SUPREME COURT AD HOC COMMITTEE ON THE UNIFORM BAR EXAMINATION

TO THE LEGAL COMMUNITY AND INTERESTED MEMBERS OF THE PUBLIC: REQUEST FOR COMMENT

The Supreme Court Ad Hoc Committee on the Uniform Bar Examination requests comments to inform its findings and recommendation as to whether New Jersey should adopt the Uniform Bar Exam (UBE).

The UBE is a standardized test consisting of three exam components authored by the National Conference of Bar Examiners (NCBE): the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT). The MBE is a multiple choice test consisting of 200 questions covering a broad range of topics and is currently administered in all states except Louisiana. The MEE is comprised of six essay questions testing law of general application, and is currently administered in 28 states and the District of Columbia. The MPT includes two tasks designed to test practical lawyering skills, and is currently administered in 38 states and the District of Columbia. Although New Jersey currently utilizes the MBE, it does not use the MEE or MPT. Instead, the New Jersey exam contains seven essays drafted by the Board of Bar Examiners and does not include a task-based practical component. In addition to administering the NCBE's uniform exam, UBE jurisdictions must adhere to certain other conditions, including transferring and accepting the UBE score to and from other UBE jurisdictions. Jurisdictions may add local components to the UBE if desired. New Jersey does not test on local law.

At this time, 17 jurisdictions have elected to adopt the UBE. Applicants in UBE states receive a score that is portable (*i.e.*, transferrable) to other UBE jurisdictions for a fixed period of time. If the applicant's score meets the minimum passing score set by another UBE jurisdiction, the score can be accepted for the purpose of applying for admission in that other jurisdiction. Note that although UBE scores are portable, applicants still must meet all of the admission requirements imposed by each state, including, for example, minimum passing score, educational requirements, and character and fitness certification, among other considerations.

Recently, following an extensive study and comprehensive written report, New York determined to implement the UBE beginning with the July 2016 examination.[1] It is expected that New York's transition to the UBE will have a significant impact on New Jersey, as approximately 50% of all New Jersey bar applicants also test in New York. In addition, it is anticipated that other states in the region soon may become UBE states, following New York's lead.

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[1] See Advisory Committee on the Uniform Bar Examination, Final Report to Chief Judge Jonathan Lippman and to the Court of Appeals (Apr. 2015), http://nycourts.gov/ip/bar-exam/pdf/FINAL%20REPORT_DRAFT_April_28.pdf.

In light of these developments, the Supreme Court has charged the Special Committee with studying the available literature on the Uniform Bar Examination, with particular emphasis on the New York Advisory Committee's report, and, in addition, examining any issues that may be unique to New Jersey. Upon completion of the charges, the Committee will issue a report setting forth its findings and recommending to the Court whether New Jersey should adopt the UBE. This report is expected for the Court's review in early 2016.

How will New Jersey applicants be affected by the adoption of the UBE in other states?

As stated above, the current New Jersey bar examination consists of the Multistate Bar Examination (MBE) on Wednesday and seven essays, prepared by the Board of Bar Examiners, on Thursday. That schedule allows applicants to seek admission in New Jersey and in neighboring states in a single examination administration. For example, in New York and Pennsylvania, the two states in which the majority of New Jersey applicants also test,[2] the essays are given on Tuesday. Applicants who test in New Jersey and another jurisdiction take that state's essays on Tuesday, the MBE on Wednesday, and New Jersey's essays on Thursday.

Critically, however, UBE states are not required to transfer MBE scores to non-UBE states, and we cannot expect that they will. Transferring MBE scores for all dual-state applicants increases the administrative burden on UBE jurisdictions. Therefore, as nearby jurisdictions transition to the UBE (*e.g.*, New York and potentially Vermont, July 2016), we can no longer expect that those states will continue to share applicants' MBE scores with New Jersey past that date. It is anticipated that UBE jurisdictions will end the practice, thereby preventing applicants from seeking admission in New Jersey and certain other jurisdictions (*e.g.*, New York) concurrently.

What are the possible benefits and disadvantages of adopting the UBE?

When considering whether to recommend the adoption of the UBE, the Ad Hoc Committee will review a number of factors, including the anticipated benefits and potential challenges inherent in moving to participate in the uniform examination. The factors below, while not exhaustive, illustrate some of the advantages and concerns considered by jurisdictions exploring a transition to the UBE, or which have recently opted to participate in the uniform examination.

Score portability and applicant autonomy are among the principle benefits of administering the UBE. The portability of an applicant's UBE score fosters mobility among recent law graduates, which may be of particular benefit in a difficult job market. Portability of one's UBE score also recognizes the prevalence of multijurisdictional practice in the modern legal community, as many of our attorneys are practicing across state lines, particularly in Pennsylvania and New York.

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[2] For context, approximately 50% of New Jersey's applicants also seek admission in New York; 25% of New Jersey's applicants also seek admission in Pennsylvania.

As a practical matter, UBE scores can be transferred upon request among participating states. This means that rather than waiting for the next bar examination administration, an applicant seeking admission in a UBE jurisdiction immediately can begin the process of applying for admission, provided the applicant complies with the processes established by that jurisdiction.

Along the same lines, score portability removes the need for applicants seeking admission in two jurisdictions (*e.g.*, New York and New Jersey) to test for three days in a row as they currently must. Alternatively, applicants who seek admission in multiple jurisdictions currently must prepare for and sit for multiple bar examinations in successive administrations (*e.g.*, taking one exam in July and another in February). If New Jersey were to adopt the UBE, its applicants could take the single two-day examination and transfer their scores to any UBE jurisdiction without sitting for an additional day of testing or taking a subsequent exam.

However, adopting the UBE would impact certain dual-state applicants differently. Although adoption of the UBE would permit applicants to easily seek admission in New York and New Jersey, it would prevent applicants from seeking admission in New Jersey and Pennsylvania in the same examination administration. If New Jersey were to adopt the UBE, New Jersey would be required to administer its essays on Tuesday, instead of Thursday, thereby conflicting with Pennsylvania's essay examination, which also is administered on Tuesday. Further, Pennsylvania requires its applicants to sit for the MBE in Pennsylvania, and will not accept an MBE score transferred from another jurisdiction. This requirement would conflict with New Jersey's administration of the UBE because, in order for a UBE score to be transferrable, applicants must take all parts of the test (including the MBE) in the UBE state. Therefore, if New Jersey were to adopt the UBE, an applicant could not fulfill the requirements of New Jersey's and Pennsylvania's bar examinations in a single administration.

Another potential concern of adopting the UBE might be the loss of control over the drafting of the written components of the exam, specifically the transition to the NCBE's essays (MEE) and practical writing tasks (MPT). Like the UBE, the New Jersey bar examination currently tests on multi-state subjects only and does not contain a New Jersey-specific component. In addition, even if New Jersey were to adopt the UBE, the Board of Bar Examiners still would retain local control over admission requirements, including the minimum passing score, education requirements, and character and fitness certification for admission in New Jersey.

Submission of Public Comment

Against that backdrop, the Ad Hoc Committee hereby requests oral and/or written comment from the legal community and interested members of the public addressing the benefits and potential disadvantages of adopting the UBE in New Jersey. Those seeking to submit a comment should follow the procedure set forth in the Notice to the Bar, published above.