Is Sooner Sometimes Better than Later?
Arizona’s Early Bar Exam

by Hon. Scott Bales

For most law students, receiving a J.D. degree marks the end of their academic legal studies but only one step toward being admitted to practice. Admission generally also requires the successful completion of a bar examination and review of an applicant’s character and fitness. Completing those steps can take many months after graduation. For example, students receiving a degree in May or June and then taking a bar exam in July may not be admitted until November. The additional time required for admission effectively increases the cost of becoming a lawyer, a financial hurdle that has otherwise increased substantially in recent decades due to increases in tuition and other charges at nearly every law school.

But what if we allowed some students to take these steps in a different order? What if they could opt to complete the bar exam before they received the J.D. degree? Could an early bar exam—also referred to as a 3L or February bar exam—help some graduates reduce their costs of becoming lawyers and successfully obtain employment? These questions deserve consideration by all who are concerned with the bar admissions process.

Since 2013, Arizona has allowed law students to take the bar exam before they have completed their last semester and received the J.D. degree. This practice was first approved as a three-year experiment in the face of concerns by some that allowing an early bar exam could be bad for students, legal education, or the legal profession. Experience, however, allayed these concerns. In 2016, with the support of the state’s law schools and the broader legal community, Arizona’s Supreme Court approved the use of the early bar exam on a permanent basis.

An early bar exam may not make sense for every state, and it certainly does not make sense for every law student. Arizona adopted its approach anticipating that most law students will wait to take the bar exam until after they receive the J.D. degree. But we did conclude that allowing the early bar exam option can benefit law students and the public more generally. Arizona’s experience may provide some general insights into how an early bar exam program can be successfully implemented and its potential benefits. To that end, this article reviews how Arizona came to approve the early bar exam, the key elements of Arizona’s approach, the results, and what we have learned from the experience.

From Concept to Trial Run

Arizona’s early bar exam had its genesis in discussions in 2011 among faculty members at the University of Arizona James E. Rogers College of Law (“Arizona Law”). They thought that offering third-year students an option of taking the bar exam before graduation might help enhance their educational experiences and post-graduation employment opportunities. After reviewing other states’ rules regarding early bar exams and the experience in the state that had most recently made the option more readily available, the Arizona Law professors approached then-Chief Justice Rebecca White Berch to gauge whether the Supreme Court, which governs the admission to practice in Arizona, would be open to considering such an option. Chief Justice

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Berch and her colleagues shared thoughts on how an early exam proposal might be structured and encouraged the professors also to contact the state’s other two law schools, Arizona State University’s Sandra Day O’Connor College of Law (“ASU Law”) and Arizona Summit School of Law (“Summit,” formerly Phoenix School of Law).

The three Arizona law schools ultimately filed a petition in January 2012 asking the Arizona Supreme Court to amend its rules to allow the early bar exam. Consistent with the Court’s usual rule-making process, the petition was open for public comment through May 2012. Supporting comments were filed by the Arizona State Bar, a recent Arizona Law graduate, and the Arizona Law Student Bar Association. The only negative comment came from the Attorney Regulation Advisory Committee (ARC), a standing committee appointed by the Supreme Court to review attorney regulation and make recommendations to the Court. ARC voiced concerns that students would have difficulty preparing for the exam and otherwise completing the admissions process while in law school and that additional applicants might strain the limited resources available for character and fitness evaluations, thereby delaying the admissions process overall.

After considering the petition and comments, the Court asked the law schools to meet with representatives of the State Bar and ARC and to provide additional information about how an early bar exam program would operate. As a result, an informal work group met several times over fall 2012. These efforts concluded with the law schools modifying their proposal to provide more specific criteria for early exam eligibility; they also proposed that the rule change be adopted on an experimental basis to be monitored and revisited over three years. ARC voted to recommend approval of the revised proposal.

With this background, the Supreme Court in December 2012 adopted proposed amendments to Supreme Court Rule 34(b), Applicant Requirements and Qualifications, to allow the early bar exam for the period January 1, 2013, through December 31, 2015, and to require the law schools and ARC to file regular reports. The Court later extended the pilot program until 2017, largely to ensure that the pilot would yield three years of data, and then in September 2016 approved the use of the early bar exam on a permanent basis. Rule 34(b)(2), which governs the early bar exam, has remained substantially the same since its adoption. (See the sidebar on page 52 for the rule.)

**Rule 34(b)(2) and Its Implementation**

In approving the early bar exam, on both a trial and a permanent basis, the Arizona Supreme Court was guided by certain key principles. First, the rules should be “neutral” in the sense of not favoring graduates of particular law schools, whether within Arizona or elsewhere. Second, the opportunity to take the early bar exam should be afforded to students who are within a semester of graduating and who are determined by their law schools to be academically prepared to successfully complete the exam. Third, the rules should afford law schools a high degree of flexibility in terms of whether they allow their students to take the early bar exam and, if they choose to do so, how they structure their particular programs.

Reflecting these principles, Arizona’s Rule 34(b)(2) concisely states six basic requirements. To be eligible to take the early bar exam for purposes of admission to the Arizona bar, a student must (1) be enrolled and in good standing at an ABA-accredited law school; (2) be expected to graduate with a J.D. within 120 days of the start of the early exam; (3) have completed, as of the start of the exam, all but eight of the required semester credits for the J.D. degree; (4) be enrolled for not more than two semester credits in the month of the early exam and the month preceding; (5) have been determined by his or her law school to be academically prepared for early testing; and (6) submit an affidavit from the student
Arizona Supreme Court Rule 34(b)(2)

Rule 34. Application for Admission

(b) Applicant Requirements and Qualifications

2. An applicant may be allowed to sit for the Arizona uniform bar examination prior to the award of a juris doctor degree if the applicant:

   A. is a currently enrolled student in good standing at a law school fully or provisionally approved by the American Bar Association;

   B. is expected to graduate with a juris doctor degree within one hundred twenty (120) days of the first day of early exam administration;

   C. has satisfied all requirements for graduation with a juris doctor except for not more than eight (8) semester hours or its equivalent in quarter hours at the time of early exam administration;

   D. will not be enrolled in more than two (2) semester hours or its equivalent in quarter hours during the month of early bar examination testing and the immediately preceding month;

   E. has been determined by their school to be academically prepared for early testing;

   F. provides by the deadline to the Committee on Character and Fitness, on a form approved by the Committee, an affidavit attested to by the applicant and the law school that they meet the above criteria. The law school’s decision whether to certify that the student meets the criteria is final and shall not be subject to review by the Committee or the Court.

No applicant shall be recommended to practice law until graduation or satisfaction of all requirements for graduation, and completion of all requirements for admission to the practice of law under these rules. If an applicant under this subsection has not graduated with a juris doctor within one hundred twenty (120) days of the first day of early exam administration, all parts of the Arizona uniform bar examination, including the score, are void and the applicant’s examination scores shall not be disclosed for any purpose. Scores may not be released until such time as satisfactory proof of award of juris doctor, as determined by the Court, is provided to the Committee. An early examination which is voided shall count as an examination attempt under Rule 35(c)(1).

At the completion of the juris doctor requirements and within sixty (60) days after graduation, the applicant must cause his or her law school, dean, or registrar to submit to the Committee on Character and Fitness proof of graduation, showing his or her juris doctor was conferred within one hundred twenty (120) days of the first day of early exam administration. Failure to complete the course of study within one hundred twenty (120) days of the examination and provide evidence of graduation within an additional sixty (60) days shall render the applicant’s score void.

and the law school attesting that all of the requirements have been met. If a student takes the early bar exam but then fails to graduate within the 120-day period, Arizona does not report the exam score to the student and treats the exam as void. (The exam still counts as an examination attempt.)

As anticipated, Arizona’s law schools have taken distinctive approaches to offering the early bar exam option to their students. Arizona Law has the most structured program and the largest number of participating students. There, interested students must take a diagnostic test in October to assess their readiness for the bar exam. They then have the opportunity to discuss the results and exam options with an assigned faculty member. For students taking the exam, spring semester is divided into a “pre-bar period” and a “post-bar period.” During the former (through the February administration of the bar exam), students are allowed to take no more than two credits and are encouraged to take a two-credit Bar and Professional Skills Study Course. Arizona Law also provides scholarships to aid students in taking commercially offered bar review courses. During the post-bar period, students are offered a menu of courses designed to help them transition from law school to practice. Illustrative topics include Advanced Family Law Practice, Intellectual Property Transactions, and Trial Advocacy. Students may take no more than eight credits, and Arizona Law encourages students to take a two-credit course in Advanced Professionalism and Law Practice. Clinical courses are also available.

At ASU Law, students must apply by August 31 before the fall semester of their third year if they wish to take the early bar exam the following February. Students must satisfy certain credit-hour and grade-point requirements, and they are encouraged to complete the Multistate Professional Responsibility Examination (MPRE) and the character and fitness components of their bar applications before taking the bar exam. ASU Law does not allow students who plan to take the early bar exam to participate in certain law journals or out-of-state externship programs during their third year. Nor may these students complete courses for credit during January or February of the spring semester; instead, during March and April, they may earn up to seven credits by completing a two-credit Transition to Practice course; one additional two-credit course; and up to three credits for an experiential placement, which preferably is a continuation of a previous law school clinic or externship.

Although Summit joined the state’s other law schools in the petition to adopt the early bar exam, few of its students have opted to test early. One Summit student took and passed the early bar exam in February 2014, and another did so in 2015. Summit does not publicly identify on its website any policies related to the early bar exam, but it informed ARC that it partners with bar preparation vendors to prepare students for the early exam; it requires students to take an advanced writing course, to sit for the MPRE, and to submit their character and fitness materials before taking the early bar; and it supports the early bar option for its students.

Arizona’s early bar exam rule does not limit eligibility to students enrolled in law school in Arizona. To date, however, only a few law students enrolled in non-Arizona law schools have opted to take the early bar exam.

The Results

The pilot program was in place for three years before the Supreme Court approved the early bar exam on a permanent basis. In gauging the success of the pilot program, the Supreme Court considered not only the passage rates for students completing the bar exam in their third year, but also how the students and their law schools viewed the program.

Statistically, the early testing applicants have done considerably better than the overall average of
test takers for each administration of the bar exam in Arizona from July 2013 through February 2016. At the February sitting of the bar exam in Arizona, the number of early test takers was 37 in 2014, 47 in 2015, and 29 in 2016.\textsuperscript{7} The passage rate for these test takers was 89\%, 83\%, and 72\%, respectively, as compared to an overall passage rate of 64\%, 58\%, and 49\%.\textsuperscript{8} A more relevant comparison, however, is perhaps between February early test takers and first-time test takers sitting for the July bar exam in the same year, as the latter group largely consists of students who graduated the previous spring. Once again, the early test takers performed well: in 2014, an 89\% passage rate for early testers in February versus 75\% for first-time testers in July; in 2015, 83\% for February early testers versus 66\% for July first-time testers; and in 2016, 72\% for February early testers versus 64\% for July first-time testers.

The statistical results demonstrate that law students can successfully prepare for and take the bar exam before graduating. This should not be surprising. The bar exam is meant to test an applicant’s knowledge of basic substantive areas of the law and ability to apply that knowledge in specific factual settings. Students demonstrably are capable of acquiring such knowledge and ability before completing their final semester of academic study. Moreover, because Arizona’s early bar exam requires both students and their law schools to assess whether the students are academically prepared to take the early bar exam, we should expect those taking the exam to do relatively well.

Feedback from the law schools was also important in assessing the program. ASU Law reported to ARC that its students who had taken the early bar exam had enjoyed earlier employment opportunities and reduced financial stress, in part because they did not need to take on additional loans to support themselves after graduation while studying for the bar exam. ASU Law strongly supported making early testing a permanent option for its students. Summit, although having few early exam takers, also supported preserving the early bar option for its students. Arizona Law, consistent with its leading advocacy for the program, also supported permanent adoption. It observed that participating students had been uniformly enthusiastic and thought the option had helped them obtain legal employment.

In the summer of 2016, ARC also surveyed by e-mail those who had taken the early bar exam. Notably, 95\% of the respondents answered that, with hindsight, they would choose to test early again. Of respondents who were admitted, 78\% found employment requiring a J.D. within one month of admission.\textsuperscript{9}

In light of the results of the three-year pilot project, and “the overwhelming support expressed by the law schools and participating law students,” ARC recommended that the Supreme Court adopt the program as a permanent rule change.\textsuperscript{10} ARC acknowledged that its earlier concerns about allowing the early bar exam had proven unfounded and observed that permanent approval “would be beneficial to young lawyers, the legal community and the public at large.”\textsuperscript{11}

Consistent with ARC’s recommendation, in September 2016, the Arizona Supreme Court approved the early bar exam program on a permanent basis effective January 1, 2017.

Learning from Experience

Whether other states choose to implement an early bar exam program will no doubt depend on their own circumstances, but others may find it helpful to consider how Arizona did so successfully. On reflection, I think several factors were important. First, the proposal was consistent with the Supreme Court’s ongoing effort to improve the legal profession, including bar admissions, to better serve the legal community and the public. The early bar exam was an opportunity to reduce the costs and other barriers to admission for aspiring lawyers—goals also advanced by other reforms the Court had approved,
such as the use of the Uniform Bar Exam and the adoption of admission on motion for experienced lawyers admitted elsewhere.

Also important to Arizona’s success was the fact that the early bar exam program was adopted through collaborative efforts by the state’s law schools, the state bar, and those involved in attorney regulation. By first implementing a pilot project, we were able both to assess the effects and to overcome the doubts of some who had questioned the program. We also gave careful thought to certain key principles that we wanted the early bar exam program to reflect: it should be optional for students and law schools, it should not preclude any accredited law school from offering the option to its students, and—beyond certain basic requirements—it should afford great flexibility to law schools in how they choose to structure an early bar exam option for their students.

As the legal profession and legal education continue to be transformed by economic and technological changes, it is increasingly important that our regulation of the admission to practice adapt to best serve the public. We should expand opportunities and reduce artificial hurdles for well-qualified prospective lawyers. Arizona embraced this approach by approving the Uniform Bar Exam, which recognizes that where people sit—in terms of one state versus another—when they take a test does not determine whether they understand and can apply a basic knowledge of the law. Those abilities also do not necessarily turn on whether a student has yet received a J.D. diploma. At least in Arizona’s experience, for some students on the eve of completing law school, sooner can be better than later in terms of taking the bar exam.

Notes

1. The requirements for admission to the bar in different U.S. jurisdictions are described in the Comprehensive Guide to Bar Admission Requirements, published annually by the National Conference of Bar Examiners and the American Bar Association Section of Legal Education and Admissions to the Bar.


3. For the background to Arizona’s adoption of the early bar exam, see Sally Rider and Marc Miller, “The 3L February Bar Exam: An Experiment Under Way in Arizona,” 82(3) The Bar Examiner (September 2013) 15–24.


5. The description is drawn from the “Summary of the Sandra Day O’Connor College of Law 3L Bar Program” prepared by the law school for its students, available at https://web.law.asu.edu/Portals/16/Files/Curriculums/3L%20Bar%20Program%20Summary.pdf, and presentations by ASU Law to ARC.


7. Students who expect to graduate after the fall semester may be eligible to take the early bar exam the preceding July. Two students did so in each of the years 2013–2015, and five of the six passed.


9. Id. at 6.

10. Id. at 7.

11. Id. at 7.

Hon. Scott Bales joined the Arizona Supreme Court in 2005 and became its Chief Justice in 2014. Justice Bales holds a B.A. from Michigan State University, an M.A. from Harvard University, and a J.D. from Harvard Law School.