The Uniform Bar Examination Comes to the Northeast: UBE Adoption and Implementation in New Hampshire

by Sherry M. Hieber and Gordon J. MacDonald

In 2013, New Hampshire became the first jurisdiction in the Northeast and only the second east of the Mississippi River to adopt the Uniform Bar Examination (UBE). New Hampshire’s path to adoption of the UBE very much reflected local norms and culture. Over the past three years, our experience with the UBE has been overwhelmingly positive both for our jurisdiction and for our applicants.

The Granite State: A Record of Leadership in Bar Admissions

Some background on the Granite State may be helpful to understand New Hampshire’s path to adoption of the UBE. With a population of just 1.3 million, New Hampshire is the proud home of the first-in-the-nation presidential primary. It is blessed with diverse natural resources and a compact geography that allows access to mountains, large lakes, and the ocean in less than a three-hour drive.

New Hampshire’s legal community is also distinctive. There are about 5,000 active lawyers. New Hampshire admits between 250 and 300 lawyers a year. There is a single law school, the University of New Hampshire School of Law. The bar is unified and is a close-knit community with a high degree of professionalism and civic involvement.

When New Hampshire first began consideration of the UBE in 2009, it already had a well-established record in developing and implementing bar admission innovations. This record was due in principal measure to the leadership of New Hampshire’s Chief Justice, Linda Stewart Dalianis.

For example, as has been chronicled previously in the Bar Examiner, prior to her elevation as Chief Justice in 2010, Justice Dalianis worked closely with what is now the University of New Hampshire School of Law (formerly the Franklin Pierce Law Center), as well as with bar leadership and the New Hampshire Board of Bar Examiners, to develop a program of legal education that would create practice-ready law graduates. The Daniel Webster Scholar Honors Program is essentially a two-year bar exam, during which students are evaluated for admission based on their performance, exempting them from taking the traditional bar exam. It produces about 25 lawyers a year and has received deserved national attention as a potential model for the training and admission of new lawyers.¹

Previously, Justice Dalianis had worked with our neighboring states of Vermont and Maine to create a compact that allowed reciprocal admission on motion for attorneys who had practiced in any of the states for three years.

When the UBE came along, it was well in keeping with New Hampshire’s tradition of innovation. At its core was the promise of portability of bar examination scores between jurisdictions, a
potentially transformative development. It was thus no surprise when, in 2009, Justice Dalianis asked the Board of Bar Examiners to investigate the UBE and to prepare a report for the New Hampshire Supreme Court with its recommendations.

**PREPARING A REPORT FOR THE COURT**

In 2009, New Hampshire already administered all of the components of the UBE—the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT). New Hampshire also had a well-established local law requirement. Anyone admitted to the New Hampshire Bar was, and still is, required to attend a 1½-day practical skills course during the first two years of practice, which provides an overview of the unique aspects of New Hampshire law and practice. The course is taught by volunteer New Hampshire lawyers with expertise in the subject areas taught in the course.

In its report to the Supreme Court, the Board of Bar Examiners supported the concept of the UBE and noted as positives the flexibility the transferable score provides to increasingly mobile law graduates, the professionalism of the NCBE exam products, and New Hampshire’s ability to cover local law through the practical skills course. The Board also aired its concerns: dilution or elimination of local control of admissions, the possibility that local law would not be adequately tested (a reprise of a concern that had been voiced when New Hampshire had begun administering the MEE a few years earlier), and the need to rely on graders from other jurisdictions from which UBE examinees would be transferring their scores.

The concerns expressed in the report were not unique to New Hampshire, and in early 2009, NCBE circulated to jurisdictions an FAQ document that addressed questions of common concern to many jurisdictions. In addition, in June 2010, NCBE held a regional meeting to gauge interest in the Northeast, which was attended by Justice Dalianis, the clerk of the New Hampshire Supreme Court, and the chair of the Board of Bar Examiners. This meeting reassured the Court regarding any concerns that had been expressed. The Court also consulted with the leadership of the law school, which was supportive of UBE adoption.

**CONVENING A TOWN MEETING**

For most of New Hampshire’s approximately 200 towns, plenary governmental authority rests with a centuries-old institution—the town meeting. At this annual event, residents come together to listen, deliberate, and decide on issues of collective importance. In keeping with that tradition, in late 2011, the Supreme Court brought together all of the New Hampshire stakeholders for a forum on the UBE. The assembled group included members of the Supreme Court; representatives of the New Hampshire Bar Association, the law school, and the Attorney Discipline Office; the Board of Bar Examiners; and bar admission staff. NCBE President Erica Moeser and then—Director of Testing Susan Case made a presentation. At the end of the presentation, Chief Justice Dalianis requested recommendations from each group regarding adoption of the UBE. Each stakeholder group recommended adoption.

The Board of Bar Examiners met again in January 2012 and voted to recommend adoption of the UBE, providing its recommendation to the Court later that month. On January 2, 2013, the Court adopted the UBE, effective August 1, 2013. New Hampshire’s first administration of the exam was in February 2014.

**A SMOOTH IMPLEMENTATION**

Implementation of the UBE was straightforward. The first task was to amend the bar admission rule,
New Hampshire Supreme Court Rule 42, to incorporate the UBE. It was necessary to determine the time period during which New Hampshire would accept transferred UBE scores. New Hampshire developed a two-tiered system of score transfer. An applicant may use a UBE score earned within three years of filing the motion for admission. If the UBE score was earned between three and five years prior to filing the motion, the applicant must also establish that he or she has been primarily engaged in the active practice of law for at least two years in another state in which the applicant has been in good standing and authorized to practice law. New Hampshire also created forms and procedures related to admission by transferred UBE score and made them available on its website.2

Another step in the implementation process was to revisit our grading procedures to ensure that we were upholding our obligation to other UBE jurisdictions accepting our transferred scores. Judy Gundersen, NCBE Director of Test Operations, traveled to New Hampshire to meet with our graders and to hold a one-day intensive training session. We highly recommend this to any jurisdiction that adopts the UBE.

Finally, we made a concerted effort to increase awareness of New Hampshire’s adoption of the UBE in the legal community and at law schools in the region. Adoption of the UBE was covered in the mainstream press as well as in the New Hampshire Bar News. New Hampshire’s bar admission staff began giving annual presentations at regional law schools regarding the benefits of sitting for the UBE.

The Impact of the UBE on New Hampshire’s Applicant Numbers

Perhaps the most interesting aspect of adopting the UBE has been its impact on applicant numbers. The New Hampshire Supreme Court Office of Bar Admissions is self-funded, and the primary source of funding is the fees paid by applicants. Thus, accurately predicting applicant numbers is important to our budgeting process. Prior to adoption of the UBE, our applicant numbers were fairly consistent: about 150 applicants for the July exam and about 70 for the February exam.

As the number of law school graduates started to decrease in 2014, the year New Hampshire began administering the UBE, we budgeted based on a corresponding expected decrease in our applicants. We predicted a drop in applicants from July 2013 to July 2014 from our average of about 150 to 133. Instead, we had 172 applicants, or a 15% increase. The number of applicants was similar in July 2015, despite the continued decline in law school enrollment. In February 2016, New Hampshire had a record 120 applications for the exam, up from 67 in February 2015. Although some of the February 2016 applicants were retakes from the July 2015 exam, many applicants told us that they were taking the UBE in New Hampshire in order to transfer their UBE scores to New York, which will begin accepting transferred UBE scores in October 2016.

As the only state in the Northeast that was administering the UBE, we knew that we had had a “UBE bump.” Whether this will continue as more of our neighboring states adopt the UBE remains to be seen. And in fact, with New York’s and Vermont’s first administrations of the UBE in July 2016, we saw a decrease in our applications to about 130, which is more consistent with our expectation based on law school enrollment.3

We sent an informal survey to applicants after the July 2014 exam asking whether the UBE was a factor in their decision to sit for the New Hampshire Bar Exam, and about one-third of the applicants responded. Forty-one percent said that it was a factor, and 10% said that it was the only factor in their decision to take the New Hampshire Bar Exam. About three-fourths of the applicants who
responded to our survey expressed their appreciation for the fact that New Hampshire is administering the UBE, and for the flexibility the UBE provides them in their job searches.

New Hampshire’s UBE score transfers, both outbound and inbound, have been relatively modest but are slowly increasing. In 2015, 10 scores were transferred into New Hampshire, and 15 were transferred out.

**Heartwarming Stories from Our Applicants**

We have heard firsthand of the positive, real-life benefits flowing from the UBE’s chief feature: score portability. Prior to adoption of the UBE, failure to achieve New Hampshire’s cut score of 270 probably meant taking the bar exam again. Now, our letters to those applicants informing them of their exam results offer another option. Because the score is portable to other UBE jurisdictions, applicants may be eligible for admission elsewhere. In the February 2016 administration of the exam, 17 of the 120 applicants failing to achieve a score of 270 were nonetheless eligible for admission in at least one other UBE jurisdiction.

We have heard heartwarming stories from applicants who have used their UBE scores to find good-quality legal jobs in other areas of the country. For example, an applicant whose score was not passing in New Hampshire told us that she found her dream job in Minnesota. Another applicant used her score to be admitted in another UBE jurisdiction and then waived into the District of Columbia (which had not yet adopted the UBE at that time), where she had a job waiting.

These stories give life to the importance of the flexibility at the core of the UBE. That flexibility grows as each new jurisdiction adopts the UBE—joining the 25 that have adopted it as of the date of this writing. May this important innovation continue to grow and thrive, in the Northeast and beyond.

**Notes**

1. [Editor’s Note: For previous Bar Examiner articles on New Hampshire’s Daniel Webster Scholar Honors Program, see Anne F. Zinkin and John Burwell Garvey, New Hampshire’s Daniel Webster Scholar Honors Program: Placing Law School Graduates Ahead of the Curve, 84(3) The Bar Examiner 16−22 (September 2015); and John Burwell Garvey, New Hampshire’s Performance-Based Variant of the Bar Examination: The Daniel Webster Scholar Honors Program Moves Beyond the Pilot Phase, 79(3) The Bar Examiner 13−23 (August 2010).]


3. The most recent northeastern states to have adopted the UBE are New Jersey, Connecticut, and Massachusetts, with first administrations scheduled for February 2017 for New Jersey and Connecticut and July 2018 for Massachusetts.

**Sherry M. Hieber** is the General Counsel of the New Hampshire Supreme Court Office of Bar Admissions.

**Gordon J. MacDonald** is the chair of the New Hampshire Board of Bar Examiners and a member of the NCBE Board of Trustees.