

FILED

February 14, 2019

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8008

**IN RE PROPOSED AMENDMENTS TO THE
RULES FOR ADMISSION TO THE BAR**

ORDER

An applicant who seeks admission to the Minnesota bar by written examination must, before the date of the examination, provide evidence of either graduation from law school or completion of all course work and other requirements for conferral of a degree from the law school. *See* Minn. R. Admission to the Bar 4(D). The Minnesota State Bar Association (MSBA) filed a petition with our court proposing amendments to the Rules for Admission to the Bar that would allow an applicant for admission to the bar to take the written examination before graduation from law school or completion of all law school coursework. Specifically, the MSBA's proposed amendment would allow a law student to take the bar exam before graduation from law school if the student will graduate within 180 days after the first day of the exam, is determined by the student's law school to be academically prepared for the exam, and is enrolled in a course of study at the time that will allow the student to prepare for the exam.

The MSBA's proposed amendment stems from the work of a task force that began studying the future of legal education in 2014. Among other conclusions reached in that study, the MSBA notes, is that the intervals between law school graduation, the bar

examination, and admission to the Minnesota bar (based on successful exam results) can lead to unfavorable impacts on lawyers and the legal profession. For example, the MSBA explains that the high, and rising, cost of law school tuition has led to significant debt loads for graduating law students. The MSBA contends that reducing the time between law school graduation and authority to practice will allow new lawyers to move more quickly into the job market, thus providing earlier access to financial resources needed for debt repayment. Similarly, the MSBA asserts, reducing the time between law school graduation and authority to practice will provide legal employers with earlier access to recent law school graduates. Thus, the MSBA concludes, a pre-graduation, early bar exam option in the last semester of law school offers the possibility of multiple benefits, for lawyers, employers, and the legal profession generally.

We opened a public comment period on the MSBA's petition. Two comments were filed in support of the MSBA's petition, by the Hennepin County Bar Association and in a joint statement filed by three local law professors in their individual capacities. The Board of Law Examiners (BLE) also filed a comment, taking a neutral position on the MSBA's petition, but providing additional factors and considerations relevant to the administration of the bar exam and a proposed early bar exam option for law students who have not yet completed law school.

Together, a law school education and the written exam are used to evaluate an applicant's competency for admission to the Minnesota bar. *See, e.g., In re Hansen*, 275 N.W.2d 790, 798 (Minn. 1978) (explaining that we "use a two-pronged test," the "educational process" and a passing score on a written examination, for admission to the

Minnesota bar); *see also* Minn. R. Admission to the Bar 1 (explaining that those admitted to the bar must “have the necessary competency” that “justif[ies] the trust and confidence” of “the public, the legal system, and the legal profession”).¹ “It is reasonable to require proof that an applicant” possesses the legal education required by the Rules for Admission to the Bar because it is our responsibility to ensure “that members of the bar are worthy of public trust with regard to their professional competence.” *In re Busch*, 313 N.W.2d 419, 421 (Minn. 1981). We have declined, however, to engage in a “substantive evaluation of law schools,” *see Dolan v. State Bd. of Law Examiners*, 483 N.W.2d 64, 65 (Minn. 1992), because we do not have the resources or expertise to evaluate whether the specific course of study at a particular law school meets minimum standards of educational excellence. *In re Busch*, 313 N.W.2d at 421. *See also Dolan*, 483 N.W.2d at 65 (explaining, in considering a request to waive the requirement for graduation from an accredited law school, our need for “practical assurance that the legal education of a prospective attorney has sufficiently prepared the individual applicant for legal service”).

The MSBA’s proposed amendments draw upon work done by other states that have adopted or studied options for an early bar exam, either as a means to allow graduating law students to obtain a license to practice and enter the workforce sooner (contributing in turn to reducing debt load); or as an opportunity to expand the resources available to organizations that provide legal services on a pro-bono or reduced-fee basis. *See, e.g., Sarah Valentine, Flourish or Founder: The New Regulatory Regime in Legal Education,*

¹ There are additional requirements for admission to the bar, related to the applicant’s character and fitness. *See* Minn. R. Admission to the Bar 5(B).

44 J.L. & Educ. 473, 518 (2015) (explaining that one state’s early-bar exam option has these attributes). For example, in New York, third-year law students can take the written exam during the final semester of law school. *See* N.Y. Comp. Codes R. & Regs., tit. 22, § 520.17 (2018). In exchange for this early access to the written exam, the student must complete at least 12 weeks of work in a clinic or external placement that serves indigent clients. *Id.*, § 520.17(c), (f). *See* Hon. Jonathan Lippman, *The Judiciary as the Leader of the Access-to-Justice Revolution*, 89 N.Y.U.L. Rev. 1569, 1584 (2014).

Arizona law students also have the option to take a written exam before graduation from law school. Similar to the MSBA’s proposed amendment, Arizona’s early bar-exam option requires the law school to certify that the student is “academically prepared,” has no more than 8 credits to complete, and is expected to graduate within 120 days of taking the exam. Ariz. Sup. Ct. R. 34(b)(2). The student is limited to enrollment in not “more than two semester credits” in the month before and the month of the exam.² *Id.* Arizona’s early-bar exam option was permanently adopted after a three-year pilot study. *In re Rule 34, Rules of the Supreme Court*, No. R-12-0002, Order (Ariz. filed Sept. 2, 2016).

The MSBA’s proposed rule amendment could be viewed as a minor change, related only to the timing of the written exam for some applicants: before graduation or after graduation. In other words, the two basic requirements—graduation from law school and

² A handful of other states have similar early bar exam options. For example, Indiana allows a third-year student to take the bar exam if the student has 5 credits or less to complete, and will graduate within 100 days of the exam. Ind. R. Admission 13, § 5. Oregon adopted a rule similar to Arizona’s, effective as of the February 2016 bar exam. Ore. R. Admission 3.05(4)–(6) (2018).

passing the written examination—are unchanged and must still be met before the applicant can be admitted to the bar. On the other hand, the MSBA’s proposed rule amendment imposes requirements on law schools that we do not currently impose; namely, confirmation that the law student who has not yet graduated is “academically prepared” for the exam before completing law school, and a limitation on the student’s course of study in the semester in which the exam is taken. These criteria are likely to affect the schedule, curriculum, and academic administration of law schools in ways that we cannot anticipate. Further, the MSBA’s proposed amendment does not address the variations in approach among those states that provide an early bar exam option, nor provide input on why one approach versus another may be preferable.

We have the inherent authority to regulate the practice of law, including by promulgating the rules that govern admission to the bar. *See In re Zbiegien*, 433 N.W.2d 871, 874 (Minn. 1988). The MSBA’s petition identifies credible reasons for an early bar exam option, but we should tread carefully when it comes to the criteria, curriculum, and schedule for Minnesota’s law schools. Further, we hesitate to adopt a rule change of this significance without more robust input from the legal community and the leaders of Minnesota’s law schools.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition of the Minnesota State Bar Association to amend the Rules for Admission to the Bar is denied. This denial is without prejudice to a later petition that

proposes the same or different amendments regarding the rules that govern admission to the bar.

2. Notwithstanding the denial set forth in paragraph 1 above, the petition of the Minnesota State Bar Association, including the appendix to that petition, is referred to the Director of the Board of Law Examiners for the purpose of providing background information on the proposals regarding early bar exam options and procedures. The Director shall convene an ad hoc committee to evaluate the format or structure of a pilot project that would allow for an early bar exam option for students enrolled at a Minnesota law school. Among other things, the committee may consider whether an early bar exam option in Minnesota can be used to enhance legal services to low-income and indigent citizens. The committee shall include up to two members from the Board of Law Examiners and from the Board of Lawyers Professional Responsibility; up to four representatives from the administration or faculty of each of Minnesota's law schools; and up to two representatives from the Minnesota State Bar Association. The committee may seek the participation or input of non-lawyer experts or consultants if it determines that it would be helpful to the work of the committee in addressing the issues identified in paragraph 2 of this order.

3. The Director, on behalf of the committee, shall file an interim report with the court on or before May 31, 2019, that identifies the members of the committee and the anticipated schedule for the committee's work. The Director shall file a final report with the court on or before March 1, 2020. The report must 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.

Dated: February 14, 2019

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lorie S. Gildea".

Lorie S. Gildea
Chief Justice