

THE SUPREME COURT OF MINNESOTA

EARLY BAR EXAM COMMITTEE

Report and Recommendation:

EARLY BAR EXAMINATION

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Introduction and Summary:

On February 14, 2019, the Minnesota Supreme Court (Court) issued an Order directing the Director of the Board of Law Examiners to convene an *ad hoc* Committee to evaluate whether Minnesota should permit applicants to sit for the Minnesota Bar Examination prior to successful completion of all course work.

The Committee is divided on whether to recommend the Court amend the Rules for Admission to the Bar to permit this option for third year students. Some Committee members conclude the benefits outweigh the concerns and are in favor of adoption; some conclude the costs are too great in the absence of data that similar programs have had an impact on student debt and employment. Each of the Minnesota law schools provided insight into the discussion; the differences in the make-up of the student bodies and current curricular structure influenced how each school weighed the benefits and costs.

Reasons supporting adoption of an early bar exam rule include:

- Earlier access to legal employment opportunities (especially employment requiring bar passage) and associated income
- Reduction in the need to borrow additional funds to bridge the gap between law school graduation and bar admission
- For law schools that already have appropriate curricular programs in place, an opportunity to provide law students with a wider range of options with minimal burden on law school staff, resources, and wider student body

Concerns about adoption of an early bar exam rule include:

- Lack of compelling record to establish the purported potential benefits to applicants
- Concerns with adverse impact on applicants who take the examination before being academically prepared; the personal and financial stress of taking the bar exam while still in law school; and potential adverse consequences of failing the bar exam under those circumstances
- For law schools that do not already have programs in place, providing this opportunity for their students may pose an undue burden on law school staff, resources, and wider student body; students already have the option to accelerate courses and graduate in 2 ½ years, permitting them to take the February examination

If, after weighing the benefits and concerns outlined in this report, the Court is inclined to proceed with adoption of a rule permitting applicants to take the bar before completing all law school coursework, the Committee recommends a five-year pilot project. As part of the pilot, the participating law schools would be required to collect and report data so the Minnesota Board of Law Examiners may file a follow-up report with the Court evaluating the success of implementation and providing recommendations as to whether to continue the early bar exam.

The Committee agrees that for the early bar examination to be beneficial, only students who are prepared to succeed on the early bar exam should be considered eligible to take it. If the Court decides to proceed with a pilot project, the Committee recommends language in the rule that provides each law school with sufficient authority to identify whether a student is prepared to succeed and to limit the coursework that the student is taking while studying for the bar.

Both the pilot project and the proposed rule language are discussed further below.

Minnesota State Bar Association (MSBA) History:

In June 2015, the MSBA's Future of Legal Education Task Force submitted a report and recommendations 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.

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

¹ Legal Ed Task Force Report, pg. 17.

the New Lawyers Section. 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 9 times between May 2016 and April 2017. The final recommendation of this Committee was presented to the MSBA Assembly on June 16, 2017. The recommendation of the Committee was as follows:

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.²

After presentation of the report and recommendation by the committee chair, representatives from the dissenting members of the Committee presented a minority report, noting that "the proposal's benefits are at best modest and speculative, while its costs are clear and substantial. The proposal may also harm students that it purports to help."³ The MSBA Assembly then engaged in a robust floor debate, discussing the merits of the Committee's recommendation, in which many stakeholders participated. The Assembly ultimately voted in favor of the Committee recommendation.

Following the decision of the MSBA Assembly to adopt the recommendation of the Committee, MSBA members Sonia Miller-Van Oort, Michael Boulette, Sarah Soucie Eyberg, and George Henry drafted a petition to the Minnesota Supreme Court requesting that the Court amend Rule 4(c) of the Minnesota Rules for Admission to the Bar to permit "certain qualified law students" to sit for the bar examination in their final year of law school.⁴ The Petition was filed on June 28, 2018.⁵

Court History:

On July 19, 2018, the Court put the matter out for public comment for a period of 60 days. Written comments were filed by the Hennepin County Bar Association,⁶ the Board of Law Examiners,⁷ and Mitchell Hamline faculty members Leanne Fuih, Dean of Career and Professional Development, Peter Knapp, then Associate Dean of Academic Affairs, and Kate Kruse, Co-Director of Clinics.⁸

On February 14, 2019, the Court issued an Order denying the MSBA's Petition, but referring the matter to the Director of the Board of Law Examiners to provide the Court with additional background information on "proposals regarding early bar exam options and procedures" and instructing the Director to convene an *ad hoc* committee to

² Report and Recommendation of the MSBA Early Bar Exam Committee, pg. 1.

³ Minority Report, pg. 1.

⁴ Case No. ADM10-8008.

⁵ *Id.*

⁶ HCBA Written Comments filed September 13, 2018, supporting the Petition.

⁷ Board of Law Examiners Written Comments dated September 17, 2018, advising that the Board did not support or object to the pending Petition, but raising additional points for the Court to consider in its evaluation.

⁸ Mitchell Hamline faculty member comments dated September 17, 2018 supporting the Petition.

evaluate the format or structure of a pilot project that would allow an early bar exam option for students enrolled at a Minnesota law school.⁹ The Court directed the *ad hoc* committee to file two reports. The first report, identifying the members of the committee and the anticipated schedule for the committee's work, was filed on May 31, 2019.¹⁰

The Court requested that the Committee file a final report on or before March 1, 2020, to "provide recommendations on whether to proceed with a pilot project that provides for an early bar exam and, if so, the design of a proposed pilot project, the rules that should govern during the pilot project, and the criteria for evaluating the results of the pilot project."¹¹

This report is filed in response to the Court's Order.

Committee Process:

The Order advised that the *ad hoc* committee should include up to four representatives from the faculty or administration of each of the Minnesota law schools and up to two representatives from the MSBA, the Board of Law Examiners, and the Board of Professional Responsibility. In March, Director Eschweiler requested that the Deans of the Law Schools, the President of the MSBA, the Secretary of the Board of Law Examiners,¹² and the Chair of the Board of Professional Responsibility provide her with the names of the representatives they wished to appoint to the Committee. The names of the Committee members were provided to the Court in the May 31, 2019 Interim Report.

The Committee held its first meeting in May 2019 to discuss the scope of its work and the timeframe. Since May, the Committee has met monthly with additional work being done by members of the Committee and the Board of Law Examiners' staff between meetings.

In early fall, the Committee determined that although the interest in proceeding with a pilot project was mixed, there was enough interest to continue to review the issue and to provide a proposal to the Court on how a pilot project could look if the Court chose to proceed.

Members of the Committee have also discussed the issue with various stakeholders and have reviewed information available from other jurisdictions that have adopted similar proposals.

⁹ MN Sup. Ct. Order ADM10-8008, dated February 14, 2019.

¹⁰ Interim Report on Early Bar Exam Proposal, dated May 31, 2019.

¹¹ MN Sup. Ct. Order ADM10-8008 at 6-7.

¹² The President of the Board of Law Examiners recused himself from this issue.

Current Rules:

Rule 4C of the Rules for Admission to the Bar permits applicants to sit for the bar if they are able to provide evidence either that they have received a J.D.¹³ degree before the exam or that they have completed all coursework 30 days before the exam, have fulfilled all requirements for conferral of degree, and will be awarded a J.D. degree within 120 days following the examination. Most applicants provide evidence of an already-conferred degree. A few rely on the alternative showing, designed to address circumstances where the school is able to certify that the coursework is completed but the school has not yet issued the conferral, usually pending receipt of a grade.

Early Bar Exams in Other Jurisdictions:

A handful of jurisdictions permit examinees who are in their third year of law school to sit for the examination prior to completion of their coursework.¹⁴

The Committee's research focused on the six jurisdictions that currently permit this option (Arizona, Oregon, Vermont, New York, Texas, and Indiana). In addition, the Committee discussed information provided from two other jurisdictions that no longer permit applicants to sit for the bar in their third year of study (Georgia and South Dakota). The Committee ultimately decided to focus on Arizona's rule for guidance based on the reported success of Arizona's program and the safeguards Arizona placed in the rule to ensure that students were academically prepared.

Arizona:

The Arizona Supreme Court adopted a rule in December 2012 permitting qualified law students to sit for the bar examination during their third year of law school.¹⁵ The Arizona law schools initiated the proposal to allow some graduates to begin practice sooner and to increase employment opportunities for students. They also noted adoption of the rule would give the law schools the opportunity to develop a third year curriculum that would provide students with an easier transition from law school to practice.¹⁶

Rule 34(b)(2) of the Arizona Revised Status Supreme Court Rules permits students within 120 days of graduation to sit for the examination if the law school determines the student is "academically prepared for early testing," has no more than eight credits

¹³ The Rules also permit an LL.B from an ABA-approved law school. The LL.B. is no longer common in the United States.

¹⁴ Additional jurisdictions permit applicants who have completed their coursework but have not yet been issued a conferral to sit for the bar exam similar to the current rule in Minnesota. See Comprehensive Guide to Bar Admission Requirements 2020. <http://www.ncbex.org/publications/bar-admissions-guide/>

¹⁵ Order amending Rule 34, Rules of the Supreme Court, Arizona Supreme Court No. R-12-0002 (filed December 10, 2012). The Court adopted the rule "on an experimental basis" effective January 1, 2013 until December 31, 2015 and required the petitioners and the Attorney Regulation Advisory Committee to file a report on the process no later than November 1, 2015. The Court later adopted the provision on a permanent basis.

¹⁶ Petition to Amend Rule 34, Rules of the Supreme Court, Arizona Supreme Court No. R-12-0002 (filed January 5, 2012).

remaining at the time of early exam administration, and is enrolled for no more than two semester hours during the months of early bar examination testing and the immediately preceding month.¹⁷ Arizona's rules state that failure to provide confirmation of completion of the J.D. within the time frames specified will result in the examination score becoming void.¹⁸

In an article published in *The Bar Examiner* in March 2017, the Honorable Scott Bales noted that the Arizona Supreme Court was guided by "certain key principles" in approving the rule: 1) neutrality in the rule to not favor graduates of specific law schools; 2) the law school should determine if the student was "academically prepared to successfully complete the exam" and 3) the law schools should have a high degree of flexibility in how to structure a program at their school to permit students to qualify.¹⁹ He noted that the Arizona law schools have each taken a distinctive approach. The program has been successfully implemented in Arizona. Members of the Arizona Supreme Court, regulators in Arizona, and the law schools have all indicated that the rule works well and has had the intended impact. The Committee queried whether Arizona had any data to support the premise that it resulted in earlier employment and fewer loans. Arizona does not appear to collect or publish statistics that would provide this information, though they believe anecdotally it is true.

Arizona is the only jurisdiction that publishes the passage rates for applicants who sit for the bar during their third year. Between July 2013 and February 2016, "the early testing applicants have done considerably better than the overall average of test takers for each administration."²⁰ Justice Bales noted that a better comparison would be to compare the February early test takers to the first time July test takers (since the February examinees would otherwise have sat for that examination).

Once again, the early test takers performed well: in 2014, an 89% passage rate for early testers in February versus 75% for first-time testers in July; in 2015, 83% for February early testers versus 66% for July first-time testers; and in 2016, 72% for February early testers versus 64% for July first-time testers.²¹

The chart on the next page shows the number of examinees who participated in the early bar examination and their passage rates for the February 2017 and February 2018

¹⁷ Rule 34(b)(2)) of the Arizona Revised Statutes Rules of the Supreme Court of Arizona Supreme Court; V. Regulation of Practice of Laws.

¹⁸ *Id.*

¹⁹ "Is Sooner Better Than Later? Arizona's Early Bar Exam." Hon. Scott Bales, *The Bar Examiner* (March 2017).

²⁰ *Id.* at page 53-54.

²¹ *Id.* at p. 54.

examination compared to the overall passage rates for first time test takers of the February examination from those schools.²²

Early Bar Exam – 2017				First Time Takers - 2017			
	Total	Passed	Pass Rate		Total Participants	Passed Exam	Pass Rate
University of AZ	19	13	68.42%	University of AZ	27	20	74.07%
Arizona State	7	5	71.43%	Arizona State	19	14	73.68%
Arizona Summit	0			Arizona Summit	88	26	29.55%
Overall	27 ²³	18	66.67%	Overall	134	60	44.78%
				All ABA Law Schools	221	119	53.85%
				Non-ABA Law Schools	1	0	0.00%
				State Average	222	119	53.60%

Early Bar Exam - 2018				First Time Takers - 2018			
University of AZ	22	14	63.64%	University of AZ	28	18	64.29%
Arizona State	5	5	100.00%	Arizona State	30	19	63.33%
Arizona Summit	0			Arizona Summit	43	13	30.23%
Overall	28 ²⁴	20	71.43%	Overall	101	50	49.50%
				All ABA Law Schools	191	112	58.64%
				Non-ABA Law Schools	2	1	50.00%
				State Average	193	113	58.55%

Oregon:

Oregon’s rule is very similar to Arizona’s, requiring 1) verification from the law school certifying that the applicant is academically prepared and 2) that the student is enrolled in no more than 2 semester hours during the month of the examination and the month

²² <https://www.azcourts.gov/Portals/108/ARC%20Annual%20Report%20042618.pdf?ver=2019-04-30-143629-767>, page 7; <https://www.azcourts.gov/Portals/108/Final%20ARC%20Report%202018.pdf?ver=2019-05-03-133307-497>, page 7; <https://www.azcourts.gov/cld/Attorney-Admissions/Examination-Statistics>

²³ One non-Arizona law school early tester participated and didn’t pass.

²⁴ One non-Arizona law school early tester participated and passed.

prior.²⁵ Oregon noted that approximately 30 students per year sat for the examination prior to graduation, but indicated that the number is rising as law schools find ways to incorporate programs into their curriculum. The University of Oregon School of Law noted that the credit limitations in the rule make it challenging for students to complete the required credits after the examination. Their spring semester courses run January through May, so students generally need to enroll in a two credit bar prep course in January and February and then participate in an externship following the examination to complete their credits. The Committee asked if Oregon had conducted any type of financial impact study and learned that it has not. Oregon cited the difficulty in collecting the information and also noted that students who take the early bar examination tend to be candidates with strong academic credentials so the employment data may be difficult to gather and interpret accurately.

Overall, Oregon noted that the early bar examination has been successfully implemented.

Vermont:

Vermont has a liberal rule, requiring only that the applicant be within six months of graduation and have completed 5 semesters.²⁶ Vermont reported that 24 applicants sat for the examination between July 2016 and July 2018. No comparison has been done as to how well early examinees do compared to other examinees. Most of the applicants who sit for the examination in Vermont are from out-of-state law schools. Vermont does not commence the character and fitness investigation until the applicant has provided proof of graduation. Students who sit for the examination prior to graduation generally are admitted four months earlier than if they sat for the examination following graduation.

New York:

New York allows students who have been accepted into the Pro Bono Scholars Program to sit for the February bar examination prior to graduation.²⁷ Students accepted into the program complete a 12-week full time placement performing pro bono legal service for impoverished clients under the supervision of a licensed attorney earning law school credit for their work.²⁸ New York has invested substantial resources into this program.

²⁵ Rule 3.05 of the Supreme Court of the State of Oregon Rules for Admission of Attorneys.

²⁶ Rule 9(c)(5) of the Rules of Admission to the Bar of the Vermont Supreme Court.

²⁷ § 520.17 of the New York Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law.

²⁸ <http://ww2.nycourts.gov/attorneys/probonoscholars/index.shtml>

Texas:

Texas permits law students to sit for the examination if they are within four credits of graduation.²⁹

Indiana:

Indiana permits law students to sit for the examination if the student is within five credit hours of completion, will graduate within 100 days, and has completed 2 hours of professional responsibility.³⁰

South Dakota and Georgia:

South Dakota and Georgia both used to permit law students to take the bar exam during the third year of law school and both eliminated the option because there were no limitations on the students course load and both found that students were neglecting studies while studying for the bar examination.³¹ Arizona noted that Georgia's experience was one of the reasons that it limited the course credits that could be taken contemporaneous with studying for the examination in its rule.³²

Regulatory Implementation of an Early Bar Examination:

Permitting law students to sit for the examination prior to graduation could result in admission three months sooner. Under the current process, students who graduate in May and sit for the July examination, learn of their bar results the first week in October, and are admitted the last week in October. Individuals whose employers have a need for the individual to be admitted prior to the October ceremony may request early admission beginning the second week in October.

If Minnesota were to adopt an early bar examination, individuals taking the examination in February would learn their results in mid-April. If the individual achieved a passing score on the bar examination, the absence of conferral of degree would be listed as a deficiency on their results letter. The law schools send the Board office the degree conferrals in late June. By mid-July, the Board office would be able to complete the file if the only outstanding item was the conferral of degree. The individual would then be eligible to participate in a monthly ceremony at the Court, or request an oath in absentia and arrange to have the oath administered by a judge on his or her own. Admission would thus be in mid-July instead of October.

If an applicant sat for the February examination and learned in mid-April that the results were not a passing score in Minnesota, the applicant would need to submit an

²⁹ Rule 3 of the Rules Governing Admission to the Bar of Texas.

³⁰ Rule 13 of the Indiana Rules of Court Rules for Admission to the Bar and the Discipline of Attorneys.

³¹ Repealed in South Dakota in 1987 (Supreme Court Rule 86-32); Repealed in Georgia in the mid-1990s.

³² *The 3L February Bar Exam: An Experiment Under Way in Arizona*: The Bar Examiner, September 2013.

application for the July examination on or before May 1, the same deadline as other repeaters.

Adequate lead time would be needed by the Board in order to make the changes needed to successfully implement a pilot. Programming changes would need to be made to the Board's computer system as well as internal procedures to implement an early bar examination and to ensure that the conferral is received prior to issuance of an oath for admission. The Court could also see an increase in the number of candidates attending the monthly admission ceremony in the months of July and August since the candidates would not be eligible for the May admission ceremony.

Implementation of the Early Bar Exam for Law Schools:

As will be discussed in greater detail in the analysis section, the positions of the three Minnesota law schools remain consistent with their positions prior to the MSBA's filing of the June 2018 Petition. One law school sees more benefits and two law schools see more challenges. The three Minnesota law schools worked together to determine six questions that each law school would answer to provide the Court with additional information.³³ The six questions addressed by each school were:

1. How do you anticipate that your law school would certify students as being academically prepared to have a substantial likelihood of success on the bar examination prior to graduation from law school?
2. What kind of curricular programming do you anticipate your school would provide for students who are sitting for the bar examination in their last semester of law school?
3. What kinds of students do you anticipate would benefit from participating in an early bar examination program at your school and how would they benefit?
4. How many students per year do you anticipate would participate in an early bar examination program at your school?
5. What impact do you anticipate such a program would have on other students at your school or on your program of legal education?
6. What administrative, curricular, or other burdens would such a program place on your school?

Mitchell Hamline's current curricular structure would permit students to participate in an early bar exam with minimal changes. Mitchell Hamline anticipates that students would participate in a 2-credit bar exam course during the J-Term and final semester to prepare for the examination. Following the examination, students would complete the remaining credits through an externship, clinic, independent study, or enrollment in one of Mitchell Hamline's condensed (6-8 week) course options. Mitchell Hamline estimates between 10 and 25 students may participate each year, although noted that during the pilot project they would limit the number of participants to 15 to ensure that the school has the appropriate administrative resources to ensure student success. The program

³³ The complete responses are provided in the attached appendices to the report.

would benefit Mitchell Hamline students seeking careers in government, public interest, business, solo practice, and small law firms, including in greater Minnesota. A substantial number of students seek careers in those areas each year. The program would also benefit students by providing additional employment options and reducing the period of time they are unemployed and unable to pay down debt.

The University of Minnesota and St. Thomas both noted that their programs do not currently have curriculum in place to support students studying for the bar during their last semester. Both also indicated that it did not seem to be in the students best interest to encourage students to deviate from the carefully designed curriculum and overall law school experience, but were open to working with the students who could succeed at this program on an individualized basis. The University of Minnesota stated “three years of course study (including clinic participation, field placements, and other experiential opportunities) and focused attention on bar preparation during all three years is the best way for students to prepare for the bar exam and in practice.” The University of Minnesota advised that although it may be possible to arrange a for-credit field placement for students following the examination in the spring, it is not the model currently followed for placements and “would require an excessive number of hours in a compressed period.”

St. Thomas anticipates the ideal candidate for this program would be a student who has a position requiring licensure, who has taken an accelerated course of study, and whose debt load would see benefit from being licensed three months sooner. St. Thomas anticipates that the number of students who participate in such a program would be small (0-4). St. Thomas notes that it is possible currently to accelerate course work and graduate in 2.5 years and no more than 3-4 students participate in that option each year. Similarly, the University of Minnesota anticipates this benefitting students with strong academic records, job offers requiring licensure, limited financial resources between June and October, and sizeable debt. The University of Minnesota believes very few students would fit this profile, and fewer or none would be able to develop a suitable course of study in the final semester.

Concerns noted by St. Thomas include resentment from students who are denied the opportunity because their academic record suggests too many risk indicators to be successful and a diversion of resources that could otherwise be used to benefit a larger group of students with bar passage. The University of Minnesota indicated similar concerns in regards to student resentment. Mitchell Hamline stated a sensitivity to this issue as well but also stated that it would work to minimize resentment by establishing clear guidelines to participate and work with ineligible students to develop a plan for completing law school in a way that best prepares the student to sit for the examination and seek employment after graduation. Based on a recent upward trend in bar passage results, the University of Minnesota also expressed concern that the early bar option would undermine recent messaging to students – preparation for bar success includes

careful attention to six semesters of coursework followed by full-time study for the bar exam.

Each of the law schools would require that students complete an application and the law school would perform an assessment on an individualized basis to determine the applicants likelihood of success based on academic history, predictive tables for bar passage, and any obstacles that could impact the students ability to study for the examination. Mitchell Hamline also anticipates that students would participate in a structured early bar admission program administered by the school.

Analysis:

The Committee spent considerable time discussing this issue and weighing the benefits and challenges. The Committee first considered whether to recommend the Court move forward with adopting an early bar examination. The Committee agreed that there should be efforts made to assist recent graduates in reducing debt load and increasing employment opportunities, but some members expressed concern that there was not enough evidence to point to an early bar examination having a significant impact. The Committee discussed that taking the examination prior to graduation could allow earlier employment for some applicants and increase their earning potential immediately following graduation. It would also reduce the need for some students to take out additional loans for support between law school graduation and an October admission. It may also provide an opportunity to begin making loan payments earlier. Reduced debt may also encourage law students to take a position outside of the metropolitan area increasing access to justice throughout the state. An early bar exam will also provide greater opportunities for applicants to be hired for a non-profit or government job requiring bar admission because applicants would be able to apply for and begin those positions as soon as they were licensed.

The Committee as a whole shared the concern that there is relatively little information allowing it to assess the effects of early bar examination programs. In particular, no states have collected data on whether taking the bar examination during the third year has resulted in recent graduates obtaining legal employment sooner and reduced the debt load for those students. There are only anecdotal reports that an early bar program has been successful in some states.

The Committee spent considerable time discussing whether the number of qualified students who would benefit from the opportunity to sit for the bar prior to graduation would be large enough to justify the expense of creating and maintaining law school programs that would support success and justify the consequent impact to other law school programs. The answer to this question varied between the schools.

As stated above, two of the Minnesota law schools (the University of Minnesota and St. Thomas) do not have coursework arranged to allow students to pause their studies sufficiently during bar exam study and then complete the required number of credits by the end of the spring term. Rearranging and creating law school programs and

coursework that would accommodate student success on an early bar exam would impose significant costs on those law schools to serve what may be a limited number of students. Students taking the early bar exam may face a complicated financial situation during the time period of studying for the bar and soon thereafter. Federal loans could be available only on a modified and reduced basis due to the altered credit load and possible different start time of classes. Moreover, VA funding would likely be unavailable, thus making the early bar exam not an option for veterans reliant on such funding. The two schools expressed concern that there may be a decreased focus on in-class studies following the bar examination and that the creation of alternative programming might negatively impact the culture of their schools and have disruptive effects on coursework and programming for the rest of the student body. Those schools noted that students who want to accelerate their admission to the bar already have the ability to take summer course work, graduate in two and half years, and sit for the February bar under the current rules.

The remaining Minnesota law school (Mitchell Hamline) saw more benefits than drawbacks from creating an early bar examination program for students who would qualify. It noted that the number of its graduates who enter the types of employment that this program would target—small practice, government, and non-profit work—is robust enough to justify the creation of a program. It also noted that its curricular structure is flexible enough to allow a student to study and sit for the bar exam with minimal changes, though such a program would require the investment of additional resources in its academic support and bar passage department. Because the school has significant variation in the make-up of its full-time and part-time student body, and because many of its students already pursue practice-based education in the final semester of law school, this school did not anticipate that an early bar examination program would disrupt the culture of the law school.

Based on the above information, the Committee members were divided on whether to recommend an early bar examination option in Minnesota.³⁴ Because the Committee was divided on the recommendation, the Committee determined it would be important to provide the Court with the information gathered so that the Court could make its own determination as to whether to permit third year law students to sit for the bar examination as part of a pilot project in which law schools could opt to participate.

Although the Committee was divided, the Committee determined that it would propose a rule in the event the Court did wish to proceed. If the Court does move forward on the proposal, the Committee recommends structuring a pilot project that would gather the type of impact data that the Committee had not been able to obtain from other states while studying the issue.

³⁴ The Committee also discussed that the National Conference of Bar Examiners' (NCBE) Testing Task Force will be completing its three-year study of the bar exam at the end of 2020 and their conclusions may impact the format of the examination in the future. See <https://testingtaskforce.org/> for more information.

The Committee agreed that it liked how Arizona and Oregon had provided in their rules a requirement that students who wish to sit for the bar have completed almost all of their coursework because this is critical to setting the students up for success on the early examination. The Committee also agreed that the rule should contain a requirement that the law schools affirm that the student is likely to succeed. Rather than requiring that students take only a certain number of credits in the spring semester before, during, and after the examination, the Committee believes the most appropriate approach is to require students to have completed all but 8 credit hours of coursework and provide some flexibility to the law schools to determine the additional criteria. The Committee agreed that the law schools should determine whether applicants for the early bar exam have demonstrated that they are prepared to succeed on the bar exam, based on factors such as coursework performance, academic plan before and after the bar, and nonacademic factors associated with academic success.

After analyzing the data gathered from other jurisdictions, the Committee determined that the New York model is not realistic to recommend at this time because it involves the establishment of a major program of supervised work for applicants. Similarly, the Committee removed the Texas and Indiana options, as both would impact a small number of students due to the small number of credits that can be remaining.

While Vermont, Oregon, and Arizona all noted that the early bar exam was working well in their jurisdictions, the number of participants in the program continues to be small. The Committee discussed that although a relatively liberal rule seems to be working well in Vermont, the Committee is persuaded by the information from Georgia and South Dakota that students would be better protected by a rule similar to Arizona and Oregon that limits the credits that could be taken contemporaneous with the examination. The Committee felt it important to leave some autonomy to the schools in how to structure their courses, since each law school is in the best position to make the determination as to whether a particular student is academically prepared and the coursework appropriately structured during the time of the examination to support the student's success on the bar examination. The law schools already have an incentive to make these determinations, as the schools are ultimately held accountable to the ABA based on their passage rates for graduates.

Proposed Language:

The Committee proposes amendments to Rule 4C as follows:

4C. Evidence of Graduation (Conferral of Degree).

(1) Prior to Examination. 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 that:

~~(1) (a) That~~ the law school has conferred a J.D. or LL.B. degree upon the applicant; ~~or~~

~~(2) (b) 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; or
(c) the applicant (i) is currently enrolled, in good standing, and is expected to graduate and be awarded a J.D. degree within one hundred fifty (150) days following the examination; (ii) has satisfied all requirements for graduation except for not more than eight (8) credit hours or the equivalent during the final semester; and (iii) has been determined by the law school to be (a) prepared to succeed on the examination prior to graduation and (b) enrolled in an appropriate course of study to succeed on the exam and complete the J.D. degree within one hundred fifty (150) days following the examination.

(2) Subsequent to Examination.

(a) An applicant filing evidence of conferral of degree pursuant to Rule 4C(1)(b) shall cause to be filed a certified transcript verifying the award of the degree within one hundred twenty (120) days following the first day of the examination.

(b) An applicant filing evidence of conferral of degree pursuant to Rule 4C(1)(c) shall cause to be filed a certified transcript verifying the award of the degree within one hundred fifty (150) days following the first day of the examination.

(c) If the evidence of conferral of degree is not filed within the timeframes indicated in 4C(2)(a) and 4C(2)(b), the application file be deemed withdrawn.

The Committee discussed at length whether to include additional specificity in the rule language but ultimately concluded that the above language strikes the appropriate balance between the level of autonomy for law schools in structuring their programs in a way that will ensure students' success on the examination and providing guidance to law schools as to parameters.

Proposed Pilot Project Structure and Success Factors:

The Committee suggests that if the Court moves forward with a pilot project that the time frame for the pilot project should be five years. In order for law students to have a program of study that will permit participation in the program, students will likely need to pre-plan some of their 2L and 3L coursework and potentially take summer school credits. Law schools who opt to participate may also need time to adjust course curriculum and establish procedures for measuring whether a student is academically prepared to sit for the examination. The Committee also proposes that law schools and students participating in the early bar exam program be required to provide additional data that will permit the Court to assess the success of the pilot project. Attached in the appendices are a series of reports that the participating law schools would be asked to complete to provide this data. The law schools expressed concern that students may not provide the requested data after graduation and the Committee discussed that there would need to be a component of the program to require that students provide the data in order to participate and educate participants on the usefulness of the data in the hopes of increasing post-graduation response.³⁵ Based on examinee data in other jurisdictions, the Committee believes it could be five years before the Board would have

³⁵ Data would be published only in the aggregate and would be anonymous.

enough data to aggregate it in a way that would ensure adequate confidentiality of the data results.

The primary questions the Committee seeks to answer by collecting the data include the following:

1. How many students seek permission from their law schools to sit for the early bar examination;
2. How many students are certified eligible by their law schools to sit for the early bar examination and statistical information about those students, including their first year grade point average, the courses taken during their third year of study, and other criteria the law school considered to predict students' success on the examination;
3. Bar passage rate of students who took the bar exam early under this rule in the aggregate and by law school;
4. Impact to student debt;
5. The date of employment offer, the start date for employment, and whether taking the examination early had any impact on job opportunities; and
6. The job sectors where they obtained employment and whether a bar license was required to begin the position.

The Committee discussed that success in the pilot would be shown by data indicating that the program resulted in earlier employment and reduced the need for additional loans during the bar exam study period, and bar passage rates confirming that students participating in the program were academically prepared to sit for the examination.

Recommendations and Conclusion:

After careful consideration of the information provided by the various stakeholders and information from other jurisdictions, the Committee makes the following findings and recommendations:

1. The Committee is divided on whether to recommend adoption of a rule that would permit students to sit for the bar examination during their third year of law school.
 - a. Factors in favor of supporting the adoption include:
 - i. earlier employment opportunities;
 - ii. reduction of overall debt load; and
 - iii. a wider range of examination options for students.
 - b. Factors in favor of not supporting the adoption include:
 - i. lack of sufficient data to establish that the proposal will result in the intended purpose;
 - ii. concerns of potential adverse consequences for applicants who sit for the examination prior to being fully prepared; and

- iii. impact to the overall student body if the cost of restructuring programs results in reductions in other law school course offerings or programs.
2. If the Court moves forward with adoption, the Committee recommends:
- a. establishing a five year pilot project and requiring law schools that choose to participate in the pilot project to collect and report data to the Board of Law Examiners to assess the success of the pilot project;
 - b. requiring the Board of Law Examiners to prepare and submit a report to the Court with the findings of the pilot project; and
 - c. structuring the rule in a way that would require sufficient completion of coursework to lay a foundation for success for the applicant and establish parameters for law schools to determine which students are eligible to participate in the early bar examination project.

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Submitted on Behalf of the Early Bar Exam *ad hoc*
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