

FILED

April 22, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8002

**ORDER ESTABLISHING PUBLIC COMMENT PERIOD
ON PROPOSED AMENDMENTS TO THE
STUDENT PRACTICE RULES**

The Minnesota State Board of Law Examiners filed a petition on April 20, 2020, proposing amendments to the Student Practice Rules to broaden the scope of those rules by allowing recent law school graduates to practice under the supervision of a Minnesota licensed lawyer in good standing. The Board also proposes to re-title the rules as the Supervised Practice Rules. A copy of the Board's petition and the Student Practice Rules as revised if the petition is granted are attached to this order. The court will consider the Board's petition and the proposed rule amendments after providing a period for public comment.

IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or in opposition to the proposed amendments to the Student Practice Rules shall file those comments with the Clerk of the Appellate Courts, using the appellate courts' e-filing application, E-MACS, if required to do so. *See* Minn. R. Civ. App. P. 125.01(a)(1). All comments shall be filed so as to be received no later than May 22, 2020.

Dated: April 22, 2020

BY THE COURT:



Lorie S. Gildea
Chief Justice

**STATE OF MINNESOTA
In Supreme Court**

FILE NO. ADM-09-8002

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**OFFICE OF
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**Petition of the Minnesota State Board
of Law Examiners for Amendment
of the Student Practice Rules**

**PETITION FOR
RULE AMENDMENT**

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner, the Minnesota State Board of Law Examiners (“Board”), respectfully requests that the Court adopt revisions to the Student Practice Rules to broaden the scope to permit recent law school graduates the ability to qualify under the Rules, to remove the restriction that recent graduates sit for the first bar examination following graduation, and to simplify and clarify the duties and responsibilities of the parties involved in the administration of the Rules. The Board further requests that the Court rename the Rules “Supervised Practice Rules” to reflect the expansion.

In support of its Petition, the Board states the following:

1. The Board assumed responsibility for the administration of the Student Practice Rules in 2013.
2. Between 2013 and the present, Board staff has been reviewing the questions the Board office receives related to these Rules and has been drafting a comprehensive rewrite, with the plan to propose the revisions sometime in late 2020.
3. On March 13, 2020, the Governor of the State of Minnesota declared a peacetime emergency related to COVID-19, creating restrictions on public activities in the interest of public health. Exec. Order No.20-01 (March 13, 2020). Since that time, the Governor has issued Executive Orders providing additional restrictions significantly

impacting activities through May 4, 2020. There is still significant unknown information as to the length of time these restrictions may last.

4. The Minnesota Board of Law Examiners is scheduled to administer the Uniform Bar Examination (UBE) on July 28 and 29, 2020.

5. The UBE is a test developed by the National Conference of Bar Examiners (NCBE). The NCBE has stated that it will determine by May 5, 2020, whether there is a sufficient number of examinees to administer the examination in a way that will provide accurate psychometric measures.

6. The NCBE has also provided the alternative testing dates of September 9th and 10th, and September 30th and October 1st, in the event that jurisdictions do not believe they can safely administer the July exam.

7. At present, thirteen jurisdictions have postponed the administration of their examination to September.¹

8. The Board has advised applicants and the Minnesota law schools that at this time, it intends to administer a July examination, but has acknowledged that there are many uncertainties related to this situation and that the decision may not be within the Board's control.

9. In addition to planning for a July examination, the Board has determined that it will plan to administer the UBE in Minnesota on September 9 and 10, 2020.

10. The Board will be making additional decisions related to the July and September examinations at the Board's May 15, 2020 Board meeting, recognizing that applicants need sufficient time to prepare for a July examination, but also cognizant that more information will be known on May 15, 2020 than is known today.

11. The Board shares the concerns of the Deans from the three Minnesota law schools that the class of 2020 is already facing significant economic and professional challenges, and that an inability to sit for the examination in July will create an additional hurdle for these graduates. Adding a September date does not resolve this hurdle.

¹ Alaska, Connecticut, District of Columbia, Georgia, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont and Wyoming.

12. Additionally, the anxiety for these graduates related to the uncertainty of whether the July examination will take place may be reduced by providing an additional opportunity for supervised practice until an examination can be safely administered.

13. A potential way to mitigate this challenge would be for the Court to adopt a modest expansion of the Student Practice Rules to allow recent graduates to practice under the supervision of a Minnesota licensed lawyer in good standing.

14. This change is one that Board staff had already flagged as an issue to consider in the comprehensive rewrite.

15. Under the current Rules, an individual must be “duly enrolled” to be certified. (Rule 1.02, 2.02, and 3.02.)

16. The certification does not terminate at graduation, so individuals certified in May prior to degree conferral are able to remain certified until they fail to take the first examination offered, fail the examination, or are admitted. (Rule 1.03, 2.03, and 3.03)

17. Individuals who request certification one day after graduation are ineligible because they are not duly enrolled.

18. The second substantive change that the Board would recommend that the Court make to the Rules either on a temporary or permanent basis would be to remove the requirement that specifically requires that the lawyer work for indigent clients. (Rule 1.01) A broader representation is already permitted under the clinical student practices rules, so this would also be a modest change. (See Rule 2.01)

19. A rule that would permit law students and recent graduates to work under the supervision of any licensed lawyer in good standing would serve both to increase Access to Justice and to provide additional employment opportunities during the period between graduation and licensure.

20. A third substantive change would be to remove the requirement either on a temporary or permanent basis that the recent graduate sit for the first available examination, and would instead extend the supervised practitioner status for eighteen months, unless the individual was admitted or failed the bar examination before then.

21. Because the Board is proposing a complete rewrite of the Rules, the attached documentation does not contain strike through language. The additional revisions to the Rules are to provide additional clarity, to delineate between a law student and a recent graduate, to outline clearly the responsibilities of each stakeholder in the process, and to create a definitions section.

22. These changes are intended to increase clarity in the administration of the Rules. The Board further recommends that the Rules be titled Supervised Practice Rules, instead of the Student Practice Rules.

23. The following language related to Student Observation that the MSBA Petitioned for in 2009 has been retained, but moved from current Rule 3.01 to revised Rule 2E:

Communication between the client and the student shall be privileged under the same rules that govern attorney-client privilege and work product doctrine, and the presence of a student during communication between the lawyer and the client shall not, standing alone, waive these evidentiary privileges.

24. The Board recognizes that a rewrite to the Rules would be a change that would typically go out for public comment.

25. In light of the extraordinary circumstances related to COVID-19 and the uncertainty that the class of 2020 is facing, the Board recommends that the Court adopt the proposed revisions on a pilot basis, with the requirement that the Board file a report on or before July 1, 2021, containing an assessment of the implementation of the revisions and recommendations for any additional changes at that time. The Board anticipates that the revised Rules would remain in effect until the Court has time to consider the pilot and either adopt these Rules on a permanent basis, or promulgate revisions.

The Board respectfully requests that the Court amend the current Student Practice Rules and adopt the proposed amended Rules attached to this Petition.

Dated: 4/20/2020

/s/

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SUPERVISED PRACTICE RULES

Rule 1. Purpose.

The Minnesota Board of Law Examiners (Board) administers these Rules to ensure that law students and recent graduates certified under these Rules have sufficient legal education and adequate supervision to perform lawyering tasks in an effective and confidential manner, while protecting the interests of the client.

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Rule 2. Definitions. In these Rules,

- A. "Eligible law student" means a student who:
 - 1. is duly enrolled at the time of certification in a law school approved by the American Bar Association (ABA);
 - 2. has completed legal studies equivalent to at least two semesters of full-time study prior to certification;
 - 3. has been certified by the dean or designee of the law school as:
 - a. being of good academic standing; and
 - b. qualified to participate either in a paid or unpaid capacity in a practice placement or clinical program in order to provide legal services to clients as a law student practitioner.
- B. "Eligible recent graduate" means a person who meets the following criteria:
 - 1. has graduated from an ABA approved law school within the previous 18 months;
 - 2. has been certified by the dean or designee of the law school as qualified to participate, either in a paid or unpaid capacity, in supervised legal employment or placement to provide legal services to clients as a supervised practitioner.
- C. "Jurisdiction" means the District of Columbia or any state or territory of the United States.
- D. "Law student practitioner" means an individual certified under these Rules who is a current law student.
- E. "Student observer" means a student certified under these Rules to observe any and all professional activities of a member of the bar as part of an academic program or course for academic credit, including client communication. Communication between the client and the student shall be privileged under the same rules that govern attorney-client privilege and work product doctrine, and the presence of a student during communication between the lawyer and the client shall not, standing alone, waive these evidentiary privileges.
- F. "Supervising lawyer" means a member of the Minnesota bar in good standing who accepts responsibility for a law student practitioner or supervised practitioner.

- G. "Supervised practitioner" means an individual certified under these Rules who has graduated from an ABA approved law school within the previous 18 months.

Rule 3. Scope of Representation. A law student practitioner or supervised practitioner may perform, under the supervision of a supervising lawyer, all functions that a lawyer may perform in representing and appearing on behalf of a client.

Rule 4. Obligations of Law School.

- A. Certification: A law school seeking to certify or recertify eligible law students or recent graduates under these Rules shall file with the Board a statement signed by the dean or dean's designee stating the following:
1. The name of each eligible law student or recent graduate;
 2. Verification that the individual is either in good academic standing or has graduated from the law school;
 3. For eligible recent graduates, the date on which the graduate's degree was conferred;
 4. For eligible law students, confirmation that the student has completed the equivalent of at least two semesters of full-time study;
 5. The name of the supervising lawyer who has agreed to supervise the individual's work; in the case of an entity, the name of the contact at the legal employer that will verify that all work is properly supervised;
 6. For student observers, confirmation that the placement is part of an academic program or course for academic credit;
 7. A statement that the law school will notify the Board in writing upon notice that any of the following have occurred:
 - a. The law student practitioner or student observer is placed on academic probation;
 - b. The law student practitioner graduates from law school;
 - c. The supervising lawyer advises the school that the employment or placement of the law student or supervised practitioner has ended.
 - d. The law school becomes aware that the supervised practitioner:
 1. Has failed the bar examination any jurisdiction; or
 2. Has been admitted to the bar of any jurisdiction.
- B. Continuing Obligation: A law school shall provide written notice to the Board within 30 days of becoming aware of any event noted in Rule 4A(7).
1. If a law student practitioner graduates, the law school shall advise the Board if the certification should convert from law student practitioner to supervised practitioner and, if so, provide the date of conferral and confirmation that there is ongoing employment with the same or a new supervising lawyer.

Rule 5. Obligations of Supervising Lawyer.

- A. When supervising a law student practitioner or supervised practitioner, the supervising attorney shall:
1. Assume personal professional responsibility for and supervision of the law student or supervised practitioner;
 2. Sign all pleadings;
 3. Ensure the law student or supervised practitioner is identified to the client and the tribunal and knowingly accepted by both;
 4. Appear with the law student or supervised practitioner in all trials and all other proceedings, except in a proceeding where the client and judge or judicial officer waives the appearance after accepting the representation made by the supervising lawyer that the law student or supervised practitioner is prepared to proceed alone;
 5. Provide appropriate supervision and assistance as needed;
 6. Send written notice to the law school and the Board if the supervising lawyer terminates the supervisory relationship with the law student or supervised practitioner for any reason; and
 7. Abide by all obligations set forth in these Rules.
- B. When supervising a student observer, the supervising attorney shall ensure that the student observer has:
1. Been identified as a student and accepted by the client; and
 - a. Signed a statement certifying the student observer will maintain the confidentiality that a lawyer is required to maintain under Rule 1.6 of the Minnesota Rules of Professional Conduct.

Rule 6. Obligations of Law Student Practitioner.

- A. Once certified, the law student practitioner shall take the following actions:
1. Identify himself or herself to each client and tribunal as a law student practitioner and proceed only if accepted by both;
 2. Comply with the supervised practice requirements outlined in Rule 5A;
 3. Comply with Minnesota Rules of Professional Conduct;
 4. Request recertification through his or her law school before the expiration of certification, if eligible; and
 5. Ensure that his or her law school files notice to the Board of his or her graduation and, if eligible, requests recertification as a supervised practitioner.

Rule 7. Obligations of Supervised Practitioner.

- A. Once certified, the supervised practitioner shall take the following actions:
1. Identify himself or herself to each client and tribunal as a supervised practitioner and proceed only if accepted by both;
 2. Comply with the supervised practice requirements outlined in Rule 5A;
 3. Comply with the Minnesota Rules of Professional Conduct; and
 4. Notify his or her law school if he or she:
 - a. Registers and takes the bar examination in any jurisdiction;
 - b. Fails the bar examination in any jurisdiction; or
 - c. Is admitted in any jurisdiction.

Rule 8. Obligations of Student Observer.

A student observer shall sign and abide by a statement certifying that the student will maintain the confidentiality that a lawyer is required to maintain under Rule 1.6 of the Minnesota Rules of Professional Conduct.

Rule 9. Obligations of the Board.

- A. The Board shall:
- a. Review the certification applications filed by the law school to confirm eligibility under these Rules;
 - b. Provide written notice to the law school confirming certification;
 - c. Post to the website a list of law student practitioners and supervised practitioners and the date that certification is scheduled to expire;
 - d. Maintain a list of student observers approved under these Rules; and
 - e. Provide written notice to the law school and remove from the website the names of law student practitioners and supervised practitioners whose licenses have expired or terminated under these Rules.

Rule 10. Period of Certification; Recertification.

If otherwise eligible under these Rules and not precluded by Rule 11:

- A. A law student practitioner may be initially certified for a period of 12 months, and may renew certification for a period of 12 months;
- B. A law student practitioner may be recertified as a supervised practitioner upon graduation from law school; and
- C. A supervised practitioner may be certified for a period of 18 months from the date of degree conferral.

Rule 11. Termination of Certification.

- A. Certification as a law student practitioner terminates when the first of the following occurs:
 - a. Twelve months has elapsed from the most recent certification;
 - b. The law school, placement entity, or supervising lawyer sends written notice to the Board that the supervising lawyer is no longer willing to supervise the law student practitioner;
 - c. The student practitioner resigns or is terminated from the qualifying position; or
 - d. The law school places the law student on academic probation.
- B. Certification as a supervised practitioner terminates when the first of the following occurs:
 - a. The law school, placement entity, or the supervising lawyer sends written notice to the Board that the supervising lawyer is no longer willing to supervise the supervised practitioner;
 - b. The supervised practitioner resigns or is terminated from the qualifying position;
 - c. The supervised practitioner is admitted to the bar in any jurisdiction;
 - d. The supervised practitioner fails the bar examination in any jurisdiction; or
 - e. 18 months has elapsed from the date of degree conferral.
- C. Certification as a student observer terminates when the course ends or the student is placed on academic probation.