



# NEW JERSEY STATE BAR ASSOCIATION

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Ad Hoc Committee on the Uniform Bar Examination  
Attn: Committee Staff Susanne Johnson, Supreme Court Clerk's Office  
Richard J. Hughes Justice Complex  
P.O. Box 973  
Trenton, New Jersey 08625-0973

Dear Ms. Johnson:

On behalf of the New Jersey State Bar Association, I thank the Court and the Ad Hoc Committee on the Uniform Bar Examination for the opportunity to provide comments on the potential adoption of the uniform bar exam (UBE) in New Jersey and for extending that time period to allow additional time to collect and analyze available information.

In considering the value and utility of the UBE, as with any substantive change to the profession, our compass is guided by asking whether the proposed change is the best way to protect members of the public who seek assistance from lawyers.

It is clear that the UBE has obvious benefits for test takers. It offers the ability to sit for a single administration of the bar exam that is considered in the admission process in several states where the UBE is adopted.

However, at the present time, the NJSBA is not convinced that the UBE is in the best interest of all law students, newly admitted attorneys, employers, the profession, and, most critically, New Jersey citizens.

Despite our best efforts to collect and analyze available information, current data is inconclusive about the impact of a uniform bar exam on the local practice of law due to its newness and its recent implementation in some states. We note that, to date, only one northeastern state has utilized the UBE during an actual testing cycle.

The NJSBA believes the Committee and the Court should be mindful of the following particular concerns:

- **It is unclear whether the UBE ensures competency to practice law in New Jersey.** As such the NJSBA requests that consideration be given to whether a separate state-specific test on New Jersey laws and procedures is necessary to ensure that applicants are sufficiently qualified to practice law in New Jersey and are familiar with our rules of professional conduct. Other states have done this or plan to do this, including New York, and sufficient time should be allotted to examine those results and consider whether New Jersey should adopt a similar test.
- Currently there is insufficient data from New Hampshire and no data from New York or Vermont to reliably predict **what impact, if any, adoption of the UBE would have on the practice of law in New Jersey.** We are mindful that a physical presence in New Jersey is no longer required to practice here and that out-of-state attorneys already practice in New Jersey, if admitted *pro hac vice*. While adopting the UBE in New Jersey does not necessarily translate to a flood of out-of-state attorneys practicing law here given CLE requirements and the challenges of managing cases in two or more states, the impact remains unclear. Statistical information from western or mountain states that have implemented the UBE does not show any pattern to allow us to form a clear picture of the potential impact of the UBE in New Jersey. It will be critical to gather data from New York, a neighboring state, to allay concerns that adoption of the UBE will overcrowd the legal market in New Jersey.
- **Questions still remain about how adoption of the UBE will affect those candidates seeking dual admission in Pennsylvania or New York,** since only New York has adopted the exam and Pennsylvania has given no indication of making the change. Currently, most bar exams are offered over a two-day period. Wednesday is the uniform day for all jurisdictions to offer the multistate bar exam (MBE). New Jersey adds an additional day on Thursday, which permits applicants to take the exam in a second jurisdiction where the additional day of testing is on Tuesday, like Pennsylvania and New York.

The UBE is given on a Tuesday/Wednesday cycle, with Wednesday being the MBE testing day. The National Conference of Bar Examiners (NCBE) advises that applicants can sit for the exam in a UBE jurisdiction on Tuesday and Wednesday, and in a non-UBE jurisdiction on Thursday, in the same manner as applicants who currently take the New Jersey exam in the same testing cycle as either New York or Pennsylvania. The NCBE further advises, however, that the UBE jurisdiction has to agree to provide the individual MBE scores to the non-UBE jurisdiction, since the jurisdiction where an applicant takes the UBE exam has control of the scores on the individual portions of the exam.

New York has indicated that it will share the MBE scores with non-UBE jurisdictions, including New Jersey, for the July 2016 exam. So, for now, if New Jersey remains *status quo*, test takers will still be able to take the New York and New Jersey exams concurrently, sitting for the UBE in New York on Tuesday and Wednesday, and the New Jersey essay portion on Thursday. It remains unclear, though, if New York will continue to share the MBE scores in the future.

The Pennsylvania bar exam is administered on Tuesday and Wednesday, the same days as the UBE. Thus, if New Jersey were to adopt the UBE, applicants would no longer be able to sit for the New Jersey and Pennsylvania bar exams in the same testing administration if Pennsylvania continued to administer its exam in the same fashion as it does currently. The NJSBA understands Pennsylvania has pledged to work with New Jersey to alleviate any conflicts should New Jersey adopt the UBE, but what that means is unclear.

Currently there are over 25,000 attorneys in New Jersey who are also admitted in Pennsylvania, and over 40,000 attorneys who are also admitted in New York. Therefore, conflicts with the exams given in those two states could present very real conflicts for individuals seeking to gain a dual license. While the NJSBA understands both states have indicated they may make changes that will affect New Jersey applicants in the future, the NJSBA has not seen any firm statement or proposal from either jurisdiction. The NJSBA urges the Court and this Committee to carefully examine and evaluate all of the available options to resolve conflicts with either state before a final decision is made.

- According to the NCBE, 9 out of 14 states that have already implemented the UBE reported a decreased passage rate immediately following administration of the UBE. **The data is inconclusive about whether that decrease in passage rates is attributable to the UBE or some other factor.** Of particular concern to the NJSBA is the lack of information about the effect of the UBE across different demographics, since the NCBE does not collect that information.

The NJSBA understands that New York will collect demographic information but that will not begin until the July 2016 administration of the bar examination. The NJSBA believes that no determination should be made about UBE adoption until there is sufficient data to determine whether such action will adversely affect any particular demographic or minority group.

These concerns may be ultimately invalidated by time and experience; however, without the benefit of additional time to gather and review data from the implementation of the UBE in New York and other northeast states, the NJSBA recommends against implementation of the test in New Jersey at this time.

The NJSBA respectfully urges the Court to wait for at least a year to gain the benefit of this data before making a final determination.

The NJSBA sees no reason to rush to introduce the test in New Jersey until the experience of other states can be adequately reviewed, and in particular, that of New York. While we are mindful that, once adopted, New Jersey can back out at any time, we believe a more prudent

approach would be to ensure the UBE is appropriate for New Jersey in the first instance by, again, waiting for more relevant, conclusive data about the test before moving forward. Thank you, once again, for allowing the NJSBA additional time to consider all of the issues presented by the prospect of implementing the UBE in New Jersey, and for considering these comments. Should you require additional information, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Miles S. Winder, III", with a stylized flourish at the end.

Miles S. Winder, III  
President

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cc: Thomas H. Prol, Esq., NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director