

Administrative Determinations by the Supreme Court on the Report and Recommendations of the Ad Hoc Committee on the Uniform Bar Examination

April 14, 2016

The Supreme Court created the Ad Hoc Committee on the Uniform Bar Examination (the Committee) to review and recommend to the Court whether New Jersey should adopt the Uniform Bar Examination (UBE) as a replacement for the state's existing bar examination (bar exam) format. The UBE is a standardized test drafted by the National Conference of Bar Examiners (NCBE), and is uniformly administered, graded, and scored in participating jurisdictions. Applicants taking the UBE earn a portable score that can be transferred to other UBE jurisdictions for a set period of time for the purpose of applying for admission in those other jurisdictions.

The Committee, chaired by Senior Associate Justice Jaynee LaVecchia and vice-chaired by retired Justice John E. Wallace, Jr., conducted an extensive review and considered written comments and testimony from members of the legal and academic communities, as well as the public. The Committee issued its Report and Recommendations to the Court on February 12, 2016. The Committee recommended that the Court adopt the UBE, and also made other recommendations relating to New Jersey's transition to the uniform exam.

The Supreme Court then sought and considered additional comments from the New Jersey legal community on the recommendations of the Committee. After thorough deliberation, the Supreme Court hereby issues its Administrative Determinations, approving the recommendations of the Committee, as amplified below.

Ad Hoc Committee Recommendations and Supreme Court Determinations

1. Adoption of the UBE

Currently, applicants for admission to the New Jersey bar must pass the New Jersey bar exam, comprised of the Multistate Bar Examination (MBE) and an essay component. The MBE is a multiple choice exam prepared by the NCBE, covering the subjects of civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts. The essay portion of the New Jersey bar exam consists of seven essay questions prepared by the New Jersey Board of Bar Examiners. Like the MBE, the essays do not test on New Jersey-specific law, but rather test on law of general application.

By contrast, the UBE is prepared by the NCBE and administered, graded, and scored by participating jurisdictions (i.e., UBE jurisdictions). The UBE consists of three components: the MBE, a multiple choice exam; the Multistate Essay Examination (MEE), comprised of six essay questions testing law of general application; and the Multistate Performance Test (MPT), comprised of two writing tasks designed to test practical lawyering skills.

Applicants who take the UBE earn a portable score that can be transferred to another UBE jurisdiction for the purpose of applying for admission to the bar in that other jurisdiction. UBE jurisdictions retain control over critical aspects of bar admission, including the minimum passing score, educational requirements, and character and fitness certification.

As of this date, twenty-one jurisdictions have adopted the UBE, and forty-nine of the fifty states use some or all of the components of the UBE as a part of their bar admissions process, even if they have not become UBE jurisdictions. Most significantly, the New York Court of Appeals recently determined to implement the UBE beginning in July 2016. Because approximately 50% of New Jersey's bar applicants also test in New York and seek concurrent admission in that jurisdiction, New York's determination to administer the UBE will have unavoidable, practical implications for many New Jersey applicants.

The Committee, by overwhelming majority vote, recommended that New Jersey adopt the UBE as a replacement for its existing bar exam format. The Committee reaffirmed that the purpose of the bar exam is to protect the public through a test of minimum competence, and determined that the UBE is a fair, accurate, and reliable means of measuring competence to practice law. The Committee determined that the content covered by the UBE and the current New Jersey bar exam is aligned, and emphasized that the current New Jersey exam does not contain a state-specific component that would be lost by adopting the UBE. The Committee further was satisfied that adoption of the UBE is unlikely, in and of itself, to have any impact on the passage rate in New Jersey and should not have a disparate impact on any testing population.

The Committee members placed significant positive value on the benefits of score portability. Portable scores will benefit applicants and their families by allowing greater mobility among recent law graduates and will benefit the public through the provision of increased legal resources in currently under-served areas. In addition, score portability will help alleviate the considerable financial strain facing applicants who currently sit for multiple bar exams. The Committee considered whether score portability might impact the number of applicants seeking admission to the bar of New Jersey and attempted to gauge such impact by canvassing other jurisdictions that have adopted the UBE. Based on other states' experiences, the Committee found no indication that portable scores will result in the feared "influx" of new applicants; in fact, it is possible that New Jersey may experience a small decline in admissions as students take a wait-and-see approach to their employment before applying for admission.

In recommending adoption of the UBE, the Committee was cognizant of those New Jersey bar applicants who wish to gain admission concurrently in another jurisdiction: The majority of New Jersey's applicants (approximately 75%) seek concurrent admission in New York (approximately 50%) or Pennsylvania (approximately 25%). The potential impact on those applicant subgroups was the subject of several public comments and was a topic of much Committee discussion.

As stated above, New York will begin administering the UBE exam in July 2016, and continued transfer of applicants' MBE scores to New Jersey beyond the July 2016 administration cannot be expected. If applicants are unable to transfer their MBE scores toward admission in New Jersey, they will not be able to seek admission in New York and New Jersey concurrently, an undesirable result that will impact approximately 50% of New Jersey's testing population. Avoiding that negative impact is an additional benefit to New Jersey's adoption of the UBE. However, for various reasons, New Jersey's adoption of the UBE would prevent applicants from

seeking concurrent admission in New Jersey and Pennsylvania, which will impact approximately 25% of New Jersey's testing population. Ultimately, the Committee determined that continuing to accommodate dual Pennsylvania and New Jersey applicants is desirable, but is an insufficient reason to decline adoption of the UBE.

After careful review, the Supreme Court decided to adopt the UBE beginning with the February 2017 administration of the exam. The Court agreed that the UBE is a well-written exam that fairly assesses minimum competency to practice law, and that transitioning to the UBE would bestow considerable benefits on New Jersey stakeholders, while also upholding New Jersey's high standards for attorney licensure. In reaching its conclusion, the Court considered the Committee's report, public comments and hearing testimony. The Court also took into account resolutions promulgated within the legal community "urg[ing] the bar admission authorities in each state and territory to adopt expeditiously the Uniform Bar Examination," including, most recently, two similar resolutions by the American Bar Association and the Conference of Chief Justices.

The Court acknowledges the legitimate concern that its decision may have adverse consequences for dual Pennsylvania and New Jersey applicants. The Court is hopeful that, through ongoing discussions between Pennsylvania and New Jersey, some form of accommodation can be reached for dual New Jersey-Pennsylvania applicants.

2. Establishing a Passing Score (i.e., "Cut" Score)

As a corollary to adoption of the UBE, the Committee addressed the establishment of an appropriate passing score (i.e., "cut" score) for applicants taking the UBE. New Jersey's current "cut" score is 133 on a 200-point scale; an equivalent passing score for an applicant taking the UBE (measured on a 400-point scale) would be a 266.

The Committee saw no reason to question the current standard for passing the bar exam, and noted that changing the standard would make comparison of historic passage rates and UBE passage rates impossible in the future. The Committee unanimously recommended that the Court establish a cut score of 266 -- the mathematical equivalent to New Jersey's current cut score -- in order to maintain New Jersey's high standard of competency, and to allow for direct comparison of the UBE results against prior exam administrations.

The Supreme Court decided to adopt the proposed cut score of 266 as the passing score for the UBE.

3. Monitoring the Impact of the UBE

To assure satisfaction with the UBE, and to monitor generalized concerns voiced during the deliberative process, the Committee recommended that the Court evaluate the UBE after three years of experience with its administration. The Committee recommended that the Court monitor, in particular, the impact on bar passage rates and admission data, either in the Court's own capacity or with the assistance of outside groups, such as New Jersey's law schools.

The Supreme Court decided to adopt the Committee's recommendation, and directs the Board of Bar Examiners to continue tracking bar passage rates in accordance with its existing practices, in order to monitor the transition to the UBE with emphasis on bar passage trends. The law schools should be asked to be involved in this important endeavor. Following three years of experience administering the UBE, or, as otherwise directed by the Court, a report on that data should be presented to the Court.

4. Establishing a Transfer Period

Each UBE jurisdiction may set its own period for the acceptance of scores earned in other testing jurisdictions. The transfer periods range from twenty-four months up to sixty months, with the most common being thirty-six months.

In formulating a recommended transfer period for New Jersey, the Committee sought to maximize the benefits of portability for recent graduates without making admission through UBE portability the means of expanding the practices of attorneys who were more established in their careers. The Committee viewed score portability as most likely to benefit applicants in the first three years of practice, as they seek employment and determine where to establish their legal practice. The Committee weighed the benefits of a shorter transfer period, but determined that a shorter time frame likely would encourage applicants to perpetuate the existing practice of seeking admission in multiple jurisdictions unnecessarily. Thus, the Committee unanimously recommended a three-year transfer period to permit applicants to reap the benefit of score portability as they settle into their practice.

The Supreme Court decided to adopt the proposed three-year transfer period for the reasons recommended by the Committee.