



NEW YORK STATE BAR ASSOCIATION

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Deputy Executive Director
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150 Grand Street
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Hon. Edward D. Carni
Hancock Estabrook
1800 AXA Tower I
100 Madison Street
Syracuse, NY 13202

Dear Ms. Levin Wallach and Judge Carni:

Congratulations on the appointment as co-chairs of the Court's Committee to study and report to the Court various options for a robust New York-specific bar eligibility requirement" in light of the Court's decision to replace the Uniform Bar Examination with the NextGen Exam in July 2028. The New York State Bar Association has described in detail its concerns about the current NYLE in reports previously issued by its Task Force On The New York Bar Examination (attached). The New York State Bar Association is keenly interested in the work of the Committee, eager to participate in its investigative and evaluative processes, and confident that we can make valuable contributions that will help the Committee reach results that NYSBA's membership, the legal community, and the non-lawyer public can appreciate.

We are thankful Michael McNamara is on the Committee representing the bar association and hopeful that the Committee will provide us with details regarding the Committee's resources, procedures for public engagement, and the timetable for fulfilling its mission. In anticipation of the Committee beginning its work, we offer a few suggestions regarding its composition and processes.

1. Committee Membership: We are meeting with the Chief Judge on March 5th and planning on mentioning that we believe it is important that Committee membership include representatives of all interested groups, including the consumers of legal services, solo and small firm practitioners, and lawyers and judges who regularly deal with matters in rural communities.

2. Committee Resources: New York has historically played a leading role in bar reform, and its actions are watched very closely by other bars, preparers of bar exams, and scholars. New York must accept the leadership role that history and circumstance have thrust upon it by undertaking an independent, well-resourced evaluation of bar admission "options." It must avoid the temptation to rely second-hand on decisions of smaller, vastly different state bars or on the data, research, and reports from entities with interests that are very different from New York's. We respectfully suggest that this Committee seek funding and commission its own professionally-conducted survey of the knowledge and skills that newly admitted lawyers use in the small law firms, resource-challenged non-profits, and large-caseload government offices where most New York lawyers' practice.

3. Committee Action Plan: In or about 1992, the Court engaged three independent, professional psychometricians under the chairmanship of Cornell University Professor Jason Millman, to evaluate the validity, reliability, and disparate impact of the New York law component of the two-day bar exam given at that time, as well as assess the Board of Law Examiners' procedures for accommodating test takers with disabilities, ensuring security of exam answers, grading exams, setting cut scores, and handling appeals of failing scores. The Millman Report, which was issued in May 1993 and covers several hundred pages, indicates that the Millman team used panels of practicing lawyers to gather data about exam question validity and question sensitivity, interviewed Board of Law Examiner personnel extensively about their procedures for granting accommodations, retaining and training graders, and scoring exam, and analyzed substantial amounts of data from BOLE files. In the Executive Summary of the Report, the Millman team concluded that the "validity, reliability, lack of bias, and other aspects of the New York State Bar Examination and its implementation surpasses acceptable levels." Notably, that high grade was awarded to the full-day-of-New-York-law exam that Chief Judge Lippman replaced with the current, much-criticized, two-hour, open-book NYLE. That decision was made, as we understand it, without the Court in 2016 undertaking the extensive professional, psychometric study conducted by the Court in 1993. The Court now has the opportunity to correct that unfortunate omission by retaining appropriate professional psychometricians to design and conduct an evaluation of bar admission "options," including an open-book, take home exam like the current NYLE.

4. Committee Engagement with The Public: Before adopting the Uniform Bar Examination in 2016, Chief Judge Lippman authorized a series of public hearings around the State to take comments from members of the bar, bench, law school student body, and legal academy. Written comments were also solicited and collected. Those oral and written comments, which on balance expressed grave concerns about jettisoning the "New York Day" of the bar exam, ultimately provided the impetus for the Court to create the New York Law Course and condition admission to the New York bar on passage of the NYLE. We believe that the Committee should create a procedure for gathering and evaluating input from the public about the options the Committee intends to consider so that the Committee's deliberations, as well as its final report, can be

informed by the wisdom and experience of the legal profession and the public we are privileged to serve.


5. Timetable: We respectfully request that the Committee let us know its action plan with appropriate milestones, target dates and timetables for the work.

We make these suggestions in the spirit of opening a dialogue with the Committee on the critical issues associated with evaluating and reforming the New York Law Exam.

Respectfully,

A handwritten signature in black ink, reading "Domenick Napoletano". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Domenick Napoletano, Esq.
President, New York State Bar Association

A handwritten signature in black ink, reading "Kathleen Marie Sweet". The signature is cursive and elegant, with a prominent initial "K".

Kathleen Marie Sweet, Esq.
President-Elect, New York State Bar Association