bar examination
15 before graduation but no longer does. Beginning in 1974, Georgia allowed all law
16 students to take the bar examination that was administered immediately before they
17 graduated. Georgia reversed course in 1995 to again require that examinees have
18 graduated.

19 According to an October 1995 memorandum prepared by the Georgia
20 Supreme Court Office of Bar Admissions, attached hereto as Appendix A, the
21 Georgia court changed the rule because:

- 22 • Most students took advantage of the opportunity to take the bar
23 examination early, and the third year of law school was “severely
24 disrupted” by students studying for it rather than attending and
25 participating in classes;

- 1 • Law schools had to adjust their curricula to put more core classes into
2 the first two years and to schedule spring break in February;
- 3 • Students missed educational experiences, including clinical
4 opportunities;
- 5 • After taking the examination, students had difficulty returning to the
6 law school routine; and
- 7 • The Georgia Board of Bar Examiners believed that bar examination
8 performance would improve if students could study for it full time
9 without competing classroom demands.

10 According to the Georgia memorandum, the Board of Bar Examiners requested the
11 change after discussing the matter with the state's law school deans.

12 Despite Georgia's experience, the Arizona deans have a well-thought-out
13 plan for allowing only "certified" law students to take the bar examination that is
14 part of a larger response to the "critiques of modern legal education." See
15 memorandum attached as Appendix B distributed by the petitioners at the March 2,
16 2012, State Bar Board of Governors Rules Committee meeting.

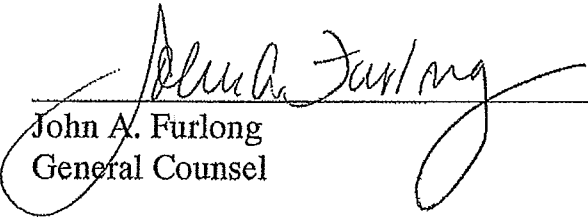
17 For those students who opt to take the bar examination and are certified to
18 do so, the University of Arizona and Arizona State University law school deans
19 plan to modify their third-year, second-semester curricula to accommodate them,
20 and to focus the post-examination period on classes "that are more closely tied to
21 the transition from theory to practice."

22 The State Bar Board of Governors Rules Committee sought input on this
23 proposal from bar members but received only six responses. Five lawyers who
24 responded disagreed with the petition, arguing – among other points – that law
25 students cannot juggle law school with studying for the bar examination. The sixth
26 comment came from a first-year law student who supported the petition.

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For the above reasons, the State Bar of Arizona supports allowing third-year law students to take the bar examination.

RESPECTFULLY SUBMITTED this 7th day of May, 2012.



John A. Furlong
General Counsel

Electronic copy filed with the Clerk of the Supreme Court of Arizona this 7th day of May, 2012,

by: Kathleen A. Lundgren

APPENDIX A

SUPREME COURT OF GEORGIA
OFFICE OF BAR ADMISSIONS

POST OFFICE BOX 38466
ATLANTA, GEORGIA 30334

BOARD TO DETERMINE FITNESS
OF BAR APPLICANTS

BOARD OF BAR EXAMINERS

HULETT H. ASKEW
DIRECTOR OF ADMISSIONS

MEMORANDUM

To: Chief Justice Benham
From: Hulett H. Askew *B.*
Date: October 23, 1995
Subject: "Early Bar" Rule

As we discussed, I have prepared the attached one page description of the Court's decision to change the "early bar" rule. Once you have edited and approved this document, I would propose that I meet with Tom Boller to provide this to him for his use and to seek advice from him about how else we should prepare for legislative interest in this issue.

I will wait to hear from you before doing anything further.

CHANGE IN "EARLY BAR" RULE

In 1994 the Supreme Court of Georgia acted upon a request from the Board of Bar Examiners and entered an order changing the "early bar" rule. This rule permitted all third year law students to take the bar examination in February of their third year of law school, prior to completion of their legal studies. The Court changed the rule to require graduation before taking the bar examination.

The reasons the Court changed the rule are as follows:

- Georgia was the only state in the U.S. that permitted all third year students to take the exam early (some allow for hardship waivers on a case-by-case basis);
- the third year of law school was severely disrupted by students studying for the bar exam rather than attending and participating in class;
- law schools were forced to adjust their course schedules and curriculum in response to the effects of this rule (i.e. more "core" courses in the first two years; scheduling spring break for February);
- the students were missing educational experiences, including clinical opportunities, which had been determined to be important professionally;
- after the exam, the students were exhausted both physically and psychologically and had difficulty adjusting back to the law school routine; and,
- the Board of Bar Examiners also believed that performance on the exam would improve if students take it in July after they have graduated and had full-time to prepare without the demands of classroom preparation.

Ultimately, the Supreme Court and the Board of Bar Examiners believe that the sacrifice to a student's legal education far outweighs any head start these students obtained by taking the bar exam early, a benefit which they could not obtain in any other state. Therefore, the Court changed the rule and as of July 1, 1995 the Rules Governing Admission to the Practice of Law in Georgia require law school graduation before sitting for the bar examination.

APPENDIX B

Petition to Amend Rule 34, Rules of the Arizona Supreme Court

Summary and Background

The Petition to Amend Rule 34, submitted by the three Arizona law schools, responds in part to the critiques of modern legal education, and in particular the third year of law school, as not sufficiently focused on preparing students for practice. The proposed rule change also responds to significant increases in the cost of legal education and the highly competitive state and national job market.

Summary of proposed changes

- The changes proposed to Rule 34 would allow third year law students, subject to policies developed by the school they attend, to take the Arizona bar exam in February of their third year.
- This would be an **option** for students. Any student wishing to pursue this option would have to comply with the policies of their law school in order to be certified to take the exam. Any student wishing to take more traditional courses and clinics could do so.
- All other requirements for taking the bar exam and being admitted to the bar would remain the same – only the timing of taking the bar exam would change.

Benefits of the proposed changes

- Allowing third year law students to take the February bar exam would allow the applicants to receive the results of the bar exam in May – about five months earlier than they would receive their results if they took the July bar exam.
- This would allow those who pass the exam to begin work earlier, effectively reducing the cost of their legal education.
- It would also allow students to compete at graduation for the many jobs in both the private and public sector which require bar admission, rather than having to wait until October for admission to the bar.
- Students who took the Arizona bar exam in February could also opt to take another state's bar exam in July, giving the student more employment options.

Changing the Third Year to Focus on Practice

- If the proposed changes are adopted, schools that allow their students to take the February bar would make curricular changes.
- The University of Arizona James E. Rogers College of Law and the Sandra Day O'Connor College of Law at Arizona State University will modify the third year second semester curriculum for those students who opt to and are certified by the school to take the February Bar as follows:
 - January and February would be set aside for bar study so that the students could enroll in a bar review preparation course, just as they do for the July bar. Generally students would be prohibited from taking classes and working during this time, although one course might be required, offered to complement bar preparation.
 - From March through the end of the academic year, a different array of classes would be offered that are more closely tied to the transition from theory to practice. In addition, field placements might be offered during March and April to help bolster this transition.
 - These short courses would address subjects such as emerging issues in different areas of practice; recurring discovery issues; collegiality, professionalism, and ethics; client development; malpractice; law office management; effective motions practice; appellate practice; Bar resources; evidence in the courtroom.
- Depending on the law school, third year students who do not opt for the February bar could take a traditional curriculum, or could take the "theory to practice" curriculum.

RECEIVED

MAY - 8 2012

CLERK SUPREME COURT



Supreme Court

STATE OF ARIZONA

FROM THE OFFICE OF
WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE

Appendix F
8
adc
FILED
MAY 08 2012
JANET JOHNSON
ACTING CLERK SUPREME COURT

1501 WEST WASHINGTON STREET
SUITE 102
PHOENIX, ARIZONA 85007-3231
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FAX (602) 452-3498
officepdj@courts.az.gov

May 8, 2012

Arizona Supreme Court
Hon. Rebecca W. Berch, Chief Justice
1501 West Washington,
Phoenix, Arizona. 85007

Re: Petition R-12-0020
0002

Dear Chief Justice Berch:

The Attorney Regulatory Advisory Committee (ARC) does not favor this petition and opposes the move for early testing for a number of reasons, including:

- This effort to compress the admission process jeopardizes Court oversight of candidates
- Candidates stressing to complete the admission process while attending school and studying for the exam are more likely to perform poorly at all, slowing rather than speeding admission
- Resources devoted to Character and Fitness are not sufficient to complete C&F investigations of students prior to passage of bar exam
- Early testing, even if successful, is no guarantee of early admission.

Admission to the practice of law is regulated by each state, in an effort to provide reliability those applicants possess necessary skills and traits. All states recognize that graduation from a law school accredited by the American Bar Association satisfies the legal education requirements to be eligible to sit for the bar examination. Since 1952, the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association has been recognized by the United States Department of Education as the national agency for the accreditation of programs leading to the J.D. degree. Law schools that are ABA-approved provide a legal education that meets a minimum set of standards promulgated by the Council and Accreditation Committee of the Section of Legal Education and Admissions to the Bar.

A law degree from an ABA-approved school is the primary indicator of competence to practice law, with passing the bar exam being a secondary indicator. Arizona Supreme Court rules provide that an applicant must prove successful completion of a J.D. degree in order to sit for the examination. In Arizona,

regulation of applicants for testing is a Supreme Court function and criteria for eligibility to test are set and enforced by the Court.

We do not recommend testing in February for prospective May law graduates, and respectfully disagree with premises set forth in the petition. ABA Standard 304: Course of Study and Academic Calendar mandates that graduates of ABA-accredited programs must complete a minimum of 83 semester hours of credit and 45,000 minutes of class time as core law school study, which seems inconsistent with the current petition and may not allow students or schools to fulfill their educational requirements for three years of study. Further, it is misleading to style this as "early admission" when a successful exam score is no guarantee of admission.

February testing for proposed May graduates was allowed in Georgia, Missouri, Virginia, Oregon, Kansas, and South Dakota within the recent past, but was discontinued in every state based on outcry from law schools who found it disruptive and distracting. Law schools were left with inattentive, overstressed and absent students in the last year as students focused on studying for the exam and fulfilling bar admission requirements. The idea was proposed by bar administrators in Florida and New York recently, but their state law schools dismissed the idea as impractical and incompatible with educational requirements. This real world experience is important and instructive, and provides the best basis to reject the proposal. The very economic conditions which bring this idea to fruition would require students to devote all their time to study for the bar, because passing the exam becomes their sole economic focus.

A few states now allow "early testing" in very limited conditions, namely by strictly limiting the amount of time which may elapse between testing and completion of J.D. degree. As it exists, this exception is limited to students who have completed all classes but may lack a written or clinical completion. Kansas (which formerly allowed February testing for May graduates) and North Carolina allow applicants to test only if they will complete their degree within 30 days after the exam date. Mississippi, Nebraska and Wisconsin allow applicants to test only if they will complete their degree within 60 days of the exam date. Iowa allows testing for applicants who will complete their degree within 45 days. None of these timeframes would allow testing in February for May graduates, as the time between test date (late February) and completion of degree would be approximately 100 days. Indiana allows applicants to sit for the exam if they will complete their J.D. degree within 100 days of testing, but they also require that students be within 5 hours of degree completion, must have completed 2 hours of professional responsibility, and must have completed all other requirements for admission to the bar at the time of the exam in order to test. In each jurisdiction, if proof of degree completion within this timeframe is not provided, the exam score is void.

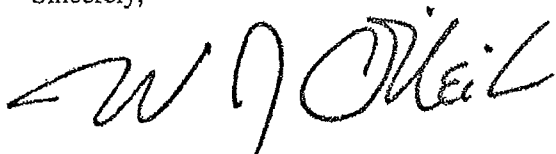
Some jurisdictions do not accept or recognize bar exam scores earned prior to the completion of the J.D. degree. If students do not hold a J.D. at the time of testing, Missouri, Michigan and other states will not recognize their bar passage for UBE transfer, waiver or motion admission.

The best argument is rebuttal to the flawed primary premise of the petition. Testing early will not provide early admission, even if the applicant is successful. Every applicant is required to complete a number of requirements for admission, including successfully testing MPRE, completion of the Course on

alone. The objective of the petition is to gain early admission for applicants but testing does not guarantee this. In order to be competitive for the "early advantage," applicants would be required to complete all requirements in the last year of law school, including completion of the Character Report, testing MPRE, and completion of the Course on Arizona Law. The student will then bear the burden of not only studying for the bar exam but also fulfilling all these other requirements, in order to possibly be eligible for admission in May or June, rather than October.

We recognize that there may be opportunity to reform educational requirements in legal education. The American Bar Association, law schools and consumer groups have suggested various changes recently. However, we do not favor the current proposal and suggest that reforms to curriculum and standards would be necessary before such a move could be made.

Sincerely,

A handwritten signature in black ink, appearing to read "W J O'Neil". The signature is fluid and cursive, with a large initial "W" and "J" followed by "O'Neil".

The Honorable William J. O'Neil
Chair, Attorney Regulation Advisory Committee

Appendix G



Supreme Court

STATE OF ARIZONA

FROM THE OFFICE OF
WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE

1601 WEST WASHINGTON STREET
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PHOENIX, ARIZONA 85007-3231
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officepdj@courts.az.gov

November 9, 2012

Arizona Supreme Court
Honorable Rebecca W. Berch, Chief Justice
1501 West Washington
Phoenix, Arizona. 85007

Re: Petition R-12-0002

Dear Chief Justice Berch:

The Attorney Regulation Advisory Committee (ARC) by letter dated May 8, 2012, previously opposed this petition for the reasons stated within that letter which is attached. A working group was requested to meet with the petitioners and to seek answers to ten questions from the Court to aid it in its consideration of this petition. The petitioners are submitting those answers separately. Out of those discussions the petitioners agreed to modify the original proposal and request this be made a pilot rule to expire in three years unless the Court takes additional action to retain the rule. The ARC Subcommittee on Admissions still opposes this petition.

ARC is deeply divided over this petition, but voted 4-3 on November 1, 2012, to recommend the approval of the petition only as a pilot program. The committee members remain troubled over the lack of clarity regarding the individual criteria for choosing which students will be approved by each school to take the bar examination. ARC is also troubled that this type of early testing has not been successful in other jurisdictions and perhaps has even been counterproductive for students.

Notwithstanding the foregoing, the majority was impressed by the stated commitment by the schools to put the students first and create a program that might be of benefit to law students. The majority believes that adoption of this rule could positively impact student wait time prior to employment and school employment statistics and also improve law school rankings. However, ARC, as stated in its previous letter of opposition, is concerned that such potential gains could be illusory. The practical realities are that successful testing does not guarantee early admission because applicants must successfully fulfill all admission requirements prior to being recommended for admission.

ARC is also aware that having law schools choose which students may sit for early testing is fraught with potential problems, especially since each school acknowledges it must, out of

limited resources, limit the number of students to early test. This delegation by the Court of its constitutional power to regulate the practice of law to the separate and changing criteria of each law school may raise equal protection issues and minimize third year learning opportunities.

Notwithstanding these concerns, the majority recommends approval of the petition as a pilot program to expire in three years unless further action is taken by the Court.

Three ARC members (Riemer, Watson, and Vessella) recommend the court not approve the revised proposal. Principal among their reasons are as follows.

1. The committee was told no other state has a rule as is being proposed in Arizona. While innovation is great as a concept, the lack of a similar rule in any other state should give the court cause for pause. Is this a proposal whose time has come or a proposal ahead of its time? The committee was told Georgia had such a rule, but rescinded it. It would be prudent to obtain additional information from Georgia as to why the rule was rescinded. If Georgia's law schools were not prepared to modify their curriculums for early bar examination takers and Arizona's law schools are, how will law schools under the proposed new rule counsel students as to whether they should choose the early bar examination track or stay on the more traditional track? Will students have to forgo law review, moot court, and other traditional third year activities in order to take the bar examination early? Will law schools be biased in favor of the early bar examination track to improve their employment after graduation statistics and U.S. News and World Report's rankings? As indicated by the majority, it should also be noted that early passage of the bar examination does not guarantee early admission as each student must also demonstrate the possession of good moral character to be admitted to the practice of law in Arizona.
2. If the third year of law school (a professional, not vocational, program) is not providing students with the skills and knowledge they need to compete in today's job market, law schools need to self-initiate curricular changes. They do not need a regulatory carrot to make the third year what it should be.
3. The impact of interjecting bar examination preparation and testing right in the middle of the third year on student learning and professional acculturation has not been carefully considered. And it moves law schools away from making positive changes in their curriculums for all students and places a premium on the educational experience for those chosen to prepare for early examination.
4. The proposed rule calls on law schools to determine if a student is academically prepared for early testing. What objective criteria will guide this determination? That the three in-

state law schools may develop appropriate and compatible standards in this area does not address the standards that will be used by the other 200 plus ABA-approved law schools in the U.S. The court needs to be assured that students who are not academically prepared for early testing are properly and timely screened out. Unprepared students risk having to take the bar examination multiple times which has its own financial and other consequences.

5. The argument is advanced that law school is too expensive and the adoption of this rule will allow students to seek employment sooner than they would otherwise. While this may be true, students can already qualify for graduation in less than three years, take an earlier bar examination, and seek earlier employment. Of course, earlier graduation triggers an earlier start date for the repayment of student loans. The proposed rule allows students to stay in school and continue the deferment of the repayment of their student loans until graduation, but does this "benefit" outweigh the potential negative effects on the third year as a capstone learning experience? The third year is the last opportunity students have to learn about the law and how to practice law. Bar examination study and passage catapults the learner into earner mode. Many decry the loss of professionalism in the profession. Helping students focus on earning rather than learning does nothing to reverse this trend.

Should the court approve the proposed rule, the minority concurs with the majority that the court should approve it on a temporary basis, establish a method to evaluate its benefits/negative effects, and consider the results of that evaluation before deciding whether to adopt the rule on a permanent basis.

Sincerely yours,

A handwritten signature in black ink, appearing to read "W. J. O'Neil", written in a cursive style.

Honorable William J. O'Neil
ARC Chair

Attachment

MSBA Early Bar Exam Committee Roster

Name	Affiliation/Title	Preferred E-mail
Sarah Soucie Eyberg	Committee Chair	sarah.soucie86@gmail.com
Elisa M. Murillo	New Lawyers Section	emurillo@aafedt.com
George H. Norris	New Lawyers Section	ghnorris@gmail.com
Landon Ascheman	New Lawyers Section	landon@aschemanlaw.com
Julie Velasquez	New Lawyers Section	juvelasquez@firstam.com
Margaret Fuller Corneille	Director - Board of Law Examiners	mfc@mbcle.state.mn.us
Emily Eschweiler	Assistant Director- Board of Law Examiners	eeschweiler@mbcle.state.mn.us
Hon. Juan G. Hoyos	Board of Law Examiners/4 th Judicial District	juan.hoyos@courts.state.mn.us
Joel Nichols	Associate Dean for Academic Affairs - Univ. of St. Thomas School of Law	Joel.nichols@stthomas.edu
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Abdulkarim Dahir	Rising 3L – Univ. of St. Thomas School of Law	abdulkmdahir@gmail.com
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