



NEW YORK
CITY BAR

**COUNCIL ON
THE PROFESSION**

December 21, 2023

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By Email

The Honorable Rowan D. Wilson
Chief Judge
New York State Court of Appeals
20 Eagle Street
Albany, New York 12207

Re: The Future of the New York State Bar Examination

Dear Chief Judge Wilson:

We write on behalf of the New York City Bar Association’s Council on the Profession — the committee of the City Bar charged with considering broad policy questions facing the legal profession. Our Council includes law school deans, law firm partners, in-house counsel, members of the judiciary, recently admitted lawyers, and other leaders.

Before you assumed the role of Chief Judge, our Council had been in communication with Chief Judge DiFiore’s Working Group on the Future of the New York State Bar Examination, chaired by Judge Howard Levine. The Working Group was charged with considering possible changes to the structure and content of the Bar Examination, as well as to the overall process of attorney admissions. We provided extensive input to the Working Group on a range of issues.¹ Although we understand that the Working Group was considering making recommendations to the Court of Appeals and the New York Board of Law Examiners (“BOLE”), we are unsure whether those recommendations were finalized or whether the Working Group continues to meet. We understand that Judge Jenny Rivera has recently been focusing on these issues, so we have taken the liberty of copying both Judge Levine and Judge Rivera on this letter.

¹ See, e.g., City Bar Letter to Judge Levine, Nov. 1, 2022, https://s3.amazonaws.com/documents.nycbar.org/files/City_Bar_11.1.22_Letter_Judge_Levine_re_Bar_Exam.pdf (responding to five questions from the Working Group) (All websites last accessed on Dec. 21, 2023).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

In keeping with our past practices, we are reaching out to you directly to offer our Council as a resource to court leaders. Many important issues regarding the future of the Bar Examination remain unresolved and require collective and thoughtful attention:

- *First*, it is our understanding that the National Conference of Bar Examiners (“NCBE”) will be rolling out the NextGen Bar Exam beginning in 2026. In 2028, the NextGen Bar Exam will replace the NCBE’s Uniform Bar Examination (“UBE”)², which New York adopted in 2016. New York has not yet determined whether, when, or if it will adopt the NextGen Bar Exam.
- *Second*, there have been increasingly prominent national conversations regarding alternative pathways to admission. For many years, some jurisdictions have declined to use bar examinations, or have implemented robust alternatives typically based on supervised practice.³ Conversations concerning alternatives became more prevalent during the COVID-19 pandemic when physical examinations became difficult or impossible to implement.⁴ Most recently, in November 2023, Oregon adopted an alternative to a bar examination.⁵ On November 16, 2023, the California State Bar’s Board of Trustees forwarded to the California Supreme Court a recommendation that California launch a pilot Portfolio Bar Exam.⁶ New York admits more new lawyers each year than any other state. As a national leader in legal education, New York is a critical bellwether and should be at the forefront of conversations about alternative pathways.⁷
- *Third*, there has been much criticism of the New York Law Exam (“NYLE”). As the two broader issues above are considered, New York will also likely want to reconsider its use of the NYLE.

² “The current exam and the NextGen exam will be offered concurrently for two full years, making the current UBE and its components—the Multistate Bar Exam (MBE), Multistate Essay Exam (MEE), and Multistate Performance Test (MPT)—available through February 2028.” *NCBE Announces Update to NextGen Exam Content, Extends Availability of Current Bar Exam*, NCBE Press Release, Oct. 25, 2023, <https://www.ncbex.org/news-resources/update-nextgen-exam-content-extends-availability#:~:text=The%20current%20exam%20and%20the,%E2%80%94available%20through%20February%202028>.

³ University of Madison-Wisconsin Law School, *Diploma Privilege*, https://law.wisc.edu/current/diploma_privilege/.

⁴ Sam Skolnik, *Over 1000 Lawyers Get Licenses Without Taking Bar Exam*, Bloomberg Law, Jan. 4, 2021, <https://news.bloomberglaw.com/business-and-practice/over-1-000-new-lawYERS-get-licenses-without-taking-bar-exam>.

⁵ Anumita Kaur, *Oregon’s new bar-exam alternative is the first of its kind*, Washington Post, Nov. 16, 2023, <https://www.washingtonpost.com/politics/2023/11/16/oregon-bar-exam-alternative-apprenticeship/>.

⁶ <https://www.dropbox.com/scl/fi/2b2n4wmwx1ira2hqbs8f6/BOTResolution.11.16.23.pdf?rlkey=rcqkbc1cqsblgpdpgx7ns15o2&dl=0>

⁷ For an up-to-date review of lawyer licensing proposals and resources, see <https://lawyerlicensingresources.org/>.

The issues above have broad implications. Any changes to the process of attorney admissions require years of lead time, as law schools, private bar preparation companies, and students will need time to prepare.

We admired the Working Group for beginning to tackle these important challenges. But we simultaneously expressed concern to Chief Judge DiFiore that the Working Group lacked diversity along important metrics (e.g., location, age, practice area, etc.) and that it would benefit from greater transparency to critical stakeholders.⁸

We ask that you consider the Council's offer to support the Court's efforts to determine the future of lawyer licensing in New York. Our membership has deep expertise in issues related to lawyer licensing and the profession and includes broad representation from multiple stakeholders who share a deep commitment to excellence in the profession and increasing access to the profession and to the justice system. The City Bar is well-positioned to host hearings or symposia designed to aid the Court in its inquiry.

We thank you for your time and attention to these critically important issues for the future of the legal profession in New York State.

Respectfully,

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Mary Lu Bilek
Co-Chair, Council on the Profession

Christopher Wilds

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By Email

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⁸ See City Bar Letter to Judge Levine, Sept, 21, 2022, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/future-ny-bar-exam-working-group-request-initial-response>.