

STATE OF MINNESOTA

In Supreme Court

FILE NO.

In re: Amendment to the Rule Regulating Qualifications to Sit for
The Minnesota Bar Examination.

PETITION OF FOUR LICENSED ATTORNEYS

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

At a critical moment of the civil rights struggle to open doors of opportunity, Senator Everett Dirksen announced his intention to vote for the Civil Rights Act of 1964 by saying, “no one can stop an idea whose time has come.” It was time for the law to catch up with the times and more perfectly embody the American ideal of equal opportunity.

A different type of change has swept away shibboleths about effective educational methods with similar implications for expanding opportunity. Rapid developments in new information technology, most notably the microchip and the Internet, have created new ways “to get there from here.” Traditional colleges and universities, whose unchallenged bloated budgets have caused tuition to spiral out of control at a pace far exceeding inflation and the ability of students and their families to pay for the education without incurring an enormous weight of debt, have been forced to adapt to the changing times by launching distance learning programs if they want to survive in the current

economic environment. More efficient, more cost-effective, and indeed more provably productive education has been the result.

In the wake of these developments, well-intentioned but increasingly archaic rules and restrictions have not caught up. Rules for admission to take bar examinations are a prime example. A creature of the 1920s, requirements in most states that an applicant taking the bar must have gone to a law school approved by the American Bar Association, no matter how intelligent or learned in the law the applicant might otherwise demonstrate himself or herself to be, was itself a change to centuries of admission practices that sought to verify that an applicant to the bar had learned the law, not the method he or she had chosen to learn it. Most “read law” with an experienced practitioner as did, for example, Abraham Lincoln. The attempt in the 1920s to force all who wanted to practice law through one funnel seemed a reasonable way to ensure uniformity and professionalism.

As is typical with well-intended rules, they become dogma. The focus shifts from the purpose of the rule, to have adequate assurance of a qualified practitioner, to the almost religious sanctity of the rule itself. Resistance to its increasingly archaic restrictiveness in light of a new and progressive learning environment seems heretical. Any proposed change is open to the charge, at least from those born after the 1920s, “we have never done it that way before.”

New ideas on educational opportunity cannot be stopped. It does not take a Bob Dylan to tell us the “times they are a’changin’” and even in a profession as restive and resistant to change as the law, some very modest changes in admission practices can

provide new opportunities for highly qualified applicants, without any sacrifice of the quality, indeed potentially an enhancement of that quality, which is the purpose of the current requirements.

Petitioners are four attorneys licensed by the states of California or New York.¹ They respectfully ask this Court to adopt the proposed amendment to Rule 4(A) of the Rules for Admission to the Bar as set forth in its current version in Exhibit A to this petition and insert one phrase—allowing for licensed lawyers from other U.S. jurisdictions to sit for the Minnesota bar examination. A redline version of Rule 4(A) showing the proposed changes is provided as Exhibit B. The proposed amendment would remove an artificial and increasingly archaic barrier to enter the practice of law and increase opportunity by allowing qualified attorneys, already licensed to practice in another U.S. jurisdiction, to sit for the Minnesota bar examination regardless of their law schools' American Bar Association accreditation status. Moreover, the proposed rule change recognizes and addresses the problem of an unchangeable accreditation process that stifles innovation and forfeits opportunities. In support of this Petition, Petitioners would show the Court the following:

1. This Honorable Court has the exclusive and inherent power, as part of its duty to administer justice, to adopt rules of practice and procedure before the courts of this state, to establish the standard for regulating the legal profession, and to establish

¹ One petitioner, Valarie Wallin, is licensed in both California and Wisconsin.

mandatory ethical standards for the conduct of lawyers and judges. This power has been expressly recognized by the Minnesota Legislature.²

2. The current version of Rule 4(A) prevents many talented lawyers from sitting for the Minnesota bar examination. By adopting the modest change proposed in this petition, this Court would enrich the state bar by allowing some currently qualified, yet ineligible, licensed lawyers to join the practice of law in Minnesota, and would open the door to other such qualified lawyers in the future.

3. By granting this petition, this Court will increase opportunity for those who do not have the resources, in time or treasury, to sequester themselves within the somewhat inflexible programs of expensive traditional law schools. Technological advances which reduce cost and expand the availability of valid educational alternatives have been increasingly recognized and added in educational programs on all levels and in nearly all fields. Yet the same technology, and accompanying benefits, is largely unavailable in legal education due to the current crabbed accreditation standards.³

4. Distance learning is ubiquitous. Once derided as mere correspondence courses advertised in newspapers and in flight magazines, distance learning has been the beneficiary of technological advancements and has taken its place in a variety of disciplines as a bona fide and effective, and often superior, educational alternative. There are more than 2.6 million students enrolled in undergraduate and graduate distance learning programs across the country, and 90% of colleges in America offer distance

² Minn. Stat. § 480.05 (2008)

³ ABA Standard 306 allows students at ABA-accredited schools to enroll in no more than four credit hours in any term in their second or third year and not more than a total of 12 credit hours toward the J.D. degree.

graduates.⁴ Even the venerable University of Oxford, whose founding is often thought to be in the 12th century, offers an online law degree in the form of a part-time, 22-month, distance-education program.⁵

5. Over the last 80 years, more than 350 academic studies have analyzed the effectiveness of alternative modes of education.⁶ Overwhelmingly, these studies have shown no significant difference in student performance based on the means of course delivery: whether face-to-face in a classroom setting or via alternative methods at a distance. The medium used in delivering course material does not significantly alter the educational outcome. Modern education can, provably and effectively, leverage technology to meet a student's needs and reduce costs without sacrificing the quality of the education. But legal education wrongly fails to fully embrace technology.

6. Despite the availability and effectiveness of alternate methods of education, current accreditation standards constrict the path to practice to one way, the traditional way, a Conestoga wagon in an increasingly technological age, a way that allows for only minimal use of new technology. Students attending an ABA-accredited law school can earn no more than 12 credit hours total toward their J.D. in distance-learning classes.⁷

7. The cost of legal education is rising. *The Wall Street Journal* reports that tuition growth at law schools has almost tripled the rate of inflation over the past 20

⁴ Amir Efrati, Hard Case: Job Market Wanes for U.S. Lawyers, Sept. 24, 2007 at <http://online.wsj.com/article/SB119040786780835602.html>

⁵ Oxford University, Masters in International Human Rights Law, <http://humanrightslaw.conted.ox.ac.uk/MStIHRL/>

⁶ No Significant Difference, <http://nosignificantdifference.wcet.info/index.asp>, last visited on April 3, 2009.

⁷ ABA Standard 306.

years.⁸ The higher costs have caused graduates in 2006 of public and private law schools to borrow an average of \$54,500 and \$83,200, respectively, each up more than 17% from the amount borrowed by 2002. Today, the average tuition at the four law schools in Minnesota is \$27,890. Exhibit C. That includes in-state tuition at the University of Minnesota. The cost increase can be attributed, in part, to existing accreditation standards. The mandatory in-classroom academic requirements, low student-to-faculty ratios, extensive libraries, and large campus requirements all increase the cost of providing, and receiving, a legal education.⁹

8. In contrast, by leveraging existing technology in creative ways, distance education schools have been able to provide a quality education at a fraction of the cost. The annual tuition, for example, at Concord is \$9,250 per year¹⁰ and at Oak Brook College of Law tuition is \$3,500 per year.¹¹

9. The current accreditation standards, while raising costs, do not represent the only means of receiving a quality legal education. This was the position taken by the deans of seven ABA-accredited law schools.¹² In the article, the deans state that, rather than focusing on the adequacy of legal education, current ABA accreditation standards enforce an educational methodology that creates a “one-size-fits-all” model for legal education. While claiming to be the only way to receive adequate legal training, the real

⁸ The average tuition at private law schools nationwide in 2006 was \$30,520 per year—an increase of over 170%, not adjusted for inflation, from tuition of \$8,225 per year in 1986.

⁹ See, e.g., ABA Standards §§ 304, 402-2, 606, and 701.

¹⁰ Concord Law School, <http://info.concordlawschool.edu/Admissions/Tuition.aspx?ID=Tuition>

¹¹ Oakbrook College of Law and Government Policy, <http://www.obcl.edu/programs/jd/admissions.php#tuition>

¹² Law School Deans Criticize the ABA, available at http://www.law.northwestern.edu/news/article_full.cfm?eventid=4063 and Exhibit D.

effect of this enforced methodology is increased costs and limited flexibility and innovation in legal education.

10. The inflexible educational methodology imposed by current accreditation standards, with its concomitant increased costs, has closed the door of law schools to many aspiring students of diverse backgrounds. Distance education, with its lower costs and flexible student-centered educational model, has increased opportunity for non-traditional students. In 2007, Concord Law School showed a 34% minority enrollment,¹³ compared to the 22% minority enrollment average for students attending ABA-accredited schools.¹⁴

11. Moreover, the increased debt load of law school students reduces opportunities after graduation. Many newly licensed attorneys are forced to forfeit the idea of working in the non-profit or public service legal fields in order to pay off their student loans. In 2007 the Senate Judiciary Committee considered legislation that would provide a loan repayment program for prosecutors and public defenders.¹⁵ The bill was designed to address the dearth of law school graduates entering legal practice as public servants due to their increased debt loads. In the committee report, Senators Kyl and Hatch evaluated the current status of legal education, and particularly the effect of the ABA accreditation requirement. The Senators concluded that while the proposed bill addressed a symptom—the large debt load of the average law school graduate—it did not address the cause, the ABA accreditation process which raised the costs of attending law

¹³ See, http://about.concordlawschool.edu/Pages/Concord_Students.aspx

¹⁴ See, http://www.abanet.org/abanet/media/release/news_release.cfm?releaseid=87

¹⁵ S. REP. NO. 110-51 (2007)

school. They wrote that, while the bill was beneficial and even necessary in the short term, the long term solution for the legal profession was the removal of the accreditation requirement in legal education. Exhibit E.

12. By adopting the proposed change, this Court will help address, in part, the shortage of lawyers available to meet the demand of members of the public who cannot afford representation. A component of the high cost of representation is the attempt to recover the high cost of attending a traditional law school. Many law students are forced to abandon an initial interest in working for not-for-profit organizations or government because of the oppressive weight of student indebtedness.

13. Petitioners are four attorneys licensed by the States of California or New York.¹⁶ While each had different reasons for being unable or unwilling to attend an ABA-accredited law school, all are qualified and talented attorneys who would enrich the Minnesota Bar. Yet, due to the current admission requirements, none is eligible to sit for the Minnesota bar examination.

14. Valarie Wallin graduated from Oak Brook College of Law and Government Policy, a non-ABA-accredited school in California, in 2001. She was admitted to practice law in California and Wisconsin after passing both states' bar examinations in 2002. Born in Brainerd, Minnesota, Wallin was looking to relocate to the Midwest, originally seeking to practice law in Wisconsin. However, she moved with her husband back to the Brainerd area where she now resides. Wallin chose not to attend an ABA-accredited school because of religious and financial reasons. Wallin is a professor of

¹⁶ One petitioner, Valarie Wallin, is licensed in both California and Wisconsin.

legal writing and research at Oak Brook and wants to practice in Minnesota but is unable to sit for the state's bar examination. If admitted to practice, Wallin intends to focus her practice on family issues. She is passionate about assisting troubled teens and their families and would like to facilitate the adoption process for those teen mothers wanting to have their children adopted.

15. Ian Maitland is a professor at the Carlson School of Business at the University of Minnesota where he teaches business ethics and international business. Maitland is a chartered accountant who holds a Ph.D from Columbia University (1979), a B.A. from Oxford University (1966), and a J.D. from Concord Law School (2005). He is licensed to practice law in California. Maitland chose to pursue a legal education for many reasons, both academic and professional. Yet his teaching schedule in America and abroad prevented him from enrolling in a traditional school. Ultimately, Maitland decided to attend Concord Law School,¹⁷ from which he graduated with honors in 2005. Maitland's depth of knowledge and experience would be an invaluable addition to the Minnesota Bar. Yet, despite his qualifications, the circumstances of his legal training prevent him from even sitting for the state's bar examination.

16. Henry Ongeri immigrated to the United States to fulfill its promise of opportunity. He is licensed to practice law by the State of New York (2006) and the High Court of Kenya (1996). He graduated with honors from the University of Nairobi with a Bachelor of Laws degree in 1995. He also holds a diploma in law from the Kenya School of Law in Nairobi and a Master of Laws in Taxation from William Mitchell College of

¹⁷ See, <http://www.concordlawschool.edu/>

Law in St. Paul. An entrepreneur, Ongerer owns his own firm that consults to African immigrants in the Twin Cities on issues of business and taxation. He previously worked as a tax accountant for U.S. Bancorp in St. Paul and, before that, was an associate for a law firm in Nairobi. Although able to practice law in Kenya and New York, Ongerer cannot gain a license in Minnesota. Consequently, despite Ongerer's relationship of trust and respect with his clients, he must refer them to other attorneys when they need legal advice. Ongerer's ability to effectively meet his clients' needs is impaired and the situation results in additional time and expense to his clients who often do not have great resources. With a license to practice law in Minnesota, Ongerer will better serve the needs of immigrant and minority clients. Ongerer has spent the last 10 years in Minnesota, raising a family, starting a successful business, working in the community, and becoming a valuable addition to the Twin Cities. Moving to another jurisdiction, even one as close as Wisconsin, where Ongerer would be allowed to sit for the bar examination and practice law, is a daunting task. The cost and logistics, not to mention the loss of friends and business contacts, are prohibitive. Thus, for now, Ongerer remains in Minnesota, competent and qualified, yet unable to practice law.

17. Micah Stanley is a fourth generation Minnesotan with significant ties to the state. Born and raised here, and with the majority of his family and extended family residing in the southern part of the state, his desire to practice law in Minnesota is understandable. However, under the current rules he is unable to even sit for the bar examination. Stanley graduated from Oak Brook College of Law in 2007 and sat for the California Bar that year. At age 19 he became the youngest student to pass the state's bar

examination.¹⁸ Wanting to begin his legal career and yet be closer to home, Stanley spent several months working as the Assistant Director of Legal Services for a major consulting firm in Chicago. But love of family and Minnesota ultimately brought him back here where he has been involved in numerous entrepreneurial and community activities. Stanley is a motivated, hardworking individual willing to think outside the box to accomplish his goals. He would be a valuable member of the state bar, yet the current rules keep this dynamic, qualified, young licensed lawyer from the practice of law in Minnesota.

18. Kent Schmidt is one who got away. He is a licensed attorney in California and partner of Dorsey and Whitney, LLP, working in the firm's southern California office in Irvine. Schmidt, a resident of Illinois, graduated from William Howard Taft University's Witkin School of Law in 1998. After being offered a position as an associate at Dorsey and Whitney, and quickly acquiring a reputation as one of the firm's top young associates, Schmidt was forced to relocate to California as he was ineligible to sit for the Minnesota bar examination. Schmidt has become a highly regarded litigation partner at Dorsey and Whitney and been named a Southern California Rising Star by Southern California Super Lawyers, 2005–2007. A qualified and talented individual, Schmidt would have been a valuable member of the Minnesota Bar, but was forced to relocate to another jurisdiction.

¹⁸ See, *The California Law Student Journal*, August 2007, available at <http://www.clsj1994.com/pdf-issues/August2007Small.pdf>.

