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## *Articles*

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6

ADVANCING TRANSPARENCY IN LAW SCHOOL EMPLOYMENT DATA:  
THE ABA'S NEW STANDARD 509

*by David Yellen*

14

THE EARLY DAYS OF NCBE'S MBE COMMITTEE:  
REMINISCENCES FROM A FORMER CHAIR

*by Douglas D. Roche*

17

A MODEL APPLICATION FORM FOR TEST ACCOMMODATIONS

*by Laurie Elwell*

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## *Departments*

---

2

LETTER FROM THE CHAIR

*by Franklin R. Harrison*

4

PRESIDENT'S PAGE

*by Erica Moeser*

20

THE TESTING COLUMN

PERSISTENCE ON THE BAR EXAM

*by Susan M. Case, Ph.D.*

24

NEWS AND EVENTS

30

LITIGATION UPDATE

*by Fred P. Parker III and Brad Gilbert*

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# LETTER FROM THE CHAIR

In spite of competing for my attention with Florida Gator football, the NCBE staff has kept me on the road this fall. Of particular interest in my travels was the Council of Bar Admission Administrators (CBAA) Fall Meeting in Lexington, Kentucky. The CBAA is made up of bar admission administrators from the individual jurisdictions, with Dave Ewert of Iowa currently serving a second term as chair. These are the folks who understand how the sausage is really made. Under Dave's leadership the conference was superb. Each session was well attended and informative and generated lively discussions. The CBAA serves a vital role in the bar admissions process. I appreciated the opportunity to attend.

In November the MBE Committee held its annual meeting with the chairs of the MBE drafting committees and the chair of the MPRE Drafting Committee. New members of the MBE Committee include Chief Justice Rebecca White Berch of the Arizona Supreme Court, who also serves on the NCBE Board of Trustees, and Jeff McInnis, former chair of the Florida Board of Bar Examiners and now emeritus member of the Florida board. Looking ahead to the future addition of Civil Procedure to the MBE, the committee welcomed Professor Mary Kay Kane, former dean of the Hastings College of the Law, as chair of the newly created Civil Procedure Drafting Committee.

In addition, I was given the opportunity to attend and speak at the inaugural International Conference of Legal Regulators held in London this past September. Also attending was Chief Justice Michael Heavican of the Nebraska Supreme Court, who is president-elect of the Conference of Chief Justices and a member of the NCBE Special Committee on the Uniform Bar Examination. The conference, organized by the Solicitors Regulation Authority, the independent regulatory body for solicitors in England and Wales, was the first of its kind, designed to bring together individuals and groups from different countries that are responsible for the admission and oversight of lawyers. The purpose of the conference was to initiate a dialogue between these entities regarding the admissions standards and oversight processes in each of the jurisdictions and to work toward the sharing of admissions and discipline information.

It was clear from the beginning that, while everyone's stated goal was the protection of the public, there were some very divergent opinions on the methods that would best serve that goal. In fact, not everyone was in agreement as to who should be driving the admissions and oversight train. For example, because of their lack of a strong independent judiciary, the representatives from Zimbabwe expressed great reservations about having judicial control over bar admissions and regulation.



On the panel with me for the session “Competence on Admission” were Vanessa Davies, Director, Bar Standards Board of England and Wales; T.P. Kennedy, Director of Education, Law Society of Ireland; and Joe Catanzariti, President-Elect, Law Council of Australia. Most countries shared the United States’ and Australia’s emphasis on high character and fitness standards, but there were others who placed more emphasis on the admission of *all* law school graduates, with character and fitness issues becoming secondary. Not surprisingly, some representatives had a difficult time understanding the logic in our 50+ jurisdictions with different bar exams, different pass/fail lines, and different admissions standards. Our system was particularly difficult for European Union countries to understand, since their lawyers appear to be able to practice with ease in other EU countries. Discussions revealed that some countries leave the preparation of the bar exam, as well as the grading and determination of who passes, to the law schools—decisions, I think, that hinge on the fact that the law schools serve a very different role in the admissions process in those countries.

During the session “When Things Go Wrong,” Jayne Kim, Chief Prosecutor for the State Bar of

California, made it clear that her job, as in most U.S. jurisdictions, is to be a police officer investigating the bad apples in our profession. In discussions, Tahlia Gordon of the Office of the Legal Services Commissioner of New South Wales, Australia, outlined a different approach employed in Australia. Their regulators concentrate on the law firms and not individual lawyers. Firms must designate a senior lawyer to work directly with the regulators in report-

ing the firm’s compliance with the rules of the bar. In practice, the Australian regulators’ concept is to work with the firms to keep lawyers out of trouble to begin with, rather than apprehending and disciplining lawyers after misbehavior has already occurred. According to Gordon, since they have gone to this approach, the numbers of complaints and disciplinary actions taken have been greatly reduced.

Needless to say, when you have regulators from over 30 jurisdictions comparing notes, you will discover an ocean of differences in their approaches. In spite of this, I left with renewed confidence in the future of our profession worldwide, as well as a renewed awareness of the challenges facing regulators in both admissions and oversight. Continued discussions and conferences on an international stage such as this one can only help all of us learn from one another’s mistakes and accomplishments. 📺

Best regards to all.

Sincerely,

A handwritten signature in black ink, appearing to read "Franklin R. Harrison". The signature is fluid and cursive, with a large initial "F" and "H".

Franklin R. Harrison

# PRESIDENT'S PAGE

by Erica Moeser

Imagine walking into a doctor's office to seek care of some sort and discovering that the physician you are seeing had just hung out a shingle after completing four years of medical school. It gives me the shivers. Of course, that is what can and does happen when some new lawyers spill out of law school.

The magnitude of what lawyers—new or experienced—are licensed to do came home to me last year in letters writ large when the NCBE Long Range Planning Committee grappled with developing a list of tasks that lawyers perform. This was done in conjunction with the job analysis that NCBE commissioned as part of the Content Validity Study related to its testing program.

The job analysis report, titled *A Study of the Newly Licensed Lawyer*, is now available on the NCBE website, [www.ncbex.org](http://www.ncbex.org). It is informative about the actual tasks performed by newly licensed lawyers as well as the knowledge, skills, and abilities the respondents—all newly licensed lawyers—felt that they needed in order to perform those tasks.

A quick scan of the tasks is sobering. Can a three-year law school curriculum actually prepare recent graduates to undertake work of the breadth and complexity listed? There is so much to know, and so much to know how to do. In addition, there is the application of professional judgment that ranges far beyond sheer knowledge.



While for NCBE the objective of the job analysis was to better inform us about the relationship between what we test and what newly licensed lawyers do—and it will serve us as we continue ongoing evaluation of our testing program—the information obtained serves other purposes, too.

For law schools, the job analysis information serves as a reminder of what graduates face when they complete their legal studies and offers guidance, if you will, about how the law school curriculum can help graduates emerge prepared for what awaits them. For some law schools, the information in the job analysis report will serve as a pleasant affirmation that the curriculum is already moving in step with their students' needs.

To continue with the medical profession analogy, the medical school graduate moves into a residency system that monitors, mentors, corrects, and develops the medical professional. The same cannot be said for many who emerge from law school, and for this reason, and barring any change to our existing licensing model, the license to practice law that is conferred shortly after law school graduation is a general license. It will continue to be for the new lawyer to recognize the tasks beyond his or her capabilities, and some of the time, when the new lawyer does not, the outcome achieved will occur at the expense of trusting clients.

In any event, I encourage anyone interested in thinking about what the practice of law entails, or what preparation for the practice of law should or must involve, to spend a few moments visiting *A Study of the Newly Licensed Lawyer*.

On another topic, I recently asked members of the NCBE testing staff to look at how many times lawyers attempt the bar examination. We started with the group that first took the Multistate Bar Examination in July 2006. Few took the test more than twice. The results for this cohort were so striking that it made sense to ask if the July 2006 results were aberrational. As a result, the study was replicated with the group that took the bar examination for the first time in July 2007. Those results followed the same pattern.

Of course, the data were not complete, in that of the candidates who sat for the examinations in July 2006 and July 2007 (51,176 and 50,181, respectively), we could only identify and longitudinally track a subset because we needed clear data points that are not always available to us at NCBE. The samples were of a good size, however: 30,878 for July 2006 and 30,759 for July 2007.

This is what we learned from following those first-time takers through 11 test administrations: for July 2006, 84.2% took the examination only once, 9.3% took it twice, 3.2% took it three times, and 1.5% took it four times. For July 2007, 85.3% took it only once, 9.1% took it two times, 2.9% took it three times, and 1.3% took it four times.

We also determined that of the first-time takers who sat in July 2006, 0.9% took the examination more than five times. For the July 2007 cohort this figure was 0.8%. The good news is that most candidates move into licensed status fairly quickly,

since presumably most of those who stop testing are successful. I was interested in seeing what the data would show because of my interest in a law school accreditation policy that judges schools based on the performance of graduates over 10 bar exam administrations. I offer it here as food for thought. My thanks go to Dr. Susan Case, NCBE Director of Testing, and Doug Ripkey, Associate Director of Testing, for doing all the heavy lifting that produced this analysis. (For more detailed results for the July 2007 group, which was followed through July 2012, see the Testing Column on page 20.)

As the year draws to a close, we see on the horizon three likely additions to the ranks of Uniform Bar Examination jurisdictions. This will bring us to 13 if our predictions, which are always conservative, hold true. There are several more jurisdictions in the pipeline, and in each of these there is a local process usually driven by the Court or the Board of Bar Examiners. There is an inexorable move in the direction of a common test, with decisions about applicant eligibility and the need to teach or test significant state-law distinctions left to the individual jurisdictions.

Finally, NCBE salutes our Director of Financial Operations, Marian Kontek, upon her retirement early next month after almost 13 years of excellent service. As one of the “unseen hands” as far as most examiners and administrators are concerned, Marian has been a faithful guardian of the organization’s assets, with a keen eye on keeping the resources of this nonprofit organization prudently budgeted and spent. She has been an important part of the NCBE family, producing reports to the Board of Trustees that have allowed it to carry out its fiduciary responsibilities to the organization with confidence. We wish her many happy times ahead. We thank her, and we will miss her. 📷

# ADVANCING TRANSPARENCY IN LAW SCHOOL EMPLOYMENT DATA: THE ABA'S NEW STANDARD 509

by David Yellen

**L**aw schools have come under some withering attacks in the past few years. Lawyers, judges, and many within legal education question whether we adequately prepare students for the practice of law. The escalating cost of tuition, resulting high debt loads, and large numbers of graduates struggling to find employment have led to questions about our economic model. And there have been charges—in news articles, blogs, and over a dozen lawsuits—that schools have misled applicants and students about the employment outcomes of their graduates.

Recently, the American Bar Association's Section of Legal Education and Admissions to the Bar (hereinafter ABA), which is recognized by the United States Department of Education as the national accrediting agency for American legal education, took a major step to ensure that prospective law students will have access to a great deal of detailed information about the employment outcomes of each law school's graduates. In August 2012, the ABA House of Delegates approved amendments to Standard 509 of the ABA's *Standards and Rules of Procedure for Approval of Law Schools*. The amended Standard 509, Consumer Information, clarifies law schools' obligations regarding reporting and publication of consumer information, including employment data, and strengthens the range of sanctions that may be imposed upon a law school that violates the Standard by providing incomplete, inaccurate, or

misleading information.<sup>1</sup> Although significant problems remain in legal education, the ABA deserves much credit for acting to enhance transparency in the reporting of law school employment data.

## HOW LAW SCHOOLS HAVE HISTORICALLY REPORTED EMPLOYMENT DATA

For many years, law school students and applicants have had access to a variety of information about their job prospects.<sup>2</sup> The ABA has required schools to report data annually on the employment status of graduates nine months after graduation. The ABA has published this data in the *ABA/LSAC Official Guide to ABA-Approved Law Schools*. In addition, schools typically post employment statistics on their websites and include them in recruiting materials. Standard 509 has long required schools to publish "basic consumer information," including placement rates. Many schools also publish salary data, either for the entire graduating class or by job category. Virtually all law schools report data to the National Association for Law Placement (NALP), which produces many valuable reports, and to *U.S. News and World Report*, which uses that data in its law school ranking formula.

The career placement profile in the 2012 edition of the *Official Guide* for my school, Loyola University Chicago, is shown on page 7 (data are for class of 2009 graduates).

ABA CAREER PLACEMENT PROFILE  
FOR LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW 2009 GRADUATES

<b>Loyola University Chicago School of Law</b>		
<b>Employment (9 months after graduation)</b>		
	<b>Total</b>	<b>Percentage</b>
Employment status known	299	97.4
Employment status unknown	8	2.6
Employed	274	91.6
Pursuing graduate degrees	14	4.7
Unemployed (seeking, not seeking, or studying for the bar)	7	2.3
<b>Type of Employment</b>		
# employed in law firms	145	52.9
# employed in business and industry	52	19.0
# employed in government	46	16.8
# employed in public interest	14	5.1
# employed as judicial clerks	12	4.4
# employed in academia	5	1.8
<b>Geographic Location</b>		
# employed in state	221	80.7
# employed outside the United States	2	0.7
# of states where employed	18	

*Source:* LAW SCHOOL ADMISSION COUNCIL AND AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA/LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 2012 EDITION 425 (2011).

The profile contains much valuable information, but the data are incomplete and potentially misleading. A prospective student might ask several important questions that are left unanswered by this profile:

- Of the graduates working in law firms, how many are in permanent positions as associates, and how many are in temporary positions as law clerks? How many are employed full time versus part time? What size are the law firms?
- Are the graduates in business and industry working as attorneys, in other professional positions, or in nonprofessional jobs?
- How much are graduates earning?

Some schools, Loyola included, have provided students with additional information. But before the financial crisis and Great Recession of 2008–2009, not much attention was really paid to these questions. Most students were getting good jobs, student loan default and attorney unemployment rates were very low, and optimism about the future pervaded legal education. There were occasional reports of schools “gaming the system,” but most schools treated this data collection and dissemination seriously and honestly. Few applicants or students seemed troubled by the available employment information.

## HOW THE RECENT ECONOMIC DOWNTURN LED TO SCRUTINY OF THE DATA

This situation changed dramatically after 2008. In the wake of the financial crisis and Great Recession,

law firm and government hiring slowed dramatically. Students who had been offered jobs with large firms saw their positions deferred or eliminated. Many graduates were able to find only part-time or temporary jobs. Although many of us expected hiring to bounce back strongly after the recession ended in 2009, it did not. Just as in other segments of the economy, globalization and technology have affected long-term prospects for law firms, and although many have returned to high levels of profitability, they have been reluctant to hire at their pre-recession rates. State and local governments still struggle with deep financial problems, which affect their ability to hire lawyers.

In light of this major downturn, many people became concerned that employment data reported by law schools were inappropriately strong. Most schools were still reporting employment rates of around 90% or more, even as more and more graduates were struggling to find truly meaningful jobs. There were a couple of reasons for this disconnect.

First, when schools (or the ABA, NALP, or *U.S. News*) use a single “employed” number, this includes part-time, temporary, and non-law-related jobs. Even at the height of the recession, most law school graduates were not unemployed, but many were getting by with less-than-ideal situations. Clearly, more graduates were underemployed than in the past, but this fact would not show up in a single employment statistic.

Also, some schools began hiring significant numbers of their own graduates in temporary positions. The schools said that these jobs were useful



bridges to practice in a tough economy, while skeptics believed that these positions were designed to prop up the schools' employment rates (and *U.S. News* rankings). Regardless of one's view, I think it is fair to say that no one goes to law school hoping, upon graduation, to work in a short-term position at his or her school. For all of these reasons, employment rates of 90% just did not ring true and certainly understated the problems in the job market.

A variety of individuals and groups began to pay attention to this problem. Two students at Vanderbilt University Law School founded Law School Transparency in 2009 in an effort to publicize issues about employment data and to exert pressure on the ABA and individual schools to make changes. Stories about the law job market began to appear in major publications such as the *New York Times* and the *Wall Street Journal*. Beginning in 2011, class action lawyers got involved, finding plaintiffs to sue 15 law schools for consumer fraud.

## THE ABA SECTION'S STANDARDS REVIEW COMMITTEE TAKES ACTION

At around the same time, the Standards Review Committee of the ABA's Section on Legal Education and Admissions to the Bar took up the issue from a regulatory standpoint. In 2008, the Section began a comprehensive review of its *Standards and Rules of Procedure for Approval of Law Schools*. (This type of review is required by the U.S. Department of Education of all recognized accrediting bodies.) The Standards Review Committee was charged with reviewing all of the Standards and making

recommendations about changes. I served on the Committee from 2006 to 2012. From the beginning of the review, the Committee recognized that Standard 509, regarding disclosure of consumer information by law schools, was inadequate and needed revision. Although not among the first few items the Committee took up, this issue was taken under consideration in relatively short order.

I was asked to chair a subcommittee on Standard 509. Our subcommittee, and then the Standards Review Committee as a whole, engaged in a deliberate process intended to craft a new rule that would satisfy the legitimate need for applicants and students to have complete and accurate employment information, without unduly burdening schools. We coordinated our work with the ABA Section's Questionnaire Committee, which drafts policies regarding the data that law schools must submit to the ABA. With the exception of one significant area, which I will discuss shortly, the two committees were in full agreement about how to proceed.

## REVISIONS TO STANDARD 509

In early 2012, the Standards Review Committee approved a proposed revision to Standard 509 and sent it to the ABA Section Council. Later that spring, the Council adopted most of that proposal. The proposed revisions were circulated to interested parties for notice and comment, a public hearing was held, and the Council made its final approval in June, followed by ABA House of Delegates approval in August 2012. The parts of new Standard 509 dealing with employment data read as follows:

Standard 509. CONSUMER INFORMATION

...

(d) A law school shall publicly disclose the employment outcomes of its J.D. graduates on its website.

(1) The employment outcomes shall be posted on the school’s website each year by March 31 or such other date as the Council may establish.

(2) The employment outcomes posted must be accurate as of February 15 for persons who graduated with a J.D. degree between September 1 two calendar years prior and August 31 one calendar year prior.

(3) The employment outcomes posted shall remain on the school’s website for at least three years, so that at any time at least three graduating classes’ data are posted.

(4) The employment outcomes shall be gathered and disclosed in accordance with the form, instructions and definitions approved by the Council.

...

**Interpretation 509-2**

*Subject to the requirements of subsection (a) above [mandating that all consumer information shall be complete, accurate, and not misleading, and that schools shall use due diligence in obtaining and verifying consumer information], a law school may publicize or distribute additional information regarding the employment outcomes of its graduates.*

**Interpretation 509-3**

*Any information, beyond that required by the Council, regarding graduates’ salaries that a law school reports, publicizes or distributes must clearly identify the number of salaries and the percentage of graduates included in that information.<sup>3</sup>*

As you can see, the Standard itself is fairly simple, directing schools to disclose three years of

employment data on their websites, and to gather and disclose that data according to rules developed by the Council. But in reality, this is a far-reaching proposal because of the detailed employment information required in the form that schools must complete. The information requested by the Council under the new Standard for Loyola’s class of 2011 is shown on page 11.

The chart lays out in useful detail information about whether the jobs obtained by Loyola’s graduates were full- or part-time, permanent or temporary, whether a J.D. degree was required, the size of the law firms in which graduates were employed, and more. A prospective student looking at this chart will have a very good idea about how our graduates were doing nine months after graduation. And importantly, because the ABA has posted all schools’ employment information on its website, an applicant can easily compare different schools’ data.<sup>4</sup>

**Salary Information Disclosure**

The one major area where there was disagreement between the Standards Review Committee and the

**ABA CAREER PLACEMENT PROFILE  
FOR LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW 2011 GRADUATES**

**Loyola University Chicago Employment Summary for 2011 Graduates**

<b>Employment Status</b>	<b>Full Time Long Term</b>	<b>Full Time Short Term</b>	<b>Part Time Long Term</b>	<b>Part Time Short Term</b>	<b>Number</b>
Employed—bar passage required	126	12	4	2	144
Employed—JD advantage	26	7	6	12	51
Employed—professional position	14	0	0	1	15
Employed—non-professional position	2	0	1	4	7
Employed—undeterminable*					1
Pursuing graduate degree full time					10
Unemployed—start date deferred					0
Unemployed—not seeking					1
Unemployed—seeking					22
Employment status unknown					0
<b>Total graduates</b>					<b>251</b>

\* A graduate in undeterminable category may or may not have a term defined

<b>Law School/University Funded Position</b>	<b>Full Time Long Term</b>	<b>Full Time Short Term</b>	<b>Part Time Long Term</b>	<b>Part Time Short Term</b>	<b>Number</b>
Of employed—law school/university funded	0	0	0	7	7

<b>Employment Type</b>	<b>Full Time Long Term</b>	<b>Full Time Short Term</b>	<b>Part Time Long Term</b>	<b>Part Time Short Term</b>	<b>Number</b>
Law firms					
Solo	5	0	0	0	5
2–10	45	2	6	2	55
11–25	12	2	0	2	16
26–50	6	0	0	0	6
51–100	4	0	1	0	5
101–250	11	0	0	0	11
251–500	4	0	0	0	4
501 +	8	0	0	0	8
Unknown	0	0	0	0	0
Business & industry	32	8	3	5	48
Government	22	6	1	1	30
Public interest (incl. public def.)	4	1	0	1	6
Clerkships—federal	4	0	0	0	4
Clerkships—state & local	8	0	0	0	8
Clerkships—other	0	0	0	0	0
Academia	3	0	0	8	11
Employer type unknown	0	0	0	0	1
<b>Total</b>	<b>168</b>	<b>19</b>	<b>11</b>	<b>19</b>	<b>218</b>
<b>Employment Location</b>	<b>State</b>				<b>Number</b>
State #—largest employment	Illinois				180
State #—2nd largest employment	Michigan				6
State #—3rd largest employment	Minnesota				4
# employed in foreign countries					1

Source: American Bar Association Section of Legal Education and Admissions to the Bar, Section of Legal Education Employment Summary Report, available at <http://employmentsummary.abaquestionnaire.org/>.

Council had to do with salaries. There have been a number of problems with how some law schools have publicized salary information. As you can see from Loyola's data, we were able to identify the employment status of all of our graduates nine months later. This is no easy undertaking, requiring hundreds of staff hours. We also ask our graduates to tell us their salaries. Here, however, graduates tend to be much less likely to comply with our request. It is not uncommon for schools to have salary information from half or less of their graduating class. There is also a tendency for graduates earning more money to be more likely to share their salary information with schools than those earning less money. So if a school publicizes a single median or average salary for its graduates, it is likely presenting a misleading picture.

The Committee recommended that schools be required to disclose the 25th, 50th, and 75th percentile salaries for all categories on the ABA's chart where the school could obtain at least five salaries. The Questionnaire Committee disagreed, and the Council ultimately rejected this recommendation. Apparently, the Council believed that information based in some cases on very small numbers of graduates would be inherently misleading. Some schools, like Loyola,<sup>5</sup> make this information available to applicants, but many schools do not.

### **Conditional Scholarship Retention**


At the same time it recommended changes to Standard 509 regarding employment data, the Standards Review Committee also addressed another issue of transparency, this time involving scholarships. Most schools offer merit scholarships to students with high LSAT scores and high college grade point averages. Some schools make the retention of these scholarships beyond the first year of

law school dependent upon the student attaining a minimum grade point average during the first year. As a result, some students at these schools lose their scholarships after the first year and have to pay the full tuition rate in subsequent years.

Schools offering these "conditional scholarships" inform applicants of their retention policies. However, very few schools inform applicants about how many or what percentage of scholarship recipients lose their scholarships after the first year. The Committee recommended adding to Standard 509 a requirement that schools inform each applicant being offered a conditional scholarship about retention rates and post those rates on the school's website. The Council accepted this recommendation, which is now part of Standard 509:

(e) A law school shall publicly disclose on its website, in the form designated by the Council, its conditional scholarship retention data. A law school shall also distribute this data to all applicants being offered conditional scholarships at the time the scholarship offer is extended.<sup>6</sup>

## **CONCLUSION**

From discussions at meetings of the Standards Review Committee, and from my own review of accreditation standards for other professions, it is my understanding that other accrediting agencies don't seem to require anything in the way of employment outcome disclosure. The ABA's revised Standard 509 will not only result in a significant improvement in the transparency of employment data reported by law schools for their graduates but will allow the ABA to become a leader among accrediting bodies in providing valuable consumer information to the public. 

## NOTES

1. The revisions to Standard 509 were effective immediately. Questionnaires sent to law schools in February 2012 for reporting class of 2011 data already reflected an expanded request for data in line with the revised Standard.
2. Interestingly, it is not clear that prospective students pay a great deal of attention to employment statistics. According to a Kaplan Test Prep survey of LSAT takers, students considered other factors much more important in choosing a law school, such as the school's ranking, location, academic programs, and affordability/tuition. See Kaplan Test Prep, Kaplan Test Prep Survey: Despite an Uncertain Employment Landscape, Law School Applicants Still Consider School Rankings Far More Important than Job Placement Rates When Deciding Where to Apply, <http://press.kaptest.com/press-releases/kaplan-test-prep-survey-despite-an-uncertain-employment-landscape-law-school-applicants-still-consider-school-rankings-far-more-important-than-job-placement-rates-when-deciding-where-to-apply> (last visited Nov. 13, 2012).
3. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, 2012–2013 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, *available at* [http://www.americanbar.org/groups/legal\\_education/resources/standards.html](http://www.americanbar.org/groups/legal_education/resources/standards.html).
4. These data are available in the American Bar Association Section of Legal Education and Admissions to the Bar, Section of Legal Education Employment Summary Report, *available at* <http://employmentsummary.abaquestionnaire.org/>.
5. See Loyola University Chicago School of Law Class of 2011 Employment Summary Report, *available at* <http://www.luc.edu/law/career/pdfs/2011.pdf>.
6. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *supra* note 3.



DAVID YELLEN is dean of the Loyola University Chicago School of Law. He served as a member of the American Bar Association Section of Legal Education and Admissions to the Bar's Standards Review Committee from 2006 to 2012.

# THE EARLY DAYS OF NCBE'S MBE COMMITTEE: REMINISCENCES FROM A FORMER CHAIR

*by Douglas D. Roche*

**D**avid Boyd's article in the September 2012 issue of the *Bar Examiner* on the occasion of the 40th anniversary of the Multistate Bar Examination<sup>1</sup> caused me to reflect on my 20 years as a member of the MBE Committee, 6 as its chair.

Until the early 1970s, the bar exam in Michigan, my state, and in most other states consisted entirely of essay questions prepared by the bar examiners or their agents. My colleagues and I on the Michigan Board of Law Examiners did the best we could, but we had little or no exposure to the science of testing. Adoption of the MBE introduced us to the availability of important quality improvements. These improvements included the use of psychometrics and expert test drafting committees to enhance the quality of the test.

The Conference was as deeply committed to the quality of the MBE in its infancy as it is today. One of the Conference's earliest quality-control efforts was the first MBE content validity study conducted in 1980 (a second study was conducted in 1992). The study, guided by testing professionals and conducted by practicing lawyers and academics who were unaffiliated with the MBE program, affirmed the MBE as a valid means of testing what a newly licensed lawyer needs to know.

When I joined the MBE Committee in 1974, I found myself among able, diligent, and friendly

colleagues. The first chair during my term was John Germany of Florida, one of the fathers of the MBE. John, a very busy and successful lawyer, contributed immense amounts of time and talent to getting the MBE developed and accepted around the country. An unfailingly cordial gentleman, John found the time to mentor a rookie—me. John has remained my friend to this day. The relationships that John developed with bar examiners and Courts throughout the country were very helpful to his successors.

I also fondly recall Joe Covington, the Conference's first Director of Testing. Joe, a former dean of the University of Missouri–Columbia School of Law, also played a significant role in launching the MBE as well as being its great advocate. His reputation and contacts in the law school community enabled him to recruit the very best for the test drafting committees. His talent scout abilities extended to identifying bar examiners who could contribute to the work of the MBE Committee and the Conference.

Sumner Bernstein, an able lawyer from Portland, Maine, succeeded John Germany as MBE chair. One of Sumner's areas of expertise was Real Property. He had served as a member of the MBE Real Property Drafting Committee, and he brought the benefit of this experience to his tenure as chair. Sumner prided himself on being a member of the affably named "New England Mafia," which included Bob Muldoon of Boston and Jack Holt-Harris of Albany, New York. (Although it remains a mystery to me as

to why the New England Mafia included a member from New York....)

I had the honor of succeeding Sumner as MBE Committee chair in 1988. During my term as chair, one of the committee's efforts was to expand our thinking about the bar admissions process by studying licensure requirements in Canada. I was extremely fortunate to have strong and committed committee members such as Greg Murphy of Montana and David Boyd of Alabama, both future chairs of the Conference.

Greg Murphy came to the attention of the Conference when, as a member of the Montana Board of Bar Examiners in the late 1980s, he successfully responded to a petition by some University of Montana law students challenging the MBE in the Montana Supreme Court. The petition asked the Court to rescind its order adopting the MBE. Montana had previously had the diploma privilege, allowing graduates of the University of Montana Law School to be admitted to the bar in Montana without having to take the bar exam. The Court adopted the MBE, and after a few years, the students filed their petition. The Board of Bar Examiners assigned to Greg the task of drafting a response. After filing the board's response, Greg brought the matter to the attention of NCBE, whose president and chair (Dick Julin and Lee Satterfield) expressed interest in contributing information in support of the board's response. Greg argued the case in court, with Dick and Lee also addressing the Court. A few weeks later, the Court denied the students' petition. Greg succeeded me as MBE Committee chair in 1994 and led the committee until 1999 with great ability and dedication.

David Boyd followed Greg as chair from 1999 to 2008, continuing the tradition of excellence. David's enthusiasm for the MBE and the other work of the

Conference is remarkable. (I daresay it might rival his affection for his beloved Crimson Tide.)

The MBE Committee continues its important work under the strong leadership of Franklin Harrison of Florida, chair since 2008 and chair of the NCBE Board of Trustees for the 2012–2013 term.

As I look back on my time with the MBE Committee and the Conference, I must recognize the Conference's three presidents and chief executive officers, Dick Julin, Frank Morrissey, and Erica Moeser.


J. Richard (Dick) Julin, a former dean of the University of Florida Law School, succeeded Joe Covington as the Conference's Director of Testing and, in 1988, was elected the Conference's first president and CEO. Dick excelled in defining his new role. As with Joe Covington, Dick used his connections with academia to maintain the quality of the test drafting committees.

In 1990, Dick was succeeded by Frank Morrissey of Chicago. Frank was largely responsible for having brought the Multistate Professional Responsibility Examination into existence and acceptance in the 1980s.

Erica Moeser, former director of the Board of Bar Examiners in Wisconsin, succeeded Frank in 1994. She led the transfer of the Conference headquarters from Chicago to Madison. She also strengthened the Conference's in-house measurement capabilities. Erica is an innovative force behind recent and future programs.

My 20-year tenure on the MBE Committee had, of course, its share of challenges; occasionally, despite our best efforts, Murphy's Law (apologies to Greg Murphy) intervenes. I remember an earthquake occurring near the test center in Pomona,

California, during the break between the morning and afternoon sessions of the MBE. The Pomona test center was unusable for the afternoon session, and we faced the question of how to determine scores for the Pomona test takers. I recall another interruption in Michigan: a young lady completed the MBE and gave birth to a child before the essay exams the next day. The local press learned of this and asked me what the Michigan Board would do for the lady. I replied that we would send flowers.

My association with the Conference and the opportunity to contribute to the MBE have been highlights of my career. I am grateful for the chance to have served and for the wonderful relationships formed with my colleagues. I extend my best wishes to the Conference for further success in serving the public and the profession. 

## NOTE

1. David R. Boyd, *A Milestone Birthday for the MBE*, 81(3) THE BAR EXAMINER 25-30 (Sep. 2012), available at [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/2012/810312beBoyd.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2012/810312beBoyd.pdf).



DOUGLAS D. ROCHE is a consulting member of Dickinson Wright PLLC in Detroit, Michigan, and a former chair of the National Conference of Bar Examiners.



# A MODEL APPLICATION FORM FOR TEST ACCOMMODATIONS

*by Laurie Elwell*

**T**he mission of the National Conference of Bar Examiners includes assisting jurisdictions with the bar admissions process. Sometimes this assistance takes the form of identifying a common need and pulling resources together to address that need: such was the driving force behind the ADA Model Form, a model test accommodations application form for jurisdictions to use in bar admissions, launched by NCBE in July 2011.

The ADA Model Form is the culmination of an effort sponsored by NCBE that began over three years ago to assist jurisdictions with processing applicant accommodations requests in a consistent and timely fashion. The goal was to create an efficient, clear application—with consistent instructions and documentation requirements—to elicit information pertinent to a thorough and well-informed determination, without unduly burdening the applicant with paperwork. Use of the form, it was hoped, might also help jurisdictions reach decision points more expeditiously, benefiting both the agency and the candidate. Since the ADA Model Form was launched, over a dozen jurisdictions have implemented the form, or a modified version of it—and the list is expected to grow.

## HOW WAS THE ADA MODEL FORM DEVELOPED?

The project began on September 30, 2009, when bar administrators from nine jurisdictions met in Madison to discuss the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) and to cri-

tique, in great detail, test accommodations application forms then in use from a sampling of states and other testing organizations.<sup>1</sup> The group reached consensus on the most important elements that should be included in a model ADA application. It continued to confer over the next 10 months to develop a model form, with the resulting product being reviewed by NCBE's legal counsel and psychologists with expertise in learning disabilities and attention deficit/hyperactivity disorder (AD/HD).

In August 2010, a draft model form was presented for discussion and feedback from jurisdictions at the NCBE/CBAA (Council of Bar Admissions Administrators) Annual Meeting in Duluth, Minnesota. Just three weeks prior to the meeting, however, the U.S. Department of Justice issued revised ADA regulations and guidance specific to testing accommodations. In light of these new regulations, the ADA Model Form Working Group undertook an additional critical review of the draft form, and changes were made to reflect the new federal guidelines.

In July 2011, the ADA Model Form was completed and made available on NCBE's Secure Website for use by interested jurisdictions.

## WHAT DOES THE ADA MODEL FORM CONSIST OF?

The ADA Model Form has four sections:

- **General Instructions for Requesting Test Accommodations:** this section includes definitions; steps for submitting a completed request;

and sections addressing filing deadlines, retake applicants, and policies and procedures regarding appeals.

- **Applicant Request for Test Accommodations:** the main body of the document, addressing the applicant's disability status, the applicant's history of accommodations requests, the accommodation(s) being requested for the bar exam, and a list of supporting documentation. Applicants have the option of including a personal narrative.
- **Five separate disability verification forms:** one each for Learning Disability, Attention Deficit/Hyperactivity Disorder, Psychological Disability, Visual Disability, and Physical Disability. Applicants need only submit the form(s) applicable to them. The form is to be completed by the applicant's qualified professional and includes diagnosis, current functional limitations related to taking the bar exam, and recommended accommodations for the exam.
- **Certification of Accommodations History:** for completion by educational institutions or testing agencies where the applicant has requested accommodations in the past.


Jurisdictions must customize certain portions of the ADA Model Form to reflect their specific policies, deadlines, and so on; they may also decide to make other changes to the form for use in their jurisdictions. Although NCBE's legal counsel reviewed the form prior to its release, jurisdictions are advised to consult with their own legal counsel before using it.

## A POSITIVE STEP

While the ADA Model Form has been well received in the bar admissions community, the process to refine it will continue. Meanwhile, many jurisdic-

tions appreciate having a standard form crafted, as Kristin Bassinger, Staff Attorney for the Texas Board of Law Examiners, states, with a "sincere and thoughtful effort behind each element of the application" and vetted by administrators, legal experts, and medical professionals following the ADA and Department of Justice regulations. (See page 19 for more testimonials.)

Penny Miller, Clerk of the North Dakota Supreme Court, puts it this way:

The use of a multijurisdictional committee to review the ADA, ADA, federal regulations, and case law, and then review various jurisdictions' procedures and requirements, was an invaluable project. Every jurisdiction, not just small ones, should take advantage of the final work product. The forms bring the best of a number of jurisdictions' forms into one comprehensive package. As more jurisdictions use these forms, it will become less likely that forms in multiple jurisdictions will become outdated and ripe for challenge. Applicants and professionals who use the forms will provide more consistent and accurate information, and jurisdictions will have more confidence in answering the question of whether to accommodate. 

## NOTE

1. The project was co-chaired by Margaret Fuller Corneille, Director of the Minnesota State Board of Law Examiners; Kellie R. Early, the then-Executive Director of the Missouri State Board of Law Examiners (who is now Chief Operating Officer for NCBE); and Michele A. Gavagni, Executive Director for the Florida Board of Bar Examiners. The other members of what became known as the ADA Model Form Working Group were Kristin Bassinger, Staff Attorney for the Texas Board of Law Examiners; Barbara Gavin, Director of Character and Fitness for the Maryland Board of Law Examiners; Penny Miller, Clerk of the North Dakota Supreme Court; Gayle Murphy, Senior Executive, Admissions, for the State Bar of California; Timothy J. Raubinger, Assistant Secretary for the Michigan Board of Law Examiners; and Lee Ann Ward, Director of Bar Admissions for the Supreme Court of Ohio.

## TESTIMONIALS ABOUT THE ADA MODEL FORM

Oregon was one of the first jurisdictions to press the ADA Model Form into service. Charles Schulz, Interim Director of the **Oregon State Board of Bar Examiners**, is pleased with how it has helped Oregon's accommodations review process. He reports that the new form has resulted in less administrative work. He has found that it elicits more complete information, thereby cutting down on the need to follow up with applicants and providers regarding additional documentation. Applicants seem to like the new form better as well, and they frequently take advantage of the option to provide a personal narrative as part of their completed application packet. Schulz and other bar administrators find that these personal narratives often include useful information that does not appear in other parts of the application.

Mary Riddell, Deputy Director of the **Kentucky Office of Bar Admissions**, after having had experience with the form for the past two administrations of the bar exam, believes that the applications Kentucky receives now are more complete "up front" and that the information they contain is more useful. She is one of several administrators who mentioned that she likes having a separate form for visual disabilities.

The **Texas Board of Law Examiners** largely based its new accommodations application form on the ADA Model Form. It posted the new form online in July 2012, in time for the February 2013 application cycle. Staff Attorney Kristin Bassinger notes the win-win benefits of having a fillable form, which is easier for the applicants to complete and easier for administrators to read.

Michele Gavagni, Executive Director for the **Florida Board of Bar Examiners**, who was involved with the ADA Model Form project from the beginning, states that use of the new form has resulted in a streamlined ADA application process in Florida. She has found that the new form provides a clearer picture and overview of applicant history in a very efficient use of space. The Certification of Accommodations History form, she believes, will make it easier for applicants to provide verification of prior accommodations, whether on the LSAT, in law school, or on other bar examinations. She hopes that as additional jurisdictions begin using the form, whether in its entirety or with modifications, law schools will familiarize their students with the form and encourage them to file early for accommodations. Filing earlier offers students the benefit of quicker decisions and affords the opportunity to timely remediate applications deemed incomplete upon initial review.



LAURIE ELWELL is Special Projects Coordinator for the National Conference of Bar Examiners.

# THE TESTING COLUMN

## PERSISTENCE ON THE BAR EXAM

*by Susan M. Case, Ph.D.*

**H**ow many times do examinees sit for the bar exam? A Google search reveals articles about examinees who have taken the exam 6, 8, and even 48 times. We know of famous people from top-tier law schools who failed the bar exam. But how do these isolated stories fit into the overall narrative?



were first-time takers in July 2007. The resulting sample included 30,759 candidates representing 35 jurisdictions. We followed the MBE performance of these examinees beginning with July 2007 and ending 11 administrations later in July 2012.

### PERSISTENCE OF THE TOTAL GROUP

In the past decade, the data collection and data sharing practices of both NCBE and individual jurisdictions have progressed significantly to the point where substantial groups of bar examination candidates can be traced through the bar examination process. Although neither candidates nor jurisdictions provide NCBE with information about the individuals' bar admission status, which would help confirm which individuals have passed or not passed the bar exam, sufficient data are available to begin making some preliminary explorations about ultimate pass rates. We have used this improved data collection to compile a database of examinees who sat for the MBE. (By "we," I really mean Doug Ripkey, NCBE's Associate Director of Testing.)

We used this data set to investigate the persistence of examinees in taking the MBE. In order to track examinees across test administration dates, our sample included only those examinees with appropriately coded Social Security numbers who

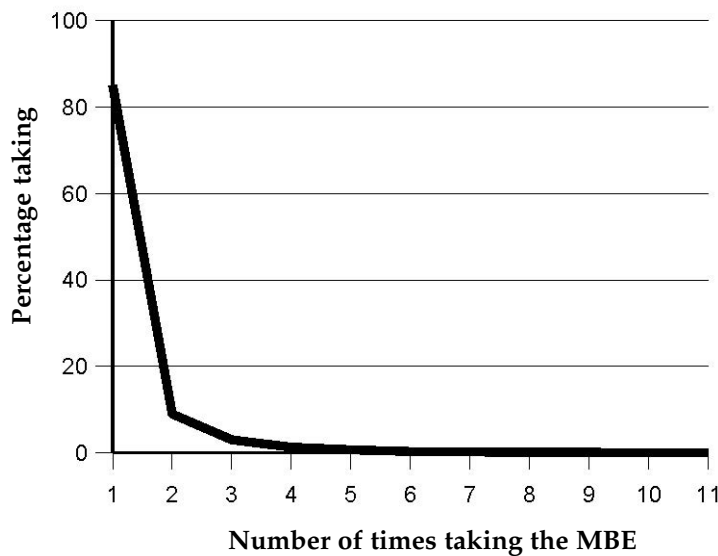
A total of 26,247 examinees took the MBE only once. This represents 85.3% of the total group. It is possible that some of these examinees took the MBE and failed but for whatever reason decided not to try again; however, we can assume that the vast majority of this 85.3% passed the bar exam on the first attempt. A total of 2,795 examinees took the MBE a second time; this is 9.1% of the total group. Totaling these, we have 29,042 examinees, representing over 94% of our sample, taking the MBE only one or two times.

The numbers drop considerably after the second try: 886 (2.9%) took the MBE three times, 392 (1.3%) took it four times, and less than 2% took it more than four times.

Table 1 shows the number and percentage of examinees taking the MBE one or more times. (For those of you who believe a picture is worth a thousand words, Figure 1 shows the same data by percentage in graphic form.)

**Table 1:** Number and Percentage of Examinees Taking the MBE One or More Times

	Number of times taking the MBE											Total taking
	1	2	3	4	5	6	7	8	9	10	11	
Number taking	26,247	2,795	886	392	208	106	56	35	17	8	9	30,759
Percentage taking	85.3	9.1	2.9	1.3	0.7	0.3	0.2	0.1	0.1	0.0	0.0	100



**Figure 1:** Percentage of examinees taking the MBE one or more times

**Persistence by Ethnic Group**

Table 2 shows the number of examinees, and Table 3 shows the percentages, taking the MBE one or more times broken down by ethnic group. (Once again, for those of you who are visually oriented, Figure 2 shows the percentage data in graphic form.) Of the 30,759 examinees in the sample, 17,414 (56.6%) were white, 2,147 (7.0%) were Asian, 1,395 (4.5%) were Hispanic, and 1,301 (4.2%) were black. The remaining 8,502 identified themselves as some other ethnic

group or did not indicate their ethnicity. While the passing percentage varied by ethnic group, the vast majority of each group took the MBE only once, and less than 3% of any group took it more than four times.

The percentage of examinees who took the MBE only once varies considerably by ethnic group: 91.1% of whites, 81% of Asians, 79.4% of Hispanics, and 70.3% of blacks took the MBE only once. The gap narrows significantly over additional takes. The

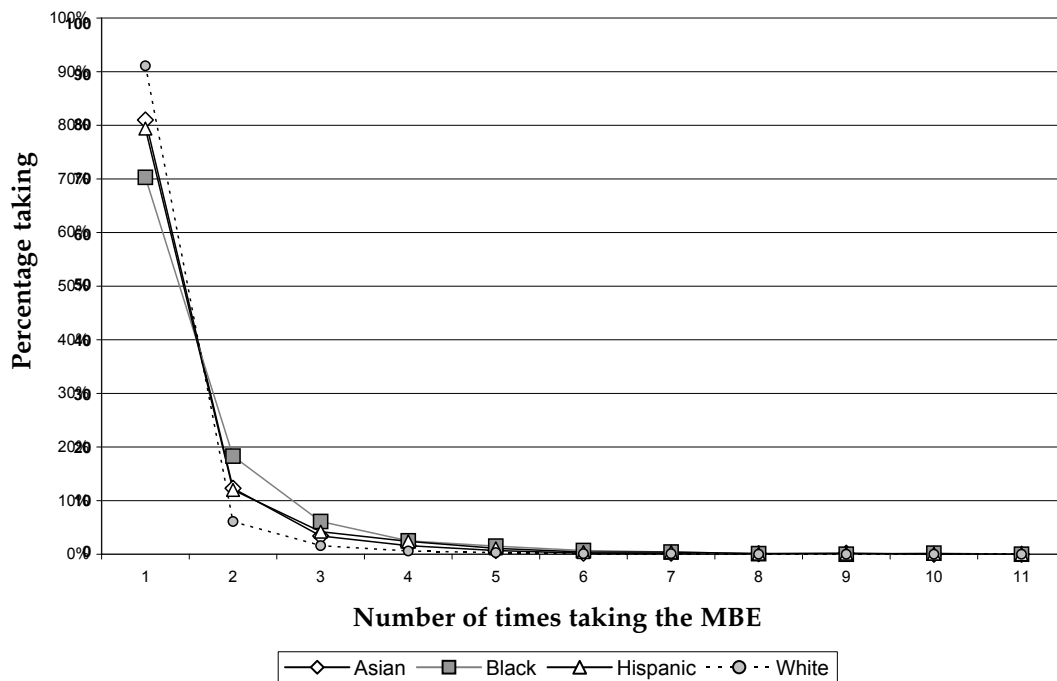
**Table 2:** Number of Examinees Taking the MBE One or More Times, by Ethnic Group

	Number of times taking the MBE											Total taking
	1	2	3	4	5	6	7	8	9	10	11	
White	15,860	1,066	286	103	54	24	10	4	2	3	2	17,414
Asian	1,739	265	74	35	15	5	5	3	5	0	1	2,147
Hispanic	1,107	167	58	34	15	5	5	2	1	1	0	1,395
Black	914	238	80	33	19	9	5	1	0	2	0	1,301
Total	26,247	2,795	886	392	208	106	56	35	17	8	9	30,759*

\* Of the 30,759 total examinees, 8,502 examinees identified themselves as some ethnic group other than those listed in this table or did not indicate their ethnicity. Data are not included for those 8,502 examinees.

**Table 3:** Percentage of Examinees Taking the MBE One or More Times, by Ethnic Group

	Number of times taking the MBE										
	1	2	3	4	5	6	7	8	9	10	11
White (%)	91.1	6.1	1.6	0.6	0.3	0.1	0.1	0.0	0.0	0.0	0.0
Asian (%)	81.0	12.3	3.4	1.6	0.7	0.2	0.2	0.1	0.2	0.0	0.0
Hispanic (%)	79.4	12.0	4.2	2.4	1.1	0.4	0.4	0.1	0.1	0.1	0.0
Black (%)	70.3	18.3	6.1	2.5	1.5	0.7	0.4	0.1	0.0	0.2	0.0
Total (%)	85.3	9.1	2.9	1.3	0.7	0.3	0.2	0.1	0.1	0.0	0.0




**Figure 2:** Percentage of examinees taking the MBE one or more times, by ethnic group

percentage of examinees taking the MBE no more than three times includes 98.8% of whites, 96.8% of Asians, 95.5% of Hispanics, and 94.7% of blacks.

## CONCLUSIONS

MBE repeater rates show that the vast majority of examinees take the MBE only once. Assuming that most of them pass, we may conclude that most examinees pass the bar exam on their first attempt. There is a large gap between the pass rates of white and minority examinees on first attempt, but this gap narrows from about 20 percentage points after the first attempt (91.1% for whites and 70.3% for blacks) to about 4 percentage points after the third attempt (98.8% for whites and 94.7% for blacks).

We do not have a complete data set that indicates who passed the bar exam. However, we do have MBE

records for a large sample of examinees. The correlation between MBE scores and written scores is high, and based on other research findings, we believe the trends noted above would not change with more complete data. (See, for example, a previous Testing Column entitled “Urban Legends about the Bar Exam,” which reports on minority performance on the written and multiple-choice components of the bar exam.<sup>1</sup>) 

## NOTE

1. Susan M. Case, Ph.D., *Urban Legends about the Bar Exam*, 77(2) THE BAR EXAMINER 44–46 (May 2008), available at [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/2008/770208\\_testing.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2008/770208_testing.pdf).

SUSAN M. CASE, PH.D., is the Director of Testing for the National Conference of Bar Examiners.

# LITIGATION UPDATE

by Fred P. Parker III and Brad Gilbert

## BAR EXAMINATION

### **Admission of foreign applicant; equivalency of LL.M. degree**

*In re Sara Paniagua de Aponte*, 364 S.W.3d 176 (Ky. 2012)

## CHARACTER AND FITNESS

### **Lack of candor on the bar application and at a hearing**

*In re Application of Martin*, Slip Opinion No. 2012-OH-5427

### **Lack of honesty; substance abuse; neglect of financial responsibilities**

*In re Gueli*, 132 Oh. St. 3d 39, 968 N.E.2d 479 (2012)

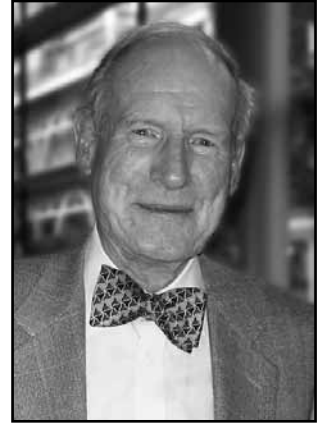
### **Permanent denial of admission; solicitation of a minor**

*In re Philip R. Pilie*, 2012 WL 4478359 (La. 2012)

## CONDITIONAL ADMISSION

### **Criminal convictions; lack of candor; permanent revocation of conditional admission**

*In re Wright*, 2012 WL 5278462 (La.)



## BAR EXAMINATION

### **Admission of foreign applicant; equivalency of LL.M. degree**

*In re Sara Paniagua de Aponte*, 364 S.W.3d 176 (Ky. 2012)

On April 26, 2012, the Supreme Court of Kentucky ruled that an applicant who received her primary legal education in the Dominican Republic was not entitled to sit for the Kentucky Bar Examination. Specifically, the court held that an LL.M. in International Legal Studies from an ABA-accredited law school was not the equivalent of a J.D. degree from an accredited American law school.

The applicant, Sara Paniagua de Aponte, studied law at the Universidad Iberoamericana Escuela de

Derecho in Santo Domingo, Dominican Republic. After graduation, she was licensed to practice law in the Dominican Republic. She later moved to the United States and earned her LL.M. from Georgetown University Law Center. In July 2010, Paniagua de Aponte took the New York Bar Examination, which she passed on her first attempt. She was subsequently sworn in to the New York Bar.

Paniagua de Aponte relocated to Kentucky in 2011 and sought the right to take the Kentucky



Bar Examination. However, the Board of Bar Examiners denied her request, stating that an LL.M. in International Legal Studies is not the equivalent of a J.D. from an ABA-accredited law school. Under SCR 2.014(1), a J.D. or equivalent from an accredited American law school is a prerequisite to admission to the bar in Kentucky.

While agreeing with the board, the Court was careful to distinguish between the LL.M. degree earned by Paniagua de Aponte and other LL.M. programs. The Court did not rule out the possibility that an LL.M. degree could be considered an “equivalent professional degree” under the statute. The Court noted that some LL.M. programs are “designed specifically to offer foreign law graduates sufficient exposure to American law and to allow them to take some states’ bar examinations.” The Georgetown General Studies LL.M. was cited as one example.

The issue with Paniagua de Aponte’s LL.M. was that it was narrowly focused on International Legal Studies. While a J.D. degree from an American institution provides exposure to the “central pillars of American law,” the Court found that an LL.M. in a particular topic is too narrowly focused and is “no substitute.” The Court noted that “[Paniagua de Aponte’s] course work, which focused on international and business law subjects, was dou-

bly narrow, and thus was unlikely to give her a sense of American law as a whole.”

However, a graduate of a foreign law school who does not meet the general education requirement of a J.D. degree may still sit for the Kentucky Bar Examination if the Court grants a waiver under SCR 2.014(3). SCR 2.014 provides an exception in instances where the foreign applicant’s education is the “substantial equivalent” of an approved law school education in Kentucky, and where the applicant has been engaged in the practice of law for at least three of the past five years. In this case, Paniagua de Aponte had less than one year of legal practice, so the Court found that any evaluation of the substantial equivalence of her education for purposes of the waiver requirement would be premature, especially considering the expense of such an evaluation.

The Court acknowledged that Paniagua de Aponte’s achievements were laudable, especially her having passed the “notoriously difficult” New York Bar Examination on the first attempt, and said that strict application of the admission rules sometimes results in “imperfect outcomes.” However, the Court stated that “[e]very time we depart from the rule . . . by a waiver, . . . we undermine overall efficiency and the confidence engendered by the rule” and that in this case, “a showing of something more than what [Paniagua de Aponte] has shown would be necessary.”

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## CHARACTER AND FITNESS

### **Lack of candor on the bar application and at a hearing**

*In re Application of Martin*, Slip Opinion No. 2012-OH-5427

Ebonie Martin graduated from law school in May 2011 and applied as a candidate for admission to the Ohio Bar in September 2010. She subsequently applied to take the July 2011 bar exam. She was interviewed by two panels of the Columbus Bar Association. The panels recommended that she not be approved for character and fitness reasons.

A panel of the Board of Commissioners on Character and Fitness conducted a formal hearing and then issued a report identifying three areas of concern that caused the panel to recommend that Martin’s application not be approved. The first concern was about Martin’s truthfulness in her explanation of why she had failed her final Real Property

exam during her first semester of law school. She stated that she had failed to place her number on the exam, because she had written it on her hand and her sweaty hand made the number illegible. The investigation revealed that while she had lost some points for this failure, she had also done poorly on the exam.

The second area of concern was Martin's handling of her finances. She began law school with \$15,000 in student loan debt, but although she received scholarships to pay all but \$18,000 a year for tuition during law school, she graduated with \$150,000 in student loan debt. The panel and the board found that because she had obtained financial counseling, planned a budget, and obtained a job as a paralegal, she was beginning to address that issue.

The panel's third and most serious concern was Martin's lack of truthfulness in her explanation of a 2008 traffic stop that resulted in her being charged with providing false information to a police officer to avoid a citation, driving with an expired driver's license, and failing to secure a child in a car seat. Martin admitted at the hearing that when she was pulled over (because the officer believed that her car windows were too darkly tinted), she did not have her driver's license with her, and that it had expired more than six months before the traffic stop. Martin testified that when the officer asked for her Social Security number, she gave him her mother's Social Security number instead, but she claimed that she had done so by mistake, due to the stress of the situation and the fact that she often gave her mother's Social Security number when dealing with her mother's health issues. However, the officer testified that in addition to giving her mother's Social Security number, Martin also gave her mother's name and date of birth.

On her bar application, Martin reported that the charge of providing false information was due to her having told the police officer that the child

in the vehicle at the time of the traffic stop was her daughter when in fact it was her goddaughter. At the hearing, Martin maintained that this "confusion" of the child's identity was the basis of the false information charge. Although the false information and child-restraint charges were dropped and Martin pleaded guilty to driving with an expired license, the panel believed the officer's testimony and believed that Martin had used her mother's name, birth date, and Social Security number in an attempt to avoid responsibility for driving with an expired license.

The panel and the board were also troubled by the fact that the car Martin was driving at the time of the stop was not registered in her name, although she claimed that she had purchased it from a friend. The panel asked Martin to submit additional documentation regarding this transaction, and the additional documentation she furnished revealed that "the transaction was completely different" from what she had testified to at the hearing. Based on Martin's apparently false testimony, the panel and the board recommended that her application not be approved, but that she be allowed to reapply for the July 2014 exam.

The Ohio Supreme Court said that an applicant's record must justify "the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them." Based on Martin's record, the Court agreed that she had failed to prove that she currently possesses the character, fitness, and moral qualifications for admission to the practice of law. The Court adopted the board's findings and disapproved Martin's application to take the bar examination, but allowed her to apply to take the July 2014 exam by filing a new registration and application and by undergoing a full character and fitness investigation by the National Conference of Bar Examiners and a review and interview by the appropriate local bar association admissions committee.

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**Lack of honesty; substance abuse; neglect of financial responsibilities**

*In re Gueli*, 132 Oh. St. 3d 39, 968 N.E.2d 479 (2012)

Jeffrey Gueli was admitted to the Florida Bar in 2005 and was hired by the Florida Office of the State Attorney in September 2005. He resigned from that position in March 2006 after he was reprimanded for filing criminal charges without discussing them with his supervisor and then taking the matter to the media when his supervisors did not agree with his actions. Although he initially testified that he was unaware of any policy that would prohibit him from talking to the media, he later admitted that he had been told of such a policy at his orientation.

After leaving the State Attorney's Office, Gueli engaged in the private practice of law in Florida and apparently became increasingly delusional, claiming that authorities had interfered with his mail and that they had spiked his drink with a deadly substance. He filed suit in federal court against the president of the United States, the governor of Florida, and the Florida state attorney, claiming that they had violated the Racketeer Influenced and Corrupt Organizations Act and had denied his First Amendment rights by interfering with his mail. The court dismissed this action. Later, Gueli testified falsely that he had voluntarily dismissed the action.

Following the dismissal of his federal action, Gueli moved to his home state of Ohio and obtained temporary employment. In 2006 and 2007 the Florida Bar filed two complaints against him based on his federal lawsuit and on an arrest for DUI that Gueli claimed had been orchestrated by the authorities because of the federal lawsuit. He responded in letters threatening to sue the bar; he then failed to appear at the hearings, claiming that he saw no reason to attend because he had been acquitted of the criminal charge and that the hearings were over 250

miles from his parents' house and he had no way to get there.

In 2008, a Florida grievance committee recommended that Gueli participate in a diversion program with Florida Lawyers Assistance (FLA, Inc.), but Gueli, having returned to Ohio, failed to submit the required evaluation. He did, however, enter into a contract with the Ohio Lawyers Assistance Program (OLAP), which the Florida grievance committee eventually determined was an adequate substitute for the required FLA, Inc., program. Gueli also applied to register as a candidate for admission to the practice of law in Ohio. In 2009, following a psychiatric evaluation, Gueli was diagnosed with major depression with psychotic features. His OLAP mental-health contract required him to take prescribed medication and to abstain from alcohol and other mood-altering drugs. Gueli failed to take his medication as prescribed and continued to drink excessively. He participated in an intensive outpatient treatment program for alcohol dependency, but without success.

Gueli entered into a second OLAP contract in 2010 to address his alcohol dependency. The contract required him to refrain from using alcohol, to submit to random alcohol screening, to participate in Alcoholics Anonymous (AA), and to obtain an AA sponsor within two weeks of signing the contract. Gueli failed to comply with many of these provisions. He did not attend AA meetings regularly, he waited six months to obtain an AA sponsor, he failed two of his six random alcohol screenings, and he missed others because he failed to call his OLAP monitor once a week. It was then recommended that he have inpatient treatment, but he refused,

threatening to sue his AA sponsor for making such a recommendation. Because of these failures, his OLAP contract was terminated.

Gueli was interviewed by the Cleveland Metropolitan Bar Association, which disapproved his character, fitness, and moral qualifications. He appealed this recommendation to the Board of Commissioners on Character and Fitness. The board appointed a panel, which conducted a hearing and made findings based on the foregoing facts.

The panel was concerned about Gueli's dishonesty, alcohol dependency, and financial irresponsibility, as Gueli was living with his parents and his credit card debt and student loans were all in default. The panel was most troubled by Gueli's "inability to know or tell the truth." The panel expressed grave concern that Gueli had not been honest with his treatment professionals, claiming that he was attending AA meetings when he was not, and that he frequently gave inaccurate testimony, which he stood by until challenged by incontrovertible evidence to the contrary. The panel questioned whether Gueli knew that he was creating his own facts, whether he was just careless, or whether his mental-health issues contributed to an altered perception of reality. Regardless of the cause, the panel found that, at present, Gueli "is not a person upon whom clients, courts, adversaries, and others can rely."

The panel recommended that Gueli's application not be approved but that he be allowed to apply to take the July 2014 bar exam under the conditions that he should continue his treatment with the mental health professionals, enter into a new three-year contract with OLAP, and comply with all of its conditions. The board unanimously adopted the panel's findings of fact and recommendations. Gueli objected, characterizing the board's recommendation as "irrational and unfair."

The Ohio Supreme Court thoroughly reviewed the record and concluded that Gueli's objections were without merit and that the board's findings were supported by the testimony and evidence at the hearing. Gueli's objections corroborated the board's findings that he creates his own facts, which are not based on reality. The Court agreed that Gueli had failed to prove that he currently possesses the necessary character, fitness, and moral qualifications for admission to the Ohio Bar. The Court added that he may submit another application no sooner than November 1, 2013, and may apply to take the July 2014 bar exam if he (1) continues his mental health treatment with his doctors and follows their recommended treatment, (2) enters into a three-year OLAP contract, and (3) complies with all its terms and conditions, to be verified by OLAP.

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**Permanent denial of admission; solicitation of a minor**

*In re Philip R. Pilie*, 2012 WL 4478359 (La. 2012)

Philip R. Pilie was permanently denied admission to the Louisiana Bar for attempting to have sex with a person whom he believed to be a 15-year-old girl.

Pilie graduated from law school in May 2007 and applied to sit for the Louisiana Bar Examination

in July 2007. Prior to sitting for the exam, Pilie made Internet contact with a person whom he believed to be a 15-year-old girl and told her he wanted to meet her to have sex. The person was actually an undercover police detective posing as a juvenile. When Pilie arrived at the prearranged meeting

location, he was arrested and charged with computer-aided solicitation of a minor and attempted indecent behavior with a juvenile, both felonies.

Pilie amended his bar application to disclose the arrest prior to the July 2007 bar examination date. The Committee on Bar Admissions refused to allow him to sit for the exam.

All criminal charges against Pilie were dropped after he completed a pre-trial diversion program in 2008. He reapplied for permission to sit for the February 2009 bar examination and disclosed his June 2007 arrest and completion of the pre-trial diversion program. Pilie was allowed to sit for the exam and passed, but the committee subsequently informed him that it would nonetheless not certify his character and fitness due to the serious nature of the prior charges against him.

Pilie appealed to the Supreme Court of Louisiana. The Court agreed with the committee and not only denied Pilie's admission but ordered that no applications would be accepted from him in the future. While acknowledging that Pilie was recently married and that he had received psychiatric counseling, the Court found that these circumstances had "little, if any, relevance" to the issue of Pilie's character and fitness to practice law. The Court found that "the lack of a criminal conviction does not prevent this court from considering the effect to be given to the conduct for purposes of our constitutional responsibility to regulate the practice of law" and said that Pilie's misconduct, if committed by a person admitted to the bar, would very likely have resulted in permanent disbarment. The Court could "conceive of no circumstance under which we would ever admit [Pilie] to the practice of law."

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## CONDITIONAL ADMISSION

### **Criminal convictions; lack of candor; permanent revocation of conditional admission**

*In re Wright*, 2012 WL 5278462 (La.)


In 2007, Eric Wright was conditionally admitted to the Louisiana Bar for two years. The conditional nature of his admission was based in part on his involvement in an incident of domestic violence. After two additional incidents of violent behavior in 2010, the Louisiana Supreme Court extended the probation for two years. In July 2012, the Office of Disciplinary Counsel (ODC) sought revocation of Wright's conditional admission based on his conviction on two counts of simple battery. The Louisiana Supreme Court remanded this matter for an expedited hearing for Wright to show why his conditional admission should not be permanently revoked. Despite notice, Wright did not appear at the hearing or present any evidence.

At the hearing before the committee, the ODC presented evidence that Wright in September 2011 had been arrested in Baton Rouge and charged with four criminal counts, and that he was tried and convicted of two counts of simple battery on July 2, 2012. Wright's practice monitor confirmed that Wright did not tell him about the arrest or convictions until he was specifically questioned about them. Furthermore, Wright's affidavit of compliance with the conditions of his admission, submitted to the ODC on July 9, 2012, does not mention the July 2 convictions. The committee concluded that Wright's convictions of two counts of battery, his prior criminal history, and his lack of candor with his practice monitor and the ODC were "serious transgressions"

which warranted the immediate revocation of his conditional admission.

On review, the Louisiana Supreme Court said that Wright's infractions were "particularly egregious because they occurred after this court granted him the privilege of practicing law on a conditional basis." The Court stated that Wright "has flagrantly and blatantly ignored his obligations under this court's prior orders and has convincingly demon-

strated he lacks the character and moral fitness to practice law in Louisiana."

Eric Wright's conditional admission was permanently revoked, and his name was permanently stricken from the roll of attorneys. 

FRED P. PARKER III is the Executive Director of the Board of Law Examiners of the State of North Carolina.

BRAD GILBERT is Counsel and Manager of Human Resources for the National Conference of Bar Examiners.