

**SUPREME COURT OF WISCONSIN**

## NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 11-08

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In the matter of the petition to amend Supreme Court Rule 40.02(2) and to create Supreme Court Rules 40.055 and 40.14(3)(i) relating to the legal competence requirements of graduates of law schools in other nations; fees.

**FILED****JUL 5, 2012**

Diane M. Fremgen  
Clerk of Supreme Court  
Madison, WI

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On November 18, 2011, the Board of Bar Examiners (BBE), by its director, Jacquelynn Rothstein, filed a petition with the Wisconsin Supreme Court. The petition requested the court amend Supreme Court Rule (SCR) 40.02(2) and create SCRs 40.055 and 40.14(3)(i) to establish criteria whereby eligible graduates of law schools from other nations would be permitted to sit for the Wisconsin bar examination.<sup>1</sup>

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<sup>1</sup> This petition was developed and filed in response to an order from the court. On April 1, 2008, the BBE filed rule petition 08-09 asking the court to create rules to permit graduates of law schools in other nations to take the Wisconsin bar examination. Following a public hearing the court issued an order returning the matter to the BBE for further development and, in the interim, 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. S. Ct. Order 08-09 (April 29, 2009).

The court conducted a public hearing on the petition on Wednesday, May 16, 2012. BBE Director Jacquelynn Rothstein presented the petition to the court. John Ohnesorge, Director, East Asian Legal Studies Center, University of Wisconsin, joined by Attorney Eric W. Ibele and Jason Smith, Graduate Programs Director, requested the court consider some amendments to the BBE's petition. Attorney Daniel Shneidman also requested some changes to the petition, as drafted.

At its ensuing open administrative conference, the court discussed the petition. The court was favorably disposed to the petition. The proposed rule is modeled, in part, upon New York's rule, 22 NYCRR 520.6, allowing graduates of foreign law schools to sit for that state's bar examination on certain conditions. The applicable conditions depend in part upon whether the applicant obtained his or her law degree in a nation whose jurisprudence is based on the principles of the English common law.

The court expressed concern that the rule, as proposed, would be extremely restrictive and recommended the BBE consult with and consider the recommendations made by the representatives of the U.W. Law School and by Attorney Shneidman. The issues raised by interested parties and by the court include:

(1) Whether a legal practice experience requirement is necessary, especially under the mechanism applicable to applicants who have completed an L.L.M. degree that meets certain requirements;

(2) Whether having individuals be licensed to practice law in their own "home" country is necessary;

(3) Whether individuals who come from common-law jurisdictions, but who do not meet the full criteria under the proposed rule may apply to take the Wisconsin bar upon completion of a qualifying L.L.M. degree;

(4) Whether it is acceptable to permit individuals to complete some or all of their L.L.M. coursework outside of the United States (under the proposed rule, none of the L.L.M. coursework may be completed outside of the United States);

(5) Whether the proposed rule should contain a provision limiting individuals from sitting for the bar exam if their country of origin prevents graduates of U.S. law schools from sitting for that country's qualifying legal practice examination; and

(6) Whether Wisconsin ethics provisions should be a requirement of the L.L.M. program.

The court voted unanimously to return the matter to the BBE for further development, including consideration of these issues. Upon resubmission the court will consider a revised petition in an open administrative conference.

At open administrative conference on June 28, 2012, a majority of the court voted to publish this order in the official publication of the State Bar of Wisconsin and in the official state case law reporter, Wisconsin Reports, but not in the official state newspaper. Chief Justice Abrahamson would have published it in the official state newspaper, as well.

IT IS ORDERED that this petition is returned to the Board of Bar Examiners for further development as set forth herein.

IT IS FURTHER ORDERED that notice of this order shall be given by a single publication of a copy of this order in an official publication of the State Bar of Wisconsin, as well as publication in the official state case law reporter, Wisconsin Reports.

Dated at Madison, Wisconsin, this 5th day of July, 2012.

BY THE COURT:

Diane M. Fremgen  
Clerk of Supreme Court

