

In the Matter of the Petition to
Amend SCR 40.02 (2) and to Create
ss. SCR 40.055 and SCR 40.14 (3) (i).
Relating to the Legal Competence Requirements
Of Graduates of Law Schools in Other Nations; Fees

MEMORANDUM

The petitioner, the Wisconsin Board of Bar Examiners (BBE), seeks to amend SCR 40.02 (2) and to create ss. SCR 40.14 (3) (i) and SCR 40.055 relating to the legal competence requirements of graduates of law schools in other nations and the applicable fees.

On April 1, 2008, the Board of Bar Examiners, by its director, filed a petition requesting the court create Supreme Court Rule (SCR) 40.055 that would permit graduates of law schools in other nations to take the Wisconsin bar examination (SCR Rule Petition 08-09). A public hearing was conducted on February 9, 2009. At the ensuing open administrative conference, the court discussed the petition. Although the court was favorably disposed to the petition, it voted to return the matter to the BBE for further development of certain issues that arose during that discussion. In the meantime and by Order dated April 29, 2009, the court directed the BBE to consider granting permission to graduates of foreign law schools to sit for the Wisconsin bar examination under its waiver provision (SCR 40.10) and to assess their qualifications for doing so under a “totality of the circumstances” approach.

Pursuant to that direction, the BBE has granted nineteen (19) applicants from other nations leave to sit for the Wisconsin bar examination. Of that group, eleven have taken the bar exam and seven have passed. In addition, a subcommittee of the BBE considered the court’s Order and subsequently developed a new petition, which the full board approved at its October 21, 2011 meeting. This rule is modeled, in part, upon New York’s provision allowing graduates of foreign law schools to sit for that state’s bar examination.

The purpose of this petition is to permit eligible graduates of law schools in other nations to sit for the Wisconsin bar examination. Under this proposal, there are two ways in which those graduates would be eligible to sit for the bar examination. Applicants from a nation whose jurisprudence is based on the principles of the English common law could sit for the Wisconsin bar examination if they met three criteria. Namely, they must (1) hold a first professional degree in law from a jurisdiction whose jurisprudence is based on the principles of English common law from a school or schools each of which, throughout the period of the applicant's study, was recognized by a competent accrediting agency in such country as qualified and approved; (2) have a license to practice law from a common-law jurisdiction and are in good standing in that jurisdiction; and (3) have been substantially engaged in the practice of law in a common law jurisdiction for at least three of the last ten years prior to filing an application to take the Wisconsin bar examination.

Alternatively, applicants from nations whose jurisprudence is not based on the principles of the English common law could sit for the bar exam if they (1) hold a first professional degree in law

from a school or schools each of which, throughout the period of the applicant's study, was recognized by a competent accrediting agency in such country as qualified and approved; (2) have a license to practice law from a foreign jurisdiction and is in good standing in that jurisdiction; (3) have been substantially engaged in the practice of law for at least three of the last ten years prior to filing an application to take the Wisconsin bar examination; and (4) have completed a master's degree in law (LL.M.) that meets certain requirements.

New rules would therefore be created and amended as follows:

Section 40.02 (2) would expand those who are eligible for admission to the practice of law in Wisconsin by including those individuals who satisfied all of the competence requirements as graduates of law schools in other nations as provided in SCR 40.055 and who successfully passed the Wisconsin bar examination.

Section 40.055 (1)-(3) would apply to applicants whose study and practice was in nations whose jurisprudence is based on the principles of the English common law. These applicants must meet three requirements: (1) hold a first professional degree in law from a jurisdiction whose jurisprudence is based on the principles of English common law and the degree is from a school or schools each of which, throughout the period of the applicants' study, was recognized by a competent accrediting agency in such country as qualified and approved; (2) have a license to practice law from a common-law jurisdiction and be in good standing in that jurisdiction; and (3) have been substantially engaged in the practice of law in a common law jurisdiction for at least three of the last ten years prior to filing an application to take the Wisconsin bar examination.

Section 40.055 (4) would allow applicants from other nations to take the Wisconsin bar examination if they meet four requirements. Those include: (1) holding a first professional degree in law from a school or schools, each of which, throughout the period of the applicant's study, was recognized by a competent accrediting agency in such country as qualified and approved; (2) having a license to practice law from a foreign jurisdiction and is in good standing in that jurisdiction; (3) having been substantially engaged in the practice of law for at least three of the last ten years prior to filing an application to take the Wisconsin bar examination; and (4) having completed a master's degree in law (LL.M.) that meeting certain requirements.

Sections 40.055 (4) (d) 1-6 outline the required content of the LL.M. program. More specifically:

Section 40.055 (4) (d) 1 provides that the program must be a minimum of 24 semester hours of credit and must be classroom courses taken at the law school in substantive and procedural law and professional skills. No credit will be allowed for correspondence courses, on-line courses, courses offered on DVD or other media, or other distance learning courses.

Section 40.055 (4) (d) 2 requires there be a minimum of 700 minutes of instruction time, exclusive of examination time, in order to grant one semester of credit.

Section 40.055 (4) (d) 3 provides that the LL.M. program shall include a period of instruction consisting of no fewer than two semesters of at least 13 calendar weeks each and that a

maximum of four semester hours of credit may be earned in courses completed during summer semesters.

Section 40.055 (4) (d) 4 requires that the LL.M. program be completed within 24 months of matriculation.

Section 40.055 (4) (d) 5 requires that all coursework for the program must be completed at the campus of a law school in the United States whose graduates qualify to take the Wisconsin bar examination under SCR 40.04 (1) (a).

Section 40.055 (4) (d) 6 requires the program content to include all of the following: (a) a minimum of two semester hours of credit in the values and ethical responsibilities of the United States legal profession and its members; (b) a minimum of two semester hours of credit in legal research, writing and analysis, which may not be satisfied by a research and writing requirement in a substantive law course; (c) a minimum of two semester hours of credit in American legal studies, the American legal system or a similar course designed to introduce students to distinctive aspects and/or fundamental principles of United States law, which may be satisfied by a course in United States constitutional law or United States or state civil procedure; and (d) a minimum of six semester hours of credit in any of the subjects included in SCR 40.03 (2) (a) or (b).

Section 40.055 (4) (d) 7 outlines the content that an LL.M. program may include a maximum of four semester hours of credit in clinical courses, provided (a) the clinical course includes a classroom instructional component in order to insure contemporaneous discussion, review and evaluation of the clinical experience; (b) the clinical work is done under the direct supervision of a member of the law school faculty or instructional staff whose primary professional employment is with the law school; and (c) the time and effort required and anticipated educational benefit are commensurate with the credit awarded. In addition, the LL.M. program may include a maximum of six semester hours of credit in other courses related to legal training taught by members of the faculty of the law school or of the university with which the law school is affiliated, or taught by members of the faculty of any university or college with which the law school offers a joint degree program, provided such courses must be completed at the campus of such university or college in the United States.

Section 40.055 (5) would require applicants to submit proofs and documentation. Those documents must be in English or must be accompanied by a translation into English prepared and certified by a neutral translator.

Section 40.055 (6) would require that applicants who wish to sit for the February bar examination file all application materials and fees with the board by August 1 of the previous year. Applicants for the July bar examination must file by January 1 of the same year.

Section 40.055 (7) would permit the board to add a surcharge in individual cases if it finds that extraordinary costs have been or will be incurred in its investigation of the applicant's qualifications.

Section 40.14 (3) (i) sets forth the fee for admission for graduates of law schools in other nations at \$850, which equals the fee for admitting persons by proof of practice in other United States jurisdictions. The BBE believes this fee is appropriate because the proposed rule also requires applicants to prove, and the Board to verify, that they have practiced in the foreign jurisdiction.

Attached for the court's review are two versions of the proposal. One includes the deleted portions and the new text. The other version includes only the new text.