

STATE OF MINNESOTA
In Supreme Court

FILE NO. ADM-10-8008

Petitioner of the Minnesota State Board
of Law Examiners for Amendment
of the Rules for Admission to the Bar

**PETITION FOR
RULE AMENDMENT**

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner, the Minnesota State Board of Law Examiners (“Board”), respectfully petitions this Court to amend the Rules for Admission to the Bar (“Rules”). A copy of the proposed changes is attached as **Exhibit A** and discussed below.

1. The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in Minnesota. Minn. Stat. §481.01 (2019); *Sharood v. Hatfield*, 210 N.W.2d 275, 279 (Minn. 1973).
2. Under the supervision of the Court, the Board is responsible for ensuring that lawyers who are admitted to the Bar in Minnesota have the competence as well as the character and fitness required to maintain the trust and confidence of clients, the public, the legal system, and the legal profession. Rule 1 of the State of Minnesota Rules for Admission to the Bar (2019).

RULE 7B (MBE TRANSFER): SCORE VALIDITY PERIOD

3. The Board recommends amending Rule 7B to allow applicants to apply under that rule for 36 months following their qualifying bar examination, rather than 24 months. The Board recommends that Rule 7B be amended to state as follows:

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~~36 months of the date of the qualifying examination being used as the basis for the admission.

4. Applicants may apply under Rule 7B for admission without examination if they score 145 or higher on the Multistate Bar Examination (MBE) portion of another jurisdiction's bar examination, pass that examination, and are admitted in that jurisdiction. While many jurisdictions have now adopted the Uniform Bar Examination (UBE), Rule 7B still provides important score mobility for qualified individuals from non-UBE jurisdictions.
5. Applicants must apply under Rule 7B within 24 months of the qualifying bar examination, whereas Minnesota bar examination scores are valid for 36 months under Rule 6J, UBE scores can be transferred for 36 months under Rule 7C, and after 36 months of qualifying practice a lawyer is eligible to apply under Rule 7A (Admission Based on Years of Practice). These provisions were enacted in three separate rule amendments over the last 12 years, but with no amendments to Rule 7B, it is now out-of-step with the Board's other rules that have coalesced around 36-month provisions.
6. Each year, a number of out-of-state lawyers contact the Board office regarding admission without examination and learn that they are ineligible because they have not yet practiced law for 36 months (Rule 7A), took the bar examination more than 24 months ago (Rule 7B), and did not do so in a UBE jurisdiction (Rule 7C). The Board believes it appropriate to close the 12-month eligibility gap between Rules 7A and 7B.
7. Since the MBE constitutes one-half of the UBE, an applicant scoring 145 on the MBE is projected to score 290 on the UBE—assuming equivalent essay performance. Over

the last three years, 99.9% of Minnesota examinees who scored 145 or higher on the MBE achieved a passing UBE score of 260, and Rule 7B's requirement that the applicant also have passed the other jurisdiction's examination ensures that the jurisdiction found the applicant's essay performance to be adequate.

8. The Board has no concerns regarding the minimum competence of Rule 7B applicants or about extending their eligibility to apply from 24 months to 36 months. These applicants generally have above-average bar examination scores, are admitted in another jurisdiction, and have often practiced law in that jurisdiction.

RULE 7C (UBE TRANSFER): CONCURRENT APPLICATIONS

9. The Board recommends amending Rule 7C to allow applicants who have a pending bar examination application in a UBE jurisdiction, but do not yet have their UBE score, to apply for admission under Rule 7C and submit evidence of their qualifying UBE score within 12 months of the date of application. The Board recommends that Rule 7C be amended to state as follows:

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.

(1) Application Deadline. 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.

(2) Concurrent Application. An applicant may submit the application prior to obtaining the qualifying UBE score by enclosing with the application evidence that the applicant is registered for the next administration of the UBE or is awaiting examination results in a UBE jurisdiction. An applicant who has applied under this rule must submit evidence of a qualifying UBE score within 12 months of the date the application is received or the applicant will be deemed ineligible and the file closed.

10. The National Conference of Bar Examiners (NCBE) states that concurrent application for admission by transferred UBE score “means that an applicant is applying to take the UBE in one jurisdiction and applying for admission by transferred UBE score in another jurisdiction before the UBE score has been earned.”¹ As of 2019, 12 UBE jurisdictions allow applicants to submit concurrent UBE transfer applications.²

11. Currently, the Board does not accept applications from individuals who are not (yet) eligible, so a prospective Rule 7C applicant must await their examination results and have obtained a qualifying UBE score before applying. The administrative processing and character and fitness investigation of an applicant file takes, on average, three to six months. Therefore, an applicant who receives notification of a qualifying UBE score from another jurisdiction’s July bar examination in October is unlikely to be admitted in Minnesota under Rule 7C before mid-winter.

12. The Board has periodically received inquiries from prospective applicants about allowing the submission of a concurrent UBE transfer application, so that the Board could begin the processing and review of their application before their examination results are available. This would be consistent with the Board’s character and fitness process for examinees, who apply prior to the examination and whose character and fitness is reviewed prior to the October score release.³ Examples of individuals who may benefit from prompt admission to the Minnesota Bar despite sitting for the examination in another state include recent graduates applying for jobs in more than one state or individuals whose employer provides legal services in Minnesota and another state (e.g. law firms in the Fargo-Moorhead area).

13. The principal challenge in allowing such applications is in designing an administrative process for applicants who receive an insufficient UBE score when the other jurisdiction’s results are released. The Board administratively closes the file of

¹ *Comprehensive Guide to Bar Admission Requirements 2019*, National Conference of Bar Examiners, American Bar Association Section of Legal Education and Admissions to the Bar (2019).

² *Id.*, Chart 5, p. 18-19.

³ The timely filing deadline for the July examination is March 15th; the late filing deadline is May 1st.

its unsuccessful examinees, and at least one jurisdiction has taken the same approach to its concurrent applicants. However, concurrent transfer applicants will have paid the higher Rule 7 application fee plus an examination fee in another jurisdiction, so this may prove a harsh result for those applicants. Conversely, Montana allows its concurrent transfer applicants to defer their application through up to three additional examination cycles. However, aging application files pose administrative challenges to Board staff, particularly as important character and fitness information and determinations may become stale.

14. The Board believes that requiring concurrent Rule 7C applicants to submit a qualifying UBE score within 12 months of applying will avoid these challenges while typically allowing time for a second out-of-state examination attempt.⁴ Rule 4E is similar in allowing applicants to apply before obtaining a qualifying Multistate Professional Responsibility Examination (MPRE) score but requiring applicants to submit a qualifying score within 12 months of a notice from the Board.

RULE 12J: CARRY-OVER OF FEES

15. The Board recommends that Rule 12J(1) be amended to state as follows:

J. Carry-over of Fees.

(1) Applicants Ineligible Under Rules 7A, 9, and 10 ~~(Admission Without Examination)~~. The fee of an applicant declared ineligible under Rule 7A, 9, or 10 ~~(Admission Without Examination)~~ shall, upon the applicant's written request, be applied to

(a) An examination held within the succeeding 15 months; or

(b) An application made under Rules 8, 9, or 10.

The written request must be received by the Board within 30 days of notice of the denial. No other carry-over of fees, other than those provided for in the following paragraph, shall be granted.

⁴ An applicant who wishes to sit for the Minnesota bar examination rather than another UBE administration would be required to submit a Rule 6 application and fee to the Board. The bar examination implicates separate administrative processes, requirements, and costs incurred by the Board.

16. Rule 12(J)(1) currently allows an applicant who is declared ineligible under Rule 7 to carry-over the application fee to an application under one of the Board's other rules, including an application for a Minnesota bar examination held within the succeeding 15 months. The purpose of this rule is to provide an alternative avenue to admission for applicants who believed they were eligible under Rule 7A (Eligibility by Practice) but the Board determined they were not. Evaluating the nature and duration of a lawyer's practice activities can be complex and a lawyer's eligibility may be uncertain or debatable at the time of applying.
17. The Board does not believe it necessary to provide this additional avenue to extend the application of concurrent Rule 7C applicants, who will already have been afforded a year to submit evidence of eligibility by UBE score before being deemed ineligible. For all other Rule 7B and 7C applicants, eligibility is determined by simple requirements principally related to examination scores, about which there is no uncertainty. Therefore, the Board recommends amending Rule 12J(1) to apply to Rule 7A applicants rather than all Rule 7 applicants.
18. The Board also believes it appropriate to expand Rule 12J(1) to permit carry-over of fees by applicants who apply for temporary or permanent in-house counsel licensure under Rules 9 or 10 and are declared ineligible, because those rules require the same practice verifications as Rule 7A.
19. Additionally, in light of the 2018 amendments to Rule 7A adopting a 36-month practice requirement, an applicant can no longer be eligible under Rule 10 if ineligible under Rule 7A. Rule 9 remains a carry-over option for certain applicants to obtain temporary in-house counsel licensure before obtaining an MPRE score.
20. The Board also recommends that Rule 12J(2) be amended to allow examinees who are unable to take the bar examination due to a non-medical emergency to carry-over their application fee. The Board recommends that Rule 12J(2) be amended to state as follows:

~~(2) Medical Emergencies. An applicant who notifies the Board prior to the examination that the applicant is unable to take the examination due to a medical emergency, death in the family, or similar exceptional circumstances, and who notifies the Board in writing or by telephone prior to the start of the examination,~~ may request carry-over of the application fee to the next examination. ~~Such~~The carry-over requests must be made in writing, received in the Board office no later than 14 days following the examination, and be accompanied by written documentation of the ~~medical~~ emergency. The applicant shall submit a fee of \$50 when reapplying for the next examination.

21. The current rule permits carry-over of fees only for medical emergencies, but other urgent or tragic circumstances have arisen or could arise that render an applicant unable to take the examination. Examples include a death in the family, hospitalization of a child, or a natural disaster in the applicant's place of residence. The Board would appreciate discretion to grant fee carry-overs to such individuals. The Board has also attempted to more clearly delineate the separate notice and request requirements in its proposed rule language.

RULE 12I: REFUNDS

22. The Board recommends that Rule 12I be amended to permit applicants who are declared ineligible under Rule 7A, 9, or 10 to request a refund of \$300. The Board recommends that Rule 12I be amended to state as follows:

I. Refunds of Fees.

(1) Bar Examination Applications. An applicant who submits a written request to withdraw a bar examination application 15 or more days before the examination for which the applicant applied shall receive a refund in the amount of:

~~(1a)~~ \$150, if the fee paid was in an amount specified by either Rule 12B or Rule 12E; or

~~(2b)~~ \$300, if the fee paid was in an amount specified by Rule 12C.

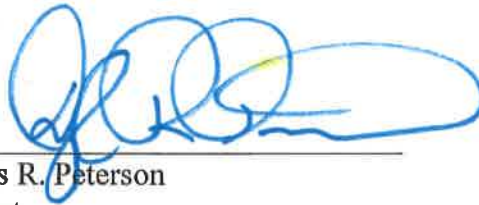
(2) An applicant who is declared ineligible under Rule 7A, 9, or 10 and who submits a written request for refund within 30 days of notice of ineligibility shall receive a refund in the amount of \$300.

(3) No other requests for refund will be granted.

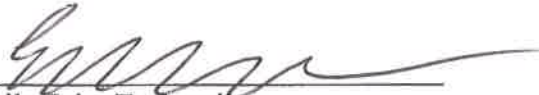
23. Rule 12I currently permits a partial refund of application fees only for examinees who withdraw their application at least 15 days prior to the examination, and states that no other refunds will be granted. However, Rule 12J(1) permits certain ineligible applicants to carry-over their application fee to an examination application, and those individuals can then withdraw pursuant to the examination refund provision. This two-step maneuver involves an unnecessary administrative step, may affect recordkeeping and statistics regarding examination applications, and the Board wishes to end this practice.
24. The Board recognizes that some lawyers who are declared ineligible by practice may prefer to withdraw their application and reapply after attaining additional qualifying practice rather than sit for the bar examination. For some who are ineligible by a narrow margin it may even be the quicker path to admission. Due to the above-noted complexities associated with practice verification and potential uncertainty at the time of applying, the Board believes it is reasonable to permit lawyers who are declared ineligible by practice to withdraw and obtain the same partial refund as examinees.

The Board respectfully requests that the Court amend the current Rules for Admission to the Bar and adopt the proposed amended Rules attached to this Petition as **Exhibit A**.

Dated: *November 21, 2019*



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EXHIBIT A

Rule 7. Admission Without Examination

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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~~36 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.

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Rule 12. Fees

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(~~1a~~) \$150, if the fee paid was in an amount specified by either Rule 12B or Rule 12E; or

(~~2b~~) \$300, if the fee paid was in an amount specified by Rule 12C.

(2) An applicant who is declared ineligible under Rule 7A, 9, or 10 and who submits a written request for refund within 30 days of notice of ineligibility shall receive a refund in the amount of \$300.

(3) No other requests for refund will be granted.

J. Carry-over of Fees.

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(a) An examination held within the succeeding 15 months; or

(b) An application made under Rules 8, or 9, or 10.

The written request must be received by the Board within 30 days of notice of the denial. No other carry-over of fees, other than those provided for in the following paragraph, shall be granted.

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