

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

REPORT OF THE SUBCOMMITTEE ON EARLY ADMINISTRATION OF THE BAR EXAM

March 4, 2014

Committee on Legal Education and Admission to the Bar (LEAB)

Background

This document will set forth a brief history and explanation of the process leading to the deliberation and adoption of a proposal, commencing on page, ten for early administration of the bar exam. As part of its ongoing program for the study and improvement of legal education, as early as the spring of 2012, the Committee on Legal Education and Admission to the Bar (LEAB) created several subcommittees confronting particularly urgent challenges. Among these was a subcommittee to study early administration of the bar exam, the subject of the present report. At the same time, the Committee addressed itself to educating the practicing bar about these challenges. It called upon thought leaders, educators, and regulators to add their voices to the debate by writing scholarly articles that the Committee gathered in the special September 2013 New York State Bar Association *Journal*.¹ The Committee followed up on the *Journal* issue by planning

¹ After a brief new introduction, this report presents the text of the article "Alternatives for Scheduling the Bar Exam," by Mary Campbell Gallagher, J.D., Ph.D., and Professor Carol A. Buckler, co-chairs of the subcommittee

a Presidential Summit that took place during the January 2014 annual meeting of the New York State Bar Association. Endorsed by President David Schraver, the Summit brought together leading thinkers from the academy, the bench, and the bar for a live forum. Practitioners attending the Summit learned from leading experts and had the opportunity to discuss many pressing issues facing the profession.

The Committee's next project is a joint program with the New York State Judicial Institute on Professionalism and the Law, an all-day spring convocation that will bring together representatives of the bench, the bar, and the legal academy, with the expectation that we will have an opportunity for dialogue and begin to formulate a coordinated response to the current crisis.

Executive Summary

Before presenting its report on early administration of the bar exam, the Committee wishes briefly to summarize its other current initiatives. The Committee has taken the lead in connecting the judiciary and leaders of the Bar with the innovative Daniel Webster Scholars Program at the University of New Hampshire School of Law. This program provides law students with an integrated set of theoretical and applied classes coupled with robust assessment at every stage. Graduates who complete the program successfully become licensed members of the New Hampshire bar without taking the traditional bar exam.

The Committee has studied the national landscape and identified three initiatives as three of the most promising areas for report: the proposal we discuss

on early administration of the bar exam. The article appeared in the *New York State Bar Association Journal*, September 2013.

in the attached material, Early Administration of the Bar Exam; a Skills Training Requirement; and the Daniel Webster Scholars. The Committee will not be bringing a substantive proposal regarding the NH program before the NYSBA's Executive Committee because LEAB met with the NY Court of Appeals last spring and, more recently, requested that the Court consider soliciting proposals from the 15 NY law schools for pilot programs that incorporate some aspects of NH program. The Court is in the process of re-reviewing our Informational Report on a skills requirement and early administration. Recognizing that law schools have been inundated with requirements, with regard to the skills requirement proposal, we are pausing until after the spring convocation.

The subcommittee on early administration of the bar exam began to study offering the bar exam optionally after the second full year of law school in the spring of 2012. The subcommittee recognized that practicing attorneys are essential to the process of reminding law schools of what it means for lawyers to be practice- ready. Early in the process, the subcommittee also contacted the academic deans of the fifteen law schools in New York state to advise them of the proposal, to answer questions, and to seek support. The deans who responded raised questions, but no dean opposed the proposal.

Early Administration of the Bar Exam

The Committee urges your consideration of a proposal, discussed in detail in this report, for early administration of the bar exam — giving students the option of taking the bar exam at the end of their second year of law school. Early administration has numerous benefits, as the subcommittee's report points out. It

would permit law graduates who chose to exercise this option to enter the profession more quickly. The full Committee supports the proposal. At the December 5, 2013 Committee meeting, following a full and lengthy discussion, the entire committee voted. There was general, although not unanimous, agreement to proceed with an Informational Report to the Executive Committee in support of early administration of the bar exam. The Committee agreed that this should decidedly not be viewed as a basis for eliminating the third year of law school, but rather as a steppingstone towards devoting the third year to preparing students for specialization and practice.

Pro Bono Scholars Program

Following the publication of our subcommittee report replicated in the *Journal*, and after our presentation of the early-administration proposal to the Executive Committee in January, in his annual address on the state of the judiciary, February 2014, Chief Judge Jonathan Lippman announced the creation of the Pro Bono Scholars program. We applaud Judge Lippman's program, and we see our proposal as entirely compatible with it. Under the Chief Judge's program, law students who commit to performing 500 hours of *pro bono* work during their final semester of law school will be permitted to take the bar exam in February. We welcome this way to increase access to justice. It will encourage law students to contribute needed legal services in exchange for the opportunity to take the bar exam early. We are delighted to note that the Pro Bono Scholars program acknowledges the attractiveness of early administration of the bar exam and early admission to the bar, an attractiveness that motivated our own earlier proposal. Like our proposal, the Pro Bono Scholars program recognizes that law students may be ready for the bar exam before they complete their third year.

The program announced by the Chief Judge simultaneously serves at least three laudable goals:

- Allowing law students to accelerate their admission to the Bar and hence their marketability as new lawyers;
- For such students, reshaping a very significant part of their third year to be focused on the practical exercise of legal skills in what can and should be a well-supervised learning environment – hence, skills training; and
- Enlarging the pool of persons who are prepared to provide legal services to those who need and cannot afford them, both in the immediate sense of those students devoting a substantial portion of their third year of law school to providing such services and in the long term sense of instilling a professional commitment to pro bono service.

Distinguishing LEAB's proposal from Pro Bono Scholars Program

While we think that the opportunity to take the Bar Examination in February of the third year is one solid option, we believe that there should also be an option to take the Examination during the summer before the third year (i.e., at the July sitting) and then to provide an equivalent amount of public service legal work spread across the entire third year rather than focused in the final months of law school. While a February sitting may work for some students at some law schools, the additional alternative of an earlier July sitting addresses numerous concerns for all three affected groups — law students, law schools, and potential clients; similarly, the option of spreading the pro bono service over the entire third year

should enhance the Scholars Program's value in the following ways for all three constituencies while improving the practical operation of the program:

- (i) formal or informal bar review study for the February examination may conflict with fall semester law study, and Bar review study during the first part of what would otherwise be the second semester takes away from the possibility that this time could be used for the student's legal education, to the detriment of both the student and the law school — whereas students who sit for the examination in July after their second year have ample time for bar review study after conclusion of the second semester and this sitting of the examination is closer in time to when they will have studied many of the examination subjects in law school;
- (ii) studying for a February administration of the Bar Examination may actually undercut student involvement in clinical legal services that would otherwise occur in the fall semester; and concentrating the Scholars' use of the law school's clinical supervisory and teaching resources in the spring semester may also make it more difficult for other students who seek the opportunity for clinical training (and service) to fit such a program into their schedules (because such slots may be open for them only in the fall semester under these circumstances);
- (iii) by spreading their legal service over the full third year the Scholars will retain more of an opportunity to take third year advance-level courses that are also valuable enhancements of their skills as new

lawyers (including, most particularly, courses offered only in the spring semester);

- (iv) students in part-time and evening courses may be more likely to undertake this program with a July examination option, and the possibility of providing the pro bono service either across two semesters or in one concentrated period may make the “service” part of the program more feasible for them;
- (v) students who sit for the July examination will have their Bar Examination results before the start of the spring semester; for those who have passed (assumedly the great majority), not only will a cloud over their spring semester be lifted but they will be able to complete their paperwork for admission (a process that can itself take many months) during the spring semester and be put on the agenda for the Character and Fitness Committees, and hence on the track for admission to the Bar, immediately after graduation. For those who, unfortunately, fail the examination, the “early warning” will allow them to target their preparation for taking the examination again post-graduation (the next July sitting) [we do not recommend that they be allowed to take the examination again in February, although others might very reasonably have a very different view], allowing them to seek guidance from their law school during the spring semester as well as to choose bar preparation courses appropriately. The fact is that most of those who do not pass the examination on the first try do eventually pass it, and these students will have a head start on getting their entry into the profession back on track right after law school

rather than waiting, in an essentially unemployable status, for six additional months;

- (vi) (vi) allowing law students to spread their legal service over the fall and spring semesters will make both for better resource planning for the law schools and for a greater continuity of services to the populations being served; and(vii), quite simply, for law students who do not have access to well-compensated jobs for their second year summer, studying for the July administration of the Bar Examination and getting the results in the fall should enhance their ability to compete for job slots that will be available post-graduation.

The importance of the practicing bar

The practicing bar has a major role to play in restoring the dignity and worth of a professional law degree. Improvement will not come all at once, but we can begin the journey by taking steps toward strengthening legal education through reform. Results will not be immediate and there may be missteps along the way, but as New York lawyers, we must ask ourselves if we will lead or follow? Should we wait to see what the ABA will do in its accrediting or national policy-making roles? Should we wait to see how recent California initiatives play out or should we play a leadership role, as the New York bar has always done in the past?

New York State's unique role in legal education and law practice

New York is well positioned to help steer the current national debate as our bar attracts many lawyers from across the nation and around the world. New York is the gold standard for lawyers from around the world and it is incumbent upon us

to ensure that a license to practice law in New York continues to be a strong signal of competence, integrity and professionalism. When older clients desperately need family estate planning, or municipalities need advice about siting wind turbines, or individuals on the brink of bankruptcy are facing foreclosure, if their lawyers are licensed in New York, they should be assured of quality representation.

LEAB urges the NYSBA Executive Committee to examine our proposal — Early Administration of the Bar Exam — to think about the tough questions of where market forces and other pressures have taken the legal profession, and ask: can we in New York and can our profession afford to ignore the current challenges? We believe that this proposal represents concrete action that will begin to address the challenges facing legal education.

Early Administration of the Bar Exam Proposal

Overview

Reforming legal education has recently become a hot topic in legal and academic circles, and even among the public. It has become an urgent priority within law schools, to benefit their students and prospective students, and to enhance the quality of the education they provide. Although many questions about law school curriculum incite debate, everyone agrees that graduates' high debt load and limited job opportunities pose a serious challenge for the profession. The national conversation has generated proposals for changes both major and minor.

Proposals for major changes include, among others, shortening law school to two years, changing the third year of law school to an apprenticeship model, and allowing students to take the bar examination during or before the third year.

The NYSBA Committee on Legal Education and Admission to the Bar has a broad-based membership representing all the law schools in New York as well as bar examination officials and a wide range of practicing attorneys from around the state. This Committee has deliberated at length about ways to move forward. This report presents one proposal that the Committee believes has the potential of benefiting new lawyers, making them more employable sooner, and thus helping to relieve their burden of debt. Focusing in this instance on a challenge for new lawyers in New York State, we note that new graduates customarily take the bar exam in July following graduation from law school. They do not learn whether or not they have passed the exam until November, and they may not be sworn in until the following spring. This may limit their employability.

Committee and Subcommittee Deliberation

The Committee accordingly supports a proposal to add an option for students to take the bar exam after two full years of law school. This proposal would retain as a second option the current system of taking the bar exam after the completion of the full three-year J.D. program. This second-year option may give

students more job opportunities upon completion of their third year of law school and graduation, and it may also broaden their choices of coursework during their third year.

If law students can take the bar exam in July following the second year of full-time study or the equivalent amount of coursework in part-time study, new graduates will receive their bar results during their third year. They can accordingly apply for admission to the bar immediately following receipt of the JD degree. This will make them more immediately employable in agencies and small law firms. As members of the bar they can interview clients or even appear in court.

We emphasize that this second-year proposal creates an additional option, not a requirement. Students could still choose to take the bar exam after the third year of the JD program. This option has the further advantage that it would not entail changing the content of the bar exam, and it would not change the prerequisites for admission to the bar, including the JD.

Argument for a Second Year Option

The arguments in favor of offering the second-year option follow.

Many students have the skills and knowledge to pass the bar earlier in their law school careers. If students could take the exam closer to taking foundational courses in law school, they might need less time for review. Those who pass an earlier administration of the exam would no longer need to worry about the exam, and might be free to pursue clinical courses, specializations, and upper-level skills courses. This in turn could encourage and facilitate law school innovation in the third-year curricular choices. Students with externships or part-time jobs during their third year might be more attractive as job candidates if they had already passed the bar exam and could begin work as a practicing lawyer almost immediately. Having a positive bar result after the second summer might even facilitate students' obtaining part-time paid employment during their third year, which could in turn reduce financial pressure and possibly debt burden.

For some students, as noted above, there would be a substantial financial benefit because they would be eligible to be licensed as soon as they graduated. Some employers, especially smaller law firms, will not hire applicants who cannot counsel clients immediately and possibly represent them in court. Some firms will not even interview applicants who lack a license. A delay of many months in a law graduate's ability to advise and represent clients can make a painful difference to his or her ability to start earning money and repaying student loans.

Once the second-year law student took and passed the bar exam, the only further steps to being a licensed attorney would be the Character and Fitness interview and the swearing-in, which would take place after graduation. Students could graduate from law school one week and, at least in theory, be sworn in the next. They might even decide to take another state's bar exam in the July following graduation.

There may be an advantage for bar candidates who failed an early administration, too. Those students could spend time in their third year working on acquiring additional knowledge and analytical skills, aiming to improve their chances of passing the exam on their second try. If successful, such students might still pass the bar exam before having to begin repaying student loans. They would have two chances to pass the exam within the traditional schedule, rather than one. Some have suggested, though, that students choosing this option might not take the first try seriously, and so they might fail at higher rates.

To be sure, any expansion of options relating to career planning and professional development can complicate decision-making for law students and complicate the law school's counseling function as well. Students taking the bar exam during their second summer would have to do significant advance planning to be confident that they had taken a broad enough range of coursework to be

prepared for the bar. Thus, an early bar option would support a law school's emphasizing the need for students to master, early in their law school careers, the basic knowledge and analytical skills tested on the bar exam. On the other hand, many students only have the basis to assess their progress at the end of their first year of law school or the end of their first summer, while preparing to take the bar during the second summer could require them to make some curricular decisions earlier, perhaps as early as the spring semester of their first year, when they are choosing courses for their second year.

In addition, many students now use the second summer of the three-year program to gain valuable work experience. If students decided to study for and take the bar exam instead, they might lose the opportunity to work in a law office, to earn money to help support themselves through the final year of school; to study abroad, or to take an internship or another clinical experience. They would also need to refine and enhance their academic and career counseling of students to respond to a more complex array of choices.

Should this proposal be adopted, among the questions to be resolved are how eligibility to sit for the exam would be determined — number of credits, required core coursework, minimum GPA, other eligibility — and who would determine

eligibility. We recommend that law schools make the decisions determining eligibility to participate in the program.

Conclusion

Overall, we believe this proposal offers significant promise of reform, and that having such an option available may benefit students in their path to admission to the bar.

The Committee accordingly recommends a proposal to add an option for students to take the bar exam after two full years of law school.

Based on the foregoing, the Committee on Legal Education and Admission to the Bar approves this report and recommends approval of the report by the New York State Bar Association's Executive Committee and/or the House of Delegates.

Members of the Early Administration Subcommittee of the Committee on Legal Education and Admission to the Bar

Mary Campbell Gallagher
Carol Buckler
Toby Golick
Dean Hannah Arterian
John McAlary □
Jennifer Gundlach

Members voting on proposal of the Committee on Legal Education and Admission to the Bar

Eileen D. Millett, Co-Chair
Ian Weinstein, Co-Chair
Bruce Baker
James Beha, II
Carol Buckler
Kim Connolly
Ilene Cooper
Dean Christian Day
John Ferrara
Mary Campbell Gallagher
Sharon Stern Gerstman**
Toby Golick
Jennifer Gundlach
Dean Anne Lukingbeal
John McAlary □
Frederick Price Rooney
Robert Stiles

* John McAlary, while participating in the discussions leading to the Subcommittee's recommendations, did not participate in drafting this Report and has abstained from taking a position on the recommendations contained herein.

**Sharon Stern Gerstman is the Executive Committee Liaison

Members not participating in March 4 meeting and not voting on proposal of the Committee on Legal Education and Admission to the Bar

Dean Hannah Arterian
Prof. Adele Bernhard
Daniel Brennan
David Gouldin
John Gross
Prof. Randy Alex Hertz
Prof. Beryl Jones Woodlin
Prof. Mary Lynch
Christina Ryba
Dean Patricia Salkin
Melinda Saran

Paulette Ross

Mailing Purposes Only, no participation in the vote

Dean Nicholas Allard
Dean Anthony W. Crowell
Dean Matthew Diller
Pamela Edwards
Dean Eric Lane
Dean Michael M. Martin
Dean Trevor Morrison
Dean Macau W. Matua
Dean David Schizer
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