

EXECUTIVE SUMMARY

In November 2014, Chief Judge Jonathan Lippman appointed an Advisory Committee to study a proposal by the New York State Board of Law Examiners to fully adopt the Uniform Bar Examination (UBE) in New York and to administer a separate examination of New York-specific law. After months of study, during which the Committee received hundreds of written comments and heard from members of the legal community at public hearings, stakeholder meetings, and focus groups, the Committee recommends that the Court of Appeals adopt the UBE and two state-specific licensing components: an online “New York Law Course” and a separate, online 50-question multiple choice exam, the “New York Law Exam.” These changes should be implemented for the July 2016 bar examination. The Committee believes this new paradigm in New York licensing will fairly assess competency, protect clients, adapt to the geographic and economic realities of 21st Century practice, and enhance candidate proficiency in New York law.

UNIFORM BAR EXAM

Benefits to Full Adoption of the UBE

The UBE, which is prepared by the National Conference of Bar Examiners (NCBE), is comprised of three assessment tools: (1) the Multistate Essay Examination (MEE), which contains six essay questions testing law of general application; (2) two Multistate Performance Test (MPT) tasks designed to test practical lawyering skills; and (3) the Multistate Bar Examination (MBE), a 200-question multiple choice test. The current New York bar exam uses the MBE and one MPT task, so a transition to the UBE would not result in a substantial change in test administration. The principal adjustment would consist of replacing the five New York essays with the MEE’s six essays on generally accepted legal principles, which often mirror New York law.

A significant advantage of adopting the UBE is that passage of the test would produce a portable score that could be used by the bar applicant to gain admission in other UBE states, assuming the applicant satisfies any other jurisdiction-specific requirements. This portability is

crucial in a legal marketplace that is increasingly mobile and requires more and more attorneys to engage in multi-jurisdictional practice. An additional benefit of the UBE is that it includes two MPT tasks, as opposed to the one used on the current New York bar exam. These MPT questions, which require applicants to use fundamental lawyering skills to perform a legal task, will help better assess whether applicants possess the skills that are necessary to enter practice.

Fifteen states have adopted the UBE to date. New York would be the first large state, both in population and number of yearly bar applicants, to embrace the UBE, and the Committee is persuaded that if New York does go this route, other states will follow its lead.

The Committee recommends that the passing score on the UBE be set at 266, which is equivalent to New York's passing score on the current New York bar exam. The Committee further recommends that applicants who take the UBE in another jurisdiction be permitted to transfer that score to New York for a period of three years after the date on which the UBE was administered.

NEW YORK STATE-SPECIFIC COMPONENTS

The New York Law Course and the New York Law Exam

Although the UBE focuses on generally accepted legal principles, and therefore addresses the vast majority of topics and issues pertinent to anyone seeking to practice in New York State, the Committee members unanimously agree that New York lawyers should be required to separately demonstrate their competence in New York law. The Committee recommends two separate and unique measures to ensure that those admitted to practice in the Empire State are well-versed in important New York legal principles and distinctions.

First, the Committee recommends that all bar applicants take an online New York Law Course. This course would consist of several hours of videotaped lectures on New York-specific law. Embedded questions would be inserted at various intervals to assure that the viewer is attentive and engaged with the course material. In order to complete the course, the candidate would have to correctly answer these embedded questions.

Second, the Committee recommends the administration of a separate, 50-question multiple choice exam, the "New York Law Exam," which every applicant must pass in order to

gain admission to practice in New York State. The Committee concluded that adding another 50 multiple choice questions on either day of the bar exam would impose an unfair and unreasonable burden. Consequently, the Committee recommends an online test, administered at least four times annually. To ensure the security and validity of an on-line exam, the Committee recommends that the SBLE employ appropriate technological measures to deter cheating, and that all applicants be required to complete an affirmation stating that they did not provide or receive any assistance in taking the exam. The passing score on the NYLE should be set at 30 out of 50.

These two New York-specific components will sufficiently ensure that new applicants for admission have a basic grounding in New York law. Although the current exam includes five essays and 50-multiple choice questions that cover New York legal principles, it is now possible for an applicant to perform poorly on the those portions of the test and still pass the bar exam if their high score on the multistate portions outweighs their low score on the New York part. With the distinct course and exam, applicants will now be required to separately demonstrate their knowledge of important and unique aspects of New York law. The Committee stresses that the purpose of these two components is to ensure that applicants are sufficiently versed in New York law and to provide them with opportunities to learn the intricacies of New York law, not to erect unnecessary or unduly burdensome protectionist barriers.

The Committee's additional recommendations flow from comments received during the Committee's outreach. A significant number of commentators questioned whether changes to the existing bar exam would exacerbate differences in bar passage rates for certain subgroups of the test-taker population. The Committee's research did not produce any evidence to suspect, let alone assume, that its proposal would disadvantage or advantage any subgroup. That said, the Committee is mindful that the issue of differences in bar passage is highly complex, multi-layered and nuanced. The issue transcends any particular exam and involves historical differences in access to resources and opportunities for educational enrichment. Consequently, the Committee recommends that if the new assessment protocol is adopted, the SBLE conduct a three-year study on passage rates and trends, and that the results of the study be made public. This study, the details of which will be determined by the SBLE and the Court of Appeals, should compare the bar passage rates by race, ethnicity and gender under the current exam with the bar passage rates under the UBE.

Moreover, the Committee recommends the Court of Appeals and the SBLE study the bar passage trends of repeat takers to identify the challenges faced by those who do not pass the exam on the first administration. The study should identify actions that result in successful passage on subsequent administrations of the bar exam.

The final recommendation stems from the generally accepted view that new attorneys should be sufficiently prepared to practice law in New York State and the suggestion by several commentators the bar applicants should be permitted to substitute a clinical or other practical training experience for a portion of the bar exam. It is well-settled that clinics, externships and other practical skills offerings are an extremely valuable tool in educating future attorneys. However, whether these experiences should replace a component of the bar exam is beyond the Committee's charge to make a recommendation concerning adoption of the UBE. Nonetheless, the Committee understands that the readiness of new attorneys is a concern among members of the legal profession, and therefore recommends that the Court of Appeals appoint a task force to consider whether the bar licensing process should include an experiential learning requirement or some other skills assessment.

In sum, the Committee recommends that the Court of Appeals:

- (1) Adopt fully the Uniform Bar Examination for the July 2016 administration of the bar examination in New York,
- (2) Require all applicants for admission on examination in New York to separately complete the New York Law Course and pass the New York Law Exam,
- (3) Require the SBLE to maintain data and conduct a three-year study of bar passage rates by demographic and gender subgroups, with the results of the study and the summary statistics regarding group performance being made available for public review,
- (4) Study bar passage trends of demographic subgroups to identify challenges of first-time test takers as well as strategies for success that may be implemented prior to taking the bar exam, and

- (5) Appoint a task force to study whether experiential learning may be quantified as a licensing requirement or whether some other demonstration of skills acquisition should be required for licensing.