MEMORANDUM

DATE: November 2, 2018

TO: Dean Emeritus and Professor Jeffrey Lewis, Chair
Barry Currier, Managing Director
Members of the Council
Section of Legal Education and Admissions to the Bar

FROM: Judith A. Gundersen, President
Michele A. Gavagni, Chair, Board of Trustees
National Conference of Bar Examiners

RE: Report from NCBE

Thank you for inviting NCBE to attend your November meeting. Michele Gavagni, NCBE’s 2018–2019 Board of Trustees Chair, and I are honored to make a presentation about NCBE’s activities since your last meeting.

Testing Task Force
NCBE has selected two research partners: ACS Ventures LLC, http://www.acsventures.com, and American Institutes for Research (AIR), https://www.air.org/, to support our future-focused study of the bar examination. See the Testing Task Force Quarterly Update for more information (see attachment 1). The first of our bar exam stakeholder meetings takes place in Denver with members of the Council of Bar Admissions Administrators (CBAA) in early November. More stakeholder group meetings are planned for 2019. Please visit https://www.testingtaskforce.org to follow our study and to subscribe for updates.

UBE
The Uniform Bar Exam (UBE) is composed of the Multistate Essay Exam (MEE), the Multistate Performance Test (MPT), and the Multistate Bar Exam (MBE). The UBE is a uniformly administered, graded, and scored exam that results in a portable score that can be transferred to other UBE jurisdictions. There are currently 34 jurisdictions that have adopted the UBE. Massachusetts administered its first UBE in July 2018.

Adoption of the UBE is pending in Texas; the matter is open for public comment until early December. The Texas Supreme Court will decide then whether to
implement it. If so, Texas could begin administering the UBE in February 2021, becoming the 35th jurisdiction to adopt (see attachment 2 or visit http://www.txcourts.gov/supreme/news). As of October 18, the number of UBE scores earned is roughly 110,000. The number of UBE scores transferred is roughly 12,000 (which reflects only a handful of July 2018 scores).

Events
NCBE hosted a Best Practices in Testing seminar for bar examiners and staff in Madison on October 1–2, and a New Bar Administrators seminar on October 3. Our Annual Bar Admissions Conference is scheduled for May 2–5, 2019, in San Francisco.

July 2018 Bar Exam Results
45,274 examinees sat for the Multistate Bar Examination (MBE) in July 2018. This represents about 3% fewer examinees than the number who sat for the July 2017 exam, and is the smallest group of examinees to take the July MBE since 2001. The national average MBE score for July 2018 was 139.5, a decrease of about 2.2 points from the July 2017 average (see attachment 3). This is the second lowest July MBE mean score ever recorded. (July 1984 had the lowest July MBE mean score of 139.2.) Performance was down for both first-time test takers and repeaters.

NCBE’s Director of Testing and Research, Dr. Mark Albanese, takes an in-depth look at the July results in our fall edition of the Bar Examiner Testing Column: July 2018 MBE: The Storm Surge, Again.

August 2018 MPRE Results
16,651 examinees took the August Multistate Professional Responsibility Examination (MPRE), down about four percent from 17,326 examinees in August 2017. The August 2018 MPRE average score was 93, a decrease of 0.7 points from the August 2017 average (see attachment 3).

NCBE Collaboration
NCBE is working with the Council on Legal Education Opportunity Inc. (CLEO) to support our shared goal of increasing diversity and inclusion in the legal profession. NCBE and CLEO recently announced NCBE’s commitment to provide funding to assist CLEO’s programs that help disadvantaged students achieve success in law school and prepare to take and pass the bar exam (see attachment 4 or visit http://www.ncbex.org/news/cleo-collaboration/).

NCBE Board of Trustees Membership
Our newest Board member is Augustin Rivera Jr. of Corpus Christi, Texas. Augie, as we know him, is Vice-Chair of the Texas Board of Law Examiners and general counsel for the Del Mar Community College District in Corpus Christi. We are very happy to welcome him to our Board.
The Testing Task Force has selected two independent research consulting firms—ACS Ventures, LLC, and American Institutes for Research (AIR)—to support its comprehensive, future-focused study of the bar examination. Although a detailed research plan is still being developed in consultation with ACS and AIR, broadly speaking the study will proceed in phases, with each successive phase building on the previous ones.

Initially, the study will focus on assessing the current bar examination and gathering stakeholder feedback both about the bar examination and about changes and trends taking place in the profession. The results of this research will help inform the next phase of the study, a future-focused practice analysis to identify the job activities of newly licensed lawyers and the knowledge, skills, and abilities (KSAs) required to perform them. Finally, the study will build on the information gathered in the first two phases to explore the multitude of issues related to program design and test design. The goal is to develop a set of recommendations that are supported by empirical data and that take into consideration logistical and psychometric requirements along with stakeholder feedback.

The Testing Task Force aims to study the legal profession as it is practiced by new lawyers today and to anticipate what newly licensed lawyers of the relatively near future will need to know and be able to do. Although the Task Force’s study is limited to the bar examination, it must take into consideration recent changes, as well as potential future changes, to the profession and the regulation of the profession; such changes could affect the work performed by newly licensed lawyers, which in turn could affect what should be tested on the bar examination.

Regardless of possible changes to the content or format of the bar examination, the exam’s purpose remains the same: to determine whether individuals seeking a license to practice have the KSAs to practice safely and effectively. The Testing Task Force must consider what a bar examination that fulfills this purpose while serving a dynamic professional and regulatory landscape should look like.

One of the tasks of ACS and AIR will be to help the Task Force gather, analyze, and weigh the wealth of data, ideas, and opinions on these topics and others.

In the meantime, the Task Force has started gathering articles, studies, reports, and information about what others have identified as the necessary competencies for lawyers, both in the United States and in other common-law countries such as Canada, Australia, and the United Kingdom. The Task Force has also been looking at how other professions, such as medicine, dentistry, accounting, and architecture, have identified the competencies that are assessed on their licensing examinations. A reading list of selected research relevant to the Task Force’s study, and a summary of licensure and certification in various professions in the United States, are available on the Task Force’s website.

Ultimately, the Testing Task Force must come up with a set of recommendations for a bar examination that continues to satisfy the three foundational principles of testing—validity, reliability, and fairness—to support the needs of jurisdictions as they make the licensing decisions of the future.

QUESTIONS OR COMMENTS?
Contact the Testing Task Force at TaskForce@ncbex.org.

NCBE’s Testing Task Force
The National Conference of Bar Examiners’ Testing Task Force, appointed by NCBE in January 2018, is charged with undertaking a three-year study to ensure that the bar examination continues to test the knowledge, skills, and abilities (KSAs) 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, future-focused, collaborative, empirical, and transparent.
COURT APPROVES TASK FORCE’S RECOMMENDATION TO ADOPT UNIFORM BAR EXAMINATION

TEXAS SUPREME COURT advisory

Contact: Osler McCarthy
512.463.1441 or email

October 8, 2018

COURT APPROVES UNIFORM BAR EXAMINATION FOR TEXAS AND SEEKS COMMENTS BEFORE ADOPTING

The Texas Supreme Court has adopted a task force’s recommendation to replace the Texas bar examination with the Uniform Bar Examination, which will allow new lawyers who pass the exam a score that can be applied for bar admission in more than 30 other states and territories.

In its order, the Court notes the change to the Uniform Bar Examination should begin with the February 2021 exam and necessary rules amendments will be adopted before then.

In a May 14, 2018, report the Court-appointed Task Force on the Texas Bar Examination recommended adopting the Uniform Bar Examination for Texas candidates seeking bar admission in the state. The task force’s recommendation resulted from a two-year study of bar examinations, prompted by several years’ declining bar-exam scores in Texas and across the nation.

With the Uniform Bar Examination, successful bar applicants will have a “portable” score to use for admission in other states and U.S. territories that employ the same test.

The so-called UBE consists of three of four components tested on the Texas Bar Examination (the multistate bar examination, the multistate performance test and essay questions). But the UBE does not test on Texas procedure and evidence or include Texas essay subjects as the Texas exam does now. In adopting the Uniform Bar Examination for Texas, the Court also approves the task force’s recommendation that a Texas law course and examination be developed to assure Texas bar applicants have Texas law, ethics and procedure.

Texas Board of Law Examiners will assist the Court in developing both the Texas law course and the Texas law examination.

Public comment on this order will be open through December 8, 2018. Written comments may be submitted to rulescomments@txcourts.gov.
July 2018 MBE
45,274
July 2018 MBE Examinees

Number of July MBE Examinees 2014–2018

MPRE scores are reported on a scale ranging from 0 to 200. The values reflect valid scores available electronically as of 9/13/18.

MPRE STANDARD DEVIATIONS

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August 2018 MPRE
16,651
August 2018 MPRE Examinees

Number of MPRE Examinees 2014–2018

MPRE scores are reported on a scale ranging from 50 to 150. The values reflect valid scores available electronically as of 9/13/18 on both standard and alternative forms of the MPRE.

MPRE STANDARD DEVIATIONS

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August 2018 MPRE Mean Score 93.0

MPRE Mean Score 2014–2018
NCBE and CLEO Announce New Collaboration

NCBE invests in diversity and inclusion within the legal profession

Madison, Wisconsin – The National Conference of Bar Examiners (NCBE) and the Council on Legal Education Opportunity, Inc. (CLEO) are pleased to announce a new collaboration in support of their shared goal of increasing diversity and inclusion in the legal profession. NCBE has provided funding to bolster CLEO’s programs that help individuals from traditionally underrepresented racial and ethnic groups and disadvantaged communities achieve success in law school and prepare to take and pass the bar exam. For over 50 years, CLEO has successfully contributed to increasing the number of lawyers from diverse backgrounds in all sectors of law.

“Diversification of the legal profession is a top priority for legal education and admissions stakeholders at all levels. We are proud to partner with CLEO and support programs with a strong track record of helping prepare underrepresented groups for law school and bar exam success,” said Judith A. Gundersen, NCBE President and CEO.

“Diversity and inclusion have been the cornerstone of CLEO’s mission since 1968,” said Cassandra Sneed Ogden, the Chief Executive Officer of CLEO. “We are extremely excited about the opportunity to collaborate with NCBE to expand the services we provide our students, especially those preparing for the bar examination. NCBE has a wealth of online information and study aids available to help students be successful in their final quest to join the legal profession. However, some students need a personal touch to coach them over the finish line. With NCBE’s generous financial support, CLEO will be able to assist scores of 1Ls, 2Ls, and 3Ls across the country to methodically prepare to conquer the bar exam.”

About the Council on Legal Education Opportunity, Inc.

CLEO, Inc., is committed to diversifying the legal profession by expanding legal education opportunities for individuals from traditionally underrepresented racial and ethnic groups and disadvantaged communities.

Founded in 1968 when the number of lawyers of color was less than one percent, more than 10,000 individuals have participated in CLEO’s programs, many of whom have gone on to excel in every area of the legal profession to include judges, corporate attorneys, law school deans and professors, practitioners, politicians, and more. Although best known for its Pre-Law Summer Institute “boot camp” for entering law students, CLEO provides services to secondary, college (pre-law), and law school students, which include mentoring, placement assistance, academic counseling and support, bar prep orientation, and scholarships. For information about CLEO, Inc., and its programs, please visit: www.cleoinc.org. For more information about
CLEO’s historic 50th Anniversary and corresponding celebrations, please visit: www.cleoinc.org/50.

About the National Conference of Bar Examiners

The National Conference of Bar Examiners, headquartered in Madison, Wisconsin, is a not-for-profit corporation founded in 1931. NCBE develops the licensing tests used by most states for admission to the bar. NCBE stakeholders and constituents include state Supreme Courts, state attorney licensing boards, attorneys, and law school deans. NCBE is governed by a national board of trustees consisting of judges, bar examiners, and bar admission administrators. Approximately 71,000 law school graduates sat for the bar exam in 2017. For more information, see the NCBE website at www.ncbex.org.

On October 26, 2018, NCBE President Judith A. Gundersen, NCBE’s Board of Trustees, and NCBE Diversity Issues Committee Chair Bryan R. Williams met at NCBE headquarters with CLEO Director of Prelaw Program Operations Bernetta Hayes and CLEO Board of Directors member Malcolm L. Morris to formalize its collaboration.

Front row: Suzanne K. Richards, Bernetta Hayes, Michele A. Gavagni, Malcolm L. Morris, Judith A. Gundersen, Hon. Phyllis D. Thompson, Bryan R. Williams, Hon. Rebecca White Berch (Ret.)