



Minnesota State
Bar Association

New Lawyers
Section

Attn: Emily Eschweiler, Director
Minnesota Board of Law Examiners
180 East 5th Street, Suite 950
St. Paul, Minnesota 55101

Minnesota
State Bar
Association

Re: Position Statement on the 2020 Minnesota Bar Examinations

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Dear Ms. Eschweiler:

On behalf of the New Lawyers Section of the Minnesota State Bar Association, we are writing to address our concerns related to the impact the COVID-19 pandemic may have on examinees seeking admission to the Minnesota bar. Undoubtedly, the COVID-19 pandemic presents challenges for proctoring the summer bar exam using the same venue and procedures as prior years. We support efforts the Minnesota Board of Law Examiners (the “Board”) have taken, and are taking, to ameliorate the repercussions of delaying the bar exam for all qualified candidates.

We support the Board’s recent petition to the Minnesota Supreme Court to amend and expand the Student Practice Rules to allow recent graduates to practice under the supervision of a licensed Minnesota lawyer in good standing. Some states have cancelled or postponed the bar exam, others have admitted this year’s graduates to practice pending the uncertainty of the examination dates. We believe the Board’s recent petition strikes the proper balance between these alternatives. We also commend the Board’s goal to continue to host the Uniform Bar Exam in July or, if not then, in September. We agree that cancelling or indefinitely postponing the bar exam would place inordinate and significant economic and professional challenges on recent graduates.

Although we support this effort, we believe there is opportunity for the petition to help a broader array of struggling candidates for the bar. Specifically, the current petition does not allow individuals seeking to re-take the bar exam the opportunity to practice law under the supervision of a licensed attorney. In addition, the petition does not allow out-of-state candidates who may not be able to travel to Minnesota for an examination. These persons are just as, if not more, financially and professionally affected by the inability to take the bar exam, as they often already have jobs or leadership positions contingent on bar passage.

Every individual not currently licensed in Minnesota and waiting to sit for the summer bar exam is likely enduring financial hardship by the uncertainty of this pandemic—not just recent graduates. Provided all character and fitness requirements are met, allowing all individuals intending to sit for the July 2020 bar examination the same ability to practice would ensure fairness in licensing opportunities. By excluding re-takers or out-of-state examinees from the supervised practice of law, it increases the already heavy reputational and monetary burden that has arisen due to the COVID-19 pandemic and looming recession. Allowing re-takers and out-of-state examinees to practice while supervised would allow these individuals to get ahead of the recession, ease each individual’s monetary burdens, and locate and secure employment

more easily. This, in turn, will allow these new attorneys to help those in need of legal services during this crisis, promoting Minnesotans' access to justice.

At the same time, we encourage the Board to consider innovative new means of proctoring the bar exam. Over the past decade, the legal profession and educators have turned to remote means of conducting important hearings, depositions, classes, and exams. This is increasingly true *during* the COVID-19 pandemic. Remotely-conducted exams through secure exam-taking software has been the norm at the nation's law schools for many years. Students must sign an honor code attesting they did not cheat or gain unfair advantages while taking the remote exam—just as lawyers swear an oath to uphold the rules of professional responsibility. We encourage the Board to consider similar remote test-taking options, as an alternative to cancelling this summer's bar exam. We acknowledge that remote proctoring may not be ideal or enable the same heightened degree of control, but necessity is the mother of invention. If the National Conference of Bar Examiners permits or does not oppose electronic means for taking the bar exam, we support and encourage the Board to move forward with electronic bar exam administration.

With court closures and cancellations, the possibility of denial of access to justice for underserved populations is higher than ever. Those seeking justice during this pandemic are more likely than ever to fall through the cracks. With proper supervision, re-taker and out-of-state examinees would be assets to the community. Additionally, if the bar exam cannot proceed in-person, using secure electronic means of proctoring the bar exam remotely would address access to justice concerns, as well as concerns related to maintaining a high standard of professional competency among the Minnesota bar.

This is an action of the MSBA New Lawyers Section and does not represent the view or action of the MSBA.

Respectfully Submitted,

New Lawyer Section Council of the Minnesota State Bar Association

/s/ Blair A. Harrington

Chair of the New Lawyers Section