

PRESIDENT'S PAGE

by Erica Moeser

Sometimes the writing of this column is, shall we say, painful? I rack my brain trying to think of what might be of value to a reader. ("Rack" is defined in my dictionary as "to stretch or strain violently." Until today I thought it was spelled "wrack.") This time the writing is coming more easily than usual because there are several news items that may be of interest.



The Uniform Bar Examination is truly off and running. We now have eight jurisdictions that have formally announced adoption of the UBE and one that has adopted the UBE conditionally—that is, subject to final approval of an implementation plan. Six of these will administer the UBE during 2012, with the rest expected to implement the test during the next year or two. Beyond that, several jurisdictions are well on their way to adopting the UBE. I would not be surprised if we have 20 jurisdictions in the fold by the end of 2013.

The 2012 edition of the *Comprehensive Guide to Bar Admission Requirements* is in print. This year we added a specific chart covering the UBE. The new Chart 10 answers questions concerning the time limit for a UBE score to remain viable, the minimum passing score, and whether or not a jurisdiction-specific component is required. The *Comp Guide* is available on the NCBE website, www.ncbex.org.

The NCBE website has recently been redesigned for greater ease of use and more logical presentation of information. We have been following the "hits" to various pages of the website. It is clear that

people are making tremendous use of this resource—we are having far more contact with the world than ever before.

The website contains past issues of this magazine and information about our tests and study aids. For those new to bar examining, the magazine archive contains important information about the subjects that are job-critical when licensing lawyers.

A peek at the website will also reveal that we have launched the "NCBE Number." It is intended to replace the Social Security number as an identifier on answer sheets and elsewhere. In this age of identity theft, we see this as a logical and constructive step. It will enable us to track candidates over time to a greater degree, since some jurisdictions have not required the SSN. It is our view that *every* bar admission candidate should be required to obtain and use an NCBE Number. Kudos to California and Pennsylvania, jurisdictions that are leading the way.

Our Annual Bar Admissions Conference, an invitational event to be held in Savannah this April, has attracted a huge crowd of registrants this year. In fact, we are bursting at the seams. At last count, every state but one is sending representatives, as are the District of Columbia and several territories.

As usual, the program for the event is a diverse one, reflecting the complexity of licensing work in this day and age. Content includes such mainstays as testing, character and fitness, and the Americans with Disabilities Act, and extends to the greater world

beyond bar examining that undoubtedly affects bar examining in one way or another: honesty on law school applications, the preparation of students for entry into the profession, changing law school accreditation standards, and the mobility of lawyers across state and national borders.

A plenary segment of the program will present information about the content validity study that NCBE is currently undertaking. The study involves taking a snapshot of what newer lawyers do and what they need to know in order to do the work at a professional standard. Given the fact that law schools are launching over 40,000 graduates each year into a world that cannot absorb them nearly as well as it could only a few years ago, there is an even greater prospect that newly minted lawyers will try their hands at private practice without the mentoring that served as the ultimate on-the-ground learning experience for many of today's professionals.

The study's survey instrument seeks answers to the "what does the lawyer do?" and "what does the lawyer need to know?" questions from thousands of newly licensed lawyers. The responses we receive will be mapped against our current test content to see where we might adjust it in the future. Frankly, I expect the results of the study to validate what we are currently doing. I also expect that the results will suggest other knowledge and skills worthy of assessment and feasible to assess. Change will be more glacial than volcanic, but change will come. We are counting on the study results to point us in the right direction.

Finally, every lawyer with an interest in the regulation of the profession should sit up and take notice of the current initiative of the ABA Commission on Ethics 20/20 as to two proposals that strike to the heart of regulation. The first proposal amends the ABA's Model Rule relating to motion admission to require three years of practice instead of the current five. What I find particularly troubling about the proposal

is that it does not amend the current five-of-seven-year durational requirement to three-of-five-years; rather, it substitutes a three-of-seven-year requirement. That suggests to me a sporadic record of practice that diminishes my confidence that the lawyer permitted to provide this rather spotty evidence should be granted a license on this basis. And, as anyone who has dealt with motion admission knows, it takes no account of the lawyer's showing of competence on an examination.

The second proposal authorizes motion admission applicants to commence practice before they are licensed. If ever a cart was placed before a horse, this is it. How this proposal protects or benefits the consumer is beyond me. And isn't the purpose of licensing to protect the public? Yes, if the client is insulated by the workings of a large law firm, there is less risk; however, the movement of lawyers from one jurisdiction to another is not just about the lawyers in the BigLaw cocoons. I cannot believe that it is sound policy to risk subjecting clients to the devastating impact that an incompetent or unethical migrating lawyer, particularly one whose practice is undertaken without the BigLaw bells and whistles, can have.

I cite back to the UBE, which at least allows jurisdictions to establish a common threshold of competence that should provide far more confidence in the worthiness of a candidate than what we assume of an applicant who has practiced for three of the last seven years—or, seen differently, *not practiced* for four of the past seven years—or who has arrived and done damage to clients *before* being assessed for character and fitness.

I encourage anyone with an interest in the future of lawyer regulation to consider carefully the ABA's 20/20 Commission proposals and to participate in the process by which they will be amended, adopted, or defeated. 🗳️