

**Testimony to Advisory Committee on New York State Bar Examination of New York State  
Bar Association President Domenick Napoletano**

**May 13, 2025**

I'm Domenick Napoletano, President of the New York State Bar Association (NYSBA). With me today is NYSBA General Counsel David P. Miranda. We thank the members of the Advisory Committee, and Chief Judge Rowan Wilson for this invitation to share NYSBA's views regarding proposed changes to the manner in which those seeking the honor and privilege of practicing law in the great State of New York are examined and tested. We applaud Chief Judge Wilson for his leadership in forming this Advisory Committee to examine whether our current and future form of testing for New York State bar admission is sufficient to test the skills and ability of law school graduates to be ready to practice law in New York.

As you know NYSBA opposes the use of the current UBE exam without a substantial and rigorous New York State examination. We support the premise that the current UBE examination is inadequate for New York State and can be improved. The 50 question online, multiple-choice, open-book, New York Law Examination (NYLE) that accompanies the current UBE is neither substantial or rigorous and is recognized as inadequate. Newly admitted attorneys in New York need to be ready to practice law, and in order to get there our old testing models need to be challenged and improved. However, the membership of NYSBA, the practicing attorneys of New York State, have very strong concerns that the NextGen exam for New York State, as it is currently configured, without a substantial and rigorous New York exam, will not lead us in the right direction, but rather is a step backward.

A license to practice law in New York is the gold standard for lawyers across our nation and around the world. That must not change, or be tinkered with, without long and careful deliberation. More often than not, the laws of New York do not follow the Uniform Laws that either the current UBE or new NextGen exam tests; rather New York laws are special, unique and sometimes frustrating, but the ability to understand and navigate the nuances and pitfalls of New York law is crucial to the ability to be able to practice competently in New York. New York, with its progressive laws, courts, and judges, is a recognized leader in the legal community throughout our nation and the world. Practicing here is special and is unique, and very different from practicing in Iowa or Nebraska. Our bar examination should be, must be, properly reflective of our uniqueness, our diversity, and our influence throughout the world.

Practicing in New York is different than any place else in the world. New York State is the opposite of uniform. What makes New York different is also what makes us so sought after. Attorneys in other states and other countries first want to practice in their home jurisdiction, but for many, a license to practice law in New York is their second most valuable asset. Every year New York State admits thousands of new attorneys from most every state and dozens of countries. We have seen since the use of the UBE that law schools are no longer attracting students to New York centric courses like civil practice, because it's not necessary to pass the New York bar exam.

When we're told that the NextGen is better because it will increase the portability of a New York license we're concerned, because there is no outcry from our members about barriers to entry in other states; no outcry from practicing New York attorneys, no outcry from our clients or the

public, and no outcry from our courts that they wish more out of state attorneys could practice here. It is the attorneys in other states who more easily flood the New York legal community without an understanding of New York law and dilute the significance of a license to practice in New York. Law firms and employers in New York want attorneys steeped in the complicated nuances of New York practice; clients in New York, whether rich or poor, need their attorneys to be fully versed in New York law. Our bar examination is the gatekeeper to protect the public we are privileged to serve. The proposed configuration of the NextGen will be a step backward if it does not include a substantial and rigorous examination of New York law.

It is important to keep in mind that the purpose of the bar examination is to determine whether the law school graduate has mastered the legal skills and general knowledge that a practicing attorney should have. This means a firm grasp of black letter law and a solid grounding in the basic analytical, reading, and writing skills. Writing a well-constructed legal essay is a learned skill that requires mastery of the law and the nature of logical argument.

A licensing process that fails to assess the candidate's ability to write, analyze, and reason logically about the law of the licensing state is inadequate to achieve its objective. This is what a licensing exam for the practice of law must be designed to do. When a candidate has mastered the basic skills of legal analysis and an understanding of the law, then the bar exam is not a barrier to the profession but a threshold requirement for entering the profession to be met like any other.

When Court of Appeals Chief Judge Jonathan Lippman announced in 2015 that the state would adopt the two-day Uniform Bar Exam, he also declared that the "New York Day" of the bar

exam would include a separate test of New York law that he promised would be “thorough” and “rigorous,” and would provide “comprehensive testing of knowledge of New York law,” and preserve New York’s reputation among state bars as the “gold standard” for bar admission.

The court’s Advisory Committee on the Uniform Bar Exam, which had spearheaded a statewide effort to gather comments from members of the bar, bench, and legal academy about the court’s plan to revise the bar exam, reported that a “recurring theme at nearly every public hearing” was concern about the potential negative effects on both the teaching and study of New York law once the bar exam no longer included the New York Day essay questions. Commenters argued that in the absence of such essay questions, the exam would not test examinees’ ability to spot and analyze the state law issues they might encounter when asked to solve the problems of their New York clients, nor would it assess whether they could clearly and accurately describe in writing the solutions to those problems.

The “recurring” concerns about new attorney competence in New York law have proven to be well-founded, and the promise of a “gold standard” for admission to the New York bar has not been kept. This court has the opportunity now to commission a careful study of the New York Law Examination with a view toward correcting what hindsight shows are the unintended, negative consequences of the state’s eight-year experiment with the Uniform Bar Examination/New York Law Examination protocol.

In my February 27, 2025 letter to CJ Wilson commending him for the formation of this Advisory Committee, we called upon him and you to engage a psychometrician to advise this Advisory Committee on the type of New York examination to recommend. When the New York Bar

examination was studied by this Court in 1992, this 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 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 the 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 then Chief Judge Lippman replaced with the current UBE along with the much-criticized, two-hour, online, open-book NYLE. That decision was made in 2015, without undertaking the extensive professional psychometric study conducted by this Court in 1993. This Advisory Committee has the opportunity to correct that glaring omission by retaining appropriate professional psychometricians to design and conduct an evaluation of bar admission "options." Please tell me – has the Advisory Committee recommended the retention of a psychometrician to advise on the proper method of examination. If so, who have they recommended? If not, why not?

We agree that New York State should embark upon creating an exam that is greater than the current model, a bar exam that truly tests the ability to practice law in New York and keeps the New York license as the gold standard for lawyers. We submit that implementing the NextGen exam without a substantial and rigorous examination of New York law does not lead us in the right direction. We ask the Chief Judge and this Advisory Committee not to be unnecessarily hasty in its decision. To date we have seen scant proof regarding the potential disparate impact of this new exam. It is not sufficient to say let's try it for a few years and see what happens. Without further study we may well be disenfranchising important groups of people from the privilege of practicing law in New York – and it is a privilege, and responsibility, that New York and not some other entity should control.

New York State must be diligent in providing an examination that fully tests knowledge of New York law and the skills necessary to practice in New York. The current exam does not get us where we need to be, and the proposed NextGen does not get us there either. We are confident that with the leadership of Chief Judge Wilson, and the dedication of this Advisory Committee, working together with the organized bar and the great law schools of this state, we will do better. The New York State Bar Association stands ready to work with you to ensure that New York State and its bar examination remains the gold standard for practicing law. On behalf of NYSBA, I thank Chief Judge Wilson, and this esteemed Advisory Committee for starting us on the path to a bar exam that truly and comprehensively tests the ability to practice law in New York.

## Attachments

1. February 27, 2025, Letter from NYSBA President Domenick Napoletano – <https://nysba.org/wp-content/uploads/2025/04/NYSBA-Feb-27.pdf>
2. *Time for Change: Future Attorneys in New York Need a Rigorous Exam To Be Better Prepared*, Domenick Napoletano, New York State Bar Association Journal, Spring 2025, Vol. 97, No. 2 – <https://nysba.org/presidents-message-time-for-change-future-attorneys-in-new-york-need-a-rigorous-exam-to-be-better-prepared/>
3. *A Rigorous New York Law Exam: Nuisance or Necessity? A View From the Bench*, David R. Marshall and Suzanne Darrow-Kleinhaus, New York State Bar Association Journal, Spring 2025, Vol. 97, No. 2 – <https://nysba.org/a-rigorous-new-york-law-exam-nuisance-or-necessity-a-view-from-the-bench/>
4. *New York's Nex Bar Exam: Where Should We Go From Here?*, David R. Marshall and Suzanne Darrow-Kleinhaus, New York State Bar Association Journal, Fall 2024, Vol. 96, No. 4 – <https://nysba.org/new-yorks-next-bar-exam-where-should-we-go-from-here/>
5. *Report and Recommendations of the New York State Bar Association Task Force on the New York State Bar Examination*, April 2020 – <https://nysba.org/wp-content/uploads/2020/04/Report-Task-Force-on-the-New-York-Bar-Examination-April-2020.pdf>
6. *Third Report and Recommendations of the Task Force on the New York Bar Examination*, June 2021 – <https://nysba.org/wp-content/uploads/2021/03/Task-Force-on-the-New-York-Bar-Examination-FINAL-approved-June-12-2021.pdf>
7. *New York Needs a New Bar Exam*, Hon. Alan D. Scheinkman and Michael Miller, New York State Bar Association Journal, September/October 2021, Vol. 93, No. 5 – <https://nysba.org/wp-content/uploads/2025/04/Attachment-7.pdf>
8. *Remarks of President-Elect David P. Miranda to the Advisory Committee on the Uniform Bar Examination*, February 3, 2015, New York State Bar Association Journal, February 2015, Vol. 87, No. 2 – [https://nysba.org/wp-content/uploads/2020/04/Journal\\_February-2015\\_FINAL-WEB.pdf](https://nysba.org/wp-content/uploads/2020/04/Journal_February-2015_FINAL-WEB.pdf)

All of the attachments can be found at the New York State Bar Association's Government Relations webpage at: <https://nysba.org/governmentrelations/>