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October 6, 2025

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You are hereby notified that the Court has entered the following order:

No. 2025AP1468-BA Morris v. Board of Bar Examiners

On July 2, 2025, Joy E. Morris, by counsel, filed a document titled "Petition for Review." The document seeks to challenge the Board of Bar Examiners' (BBE) determination that Ms. Morris does not meet the eligibility criteria under Supreme Court Rule (SCR) 40.04(1) to sit for the Wisconsin bar examination. This rule provides as follows:

SCR 40.04 Legal competence requirement: Bar examination.

(1) An applicant who has been awarded a first professional degree in law from one of the following shall satisfy the legal competence requirement by presenting to the clerk certification of the board that the applicant has passed an examination administered by the board covering all or part of the subject matter areas of law specified in SCR 40.03(2)(a):

(a) A law school that is fully or provisionally approved by the American bar association at the time of the applicant's graduation.

(b) A law school whose graduates are eligible to take the bar examination of the state, territory or District of Columbia in which the law school is located, provided the applicant has passed the bar examination of and has been admitted to practice in that or another state, territory or the District of Columbia.

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The underlying facts of this matter are as follows. Ms. Morris graduated in August of 2021 from the Birmingham School of Law in Birmingham, Alabama. This law school is not fully or provisionally approved by the American Bar Association (ABA). Ms. Morris has taken the Alabama bar examination six times, but has not passed it. As a result, she has not become licensed to practice law in Alabama.

In September 2024, Ms. Morris passed the bar examination administered by the Yurok Tribal Court, located in Klamath, California.

In May 2025, Ms. Morris applied to sit for the July 2025 Wisconsin bar examination. Following a review of her application and by letter dated May 5, 2025, the Board of Bar Examiners notified Ms. Morris that she was ineligible to sit for the examination pursuant to SCR 40.04(1).

Ms. Morris subsequently asked the BBE to reconsider her eligibility to sit for the July 2025 Wisconsin bar examination. At its June 6, 2025 meeting, the Board reviewed Ms. Morris's request and voted to uphold the denial. By letter of June 10, 2025, the BBE Director provided the following explanation to Ms. Morris:

Please be advised that under SCR 40.04(1) there are two ways for graduates of non-ABA accredited law schools to sit for the Wisconsin bar examination. Option one allows those individuals to sit for the exam provided they meet two criteria: (1) they must be eligible to take the bar exam of the state, territory, or District of Columbia in which the law school is located and (2) they must also become admitted to practice in that jurisdiction. Alternatively, graduates of non-ABA accredited law schools may sit for the Wisconsin bar examination if they have been admitted to practice in another state (i.e., a state other than where the unaccredited law school is located), territory, or the District of Columbia.

Your application indicates that you have taken the Alabama bar examination six times, but have not passed it and therefore have not been admitted to the practice of law in that state. Your application also indicates that you have been admitted to the Yurok Tribal Court. However, the Yurok Tribe is a sovereign nation and, as such, is not another "state, territory, or the District of Columbia." *See Helgemo v. BBE*, 2002 WL 57. Accordingly, because you are not admitted to practice law in another state, territory, or the District of Columbia, you do not meet the eligibility criteria under SCR 40.04(1) to sit for the Wisconsin bar exam.

As noted above, on July 2, 2025, Ms. Morris, by counsel, filed a document with this court titled "Petition for Review." Ms. Morris states in the document that she filed it "[p]ursuant to

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Supreme Court Rule 40.08(7)^[1] and Wis. Stat. § 809.70.^[2]” She further states that “[u]nder SCR 40.08(7) and Wis. Stat. § 809.70, this Court has authority to review decisions of the BBE regarding eligibility to sit for the Wisconsin Bar Examination.”

Ms. Morris asks this court “to review and reverse” the BBE’s determination that she is ineligible to sit for the Wisconsin bar examination. She offers two main arguments in opposition to the BBE’s determination.

The first argument is that the case cited by the BBE in its June 10, 2025 letter (quoted above)—*In re Helgemo*, 2002 WI 57, 253 Wis. 2d 82, 644 N.W.2d 912—is no longer good law. *Helgemo* involved SCR 40.05, a different Supreme Court Rule than the one at issue here. Rule 40.05 permits admission to the Wisconsin bar based on proof of practice elsewhere. At the time of the *Helgemo* decision, SCR 40.05(1)(b) required the applicant to provide, among other things, “[p]roof . . . [of having] been primarily engaged in the active practice of law in the courts of the United States or another state or territory or the District of Columbia for 3 years within the last 5 years prior to filing application for admission.” In *Helgemo*, this court held that a bar applicant could not count her legal service before tribal courts toward this durational practice requirement because tribal courts “are courts of separate sovereign nations,” not “courts of the United States or another state or territory or the District of Columbia,” as required by SCR 40.05. *Id.*, ¶13. Ms. Morris maintains that *Helgemo* ceased being good law after this court decided, in 2017, to amend SCR 40.05 so as to allow the practice of law with a federally recognized Indian tribe to be “counted” toward the durational practice requirement.³ Ms. Morris also argues that *Helgemo* was further invalidated by Congress’ enactment of the Tribal Law and Order Act of 2010, Pub. L. No. 111-211, §§ 201-266 (codified in various sections of 18 U.S.C. and 25 U.S.C.).

Ms. Morris’ second argument is that the BBE’s determination wrongfully “exclud[es] a qualified applicant without a legally sufficient basis.” Ms. Morris claims that she is qualified to take the Wisconsin bar examination given that her bar examination score in Alabama would constitute a passing bar examination score in Wisconsin, and she has passed the Yurok bar examination. Ms. Morris insists that she is asking only for the opportunity “to meet the same

¹ Supreme Court Rule 40.08(7) states, as relevant here, that “an applicant may seek review of an adverse determination by filing a petition for review with the supreme court and serving a copy on the board within 30 days of the date of mailing of the board’s adverse determination.”

² Wis. Stat. § (Rule) 809.70 sets forth the procedures to be followed in asking this court to take jurisdiction of an original action.

³ Following its 2017 amendment, SCR 40.05(1)(b) now reads that the durational practice requirement will be satisfied by “[p]roof that the applicant has been substantially engaged in the practice of law in a state or territory, the federal government, the District of Columbia, or a *federally recognized Indian tribe* for 3 years within the last 5 years prior to filing application for admission.” (Emphasis added).

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requirements as every other Wisconsin Bar Exam taker”; that is, “achiev[ing] a passing score on the exam and meet[ing] the Character and Fitness requirements as determined by the BBE.”

The BBE has filed a response to Ms. Morris’ “Petition for Review.” The BBE submits that the holding in *Helgemo* that practicing law before tribal courts amounts to practicing law before “courts of separate sovereign nations” remains valid. *Helgemo*, 253 Wis. 2d 82, ¶13. It is not affected by either this court’s 2017 amendment of the proof-of-practice provision in SCR 40.05 or by Congress’ passage of the Tribal Law and Order Act of 2010, the primary purpose of which is to address crime in tribal communities, not to address attorney licensure. The BBE further submits that

[t]he proper remedy for the Petitioner lies with the Court’s rulemaking process. If Ms. Morris believes that a law license issued by a federally recognized Indian tribe should be a basis upon which applicants are eligible to sit for the Wisconsin bar exam, then a rule petition may be filed with the Court seeking such an amendment. In 2016, that precise remedy was employed by the Petitioners who filed Rule Petition 16-09, seeking recognition of legal service in a federally recognized Indian tribe as a means of demonstrating proof of legal practice under SCR 40.05. See Rule Petition 16-09, *In re the Matter of the Petition to Amend SCR 40.05*. In the absence of a similar amendment to SCR 40.04 in which a law license issued by a federally recognized Indian tribe is specifically identified as a basis upon which applicants are eligible to sit for the Wisconsin bar exam, the BBE is compelled to interpret and apply the rule in its existing form. The Board did just that, reaching the correct determination.

With the court’s permission, Ms. Morris has filed a reply to the BBE’s brief. Although she invoked this court’s original jurisdiction in her initial filing, she appears to abandon this position in her reply brief. She states that “the basis for [her] appeal” is the alleged fact that the BBE made an “adverse determination” that she is entitled to challenge pursuant to SCR 40.08(7) (quoted in n.1, supra). Ms. Morris urges the court to “accept its jurisdiction under SCR 40.08(7) as failure to allow someone to take the bar exam is a considerable matter and the petitioner deserves to be heard on this dispute of law relating to her eligibility to sit for the Wisconsin bar exam.” Ms. Morris repeats her argument that *Helgemo* is no longer good law, either by virtue of the 2017 amendment to SCR 40.05 (discussed above) or by virtue of the congressional enactment of the Tribal Law and Order Act of 2010. Ms. Morris further asserts that the BBE’s recommendation that she file a rule petition to amend SCR 40.04 “dodges the question of law that this Court will need to address which is are Federal recognized Indian Tribes US Jurisdictions of law or Foreign Jurisdictions of Law, and if the former, how can the language of SCR 40.04(1) not be broad enough for their inclusion as a matter of fairness.”

With briefing complete, the matter is now before us. We note that our rules do not specify, and the parties do not agree, whether the denial of permission to sit for the Wisconsin bar exam constitutes an “adverse determination” that is reviewable by this court pursuant to SCR 40.08(7).

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Ms. Morris submits the answer is “yes” and the BBE answers “no,” but neither side offers more than conclusory statements on the point.

While we do not resolve here whether the BBE's ineligibility determination falls within the purview of SCR 40.08, we are satisfied that this matter is properly before us. We find SCR 40.04(3m) instructive. This provision specifies that the BBE's partial or complete denial of a request for a testing accommodation for the bar examination is a reviewable "adverse determination."⁴ If the denial of a testing accommodation for the bar is reviewable by this court, then it stands to reason that a denial of authority to sit for the examination at all is reviewable, too. Moreover, “[i]n the final analysis, . . . this court retains supervisory authority and has the ultimate responsibility for regulating admission to the Wisconsin bar.” *In re Bar Admission of Jarrett*, 2016 WI 39, ¶2, 368 Wis. 2d 567, 879 N.W.2d 116; *see also* SCR 30.02 (“Board members, board staff and board counsel acting in the course of their official duties under the statutes and SCR chapters 30, 31 and 40 and supreme court orders *are acting on behalf of the supreme court.*”) (emphasis added). This supervisory authority necessarily extends to preliminary steps in the bar admission process—here, the decision to allow an applicant to sit for the bar examination. We therefore turn to the merits of the parties’ positions.

The merits are in the BBE’s favor. Our statement in *Helgemo* that tribal courts “are courts of separate sovereign nations” as opposed to courts of a “state, territory, or the District of Columbia” remains true. The fact that this court amended SCR 40.05 (again, the rule governing admission based on proof of practice elsewhere) to specify that the practice of law with a federally recognized Indian tribe may be “counted” for purposes of the durational practice requirement only confirms this point. Were it otherwise, the amendment would have been unnecessary. Importantly, the rule at issue here—SCR 40.04—has *not* been amended in the same fashion. While Ms. Morris is free to seek an amendment of that rule, she is not free to read into the rule language that is not there.

In addition, *Helgemo* also remains good law notwithstanding Congress’ enactment of the Tribal Law and Order Act of 2010. This act attempts to address a variety of criminal justice and public safety issues on reservations. *See* Tribal Law and Order Act of 2010, Pub. L. No. 111-211, § 202 (codified at 25 U.S.C. § 2801 note)(“Findings; Purposes”). Ms. Morris fails to cogently explain how the Act relates to attorney licensure in this state.

⁴ Supreme Court Rule 40.04(3m) states in full:

An applicant who seeks testing accommodation shall submit with the application a written request that shall describe the type of accommodation requested and the reasons for the requested accommodation, including medical documentation. If the request is denied in whole or in part, the board's response shall state the reasons. *Denial of a request for testing accommodation, in whole or in part, constitutes an adverse determination that may be appealed pursuant to SCR 40.08(6) and (7).*

(Emphasis added).

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Finally, we are not persuaded by Ms. Morris' argument that the BBE's determination wrongfully "exclud[es] a qualified applicant without a legally sufficient basis." Ms. Morris has graduated from a law school that is not fully or provisionally approved by the ABA, and she has failed the Alabama bar examination six times. Her argument that her Alabama bar exam score would translate into a passing Wisconsin bar exam score is unsound, as Wisconsin, unlike Alabama, does not administer the Uniform Bar Exam, but instead administers its own state bar exam. And while Ms. Morris' success on the Yurok bar examination is significant, it does not entitle her to sit for the Wisconsin bar examination under the current language of SCR 40.04.

Finally, we note there is no indication that Ms. Morris asked the BBE to exercise its discretion under SCR 40.10 to waive the eligibility criteria under SCR 40.04(1) to sit for the Wisconsin bar exam. *See* SCR 40.10 ("Except for the requirements under SCR 40.03, the board may waive any of the requirements of this chapter in exceptional cases and for good cause if failure to waive the requirement would be unjust.") Even if we were inclined to read into Ms. Morris' filings in this court an argument that this is an "exceptional case" warranting waiver of the eligibility criteria, any such argument would have failed. Ms. Morris has graduated from a law school that is not fully or provisionally approved by the ABA; she has repeatedly failed the Alabama bar examination; and while she has passed the Yurok bar examination, she offers no information regarding its content or procedures. On this record, it is not an unreasonable exercise of discretion to decline to waive the eligibility criteria under SCR 40.04(1).

Therefore,

IT IS ORDERED that the determination of the Board of Bar Examiners that Ms. Joy Morris is not entitled to sit for the Wisconsin Bar examination under SCR 40.04(1) is affirmed.

Samuel A. Christensen
Clerk of Supreme Court