The Uniform Bar Examination—Right for New York and for the Future of the Legal Profession

by Hon. Jonathan Lippman

This year New York began a new era in licensing lawyers to meet the challenges of the mobile, interconnected society in which we live. Commencing with the July 2016 bar examination, New York adopted the Uniform Bar Examination (UBE) as its method of testing applicants for admission to practice law. New York’s carefully considered decision to adopt the UBE is a giant step toward a national, uniform bar exam that will enormously benefit law school graduates, the legal profession, and the public.

Many law offices handle cases across state and international borders and operate multiple locations throughout the country. Their clients and their businesses require it. While the legal industry has adapted to the reality of multijurisdictional and cross-border practice, the licensing process for attorneys in the United States has not. Unlike other professions, the legal profession lacks a common licensing test that is shared among all 50 states—whereas doctors, accountants, and members of other professions have had uniform testing systems to obtain licensing credentials for decades. The UBE makes it easier for new lawyers to become licensed and employed in a new jurisdiction, and lawyers who are readily able to be licensed in multiple states are a tremendous asset.

In addition to facilitating mobility in the modern world, the UBE is also enormously beneficial in addressing some of the economic difficulties that new law graduates face. Law school enrollment is at the lowest level since the 1970s, and fewer people are choosing to enter the legal profession. People are reluctant to invest in a legal education—despite the great need for affordable and accessible legal services by the poor and people of limited means—because they sense that it is no longer a reliable source of employment sufficient to justify the high cost of law school.

The UBE provides greater flexibility and saves precious time and resources for new law graduates. In the past, graduates who were job searching in different states would have to study for, pay for, wait for, and take multiple bar exams with uncertain results. With New York’s adoption of the UBE, New York law graduates will no longer have to duplicate their efforts by taking the bar exam in multiple jurisdictions. Candidates will be able to take the UBE in New York and still look for jobs in New Jersey, New Hampshire, Missouri, Washington, and other UBE states. As long as their UBE score meets the minimum passing score for a specific state, they will be eligible for admission in that state. Because UBE jurisdictions recognize that all applicants who have
taken the bar exam in a UBE jurisdiction are tested with the same high-quality examination, they know that they can rely on UBE scores to demonstrate that these applicants have the fundamental knowledge and skills necessary for legal practice. Should they decide that there are certain aspects of law unique to their states that warrant exposure and/or testing prior to admission, they maintain control over whether or not to require a state-specific component—as well as maintaining control over other requirements for admission.

New York is by far the state with the greatest number of examinees to adopt the UBE. In 2015, the New York Board of Law Examiners administered the bar exam to well over 14,000 people from across the state, the nation, and the globe—more than any other state in the country. Since New York’s adoption of the UBE, many additional states have come aboard, including Iowa, Vermont, New Mexico, South Carolina, the District of Columbia, New Jersey, West Virginia, Connecticut, and Massachusetts. It is my belief that the UBE will, in short order, become the standard throughout the country.

New York’s adoption of the UBE and its decision to require a separate online course and test on New York law ensure the integrity of the state’s licensing structure. While the law tested on the UBE is in many ways consistent with New York law, it is the imperative of the legal profession in New York to ensure that our new lawyers are prepared in every way for the practice of law here in the state. Important and unique principles of New York law are covered under the new protocols. While several UBE jurisdictions have taken steps to ensure competence in home-state law prior to admission, through either online testing or an educational course, New York is the first to require both a course and a test. The online New York Law Course (NYLC) consists of hours of videotaped lectures on New York–specific law with embedded questions to be answered by the applicant, and the thorough and rigorous online New York Law Exam (NYLE) consists of 50 multiple-choice questions to ensure familiarity with the material presented in the online course. A specifically formed working group consisting of legal academics and scholars well versed in New York law helped to create the outline of topics to be covered in the NYLC, and expert practitioners, judges, and law professors functioned as faculty presenters for the course.

With our embrace of the UBE, experts in New York bar admissions have continued to be very much involved with NCBE. A New York attorney and member of the New York Board of Law Examiners, Bryan R. Williams, has just completed 12 years of service on NCBE’s Board of Trustees, and Diane Bosse, longtime chair of the New York Board of Law Examiners, serves on NCBE’s Special Committee on the Uniform Bar Examination. Law professors and subject-matter experts from New York serve on NCBE drafting committees responsible for developing and evaluating content for the three tests that comprise the UBE.

New York is rightly at the forefront of the movement toward a more rational, effective system for ensuring that new lawyers are eminently qualified to practice law. In today’s global legal world, it has become easier for foreign-trained lawyers to achieve limited licensing rights to practice law in some states than it is for a domestically trained lawyer to do the same. This simply does not make sense. What our mobile, interconnected society needs is a nationally administered UBE, and I am proud that New York has embraced this broad global vision for the future of our profession.
The Bar Examiner, September 2016

NOTES

1. A committee was appointed by this author in November 2014 to study a proposal by the New York State Board of Law Examiners for New York to adopt the UBE. This Advisory Committee on the Uniform Bar Examination conducted an extensive study, during which it held public hearings and informational sessions where it heard from members of the legal community and received hundreds of written comments. The Advisory Committee presented its final report to the Court in April 2015 recommending adoption of the UBE and of two state-specific licensing components. For the Advisory Committee’s final report, see Advisory Committee on the Uniform Bar Examination, Ensuring Standards and Increasing Opportunities for the Next Generation of New York Attorneys, Final Report to Chief Judge Jonathan Lippman and to the Court of Appeals, April 2015, http://www.nycourts.gov/ip/bar-exam/pdf/FINAL%20REPORT_DRAFT_April_28.pdf.

2. [Editor’s Note: See page 47 of this issue for an article on the NYLC and the NYLE.]