

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

Comments on NYS Board of Law Examiners Proposal Regarding Uniform Bar Examination

November 6, 2014

The New York City Bar Association appreciates the opportunity to submit comments on the recommendation of the New York State Board of Law Examiners that the current New York bar examination be replaced with the Uniform Bar Examination (UBE). State-by-state bar examinations significantly limit lawyer mobility at a time when the practice of law is increasingly national and global. The Association hopes that adoption of the UBE by New York will spur the use of this examination nationwide.

Another positive benefit of the UBE is that it will test more practical skills than the current bar exam. This bar association has long urged that the bar examination better test the skills lawyers actually use in their practice, and shift away from the current focus on memory-based testing. Additional skills testing also will better align the bar examination with its basic purpose, which is to protect consumers by seeking to ensure the quality of lawyers admitted to practice in the state.

We agree with the Board of Law Examiners that the bar examination should continue to have a New York component. We should expect lawyers admitted in New York to have a grounding in New York law. Establishing additional testing dates for the New York examination, as proposed by the Board, will reduce the burden on bar applicants and provide more flexibility.

One issue about which this bar association continues to be concerned is how the bar examination may disparately impact racial and ethnic minorities. We have raised this concern many times over the years with regard to the New York State bar exam. We do not now know whether the proposed new regime of the UBE with a New York law component will lessen or enhance such an impact. We are concerned, however, that a continued focus on standardized testing, to the exclusion of other mechanisms for demonstrating a high level of competency, may continue to disparately impact candidates of color without enhancing the quality of those who are licensed to practice law in the jurisdiction. If others have undertaken studies that examine the bar results of other UBE states for disparate impact, we ask that the Board of Law Examiners make these studies available. If not, we encourage the Board to undertake such a study to determine whether such a disparity exists and to publish the results of that analysis. At a minimum, we urge the Board to monitor the New York results under the proposed regime in the future to determine whether a disparity occurs. In an increasingly pluralistic society, especially where the practicing bar remains disproportionately white, we should seek to have a licensing process that, while setting a reasonably high standard for admittance, does nothing to impede the diversity of the legal profession.

Finally, some have suggested that implementation of the UBE in New York should be delayed pending further study. Our view on the timing of implementation of the UBE in New York is nuanced. This bar association firmly believes that adoption of the UBE is an important reform that should not be unnecessarily delayed. At the same time, we recognize that

implementation in July 2015 may upset the settled expectations of current third-year law students, especially those for whom the bar examination is an especially high barrier, and for whom the Association has particular concern. Accordingly, we respectfully request that the Board of Law Examiners and the Court consider delaying implementation until 2016. This delay also will allow time to resolve other issues that may arise.