MEMORANDUM

DATE: April 25, 2018

TO: Dean Maureen O’Rourke, Chair
    Barry Currier, Managing Director
    Members of the Council

FROM: Judith A. Gundersen, President
    National Conference of Bar Examiners

RE: Report from NCBE

Thank you for inviting me to your meeting. I am honored to attend.

New Initiatives at NCBE

Testing Task Force
To ensure that assessment keeps pace with the rapidly evolving legal profession, NCBE has formed a future-focused Testing Task Force. The Task Force is charged with undertaking a three-year study to ensure that the bar examination continues to test the knowledge, skills, and abilities required for entry-level legal practice. The study will identify the core competencies that newly licensed lawyers need and how they can be assessed. Recognizing the shared objective of ensuring the protection of the public by assuring the readiness of new lawyers, the Task Force will solicit input from state bar admitting authorities, legal educators, and legal professionals. The study will be supported by research and review conducted by independent professionals with technical expertise, and will maintain transparency by sharing updates on its website, www.testingtaskforce.org.

New Online Character and Fitness Report Application
In March, NCBE launched a newly designed online character and fitness report application. The application is currently used by 26 jurisdictions and offers many new features including improved help text, more robust error checks, the ability to copy information to a new application, online payments, and an easier application to navigate for jurisdictions and applicants.
Communications
We are directing resources toward enhancing communications to stakeholders, updating our website (www.ncbex.org), moving The Bar Examiner to HTML, and offering e-subscriptions to that publication.

February MBE Facts and Figures
21,111 examinees sat for the Multistate Bar Examination in February 2018, 5% fewer than the number who took the exam in February 2017. The national average MBE score for February 2018 was 132.8, a decrease of about 1.3 points from the February 2017 average of 134.1. The reliability of the February 2018 MBE was 0.92, an all-time high for February. About 30% of February examinees were likely first-time test takers. The average score for these examinees was 135.0, slowing the downward trend for first-time test takers seen in recent years. The average for this group was 135.3 in February 2017.

Repeat test takers comprised about 70% of those who sat in February 2018 and had an average score of 132.0, a 1.7-point decrease compared to February 2017. This result drove the change in the overall February 2018 MBE mean.

Most jurisdictions have completed the grading of their written portions of the exam by now and those scores have been scaled to the MBE. We expect to see lower pass rates in the majority of jurisdictions. http://www.ncbex.org/news/repeat-test-taker-scores-drive-february-2018-average-mbe-score-decline/

March MPRE Facts and Figures
20,346 examinees took the March 2018 MPRE, up from 20,260 examinees last March. The MPRE mean scaled score was up 2.01 points; the MPRE mean is the highest it’s been for March since 2012.

UBE
Thirty-one jurisdictions have adopted the Uniform Bar Exam (UBE), which is composed of the Multistate Essay Exam (MEE), the Multistate Performance Test (MPT), and the Multistate Bar Exam (MBE). The latest jurisdiction to adopt is Tennessee, effective with the February 2019 administration. Adoption of the UBE is under consideration in other jurisdictions as well, including Illinois and Ohio.

External Collaboration and Events
I attended the Summit on the Future of Legal Education in April. NCBE’s Annual Conference (agenda attached) was in Philadelphia on April 19–21. In May, NCBE will be holding an MPRE question-writing workshop.

The Hon. Rebecca Berch, NCBE Chair, attended the NALP Conference April 24–27 in Ft. Lauderdale, Florida.

jag/lg
attachments
In January 2018, the National Conference of Bar Examiners appointed a Testing Task Force charged with undertaking a three-year study to ensure that the bar examination continues to test the knowledge, skills, and abilities required for competent entry-level legal practice in the 21st century. The study is scheduled to be completed by the end of 2020. The Testing Task Force’s study will be:

**COMPREHENSIVE.** The study will identify core competencies for newly licensed lawyers and explore when and how those competencies should be assessed.

**FUTURE-FOCUSED.** The study will help ensure that the assessment of core legal competencies keeps pace with a rapidly evolving legal profession.

**COLLABORATIVE.** The Task Force will solicit input from state bar admitting authorities, legal educators, and legal professionals, recognizing a shared objective of ensuring the protection of the public and the readiness of new lawyers to join the profession.

**EMPIRICAL.** The study will be supported by research and review conducted by independent professionals with relevant technical expertise.

**TRANSPARENT.** The Task Force will welcome feedback and share updates on its website as the study progresses.

**QUESTIONS OR COMMENTS?**

Contact the Testing Task Force at TaskForce@ncbex.org

www.testingtaskforce.org

National Conference of Bar Examiners
Testing Task Force - NCBE

National Conference of Bar Examiners
(http://www.ncbex.org/)

Statistics and Research

TESTING TASK FORCE

The National Conference of Bar Examiners has appointed a Testing Task Force charged with undertaking a three-year study to ensure that the bar examination continues to test the knowledge, skills, and abilities required for competent entry-level legal practice in the 21st century.

This comprehensive, future-focused study will identify core competencies for newly licensed lawyers and explore when and how those competencies should be assessed, helping to ensure that the assessment of core legal competencies keeps pace with a rapidly evolving legal profession. The study will be supported by research conducted by independent professionals with relevant technical expertise, and the Task Force will solicit input from state bar admitting authorities, legal educators, and legal professionals, recognizing a shared objective of ensuring the protection of the public and the readiness of new lawyers to join the profession.

In the coming weeks, we will be launching a new website dedicated to sharing updates as the Task Force’s work gets underway. In the meantime, we invite you to learn about the Task Force’s objectives and members (/statistics-and-research/testingtaskforce/taskforcemembers/).

About the Testing Task Force

- Why is NCBE studying the bar exam?

NCBE studies many aspects of the bar examination on an ongoing basis. Periodic confirmation that the content being tested on a licensing exam aligns with competencies expected of a newly licensed professional is common and prudent in the field of licensing exams. The last large-scale survey-based study of this nature undertaken by NCBE was conducted via a job analysis (pdfviewer/?file=%2FEdmsdocument%2F219) in 2012. The Testing Task Force reflects NCBE’s ongoing efforts to support jurisdictions and to sustain confidence by all stakeholders in the testing process.

- How is the Task Force study different from the 2012 job analysis?

The Task Force study will be more comprehensive than the 2012 job analysis (pdfviewer/?file=%2FEdmsdocument%2F219) in several ways. The 2012 study identified the job activities of newly licensed lawyers in sufficient detail to provide a job-related and valid basis for the development of licensing examinations offered by NCBE. The Task Force study will identify competencies required of newly licensed lawyers in the 21st century; it will also research whether, how, and when the identified competencies could be assessed and in the process will study test formats, test delivery methods, and the timing of test administration.

- Why is a more comprehensive study required now?

The legal profession, like other professions, is undergoing a period of accelerated change. Some of the changes are brought on by rapid developments in technology that impact both the delivery of legal services and the types of legal problems for which clients seek representation. Technology is also contributing to advances in the science of assessment and testing. In addition, competency modeling in the legal profession has become increasingly important in a variety of contexts, including assessment of competencies expected of newly licensed lawyers to protect the public. It is prudent to undertake a comprehensive and systematic study at this time to ensure that the bar exam keeps pace with developments and changes in the practice of law, legal education, technology, and testing.

- How will the Task Force solicit input from jurisdictions and other stakeholders?

The Task Force will soon retain an independent research consultant to outline a research plan for the study. Although that consultant has not yet been selected, the Task Force has advised potential consultants of the critical importance of incorporating jurisdiction and stakeholder input into the research plan. We anticipate that the study’s research methodology will gather information from our stakeholders through focus groups,
Who are the members of the Task Force?

Members of the Task Force bring many years of combined experience from their roles serving on the bench, in private practice, on state boards of bar examiners, as bar administrators, as legal employers, and as legal educators. They are familiar with NCBE’s examinations and knowledgeable about its test development processes. The Task Force is purposefully small in number to permit deliberate execution of its work, but it is committed to a comprehensive and collaborative study that draws heavily on independent expert assistance and on outreach to and input from stakeholders.

View members (/statistics-and-research/testingtaskforce/taskforcemembers/).

What is the role of the Task Force?

The Task Force will oversee the study, which will include gathering input from stakeholders. The Task Force will periodically report on its progress to the NCBE Board of Trustees and through updates on its website. Ultimately, the Task Force will prepare a final report setting out its recommendations. The report will provide a documented record of the Task Force’s work and will include qualitative and quantitative data that support its findings and recommendations.

When will the study be completed?

The Task Force plans to complete its work and submit its report to the NCBE Board of Trustees by the end of 2020.

Is the bar exam going to change?

The Task Force is approaching this study with no preconceived conclusions about whether the bar exam will or should change, whether in terms of content, format, timing, or method of delivery. Recommendations made by the Task Force will be driven by empirical research and stakeholder input. If any changes to the bar examination are recommended by the Task Force, all stakeholders, particularly state bar admission authorities and legal educators, will be informed about the nature of and the rationale for the proposed changes and will be given a meaningful opportunity to provide input on those changes. As has always been the case, no changes will be made to the bar exam without affording ample notice.

Will the Task Force study affect the Uniform Bar Exam?

The Uniform Bar Exam (UBE) is not a test product. Rather, it is a compact among jurisdictions that agree to use the same exam components, to adopt a set of policies to produce portable bar exam scores, and to accept the transfer of those scores from other UBE jurisdictions. The Task Force’s study will not change the premise on which the UBE is based—that use of the same exam components, administered and graded uniformly, produces bar exam scores that can be relied upon by other jurisdictions, sparing applicants from sitting for the bar exam in each jurisdiction in which they seek admission. UBE jurisdictions are stakeholders whose input will be sought and encouraged as the Task Force undertakes its study.

Will the study include a standard-setting study?

Setting the passing score for licensure is the prerogative of each jurisdiction. As such, the Task Force does not plan to include a standard-setting study within the scope of its work. However, research on score conversion or similar topics may be conducted if the Task Force’s study warrants it. NCBE will continue to provide jurisdictions with guidance regarding the appropriate interpretation and use of test scores.

Other groups are studying the bar exam now, too. Will the Task Force work with these groups?

The Task Force looks forward to receiving feedback and input from other stakeholder groups that are studying the bar exam. Although the Task Force study will be undertaken independently, the Task Force plans to share the results of its research with other interested stakeholders.
February Bar Exam Performance Hits Record Low

A decline in the average MBE score from the February 2018 bar exam does not bode well for pass rates, which are beginning to trickle out.

By Karen Sloan | April 19, 2018

Photo: PeopleImages/iStockphoto.com
Call it a tale of two bar exams.

Performance of law graduates taking the attorney licensing test in February has hit the lowest point in more than a decade, while scores for those taking the exam during the more popular July session have been on the upswing.

According to the National Conference of Bar Examiners, the average score on February's Multistate Bar Exam—the 200 multiple-choice question portion of the test used by all jurisdictions—fell 1.3 points (http://www.ncbex.org/news/repeat-test-taker-scores-drive-february-2018-average-mbe-score-decline/) from the previous year, to 132.8. That’s the lowest average in more than 10 years, and marks the fourth straight year that the February average declined.

By contrast, the average MBE score from the July exam ticked up slightly in 2016 and went up 1.4 points in 2017.

The diverging performance of July and February bar takers largely boils down to repeat test takers, according to Judith Gundersen, president of the national conference. Fully 70 percent of those who sat for the bar in February had already taken the test at least once, and repeat takers on average perform worse than those in their first sitting.

Indeed, the average MBE score for first-time takers in February was 135, compared to 132 for repeat test takers, the national conference reported.

While the percentage of repeat takers did not change from the February 2017 exam, they didn’t score as highly as the repeaters a year earlier, Gundersen said. Their average score fell 1.7 points from 2017. First-time February takers scored about the same as last year, she added.

“That percentage [of repeaters] from last year did not rise, but some of those repeaters’ performance dropped from last year, affecting the mean,” she said.

It’s difficult to draw too many conclusions from the February bar exam scores because the cohort of those tested is relatively small, according to Pepperdine University School of Law professor Derek Muller, who tracks bar exam trends. Just 21,111 took the bar this February, compared with 46,627 in July 2017.

But law schools may have played a role in the February declines by positioning some lower-performing students to take that exam, instead of the July one, he said.

“I think some schools have been advising their more at-risk students to skip the July bar and study more for the February bar so they have a higher chance of passing the first time; if—big if!—that’s the case, we would expect lower scores in this cohort,” Muller said.

It’s likely that pass rates will be down for the most recent exam based on the lower MBE average, Gundersen said, though jurisdictions are still in the process of grading exams and releasing scores. (Jurisdictions set their own cut scores, so the MBE average doesn’t offer a full picture of national results. Several jurisdictions, including Nevada and Oregon, have recently adopted lower cut scores, which should help boost their pass rates.)

February bar exam results are beginning to trickle in, however. Florida’s February pass rate held steady at 58 percent. North Carolina’s pass rate was 33 percent. In Mississippi, 36 percent of February bar takers passed.
### Schedule at a Glance

(See next page for breakout session descriptions.)

<table>
<thead>
<tr>
<th>Category</th>
<th>ADA</th>
<th>Bar Admissions</th>
<th>Character and Fitness</th>
<th>Foundations</th>
<th>Legal Education</th>
<th>Legal Profession</th>
<th>Research</th>
<th>Testing</th>
</tr>
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#### Thursday, April 19

- **3:00-6:00 p.m.** Registration
- **4:00-5:30 p.m.** Roundtable for Supreme Court Justices (Justices only)
- **5:30-7:00 p.m.** Opening Reception

#### Friday, April 20

- **6:30 a.m.** Morning Run/Walk
- **7:30-8:30 a.m.** Breakfast
- **8:30-8:45 a.m.** Conference Welcome
- **8:45-9:45 a.m.** PLENARY: In the Queue: Profiles of Applicants, Law Students, and New Lawyers
  - Barry Currier, James Leipold, Kellye Testy
- **9:45-10:00 a.m.** Break
- **10:00-11:00 a.m.** PLENARY: Alcohol Abuse, Addiction, Stress, and Other Wellness Challenges to the Legal Profession
  - Anne Bradford, Bree Buchanan, James Coyle, Patrick Krill
- **11:00-11:15 a.m.** Break
- **11:15 a.m.-12:15 p.m.** Breakout Sessions (A1–A4)
  - **A1:** Crime, Character, and Admissions
    - Hon. Anne Dranginis
    - Jean McElroy
  - **A2:** Basic Testing Concepts for Bar Examiners
    - Joanne Kane, Ph.D.
    - Andrew Mroch, Ph.D.
  - **A3:** New Cases and a New Presidential Administration, But Has Anything Changed?
    - Robert Burgoyne
  - **A4:** So, What Does Raise Bar Exam Scores?
    - Robert Kuehn
    - Leo Romero
- **12:15-1:00 p.m.** Lunch
- **1:00-2:00 p.m.** PLENARY: Sparks! Sessions on Ideas and Innovations
  - Communicating to the Press
    - Sophie Martin
  - LGBTI Judicial Training
    - Todd Brower
  - Legal Incubators
    - Stephanie Everett
  - Legal Design
    - Margaret Hagan
  - Washington
    - LLLT
    - Steve Crossland
  - Computer-Based Testing
    - Douglas Ripkey
  - Why the GRE?
    - Marc Miller
- **2:00-2:15 p.m.** Break
- **2:15-3:15 p.m.** Breakout Sessions (B1–B4)
  - **B1:** Character and Fitness — One Jurisdiction’s Approach to Conducting Investigations Through Final Determination
    - JT Almon
    - Mark Huntsberger
  - **B2:** Prosecuting Cheating Cases
    - Mark Albanese, Ph.D.
    - Christine Kenefick
  - **B3:** Diversity in Recruitment and Enrollment: Implications for the Future
    - Tiffanie Cochran
    - Aaron Taylor, Ph.D.
  - **B4:** The ABA Commission on the Future of Legal Education
    - Andrea Sinner
    - Patricia White
- **3:15-3:30 p.m.** Break
- **3:30-4:30 p.m.** Breakout Sessions (C1–C4)
  - **C1:** Case Studies in Character and Fitness: A Hands-On Session
    - Barbara D’Aquilla
    - Emily Eschweiler
  - **C2:** You Grade the Test!
    - Adisa Harrington
    - Matthew Samuelson
  - **C3:** Primarily Engaged in the Active Practice of Law: Are We Behind the Times?
    - Sherry Hieber
    - Bradley Skolnik
    - Marilyn Wellington
  - **C4:** Unpacking the Bar Exam
    - Timothy Davis
    - Hon. Cynthia Martin
    - Alexander Scherr
- **5:30-6:30 p.m.** Reception

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This presentation has been deemed worthy of an encore by past Conference attendees.
SCHEDULE AT A GLANCE (continued)

SATURDAY, APRIL 21

8:00-8:45 a.m. Breakfast and Welcome

8:45-9:15 a.m. **PLENARY: Lawyers as Heroes**
Blake Morant

9:15-10:15 a.m. **PLENARY: Standard Setting Studies: Exploring Frameworks, Timelines, and Methodologies**
Chad Bueckendahl, Ph.D.; Michael Kane, Ph.D.

10:15-10:30 a.m. Break

10:30-11:15 a.m. Breakout Sessions (D1-D4)

- **D1: Reading the Signs of Successful Rehab: Evaluating Progress and Developing Standards**
  Patrick Knill
  William Sleaze

- **D2: A Deeper Dive Into the UBE**
  Kellie Early
  John McLarly
  Andrea Spillars

- **D3: The ADA in Practice—What We Are Observing**
  Brad Gilbert

- **D4: Law School Innovations: Responses to an Evolving Market**
  Darby Dickerson
  Mark Gordon

11:15-11:30 a.m. Break

11:30 a.m.-12:30 p.m. **PLENARY: A View from the Courts**

**ENCORE! This presentation has been deemed worthy of an encore by past Conference attendees.**

BREAKOUT SESSION DESCRIPTIONS

A1 Recent jurisdiction experiences with applicants with substantial criminal backgrounds and the processes for evaluating their moral character and fitness.

A2 Foundations of measurement that every bar examiner should know—reliability, validity, equating, and scaling—and pitfalls to avoid.

A3 How does the new presidential administration view the Americans with Disabilities Act?

A4 How one law school dramatically increased its bar passage rate in a year and new research exploring the relationship between experiential coursework and bar passage outcomes.

B1 From application to final determination, one jurisdiction's approach to conducting a character and fitness investigation.

B2 A dynamic look at building a strong cheating case from test data through prosecution based on observational evidence, data anomalies, and prior experiences.

B3 The current and future implications of the downturn in law school enrollments on racial and ethnic stratification and an analysis of LSAC's Top 240 Applicant Feeder Schools list.

B4 The chair of the ABA Commission on the Future of Legal Education discusses key issues and the changing dynamics in legal education.

C1 A lively, interactive session of character and fitness scenarios presented in video format with discussion and determinations.

C2 Foundations of effective grading of the written components of the bar exam demonstrated in a hands-on essay grading exercise.

C3 A collaborative session exploring the traditional criteria for admission on motion and its current relevance in the profession and the rapidly changing legal employment market.

C4 Popular misconceptions and their counterarguments surrounding the purpose, integrity, scope, and composition of the bar exam.

D1 A foundation session on developing standards and processes for evaluating applicant progress in substance abuse treatment programs.

D2 An exploration of beyond-the-basics UBE policies such as concurrent applications, courtesy seating, and retake limits. How such policies can be implemented and why jurisdictions might choose not to adopt them.

D3 Case studies and data that identify the trends in law school and MPRE accommodations that will soon be at the bar admissions doorstep.

D4 Thought leaders in legal education discuss groundbreaking programs and approaches they have taken in their institutions to address the changing market.