

**Final Report, Findings & Recommendations  
of the  
ISBA Standing Committee on Legal Education,  
Admission and Competence  
on the  
Adoption of the Uniform Bar Examination**



**ILLINOIS STATE  
BAR ASSOCIATION**

*Submitted to the ISBA Board of Governors  
on October 7, 2016*



## **Standing Committee on Legal Education, Admission & Competence**

\*Daniel R. Thies, Chair  
Chicago, IL

Nancy Z. Hablutzel, Secretary  
Durham, NC

Greg C. Anderson  
DeKalb, IL

\*Andrew C. Corkery  
St. Louis, MO

Tarek A. Fadel  
Chicago, IL

Edward W. Huntley  
Springfield, IL

Heidi E. Ramos  
Murphysboro, IL

\*J. David Sanders  
Carbondale, IL

Stacey L. Tutt  
Champaign, IL

Lois Wood  
East St. Louis, IL

Kimberly A. Furr  
Springfield, IL

Allison K. Bethel, Vice Chair  
Chicago, IL

Peter C. Alexander, Ex. Officio  
Carbondale, IL

Barbara B. Bressler  
Glenview, IL

\*Jessica R. Durkin  
Chicago, IL

\*Amanda E. Goldsmith  
St. Louis, MO

Megan Moore  
Springfield, IL

Peter L. Rotskoff  
Springfield, IL

Lawrence A. Stein  
Chicago, IL

\*Wendy H. Vaughn  
Rockford, IL

Kent A. Gaertner  
Wheaton, IL

\* Denotes member of the subcommittee responsible for drafting this report

## TABLE OF CONTENTS

Executive Summary .....	1
Introduction.....	5
Methodology .....	5
Report of the Committee.....	6
I. History of the Uniform Bar Examination .....	6
II. Nuts and Bolts of the UBE .....	8
A. Testing Format .....	8
B. Scoring/Grading .....	9
C. Cost to Candidates.....	10
D. Subjects Tested.....	11
E. Ease of Transferring into Illinois .....	11
F. Possibilities for Continuing to Evaluate Knowledge of Illinois Law .....	12
III. Reasons to Adopt the UBE.....	14
A. The Adoption of the UBE Will Provide More Employment Flexibility, Benefiting Young Lawyers, Legal Employers, and the Public .....	14
B. The UBE Increases the Bar’s Focus on Practical Legal Skills .....	16
C. Adopting the UBE Will Enhance a Candidate’s Knowledge of Illinois-Specific Law .....	18
D. Illinois Law School Deans Support Adoption of the UBE .....	19
IV. Objections to Adopting the UBE.....	19
A. Adopting the UBE Will Result in an Inadequate Focus on Illinois Law .....	19
B. Foreign Lawyers Will Enter Illinois and Take Jobs Away from Illinois Attorneys.....	20
C. The UBE Landscape Suggest More Lawyers May Transfer Into Illinois.....	22
D. The UBE May Have a Negative Impact on Minority Candidates.....	23
V. Recommendations.....	24
A. Illinois Should Adopt the UBE .....	24
B. Illinois Should Adopt an Additional Licensing Requirement to Ensure Familiarity with Illinois Law .....	25
1. Illinois Could Modify or Expand Its Current Minimum Continuing Legal Education Requirements to Include Education and Focus on Distinctions in Illinois-Specific Substantive Law and Procedure.....	25
2. Illinois Could Require a Course on Illinois-Specific Law and/or a Multiple Choice Examination to be Administered Periodically Throughout the Year .....	26
3. Illinois Could Administer the Illinois Essay Examination Periodically Throughout the Year and Require a Minimum Passing Score .....	27
C. Illinois Should Accept Transferred UBE Scores for Up to Three (3) Years.....	28

D. Illinois Should Gather Data Related to the Performance of Minority Candidates on the UBE, Determine if the UBE Adversely Affects Minority Candidates, and Mitigate These Affects, if Any .....	28
VI. Conclusion .....	29
Appendix A.....	Map of UBE Jurisdictions
Appendix B.....	UBE Transfer Statistics by Source and Destination

## EXECUTIVE SUMMARY

President Vincent Cornelius of the Illinois State Bar Association charged the ISBA Legal Education, Admission and Competence Committee (the “Committee”) to review the Uniform Bar Exam (“UBE”) and to make a recommendation as to whether Illinois should adopt the UBE in place of the existing bar exam. Following several months of study, during which the Committee received written and oral comments from numerous members of the legal community, the Committee recommends that the Illinois Supreme Court adopt the UBE. The Committee believes that adopting the UBE will create a more flexible job market, lower the cost of bar admission, and enhance the bar exam’s focus on ensuring that candidates are practice ready. Moreover, because the UBE allows states to adopt additional state-specific requirements for bar admission, including an additional state-specific exam, adopting the UBE will not compromise Illinois’ ability to ensure candidates are knowledgeable about Illinois-specific law and procedure.

### A. The Uniform Bar Examination

First administered in Missouri during February 2011, 25 jurisdictions, including New York, South Carolina, and the District of Columbia, have adopted the UBE.<sup>1</sup> Similar to the current Illinois bar exam, the purpose of the UBE is “to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law.”<sup>2</sup> The National Conference of Bar Examiners (“NCBE”), the same company that already prepares the majority of the Illinois bar exam, also prepares the UBE for administration by state and territorial testing authorities twice per year during February and July.

The UBE has three parts: The Multistate Bar Examination (“MBE”), which is a 200 question multiple-choice exam taken in 6 hours; the Multistate Essay Examination (“MEE”), which consists of six 30-minute essay questions, and the Multistate Performance Test (“MPT”), which consists of two 90-minute performance essays. Candidates who take the UBE receive a portable score that can be submitted as part of an application to gain admission in other UBE states.<sup>3</sup> Under the UBE, each state continues to set its own passing score, meaning that a passing score in Massachusetts will not necessarily entitle a candidate to bar admission in Illinois. To obtain a portable UBE score, candidates must take all portions of the UBE in the same UBE jurisdiction and during the same administration.

Both the American Bar Association and the Conference of Chief Justices have adopted resolutions supporting the UBE. The Conference found that adoption of the UBE will make the bar examination process more efficient and less costly, provide recent graduates with greater mobility and flexibility in seeking employment, and better reflect the multijurisdictional practice of today’s legal market.<sup>4</sup>

---

<sup>1</sup> National Conference of Bar Examiners, *Uniform Bar Examination*, <http://www.ncbex.org/exams/ube/>. South Carolina and New Jersey will begin administering the UBE in February 2017.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

## **B. Changes To The Current Illinois Bar Examination If The UBE Were Adopted**

Crucial to any evaluation of the UBE is determining what would change as a practical matter. As outlined in this report, the content of the actual test administered would not change significantly, because Illinois already uses 87.5% (seven-eighths) of the UBE. Whereas the UBE has two MPT questions, the Illinois Bar Exam includes only one MPT question and requires candidates to complete three 30-minute Illinois-specific essays called the Illinois Essay Examination (“IEE”). Although Illinois would not administer the IEE if it adopted the UBE, any jurisdiction that adopts the UBE has the option of requiring candidates to complete a jurisdiction-specific educational component and/or pass a test on jurisdiction-specific law.<sup>5</sup> The additional test or course could be taken at a separate time from the two-day bar exam, and could be administered multiple times per year, or on demand through an online system. Jurisdictions have developed various models for fulfilling a state-specific law requirement, ranging from live courses to online instruction, both with and without online testing.

Many of these UBE state-specific options may provide a more rigorous test of Illinois-specific law than the current IEE. The three Illinois essay questions make up only about one-eighth of a candidate’s total score on the current exam, and can test only a limited number of subjects. There is no requirement that a candidate achieve a passing score on this part of the test; instead, only the total score must be at a passing level. Moreover, a candidate can obtain partial credit by answering based on general principles of law, without knowing Illinois law. Thus, a candidate can pass while still scoring poorly on the Illinois essays. In other words, under the current system, nothing guarantees that candidates are knowledgeable about Illinois-specific law. By contrast, under many of the UBE alternatives, Illinois could require that candidates demonstrate adequate knowledge of Illinois-specific law before gaining admission.

If Illinois adopted the UBE, the MBE would still be graded nationally, and the Illinois Board of Admissions to the Bar would continue to grade the MEE and MPT using uniform model answers and grading materials from the NCBE. The scores would also continue to be scaled against the MBE scores of Illinois test takers. The current Illinois exam is scored on a 400-point scale with the minimum passing score of 266 (increasing to 268 in 2017), which applies to the entire exam. Even if Illinois adopted the UBE, the Illinois Supreme Court will maintain the authority to set the passing score.

## **C. Reasons to Adopt the UBE**

### *Additional Employment Opportunities*

Under the current system, licensed attorneys in other states can be admitted to the Illinois bar by motion after practicing for three years in another jurisdiction.<sup>6</sup> Candidates who have not practiced for three years, but have taken a bar exam within the last year, can also transfer their MBE scores to Illinois. If Illinois adopted the UBE, candidates would be able to use a UBE score earned in any other UBE jurisdiction to apply for admission to the Illinois bar for a period

---

<sup>5</sup> See, e.g., *supra* note 1.

<sup>6</sup> Pursuant to Illinois Supreme Court Rule 705, “[a] person who, as determined by the Board of Admissions to the Bar, has been licensed to practice in the highest court of law in any USA state, territory, or the District of Columbia for no fewer than 3 years may be eligible for admission on motion.” Ill. S. Ct. R. 705 (West 2014).

specified by the Illinois Supreme Court. The UBE does not permit a transfer of status, so admission in another state would not guarantee admission in Illinois, which could set its passing score higher than other UBE jurisdictions. Candidates who take the Illinois bar would also be able to transfer their scores to the 25 jurisdictions that have adopted the UBE, including the bordering states Missouri and Iowa.

Students are graduating with high debt and limited employment opportunities. By adopting the UBE, Illinois bar exam takers will theoretically have employment opportunities open up for them in 25 other jurisdictions in addition to Illinois.<sup>7</sup> Having a portable bar exam score is a significant benefit because lawyers who are licensed in more than one jurisdiction have a competitive advantage over lawyers licensed to practice in only one state. If Illinois adopts the UBE, Illinois lawyers may be able to become licensed more quickly and with less expense in the neighboring states of Missouri and Iowa, for example, which have already adopted the UBE.

Adopting the UBE would also benefit Illinois employers by increasing the pool of candidates for jobs in areas where lawyers are scarce, such as in rural parts of the state or in certain high-demand practice areas. These additional lawyers may in turn be better able to meet the legal needs of the public in these areas.

#### *The UBE Will Better Test the Practice Readiness of Examinees*

Two recent ISBA Committees—the Special Committee on the Impact of Law School Debt on the Delivery of Legal Services (the “ISBA Debt Committee”) and the Special Committee on the Impact of Law School Curriculum and the Future of the Practice of Law in Illinois (the “ISBA Curriculum Committee”)—recommended more practical training to ensure that candidates for the bar are practice ready. Adopting the UBE will help achieve that goal by adding an additional MPT question and thereby increasing the percentage of the bar exam devoted to testing practical legal skills.<sup>8</sup>

#### *The UBE Allows More Rigorous Examination of a Candidate’s Knowledge of Illinois-Specific Laws*

Adopting the UBE may allow Illinois to implement a more rigorous state-specific requirement for bar admission than the current IEE. Such a requirement could ensure that each candidate has exposure to Illinois-specific law and cannot skate through the bar exam based only on knowledge of general principles of law. For example, Illinois could put into practice a separate Illinois-specific exam, a state-specific online course, additional required CLE during the first year of admission, or a required mentorship program. Implementing an additional CLE requirement would not only benefit new lawyers, but would also promote membership in the ISBA, the state’s premier CLE provider. For instance, the ISBA could expand and tailor its current continuing legal education courses to meet any requirements set by the Illinois Supreme Court. With more exposure to the ISBA at an early stage of their career, candidates may continue to take advantage of the many benefits offered to new members. This in return could increase membership in the ISBA.

---

<sup>7</sup> A map showing the jurisdictions that have adopted the UBE is attached as Appendix A to this report.

<sup>8</sup> National Conference of Bar Examiners, *Multistate Performance Test*, <http://www.ncbex.org/exams/mpt/>.

### Adopting the UBE Will Not Lead Foreign Lawyers to Enter Illinois to Take Jobs

The experience of other UBE states suggests that adopting the UBE will not lead to an influx of new lawyers. Instead, most states that have adopted the UBE see about as many attorneys transferring UBE scores out of the jurisdiction as in, and the overall numbers of transfers are small.<sup>9</sup> Although Illinois may be unique given the size and international importance of its legal job market, the threat that adopting the UBE will lead to a large number of foreign lawyers inundating Illinois is nonetheless small.

### Any Disproportionate Impact on Minority Candidates is Not Likely Significant, But Should be Carefully Monitored

Current data suggests that minority students perform disproportionately worse on the bar exam as it currently exists.<sup>10</sup> It seems unlikely that the adoption of the UBE will significantly alter the current situation with respect to minority passage of the bar exam, given that it is so similar to the current exam. The Committee therefore recommends that after adopting the UBE, Illinois should collect data to study the possible impact on minority students.

#### **D. Recommendations**

After conducting extensive research, the Committee unanimously recommends the following:

- Illinois should adopt the UBE;
- Illinois should adopt additional requirements to educate and/or test candidates on Illinois-specific law, including one or both of the following:
  - Modify or expand minimum continuing legal education requirements in the first year of admission to include distinctions in Illinois substantive law and procedure;
  - Create an Illinois-specific exam to be administered periodically throughout the year for candidates taking the Illinois bar and for candidates seeking to transfer in a UBE score. Such an exam should likely be a multiple-choice exam, to ensure it is psychometrically sound and to facilitate the testing of a larger number of state-specific topics, but it could theoretically be something similar to the current IEE;
- Illinois should accept transferred UBE scores for up to three (3) years;
- Illinois should gather data related to the performance of minority candidates on the UBE, determine if the UBE adversely affects any group of minority candidates, and mitigate these affects, if any.

---

<sup>9</sup> A chart showing the transfer in and out of the UBE jurisdictions is attached as Appendix B.

<sup>10</sup> Ben Bratman, *Opinion: Why More States Should Not Jump on the Uniform Bar Exam Bandwagon*, JD Journal, June 17, 2015, available at <http://www.jdjournal.com/2015/06/17/opinion-why-more-states-should-not-jump-on-the-uniform-bar-exam-bandwagon/>.

## INTRODUCTION

To gain admittance to practice law in Illinois, a new lawyer must pass the Illinois bar exam. Like the majority of states, Illinois' bar exam score is state-specific. That is, a passing score is valid only in the state where the test is administered, and nowhere else. If a candidate for admission wishes to practice in another state, the candidate generally must take and pass a separate state-specific bar exam. The time and cost connected with sitting for the bar exam, waiting for the results, and waiting to be sworn-in as an attorney creates a high burden for any attorney seeking to take advantage of job opportunities in multiple states. This burden is particularly heavy for young attorneys, who face high debt loads and a difficult job market.

A major focus of President Vincent Cornelius's year as president is serving the needs of young lawyers. As part of that focus, President Cornelius charged the Committee to undertake a comprehensive evaluation of the UBE, and to recommend whether Illinois should adopt it in place of the current bar examination. Consistent with that charge, this report compares the current Illinois bar exam with the UBE, evaluates the arguments for and against the UBE, and ultimately recommends that Illinois adopt the UBE.

The Committee's work builds on two previous reports prepared by the ISBA studying the impact of law school debt and the process by which we train new lawyers on the delivery of legal services in Illinois.<sup>11</sup> A major goal of these efforts was to explore ways to ensure that future law school graduates in Illinois are prepared for the realities of today's legal marketplace by attaining competency in core professional skills at a reasonable cost. Both of these reports highlighted the need to enhance the practical skills training that new lawyers receive while also decreasing the cost of joining the bar in Illinois. The Committee believes that its recommendations advance the goals articulated in each of these previous reports.

## METHODOLOGY

During the summer of 2016, members of the Legal Education, Admission, and Competence Committee began researching information regarding the UBE. Each member was assigned a particular topic and prepared a short memo summarizing the results of his or her research. The Committee also held a hearing on August 16, 2016, at the ISBA's Chicago Regional Office. Prior to the hearing, a broad cross section of the legal profession in Illinois, including the deans of the Illinois law schools, members of the Illinois Board of Admission to the Bar, members of the Illinois Attorney Registration and Disciplinary Commission, and members of the National Conference of Bar Examiners ("NCBE") received personal invitations to testify at the hearing or submit comments or concerns to the Committee about whether the Illinois Supreme Court should adopt the UBE. The Committee received written and oral comments from most of the deans of the Illinois law schools and from members of the ISBA Young Lawyers Division. In addition, the Committee heard live testimony from Kellie Early of the NCBE.

---

<sup>11</sup> These reports were the *Report and Recommendations of the Special Committee on the Impact of Current Law School Curriculum on the Future of the Practice of Law in Illinois*, released in 2015, and the *Final Report, Findings & Recommendations on the Impact of Law School Debt on the Delivery of Legal Services*, released in 2013.

## REPORT OF THE COMMITTEE

### I. HISTORY OF THE UNIFORM BAR EXAMINATION

The NCBE prepares the UBE for administration by state and territorial testing authorities twice per year during the final weeks of February and July. The UBE is composed of the Multistate Bar Examination (“MBE”), the Multistate Essay Examination (“MEE”) and the Multistate Performance Test (“MPT”).<sup>12</sup> The purpose of the UBE is “to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law.”<sup>13</sup> Candidates who take the UBE receive a score that is portable and that can be submitted as part of an application to gain admission in other states that have adopted the UBE.<sup>14</sup>

Missouri became the first jurisdiction to adopt the UBE in February 2011. Prior to adopting the UBE, the Missouri Board of Law Examiners (the “Board”) met with the Missouri Supreme Court, deans of the law schools in both Missouri and Kansas, and one Illinois law school dean, in September 2009.<sup>15</sup> The principle concern that emerged from that meeting was “how can you license lawyers to practice in Missouri without testing their knowledge of Missouri law?”<sup>16</sup> Although this concern was legitimate, the Board concluded that adopting the UBE would not significantly diminish Missouri’s ability to ensure that new lawyers were competent in Missouri law, as compared to the pre-UBE system. The Board noted that even before adopting the UBE, “it had become the Board’s practice to craft questions that tested knowledge of general principles of law rather than details of Missouri law.”<sup>17</sup> Despite examinees being instructed to answer the MEE questions according to Missouri law, moreover, “it was the Board’s experience that Missouri law often was the same as the general rules of law with respect to the subjects tested on the MEE.”<sup>18</sup>

Likewise, during 2014-15, New York undertook a comprehensive study of the UBE. Chief Judge Jonathan Lippman of the New York Court of Appeals appointed an Advisory Committee in November 2014 to study a proposal by the New York State Board of Law Examiners to fully adopt the UBE in New York.<sup>19</sup> After a thorough study, which included public hearings, stakeholder meetings, and focus groups, the Committee recommended that the Court of Appeals adopt the UBE along with two state-specific licensing components to be implemented for the July 2016 bar examination.<sup>20</sup> New York found that the UBE along with the two state-specific licensing components would “fairly assess competency, protect clients, adapt to the

---

<sup>12</sup> National Conference of Bar Examiners, *supra* note 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Cindy L. Martin, *Local Law Distinctions in the Era of the Uniform Bar Examination: The Missouri Experience (You Can Have Your Cake and Eat it Too)*, Bar Examiner, Sept. 2011, at 8, available at <http://www.ncbex.org/pdfviewer/?file=%2Fdocsdocument%2F142>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See New York Advisory Committee on the Uniform Bar Examination, *Ensuring Standards and Increasing Opportunities for the Next Generation of New York Attorneys*, April 2015, at 7, [http://www.nycourts.gov/ip/bar-exam/pdf/FINAL%20REPORT\\_DRAFT\\_April\\_28.pdf](http://www.nycourts.gov/ip/bar-exam/pdf/FINAL%20REPORT_DRAFT_April_28.pdf) [hereinafter New York Report].

<sup>20</sup> *Id.* at 5.

geographic and economic realities of 21st century practice, and enhance candidate proficiency in New York law.”<sup>21</sup>

As of July 2016, 20 jurisdictions, including the District of Columbia, have adopted the UBE. Four more states have approved its use beginning in 2017,<sup>22</sup> and Massachusetts is slated to begin administering the UBE in 2018.<sup>23</sup>

<b>Jurisdiction</b>	<b>Adoption</b>
Alabama	July 2011
Alaska	July 2014
Arizona	July 2012
Colorado	February 2012
Connecticut	February 2017
District of Columbia	July 2016
Idaho	February 2012
Iowa	February 2016
Kansas	February 2016
Massachusetts	February 2018
Minnesota	February 2014
Missouri	February 2011
Montana	July 2013
Nebraska	February 2013
New Hampshire	February 2014
New Jersey	February 2017
New Mexico	February 2016
New York	July 2016
North Dakota	February 2011
South Carolina	February 2017
Utah	February 2013
Vermont	July 2016
Washington	July 2013
West Virginia	July 2017
Wyoming	July 2013

Both the American Bar Association and the Conference of Chief Justices have adopted resolutions supporting the UBE. At their annual meeting on July 28, 2010, the Conference of Chief Justices adopted *Resolution 4 Endorsing Consideration of a Uniform Bar Examination*, where the Conference urged “the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination.”<sup>24</sup> In 2016, the Conference adopted *Resolution 10 Urging Consideration of Implementation of Uniform Bar*

<sup>21</sup> *Id.* at 8.

<sup>22</sup> Connecticut, New Jersey, South Carolina, and West Virginia.

<sup>23</sup> See Appendix A.

<sup>24</sup> Resolution 4 of the Conference of Chief Justices, *Endorsing Consideration of a Uniform Bar Examination*, adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee at the 2010 Annual Meeting (July 28, 2010), <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F137>.

*Examination.*<sup>25</sup> Resolution 10 found that adoption of the UBE will make the bar examination process more efficient and less costly, provide recent graduates with greater mobility and flexibility in seeking employment, and better reflect the multijurisdictional practice of today's legal market.<sup>26</sup>

On August 6, 2010, the ABA's Section of Legal Education and Admissions to the Bar adopted a *Council Resolution Endorsing Consideration of a Uniform Bar Examination*, where it also urged "the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination."<sup>27</sup> At the ABA's 2016 Midyear Meeting, the ABA adopted Resolution 109 urging each state and territory's bar admission authorities "to adopt expeditiously the Uniform Bar Examination."<sup>28</sup>

## **II. NUTS AND BOLTS OF THE UBE**

Crucial to any evaluation of the UBE is determining what would change as a practical matter. As outlined below, the content of the actual test administered would not change significantly, because Illinois already uses many of the components of the UBE. A full review of the practical changes resulting from adoption of the UBE must also consider other aspects of the examination process.

### **A. Testing Format**

The current Illinois Bar Exam takes place over a two-day period and consists of the MBE, MEE, MPT, and the Illinois Essay Examination ("IEE"). The following are given on the first day of the test: three IEE questions drafted by Illinois examiners (90 minutes total), one MPT task testing candidates' ability to perform a practical skill necessary for the practice of law (90 minutes), and six MEE essay questions (3 hours total). The MBE, a 200-question multiple choice exam, is administered on the second day. Test takers are allowed three hours in the morning and three hours in the afternoon to complete the MBE.<sup>29</sup>

The components of the UBE are very similar to the current exam. The UBE also takes place over a two-day time period, and also includes the MBE and six MEE questions. However, the UBE includes two MPT tasks, rather than the one MPT task on the current exam. The first day of the exam allots three hours to complete the two MPT tasks and three hours to complete the six MEE questions. The second day of the exam allots six hours to complete the MBE.<sup>30</sup>

---

<sup>25</sup> Resolution 10 of the Conference of Chief Justices, *Urging Consideration of Implementation of Uniform Bar Examination*, adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee at the 2016 Midyear Meeting (February 3, 2016), <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F194>.

<sup>26</sup> *Id.*

<sup>27</sup> Council Resolution of the Section of Legal Education and Admissions to the Bar of the American Bar Association, *Endorsing Consideration of a Uniform bar Examination*, adopted by the Council of the Section of Legal Education and Admissions to the Bar (August 6, 2010), <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F141>.

<sup>28</sup> Resolution 109 of the American Bar Association (February 2016), <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F193>.

<sup>29</sup> *See, e.g.*, Ill. S. Ct. R. 704 (West 2014).

<sup>30</sup> *See, e.g.*, National Conference of Bar Examiners, *supra* note 1.

The critical difference between the current exam and the UBE is that the UBE has a second MPT question in place of the three IEE questions. Therefore, in terms of substance, the current exam and the UBE are 87.5% the same. If Illinois adopted the UBE, the change would be less dramatic than in a state that does not already utilize the MBE, MPT, and MEE.

Separate from the two-day bar exam, Illinois requires candidates to take the Multistate Professional Responsibility Examination (“MPRE”). The MPRE is a two-hour, 60 question multiple choice examination that is administered three-times per year outside of the bar examination.<sup>31</sup> It is required for admission to the bars of all but three U.S. jurisdictions.<sup>32</sup> Passing scores are established by each jurisdiction.<sup>33</sup> Adopting the UBE would have no impact on the administration of the MPRE.

Any jurisdiction that adopts the UBE has the option of requiring candidates to complete a jurisdiction-specific educational component and/or pass a test on jurisdiction-specific law.<sup>34</sup> Jurisdictions have developed various models for fulfilling a state-specific law requirement, ranging from live courses to online instruction, both with and without online testing.

## **B. Scoring/Grading**

Each state that has adopted the UBE administers, grades, and scores the test.<sup>35</sup> In particular, the user jurisdictions independently:

- Decide who will be admitted to practice in the jurisdiction;
- Determine underlying educational requirements;
- Make all character and fitness decisions;
- Grade the MEE and MPT;
- Access candidate knowledge of jurisdiction-specific content through a separate test, course or some combination of the two;
- Accept MBE scores earned in a previous examination or concurrently in another jurisdiction for purposes of making local admissions decisions, if they wish;
- Set their own passing scores; and
- Determine how long incoming UBE scores will be accepted.<sup>36</sup>

The four components of the current Illinois Bar Exam are weighted as follows:

- MBE- 50%
- MEE- 26.7%
- MPT- 10%
- IEE- 13.3%

---

<sup>31</sup> See, e.g., National Conference of Bar Examiners, *Multistate Professional Responsibility Examination*, <http://www.ncbex.org/exams/mpre/>.

<sup>32</sup> Maryland, Wisconsin and Puerto Rico do not require the MPRE.

<sup>33</sup> See, e.g., National Conference of Bar Examiners, *supra* note 31.

<sup>34</sup> See, e.g., National Conference of Bar Examiners, *supra* note 1.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

As a multiple choice test, the MBE is graded nationally. The other parts of the current exam are graded by the Illinois Board of Admissions to the Bar and scaled using the MBE scores of Illinois test takers (to make the scores comparable from one exam administration to another). Graders use uniform model answers and grading materials provided by the NCBE to grade the MEE and MPT portions of the exam.

Under the UBE, the components of the exam would be weighted as follows:

- MBE- 50%
- MEE- 30%
- MPT-20%

If Illinois adopted the UBE, the MBE would still be graded nationally, and the Illinois Board of Admissions to the Bar would still grade the MEE and MPT using uniform model answers and grading materials from the NCBE. The scores would also continue to be scaled against the MBE scores of Illinois test takers.

The current Illinois exam is scored on a 400-point scale with the minimum passing score being 266. This passing score applies to the entire exam. Thus, a candidate can still pass with a weak score on one part of the exam, so long as the scores on the other parts of the exam are high enough to meet the comprehensive passing score.

Effective for the July 2017 bar examination, the Illinois Supreme Court approved an increase in the minimum passing score to 268.<sup>37</sup> The UBE would also be scored on a 400 point scale, and Illinois could continue to set its own passing score on the same scale. Passing scores in other UBE jurisdictions range from 260 to 280.

### **C. Cost to Candidates**

The current cost of the Illinois bar exam is \$500/ \$700/ \$1000, depending on when a candidate registers. There is no standard UBE application cost, because user jurisdictions control the application fees.

Most likely, the cost of applying for admission to the bar in Illinois would not change significantly with adoption of the UBE. Illinois currently spends about \$106 per test taker to purchase test materials, and that cost would increase to about \$114 under the UBE to account for the purchase of an additional MPT question.<sup>38</sup> However, Illinois would no longer need to pay for the development and grading of three IEE essays per test administration, likely offsetting the increased cost.

UBE jurisdictions also set their own fees for the transfer of a score from another UBE jurisdiction. Those fees in UBE jurisdictions currently range anywhere from \$250 (New York) to

---

<sup>37</sup> Matthew Hector, *The Illinois Bar Exam Gets Tougher*, ILL. B.J., May 2015, available at <https://www.isba.org/ibj/2015/05/lawpulse/illinoisbarexamgetstougher>.

<sup>38</sup> Jack Silverstein, *Getting in Uniform*, Chicago Daily Law Bulletin, July 10, 2015, available at <http://www.chicagolawbulletin.com/Archives/2015/07/10/Uniform-Bar-Exam-7-10-15.aspx>.

\$1,250 (Kansas). In many states, the transfer fee is the same as or more than the fee for sitting for the bar in that jurisdiction.

The largest portion of the current Illinois bar admission fee pays for the cost of undertaking the character and fitness review of each candidate. Because that cost will not vary with the adoption of the UBE, the overall cost to candidates will stay approximately the same.

#### **D. Subjects Tested**

The MEE may test on any of the following subjects: business associations (agency and partnership, corporations and limited liability companies), civil procedure, conflict of laws, constitutional law, contracts (including Article 2 of the UCC), criminal law and procedure, evidence, family law, real property, torts, trusts and estates, and Article 9 (secured transactions) of the UCC.<sup>39</sup> The MEE may also test the MBE subjects listed below. Not all of these topics appear on every administration of the exam.

The MBE tests the following subjects:<sup>40</sup> civil procedure (27), constitutional law (27), contracts (28), criminal law and procedure (27), evidence (27), real property (27), and torts (27).<sup>41</sup>

The IEE tests all of the topics appearing on the MEE, and may also test the following subjects: administrative law, commercial paper, equity, federal taxation, Illinois constitutional law, Illinois suretyship, personal property and Illinois civil procedure.<sup>42</sup>

Although these additional IEE subjects would not be tested on the UBE, there is still significant overlap between the substantive areas tested on the UBE and the current IBE.

The MPT is not a test of substantive knowledge. Instead, it is a test of practical skills designed to test the “ability to use fundamental lawyering skills in a realistic situation and complete a task that a beginning lawyer should be able to accomplish.”<sup>43</sup> For each MPT task, candidates are given a closed set of materials, including cases, statutes, deposition transcripts, or exhibits. The candidates then have 90 minutes to use these materials to draft a brief, memo, complaint, pleading, letter, contract, or other legal document that lawyers are often called upon to complete. The UBE includes two such MPT tasks, rather than the one tested by the current exam.

#### **E. Ease of Transferring into Illinois**

Under the current system, licensed attorneys in other states can be admitted to the Illinois bar by motion after practicing for three years in another jurisdiction. Pursuant to Illinois Supreme

---

<sup>39</sup> See, e.g., National Conference of Bar Examiners, *Multistate Essay Examination*, <http://www.ncbex.org/exams/mee/preparing/>.

<sup>40</sup> The number of questions on each exam is found in the parentheses.

<sup>41</sup> See, e.g., National Conference of Bar Examiners, *Multistate Bar Examination*, <http://www.ncbex.org/exams/mbe/preparing/>.

<sup>42</sup> Ill. S. Ct. R. 704(d) (West 2014).

<sup>43</sup> See, e.g., National Conference of Bar Examiners, *Multistate Performance Examination*, <http://www.ncbex.org/exams/mpt/>.

Court Rule 705, “[a] person who, as determined by the Board of Admissions to the Bar, has been licensed to practice in the highest court of law in any USA state, territory, or the District of Columbia for no fewer than 3 years may be eligible for admission on motion.”<sup>44</sup>

Candidates who have not practiced for three years, but have taken a bar exam within the last year can also transfer their MBE scores to Illinois. Such candidates are required to take only one day of the current exam, including the administration of the IEE, MEE, and MPT.<sup>45</sup> Illinois will accept a scaled MBE score of 141 or more, provided that the candidate passed the entire bar exam in the jurisdiction in which the MBE score was earned.<sup>46</sup> The candidate must then pass the MEE, IEE, and MPT portions of the Illinois exam to be eligible for admission.

Candidates who take the Illinois bar may transfer to other states only as allowed by the other states’ rules. If Illinois adopted the UBE, the option of transferring in by motion after three years and the option of transferring an MBE score would remain. In addition, candidates would also be able to use a UBE score earned in any other jurisdiction to apply for admission to the Illinois bar for a period specified by Illinois. Significantly, the UBE does not permit a transfer of status. Instead, candidates are only transferring a portable score that may be used to apply for admission in another UBE jurisdiction.<sup>47</sup> Accordingly, if a candidate earns a 262 on the UBE, that candidate will be eligible for admission in jurisdictions that have passing scores of 260, but will not be eligible for admission with that UBE score in a jurisdiction that sets its passing score at 266. Lastly, if Illinois adopted the UBE, candidates who take the Illinois bar would also be able to transfer their scores to the 25 states that have adopted the UBE, including the bordering states Missouri and Iowa.

## **F. Possibilities for Continuing to Evaluate Knowledge of Illinois Law**

As noted above, adoption of the UBE does not preclude a state from imposing additional testing or educational requirements on state-specific laws. Of the states that have adopted the UBE, seven require a jurisdiction-specific component,<sup>48</sup> ranging from a separate educational course to an additional exam. These various state specific components are listed below, as described by each state.

**Missouri.** Missouri, the first state to adopt the UBE, chose an education-focused approach. It developed a Missouri curriculum, available online, that provides candidates with written outlines of “significant issues of distinction in Missouri law, including appropriate references to Missouri statutory, decision, and common law.” It then formulated a 30-question multiple-choice test covering matters addressed in the written outlines. This Missouri Educational Component Test (“MECT”) is an open book test, which can be taken any time after a candidate has submitted an application to take the Missouri Bar Exam, or up to one year after

---

<sup>44</sup> Ill. S. Ct. R. 705 (West 2014).

<sup>45</sup> See Illinois Board of Admissions to the Bar, *Information For Bar Exam Applicants*, <https://www.ilbaradmissions.org/appinfo.action?id=1>.

<sup>46</sup> *Id.*

<sup>47</sup> See National Conference of Bar Examiners, *supra* note 1.

<sup>48</sup> See American Bar Association Section of Legal Education and Admissions to the Bar, *Comprehensive Guide to Bar Admission Requirements 2016*, Chart 6, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/ComprehensiveGuidetoBarAdmissions/2016\\_comp\\_guide.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/ComprehensiveGuidetoBarAdmissions/2016_comp_guide.authcheckdam.pdf).

the candidate has achieved a passing UBE score in Missouri, or another jurisdiction. Because this approach is focused more on education than testing, candidates may take the MECT as many times as necessary to achieve a passing score.<sup>49</sup>

**New York.** New York requires candidates to complete an online course in New York-specific law, known as the New York Law Course (“NYLC”), and to take and pass an online examination, known as the New York Law Exam (“NYLE”). The NYLC is an online, on demand course that reviews important and unique aspects of New York law. The NYLC consists of approximately 15 hours of recorded lectures with embedded questions that must be answered correctly before a candidate can continue viewing the lecture. The NYLE is a 50-item, two-hour, open-book, multiple-choice test administered online that tests important New York rules. Candidates are required to achieve a 60% score to pass (i.e., they must answer 30 of the 50 questions correctly). Any candidate who fails to achieve that score must retake both the NYLC and the NYLE.<sup>50</sup>

**Alabama.** Alabama requires candidates to take an online video course. The course consists of eight online learning modules covering the following subjects: Alabama Constitution; Alternative Dispute Resolution; Civil Litigation; Criminal Law; Family Law; Real Property; Torts; and Wills & Trusts/Probate. Completion of all online learning modules contained in the course is a requirement for admission to the Alabama State Bar. Candidates will be given access to the course approximately 7-10 days after administration of the bar examination. UBE score transfer candidates are given access to the course after a complete application is submitted and approved by the Committee on Character & Fitness.<sup>51</sup>

**Arizona.** Completion of the Arizona Supreme Court Course on Arizona Law is a requirement for all types of admission. The course highlights areas of law specific to Arizona, providing candidates a base of knowledge common to the practice of law in Arizona. Topics include Civil Procedure, Torts, Contracts, Criminal Procedure, Family Law, Real Property, Professional Responsibility and Constitutional Law. The course includes approximately six hours of video instruction along with supplemental materials and knowledge checks.<sup>52</sup>

**Montana.** All candidates, whether by transferred UBE score or by examination, must register and attend the Montana Law Seminar (“MLS”), which is offered the Thursday following the February and July bar exam. The Montana Law Seminar is a Supreme Court-required course that focuses on the structure of the legal system in Montana, the unique aspects of Montana law and the accepted mores and culture of practicing law in Montana. The MLS is directed specifically to those seeking admission to the Bar, and only those who are applying for admission to the State Bar of Montana are eligible to attend. The MLS is not a CLE program, nor are CLE credits awarded. A candidate may delay attendance at the MLS, but may not be admitted to the Montana Bar until attendance at the MLS has been confirmed. The MLS is

---

<sup>49</sup> Missouri Education Component, available at <http://www.courts.mo.gov/page.jsp?id=325>; Martin, *supra* note 15.

<sup>50</sup> The New York State Board of Law Examiners, *available at* <http://www.nybarexam.org/UBE/UBE.html>, <http://www.nybarexam.org/Content/CourseMaterials.htm>.

<sup>51</sup> Alabama State Bar, available at <http://alabar.scholarlab.com> (contact the Alabama State Bar to access).

<sup>52</sup> Arizona Judicial Branch, <http://www.azcourts.gov/educationservices/Committees/JCA/OnlineRegistration.aspx>.

unique in that it provides candidates the opportunity not only to learn about important topics of Montana law, but also to network with lawyers and judges in the state.<sup>53</sup>

**New Mexico.** New Mexico requires candidates to attend a one day in-person class on New Mexico law before admission. Topics include Indian Law, Family Law, Professionalism, and Ethics. This one-day course is also open to attorneys seeking admission by motion, although priority is given to bar exam candidates.<sup>54</sup>

**Washington.** To be admitted to practice law in Washington, a candidate must successfully pass the Washington Law Component (“WLC”). The WLC is an online timed test based on the Washington Law Component Research Materials, which include 15 outlines on various subjects of law. These materials are available to candidates to study prior to the test. The purpose of the WLC is to educate new lawyers in Washington about areas of law that are unique to Washington law or that are substantially different from the law tested on the UBE. Candidates will be able to access the test from their online admissions account after they submit an application and pay the application fee. There are 60 multiple choice questions to be answered within a four-hour time period. Candidates have access to the WLC research materials while taking the test. A candidate must answer 80% of the questions correctly to pass.<sup>55</sup>

### III. REASONS TO ADOPT THE UBE

The Committee considered numerous reasons to adopt the UBE in Illinois.

#### A. The Adoption of the UBE Will Provide More Employment Flexibility, Benefiting Young Lawyers, Legal Employers, and the Public.

First, adopting the UBE is consistent with the recommendations of the ISBA Debt Committee, which highlighted the employment and debt challenges facing young lawyers.<sup>56</sup> Many law students are graduating with high debt and limited employment opportunities. In 2012, the average debt of a law school graduate was \$140,000, 59 percent higher than eight years earlier.<sup>57</sup> This debt burden can plague law graduates for years, negatively affecting their credit, their career prospects, and the quality of legal services these lawyers provide to the public. At the same time, half of new graduates earn a starting salary between \$40,000 and \$65,000, salaries

---

<sup>53</sup> Montana Judicial Branch, *Montana Law Seminar*, <http://courts.mt.gov/library/bar-seminar>.

<sup>54</sup> New Mexico’s Board of Bar Examiners, *Required Class in New Mexico Law*, <http://nmexam.org/event/required-class-in-new-mexico-law/>.

<sup>55</sup> Washington State Bar Association, *Uniform Bar Exam*, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Admissions/Uniform-Bar-Exam>.

<sup>56</sup> Ill. State Bar. Ass’n, *Final Report, Findings & Recommendations on the Impact of Law School Debt on the Delivery of Legal Services* 11-14 (2013) [hereinafter ISBA Debt Committee Report]. A report by the National Association for Law Placement released in September 2016 found that the overall employment rate for recent law grads in 2015 was consistent with 2014 at 86.7% employment rate, down from 91.9% in 2007. However, only 66.6% of those jobs required bar passage. See National Association for Law Placement, *Highlights of Employment Outcomes For the Class of 2015*, <http://www.nalp.org/0916research>.

<sup>57</sup> Josh Mitchell, *Grad-School Loan Binge Fans Debt Worries*, Wall St. J., Aug. 18, 2015, available at <http://www.wsj.com/articles/loan-binge-by-graduate-students-fans-debt-worries-1439951900?alg=y>.

that are not adequate to support such high debt loads.<sup>58</sup> This unfavorable debt to income ratio is exacerbated by the historically low bar passage rates of recent years.<sup>59</sup>

As one way of dealing with this problem, the ISBA Debt Committee recommended that the Illinois Supreme Court “should investigate ways to license new lawyers at less cost to the lawyer and with less of a delay after law school.”<sup>60</sup> The UBE provides a tangible response to this recommendation by making a law degree more portable, thus allowing new graduates to more easily become licensed where they can find a job.

As the New York report on the UBE found, “[n]ew law graduates are entering a profession where the job market requires geographic flexibility in a challenging employment landscape,” even while the current bar admissions system requires students to determine where they are going to practice before they have a job.<sup>61</sup> The UBE will alleviate this problem by allowing young lawyers to more easily transition to another state when an opportunity for a new job arises. Such a lawyer will no longer need to worry about committing another six months to taking an additional bar exam and waiting for it to be graded.

By adopting the UBE, Illinois bar exam takers will theoretically have job opportunities open to them in 25 other states in addition to Illinois.<sup>62</sup> That tally includes two bordering states, Missouri and Iowa, that have adopted the UBE. Young lawyers in border areas will become more marketable if they can be quickly licensed in both Illinois and another state.

The members of the ISBA Young Lawyers Division who responded to the Committee’s requests for comment overwhelmingly endorsed the UBE because of the possibility that greater portability of a law degree will provide more employment opportunities to debt-ridden young lawyers. One member of the Young Lawyers Division Council stated, “not only will it help attorneys transition to other states, but it can help attorneys who want to practice between states.” A law student representative told the Committee that “the adoption of the UBE would create more flexibility in a student’s job search. Furthermore, the ability to be licensed in multiple jurisdictions could make someone a more attractive candidate in their job search.”

Another young lawyer stated as follows:

I am in favor of Illinois adopting the UBE. The UBE score is portable, and can be used to seek admission in another UBE jurisdiction. This is of vital importance to

---

<sup>58</sup> National Association of Law Placement, *Highlights of Employment Outcomes For the Class of 2015*, <http://www.nalp.org/0916research>. Furthermore, the median entry-level salary for a legal services attorney is \$44,600; at 11-15 years of experience, the median is \$65,000. Pay for public defenders and local prosecuting attorneys is somewhat higher, with a median of \$50,400 for entry-level public defenders and increasing to about \$84,500 for those with 11-15 years of experience. For local prosecuting attorneys, the corresponding figures are \$51,100 and \$80,000. National Association of Law Placement, *NALP’s Public Sector and Public Interest Report Turns Ten!*, July 2014, <http://www.nalp.org/july14research>.

<sup>59</sup> Natalie Kitroeff, *Their Lowest Point in Decades*, Bloomberg, Sept. 17 2015, available at <http://www.bloomberg.com/news/articles/2015-09-17/bar-exam-scores-drop-to-their-lowest-point-in-decades>.

<sup>60</sup> ISBA Debt Committee Report, *supra* note 56, at 48.

<sup>61</sup> New York Report, *supra* note 19, at 38-39.

<sup>62</sup> Twenty jurisdictions have adopted and implemented the UBE. South Carolina, New Jersey, and Connecticut will administer the UBE starting February 2017. West Virginia will administer the UBE starting in July 2017 and Massachusetts will administer the UBE starting July 2018.

new lawyers who are searching for that first law job, and may have to travel to find it. Equally as important is that the UBE would allow those who took a job in another jurisdiction to return to Illinois with fewer barriers to entry. Several of my friends from law school had to either sit for another bar exam in order to move back home, or delayed a return home for long enough to satisfy jurisdictional reciprocity requirements. These obstacles are unnecessary and unduly burdensome in today's fast-paced and highly mobile legal economy.

The widespread adoption of the UBE would allow lawyers to enjoy the same flexibility that is already common in other professional disciplines, including medicine, that use a uniform exam to determine competence for licensure.<sup>63</sup> As another Young Lawyers Division Council member told the Committee, "Having several CPA friends, I have seen the CPA exam's uniformity permit accountants to move freely about the Country (and the world). No doubt, a uniform bar exam would permit greater movement across state lines."<sup>64</sup>

Adopting the UBE may also assist small private firms and legal aid societies, particularly in rural areas, that have had difficulty finding qualified new attorneys.<sup>65</sup> Adopting the UBE would increase the pool of potential candidates for these jobs by adding attorneys in surrounding states with a portable UBE score to the pool of possible job candidates. Lois Wood, the Executive Director of Land of Lincoln Legal Assistance Foundation, mentioned the difficulty that legal aid societies in Illinois have had when waiting for new hires from out of state to pass the bar exam. Adopting the UBE can help eliminate some of those concerns and time delays.

Finally, these changes also hold potential benefits for the public. Many Illinois firms frequently have offices or have attorneys handling legal matters in neighboring states and elsewhere in the United States. If Illinois adopts the UBE, Illinois lawyers may be able to become licensed more quickly and with less expense in the neighboring states of Missouri and Iowa, for example, which have already adopted the UBE. Consumers of legal services in Illinois may find it easier to find an Illinois-based attorney licensed to practice in other states to advise them or represent them in an out-of-state or multi-state matter. Ultimately, Illinois lawyers who are able to use their UBE score to obtain admission to practice in other states will be able to provide Illinois consumers with more affordable and accessible legal services for such matters.

## **B. The UBE Increases the Bar's Focus on Practical Legal Skills.**

In addition to providing more economic opportunities to law graduates, adopting the UBE will better test the practice readiness of candidates. Both the ISBA Debt Committee and the ISBA Curriculum Committee recommended more practice based training in law school to ensure

---

<sup>63</sup> The United States Medical Licensing Exam, which has been used since the early 1990s, "provides a single pathway for primary licensure of all graduates of . . . accredited medical schools in the United States and Canada." See Committee to Evaluate the USMLE Program, *Comprehensive Review of USMLE*, at p. 2, <http://www.usmle.org/pdfs/cru/CEUP-Summary-Report-June2008>.

<sup>64</sup> As of May 2014, 50 states and the District of Columbia have passed mobility laws that will allow licensed CPAs to provide services across state lines. See American Institute of CPAs, *History of CPA Mobility*, <https://www.aicpa.org/Advocacy/State/Pages/SubstantialEquivalencyandPracticeMobility.aspx>.

<sup>65</sup> ISBA Debt Committee Report, *supra* note 56 at 18-21.

that bar candidates have the practical skills necessary for practice.<sup>66</sup> By changing just one-eighth of the current Illinois bar exam, the UBE will better test these practical skills as compared to the current bar exam.

For example, the ISBA Debt Committee recommended a “focus on practice-oriented courses” and stated that nearly every young lawyer to testify indicated that he or she would have preferred more practice based classes if offered.<sup>67</sup> As a result, the ISBA Debt Committee recommended that the “supreme court should carefully consider the purpose of the current procedures for licensing attorneys, including the bar exam, and should evaluate whether the current procedures achieve that purpose.”<sup>68</sup> It also recommended that the supreme court “should consider alternatives to the bar exam as a means of ensuring that new lawyers are qualified to practice.”<sup>69</sup>

The ISBA Curriculum Committee explained that “[i]t is no longer sufficient for law school graduates to merely *think* like lawyers; they must be able to perform the basic tasks central to legal practice. Law school graduates must have a strong work ethic and be able to communicate effectively (both orally and in writing), solve problems, competently perform legal research, and draft common legal documents.”<sup>70</sup> The ISBA Curriculum Committee also criticized the current bar exam format for focusing too much on academic skills over practical.<sup>71</sup>

Research suggests that these skills are crucial to the success of young attorneys. As the ISBA Curriculum Committee noted:

*In July 2012, the National Conference of Bar Examiners evaluated the extent to which the bar exam tests the skills necessary for a newly licensed attorney . . . . Based on the findings . . . , changes are underway . . . .The results demonstrate that written communication, oral communication, and professionalism, among other skills, are considered significant nationally by practitioners and are thus identified by the NCBE as areas to include in the bar exam.*<sup>72</sup>

Consideration and adoption of the UBE is a natural outgrowth of these recommendations. If Illinois adopts the UBE, the three Illinois-specific essay questions would be replaced with an additional MPT task, which tests a candidate’s practice ready skills. As a result, the MPT’s share of a candidate’s overall score would increase from 10 percent to 20 percent.

The MPT does not test substantive knowledge but instead tests examinees’ “fundamental lawyering skills” by providing a realistic situation and a task that new lawyers should have the skills to accomplish.<sup>73</sup> Each MPT question includes a case file and a library of cases, statutes,

---

<sup>66</sup> ISBA Debt Committee Report, *supra* note 56, at 5-6, 45-46; Ill. State Bar Ass’n, *Report and Recommendations of the Special Committee on the Impact of Current Law School Curriculum on the Future of the Practice of Law in Illinois* 6-7, 63-66 (2015) [hereinafter ISBA Curriculum Committee Report].

<sup>67</sup> ISBA Debt Committee Report, *supra* note 56, at 45.

<sup>68</sup> *Id.* at 48.

<sup>69</sup> *Id.*

<sup>70</sup> ISBA Curriculum Committee Report, *supra* note 66, at 6.

<sup>71</sup> *Id.* at 84-85.

<sup>72</sup> *Id.* at 85.

<sup>73</sup> National Conference of Bar Examiners, *Multistate Performance Test*, <http://www.ncbex.org/exams/mpt/>.

regulations and rules. The case file contains source documents with the facts of the case, including deposition transcripts, pleadings, correspondence, police reports or medical records.<sup>74</sup> Candidates must sort through this file, which often contains irrelevant facts and ambiguous or conflicting testimony, to identify the material they need to perform the assigned task.<sup>75</sup>

For example, examinees might be instructed to complete any of the following: a memorandum to a supervising attorney, a letter to a client, a persuasive memorandum or brief, a statement of facts, a contract provision, a will, a counseling plan, a proposal for settlement or agreement, a discovery plan, a witness examination plan, or a closing argument.<sup>76</sup>

These types of tasks are similar to those a new lawyer will face in his or her first years of practice. Weighting a candidate's bar passage more towards his or her ability to effectively complete the MPT tasks will thus better ensure that the candidate is practice ready and qualified to practice as an attorney in Illinois.

### **C. Adopting the UBE Will Enhance a Candidate's Knowledge of Illinois-Specific Law.**

As explained more fully above, the current Illinois bar exam includes all three components of the UBE: the MBE, the MEE, and the MPT. These three components, which are also part of the UBE, are weighted as 86.7% of the current Illinois Bar Examination score.<sup>77</sup> In addition to these three UBE components, the Illinois Bar Examination includes the IEE in which test takers are required to answer three essay questions designed to test Illinois-specific law. The IEE component is weighted as 13.3% of the overall score.<sup>78</sup>

Furthermore, there is no requirement that a candidate achieve a passing score on the IEE in isolation. Only the candidate's total score from all parts of the test must be at a passing level. Thus, a candidate can currently pass the Illinois bar exam while still scoring poorly on the Illinois essays.

The Illinois Board of Admissions to the Bar has also found that the Illinois essays frequently overlap with the MEE "in subject matter and issues selected for testing."<sup>79</sup> For the drafters of IEE,

*[f]inding Illinois law-specific issues appropriate for a test of minimum competence to practice law has proved challenging when drafting IEE questions. Much of the difficulty stems from Illinois having adopted uniform laws, placing it in the modern majority of states that apply state common law.*<sup>80</sup>

Consequently, the IEE, at least in part, tests only general principles of law that are also tested on the MEE, rather than distinctions in Illinois law and procedure.

---

<sup>74</sup> National Conference of Bar Examiners, *Preparing for the MPT*, <http://www.ncbex.org/exams/mpt/preparing/>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Illinois Board of Admissions to the Bar, *Request for Public Comment on the Uniform Bar Examination*, September 10, 2015, at 2.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 3.

<sup>80</sup> *Id.*

Based on the above, the Committee concludes that the IEE may not be the best mechanism for insuring that Illinois lawyers are knowledgeable about Illinois specific areas of law and competent in applying these Illinois distinctions in their practices.

By contrast, if Illinois adopts the UBE, Illinois could adopt an additional licensing requirement that will better ensure familiarity with Illinois law. For example, Illinois could adopt a separate Illinois-specific exam and require each candidate to achieve a passing score on it apart from the candidates' score on the rest of the exam. This separate exam could be multiple choice or essay-based, and could be given 4-5 times a year (separate from the UBE administration) for both first-time candidates and UBE transferees. This separate exam could be a multiple-choice exam that would test more subjects of state law with more precision than the current essay questions.

Another possibility is that Illinois could also implement additional continuing legal education requirements in the first year of admission, or could require that new attorneys participate in a mentorship program. These types of programs will also greatly enhance new lawyers' practice ready skills.

#### **D. Illinois Law School Deans Support Adoption of the UBE.**

The Committee also reached out to Illinois law school deans. In addition to the overwhelming support of young lawyers and law students, Illinois law school deans are generally in favor of the change to the UBE. The dean of the Southern Illinois University School of Law was in favor of the adoption of the UBE, particularly because many SIU graduates wish to practice in both Missouri and Illinois. Deans from the DePaul University College of Law and the Northern Illinois University College of Law were open to exploring the adoption of the UBE. The dean of John Marshall Law School stated that he was "mainly positive on this possible development." The dean of Loyola University Chicago School of Law attended a Committee meeting and expressed his support for the UBE, although he cautioned that Illinois should also ensure that any changes do not negatively impact minority students.

### **IV. OBJECTIONS TO ADOPTING THE UBE**

The Committee also considered potential concerns with the adoption of the UBE, with the goal of fully and fairly assessing each of them. Although some have criticized opponents of the UBE as protectionist and reactionary,<sup>81</sup> the Committee does not share this view. The Committee instead views many of the following concerns raised by UBE opponents to be real and legitimate, and deserving of careful consideration and a full response.

#### **A. Adopting the UBE Will Result in an Inadequate Focus on Illinois Law.**

The primary concern is that adopting the UBE means that Illinois bar candidates will not be tested on Illinois-specific law. Illinois law and procedure have numerous aspects that are unique and differ from federal law and federal procedure. Members of the Bar are aware of these

---

<sup>81</sup> Barron YoungSmith, *The National Bar Exam That Could Save the Legal Profession*, July 22, 2014, [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2014/07/the\\_uniform\\_bar\\_exam\\_or\\_ube\\_could\\_save\\_the\\_legal\\_profession\\_go\\_take\\_it.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2014/07/the_uniform_bar_exam_or_ube_could_save_the_legal_profession_go_take_it.html).

many differences, including the differences in contribution law, Supreme Court Rule 213 expert disclosure requirements, intrastate *forum non conveniens* rules, the Dead Man's Act, jury demand issues, and many other unique provisions of state law. Illinois courts also apply discovery rules differently with respect to what is considered privileged, what must be produced in litigation, and the description of privileged documents required by Supreme Court Rule 201(n). The adoption of the UBE thus leads to the question of whether a candidate can be competent to practice in Illinois without knowledge of Illinois-specific law.

Underlying this concern is the assumption that someone who passes the bar should be able to practice as a lawyer in Illinois. Without knowledge of distinctive aspects of Illinois law, new lawyers can be a danger not only to themselves, but also to their clients, the rest of the bar, the courts, and the public in general.

A related issue is that if Illinois law is not tested at the time of the exam, then candidates will be left with the impression that Illinois law is not as important for their preparation and practice as an attorney. This impression may be misleading, given that attorneys in practice will be required to know Illinois law to protect their client's interests.

**Resolution:** As explained above, the UBE actually enhances Illinois' ability to ensure that candidates are familiar with Illinois law, as compared to the current test. Only about 13% of a candidate's overall score on the current bar exam comes from the IEE—the segment of the test devoted to Illinois law. But even this section of the exam is not devoted exclusively to Illinois law (testing such subjects as federal taxation), and candidates can score partial credit by answering based on general principles of law. It is thus possible to pass the current Illinois bar exam without studying Illinois law in any depth.

The best way to enhance the testing of Illinois-specific law is to adopt the UBE with an Illinois component that tests candidates on Illinois law, and to require each candidate to earn a passing score on the Illinois-specific test, apart from the candidate's score on the rest of the UBE. Such a version of the UBE would better prepare Illinois lawyers regarding multiple aspects of Illinois law. There are a number of options for the form of this Illinois-specific component, as discussed below, but they all have the potential to enhance a candidate's exposure to Illinois law as compared to the current process.

## **B. Foreign Lawyers Will Enter Illinois and Take Jobs Away from Illinois Attorneys.**

Another concern is that adopting the UBE will lead to an influx of foreign lawyers, causing Illinois lawyers to lose jobs and lose business. Illinois has a high number of lawyers already. The United States Department of Labor reports that Illinois has one of the highest concentrations of lawyers in the country, with over 5 lawyers employed per 1000 jobs in the state.<sup>82</sup> The Department's statistics also show that the Chicago metro area has more lawyers than all but three other metropolitan areas in the country.<sup>83</sup>

---

<sup>82</sup> Bureau of Labor Statistics, *Occupational Employment and Wages*, May 2015, [www.bls.gov/oes/current/oes231011.htm](http://www.bls.gov/oes/current/oes231011.htm).

<sup>83</sup> *Id.*

Even while Illinois continues to have a high concentration of lawyers, the number of lawsuits in the state has decreased. The Annual Report of Illinois Courts states that lawsuits are substantially down from 2010 to 2014, having declined from 3.8 million to 2.9 million during that time.<sup>84</sup> Moreover, Illinois lawyers are facing challenges they never faced before. Out-of-state lawyers advertise on TV in Illinois. Nontraditional lawyer referral services like AVVO represent a significant challenge, and non-lawyer entities like LegalZoom seek to replace the services that lawyers have traditionally provided. All of these factors put lawyers in a sensitive and difficult position.

To be sure, statistics from the NCBE do not suggest that the adoption of the UBE will lead to an influx of new lawyers. The NCBE statistics show that most states that have adopted the UBE see about as many attorneys transferring UBE scores out as in, and the overall numbers of transfers are small.<sup>85</sup>

Nonetheless, Illinois may be unique. None of the states from which statistics are available are similar to Illinois. Illinois is a large state containing one of the nation's largest cities and is home to a significant national and international legal market. The only comparable state to adopt the UBE thus far is New York. At this time no statistics are available from New York because it administered the UBE for the first time in July 2016. In its report recommending adoption of the UBE, New York anticipated that many lawyers would transfer to other states to partially offset those who would come into the state.<sup>86</sup> Data does not yet exist to confirm or refute that conclusion.

**Resolution:** The Committee concluded that the threat that foreign lawyers transferring into Illinois will disrupt an already weak legal employment market is not significant, for multiple reasons.

First, there are geographical areas within Illinois suffering from a shortage of lawyers that could benefit from UBE candidates transferring into the state. For example, the ISBA Debt Committee found that there is a shortage of lawyers in rural parts of the state.<sup>87</sup> Lawyers in rural parts of the state are also disproportionately older, suggesting that the shortage of lawyers will continue to intensify in future years.<sup>88</sup> Adopting the UBE could help attorneys who initially took the bar in other states to take these jobs. In particular, Missouri and Iowa are two bordering UBE states that might prove fertile sources of candidates to the bar to serve rural counties in southern and western Illinois.

Currently, lawyers living along Illinois' borders often take two bar exams. Many lawyers in Southern Illinois take the Missouri bar, and lawyers in Northern Illinois often take the Iowa bar. Adopting the UBE will allow young lawyers in these areas to save a significant amount of time and money, as they will not have to prepare for a second bar examination, take a second bar prep course, and wait for the results of another bar exam. Prospective employers may benefit as

---

<sup>84</sup> Administrative Office of the Illinois Court, *2014 Annual Report of the Illinois Courts*, at 9.

<sup>85</sup> See Appendix B.

<sup>86</sup> New York Report, *supra* note 19, at 42-43.

<sup>87</sup> ISBA Debt Committee Report, *supra* note 56, at 23-25.

<sup>88</sup> *Id.*

well, as they will not need to wait for new hires to take another bar exam before starting work across the border.

Second, there are also practice areas within Illinois that suffer from a shortage of attorneys. As the ISBA Debt Committee found, job opportunities are plentiful in certain specialized practice areas, such as ERISA, regulatory compliance, and sophisticated tax planning.<sup>89</sup> The more fluid job market made possible by the UBE will better match qualified young attorneys from across the country with Illinois' particular job needs.

Third, Illinois' other requirements for bar admission beyond the bar exam will continue to ensure that only qualified attorneys can practice in Illinois. A candidate must still pay the relevant fee, pass character and fitness, and meet whatever additional Illinois-specific requirements Illinois chooses to impose (including potentially some type of test on Illinois law). Thus, casual transferees to Illinois are not likely, as New York concluded when addressing a similar concern in its state.<sup>90</sup> The majority of people who will become lawyers in Illinois will continue to be people who have connections to this state and want to practice law here.

Fourth, Illinois' passing score will likely still be high enough that many candidates who want to transfer in will not be able to do so. After Illinois raises its passing score to 268 in 2017, it will have a passing score higher than most other UBE jurisdictions. As a result, some candidates may fail to earn a score high enough to practice in Illinois, but may be eligible to move to practice in another state, thus decreasing the likelihood that Illinois will see a significant net influx of UBE transfers.

Finally, the Committee also concluded that using the bar exam to limit the number of attorneys in Illinois is not consistent with the core purpose of the bar exam. The exam is not in place to limit the number of lawyers in a specific state. Instead, the bar exam is in place to ensure minimum competency. As the New York committee evaluating the UBE stated, the bar exam is "a consumer protection device intended to ensure, to the extent possible, that only those who have demonstrated minimum competence are permitted to bear the title 'Attorney at Law' and represent clients."<sup>91</sup> The Illinois Committee views the bar examination in the same way.

### **C. The UBE Landscape Suggests More Lawyers May Transfer Into Illinois.**

A related concern is tied to the current UBE map. Currently, 25 jurisdictions have adopted the UBE, providing numerous locations to which an Illinois bar candidate could transfer a UBE score. But many large states with national and international legal markets comparable to Illinois have not adopted the UBE, including Texas, California, and Florida.<sup>92</sup> Moreover, there is no indication these states have any plans to adopt the UBE. By adopting the UBE, Illinois may become a magnet for transfers from "smaller states," while not as many lawyers will seek to transfer out of Illinois to smaller jurisdictions.

---

<sup>89</sup> *Id.* at 28.

<sup>90</sup> New York Report, *supra* note 19, at 43.

<sup>91</sup> *Id.*

<sup>92</sup> National Conference of Bar Examiners, *Mission and Services of the National Conference of Bar Examiners*, July 21, 2016.

**Resolution:** Although not every state has adopted the UBE, the trend appears to be that more and more states are adopting it. Moreover, several of Illinois' neighboring states have adopted it. This trend is likely to continue, particularly if Illinois joins New York as the second large state with a national and international legal market to adopt the UBE. This momentum will encourage other large states to join as well, which should also lessen the danger that Illinois will disproportionately attract UBE transfers.

#### **D. The UBE May Have a Negative Impact on Minority Candidates.**

There is also a concern that adopting the UBE may affect minority candidates negatively. Some have pointed out that the UBE serves to enhance the flaws of the current bar exam, including that minorities traditionally perform worse than non-minority candidates, by applying the same exam to everyone.<sup>93</sup> Even worse, the UBE removes the ability of the states to act as workshops to develop new approaches to the bar exam that may help to alleviate this problem.<sup>94</sup>

**Resolution:** Current data suggests that minority students perform disproportionately worse on the bar exam as it currently exists. As outlined above, however, adopting the UBE means that only one-eighth of the test will change, as the three essays on the IEE are replaced by an additional MPT task. Even the part of the test that is changing will not introduce a radically different component, as the MPT is already a part of the current Illinois exam. It thus seems unlikely that the adoption of the UBE will significantly alter the current situation with respect to minority passing rates.

Nonetheless, little data currently exists about the impact of adopting the UBE on minority passing rates. The Committee therefore recommends that after adopting the UBE, Illinois should collect data to study any possible impact on minority students.

The New York Committee suggested a similar course of action, recommending that New York monitor the following data points over the course of at least three years of bar examinations:

- Bar passage rates by (1) race; (2) ethnicity; and (3) gender. These data points should be reviewed for overall performance and performance by question type and compared to the current test in the same categories.
- Performance by candidate credentials: (1) LSAT scores; (2) Law school GPA; (3) Other indicators deemed relevant by the bar examiners of the state.
- Statistics related to individuals who are taking the test for the first time vs. subsequent attempts. The Committee noted that there was evidence that racial and gender differences decline with the second taking of the test and that this could point to the need for tailored preparation strategies.<sup>95</sup>

---

<sup>93</sup> Ben Bratman, *Opinion: Why More States Should Not Jump on the Uniform Bar Exam Bandwagon*, JD Journal, 2015, at 8.

<sup>94</sup> *Id.*

<sup>95</sup> New York Report, *supra* note 19, at 61-63.

The Illinois Committee proposes that Illinois study the same factors. After three years, Illinois can make a more informed determination about whether the UBE has any negative effect on minority students, and take necessary steps to mitigate such an effect, if it exists. At this time, there is no objective basis for this concern to stop the adoption of the UBE.

## **V. RECOMMENDATIONS**

The Committee has extensively analyzed the current Illinois bar exam, the experience of other states that have adopted the UBE, and the likely impact of either maintaining the current exam or adopting the UBE on current and future Illinois lawyers, Illinois law firms, and the public at large. Based on these considerations the Committee unanimously endorses the following recommendations:

### **A. Illinois Should Adopt the UBE.**

After considering the views of both proponents and critics of the UBE and engaging in an independent analysis of all of the issues, the Committee recommends that Illinois adopt the UBE. Although the critics of the UBE rightly point out the importance of ensuring that candidates have knowledge of Illinois-specific law, the Committee believes that this goal can be achieved best by adopting the UBE and including an additional state-specific component. If this state-specific component is sufficiently rigorous, it will be a better guarantor of knowledge of Illinois law than the current system.

At the same time, adopting the UBE with its additional MPT task will advance the goal of ensuring that new lawyers are practice ready. Critics of traditional bar examination methods express concern that multiple choice and essay examinations testing a lawyer's ability to memorize and recall information do not adequately assess a lawyer's ability to think critically, comprehend and analyze information, apply legal concepts to a factual problem, and communicate effectively in writing. Adopting the UBE represents another step toward a bar exam focused on the practical skills a lawyer will use in practice.

Adopting the UBE will allow Illinois to administer a second MPT task and will provide more testing of practical skills and lawyering competency generally.

Perhaps the greatest benefits of adopting the UBE will go to young lawyers facing a hostile job market. In the current legal marketplace, lawyers who have the ability to practice in more than one jurisdiction have a competitive advantage over lawyers licensed to practice in only one state. Young lawyers, in particular, who may have difficulty finding entry-level legal employment will have broader opportunities for practice and will be able to widen their search for employment if Illinois adopts the UBE. Recent law graduates facing high law school debt burdens in particular will be able to secure more lucrative positions or positions that offer loan repayment if they are able to market their legal skills in more than one state.

## **B. Illinois Should Adopt an Additional Licensing Requirement to Ensure Familiarity with Illinois Law.**

Although some states that have adopted the UBE have chosen not to require a state-specific component for admission to the Bar in their states, the Committee recommends that Illinois require that new candidates and practicing attorneys licensed in other states seeking admission on motion to the Illinois bar be familiar with distinct areas of Illinois substantive law and procedure. The Committee recommends that these options be considered not only for new admittees, but also for practicing attorneys seeking admission on motion. The Committee has identified a variety of options that the Illinois Board of Admissions to the Bar and the Supreme Court of Illinois should consider as possible methods for increasing attorneys' knowledge and competence with respect to Illinois-specific law.

### **1. Illinois Could Modify or Expand its Current Minimum Continuing Legal Education Requirements to Include Education and Focus on Distinctions in Illinois-Specific Substantive Law and Procedure.**

Pursuant to Illinois Supreme Court Rule 793, newly admitted attorneys are required to complete the following three requirements during the first year they are admitted to practice in Illinois:

*The requirement for newly-admitted attorneys includes three elements:*

*(1) A Basic Skills Course of no less than six hours covering topics such as practice techniques and procedures under the Illinois Rules of Professional Conduct, client communications, use of trust accounts, attorneys' other obligations under the Court's Rules, required record keeping, professional responsibility topics (which may include professionalism, diversity issues, mental illness and addiction issues and civility) and may cover other rudimentary elements of practice. The Basic Skills Course must include at least six hours approved for professional responsibility credit. An attorney may satisfy this requirement by participating in a mentoring program approved by the Commission on Professionalism pursuant to Rule 795(d)(12); and*

*(2) At least nine additional hours of MCLE credit. These nine hours may include any number of hours approved for professional responsibility credit;*

*(3) Reporting to the MCLE Board as required by Rule 796.<sup>96</sup>*

The programs accredited to qualify for the Basic Skills Course, professional responsibility credits, and qualifying mentoring programs could be modified to provide more emphasis on unique and distinctive areas of Illinois law and practice. In the alternative, current requirements could be expanded to increase the total number of hours required or to include a fourth requirement devoted more exclusively to education and training on Illinois-specific substantive law and procedure.

---

<sup>96</sup> Ill. S. Ct. R. 793 (West 2014), *Requirement for Newly Admitted Attorneys*, [http://www.illinoiscourts.gov/supremecourt/rules/art\\_vii/artvii.htm](http://www.illinoiscourts.gov/supremecourt/rules/art_vii/artvii.htm).

Newly admitted attorneys are eligible for complimentary membership in the ISBA during their first year of bar admission and can meet their Illinois MCLE requirements through programs provided by the ISBA at no cost.<sup>97</sup> The ISBA has developed a full set of curricula for newly admitted lawyers to meet the Basic Skills Course and professional responsibility credits required by Illinois Supreme Court Rule 793.<sup>98</sup> If additional state-specific components are required, the ISBA will be able to modify or add this information to its curricula.

Enhancing or expanding the content of existing Basic Skills Courses and qualifying mentoring programs to provide additional training and emphasis on distinctive areas of Illinois law and practice is a simple and effective way to increase knowledge and competence among lawyers practicing in Illinois. Although some modification to existing programs and curricula will be required, it is unlikely that these enhancements will be expensive or unduly burdensome on qualified CLE providers and mentoring programs, or on admitted lawyers.

The Committee further recommends that Illinois require practicing lawyers seeking admission to the Illinois bar on motion to also complete similar CLE programs and/or mentoring programs focused on providing training and emphasis on distinctive areas of Illinois law and practice. This measure will ensure that all out of state attorneys seeking to practice in Illinois are competent in Illinois law.

## **2. Illinois Could Require a Course on Illinois-specific law and/or a Multiple Choice Examination to Be Administered Periodically Throughout the Year.**

A number of states that have adopted the UBE have created in person courses, online videos, or online interactive educational programs designed to teach state-specific information and, in some cases, to provide periodic embedded questions within the course to ensure ongoing attention and understanding of the material covered. Other UBE states have included not only a mandatory online course, but also multiple choice tests that are either self-administered for educational purposes or that require a minimum passing score for admission.

Both options—an Illinois specific test or an educational course—could apply to candidates taking the UBE in Illinois, candidates seeking to transfer their UBE score from another jurisdiction, and practicing attorneys seeking admission by motion, thereby ensuring that all attorneys practicing in Illinois have some exposure to Illinois law.

There are multiple options for implementing this requirement. For example, an educational program could be offered online to reduce cost and increase accessibility. It could also include embedded questions and interactive components to ensure the candidates are engaged in the course and are applying Illinois law correctly. In any case, such a course should be sufficiently rigorous to ensure candidates gain familiarity with Illinois law.

---

<sup>97</sup> Ill. State Bar Ass'n, *Continuing Legal Education: New Attorneys*, <http://onlinecle.isba.org/store/provider/custompage.php?pageid=105>.

<sup>98</sup> Ill. State Bar Ass'n, *Continuing Legal Education: ISBA Basic Skills - For Newly Admitted Attorneys*, <http://onlinecle.isba.org/store/seminar/seminar.php?seminar=45257>.

Numerous options exist for the testing requirement as well. First, any test could be a self-administered diagnostic examination or a graded examination with a minimum score requirement.

Second, the test could be administered prior to admission, or within a specified period of time not longer than a year after admission. Administering the exam after a period of practice would give the candidate context for the test and a deeper understanding of why the Illinois-specific points of law are important. If the exam were given after admission, it could not require a particular passing score such that some attorneys could fail, so as to not detrimentally affect representation of the lawyers' clients. Instead, the test could only be diagnostic.

Third, an Illinois multiple-choice examination could be administered as an open-book examination (that could be taken online from any location at any time) or as a closed-book examination (that would have to be proctored at a testing center). If Illinois elects an open-book format, the examination could be carefully timed such that candidates must have a solid grounding in Illinois law to complete the examination within the time allowed. Requiring candidates to take a closed-book examination at a testing center would likely increase the cost of the examination, but could provide a more rigorous test of attorney competence and understanding of Illinois-specific law.

### **3. Illinois Could Administer the Illinois Essay Examination Periodically Throughout the Year and Require a Minimum Passing Score.**

If Illinois adopts the UBE, it could also continue to administer a separate Illinois Essay Examination similar to that currently in place, but at a separate time and place than the bar exam. Administering the IEE as a separate examination might allow for a more rigorous testing of knowledge of Illinois law, because Illinois could require a minimum passing score on the Illinois portion alone.

The Committee does not recommend that a third half-day be added to the examination schedule to allow the IEE to be administered at the same time as the UBE. This setup would eliminate the flexibility gained from adopting the UBE, which allows candidates to transfer a score into Illinois at any time without waiting for another administration of the bar exam. Requiring candidates to sit for an additional partial day for an Illinois-specific examination would also add significantly to the cost of administering the examination, would require candidates to expend additional funds for lodging and expenses related to staying overnight for an additional day of testing, and would be unduly burdensome for bar examiners and test-takers.

To maintain the flexibility offered by the UBE, the IEE would have to be given multiple times per year, presenting additional obstacles. For example, a new version of the test would have to be developed for each administration to ensure the security of the questions. The administrative burden of doing so would be significant. In addition, the cost of administering and proctoring the IEE periodically throughout the year might increase costs for candidates taking the bar examination and possibly deter potential candidates from seeking admission to the Illinois bar.

Thus, given the other options for ensuring that Illinois lawyers have knowledge and competence in Illinois specific areas of law and practice outlined above, administering a separate IEE may not be the best option.

### **C. Illinois Should Accept Transferred UBE Scores for Up to Three (3) Years.**

Illinois currently allows attorneys to gain admission by motion after practicing for three years in another jurisdiction:

*Any person who, as determined by the Board of Admissions to the Bar, has been licensed to practice in the highest court of law in any United States state, territory, or the District of Columbia for no fewer than three years may be eligible for admission on motion.*<sup>99</sup>

Based on this rule, the Committee recommends that Illinois accept transferred UBE scores for up to three years after the score has been earned. These two rules would then match up and ensure that candidates always have an administratively easy option for gaining admission to practice in Illinois.

### **D. Illinois Should Gather Data Related to the Performance of Minority Candidates on the UBE, Determine if the UBE Adversely Affects Minority Candidates, and Mitigate These Affects, if Any.**

In 2016, the American Bar Association adopted two resolutions relating to the UBE. At its midyear meeting in 2016, the American Bar Association's House of Delegates adopted Resolution 109 which "*urges the bar admission authorities in each state and territory to adopt expeditiously the Uniform Bar Examination in their respective jurisdictions.*"<sup>100</sup> At that same midyear meeting in 2016, the American Bar Association's House of Delegates also adopted Resolution 117, which

*[u]rges bar admission authorities to consider the impact on minority applicants in deciding whether to adopt the Uniform Bar Examination (UBE) in their jurisdiction . . . .*<sup>101</sup>

In recommending adoption of the UBE, the New York Advisory Committee stated that "there is simply no available evidence suggesting that the UBE would negatively affect (or, for that matter, positively affect) any particular demographic group."<sup>102</sup> To further study and evaluate the potential impact of adoption of the UBE on minority candidates, the New York Advisory Committee recommended that New York collect specific data and study bar passage rates by race, ethnicity, and gender over the course of at least three years of bar examinations.<sup>103</sup>

---

<sup>99</sup> Ill. S. Ct. R. 705 (West 2014).

<sup>100</sup> American Bar Association, *Midyear Meeting 2016 Reporter Resources: House of Delegates Resolutions*, [http://www.americanbar.org/news/reporter\\_resources/midyear-meeting-2016/house-of-delegates-resolutions/109.html](http://www.americanbar.org/news/reporter_resources/midyear-meeting-2016/house-of-delegates-resolutions/109.html).

<sup>101</sup> *Id.*

<sup>102</sup> New York Report, *supra* note 19, at 61.

<sup>103</sup> *Id.*

Although New York has now adopted the UBE, the results of New York's collection and evaluation of data of UBE test takers in New York are still unknown.

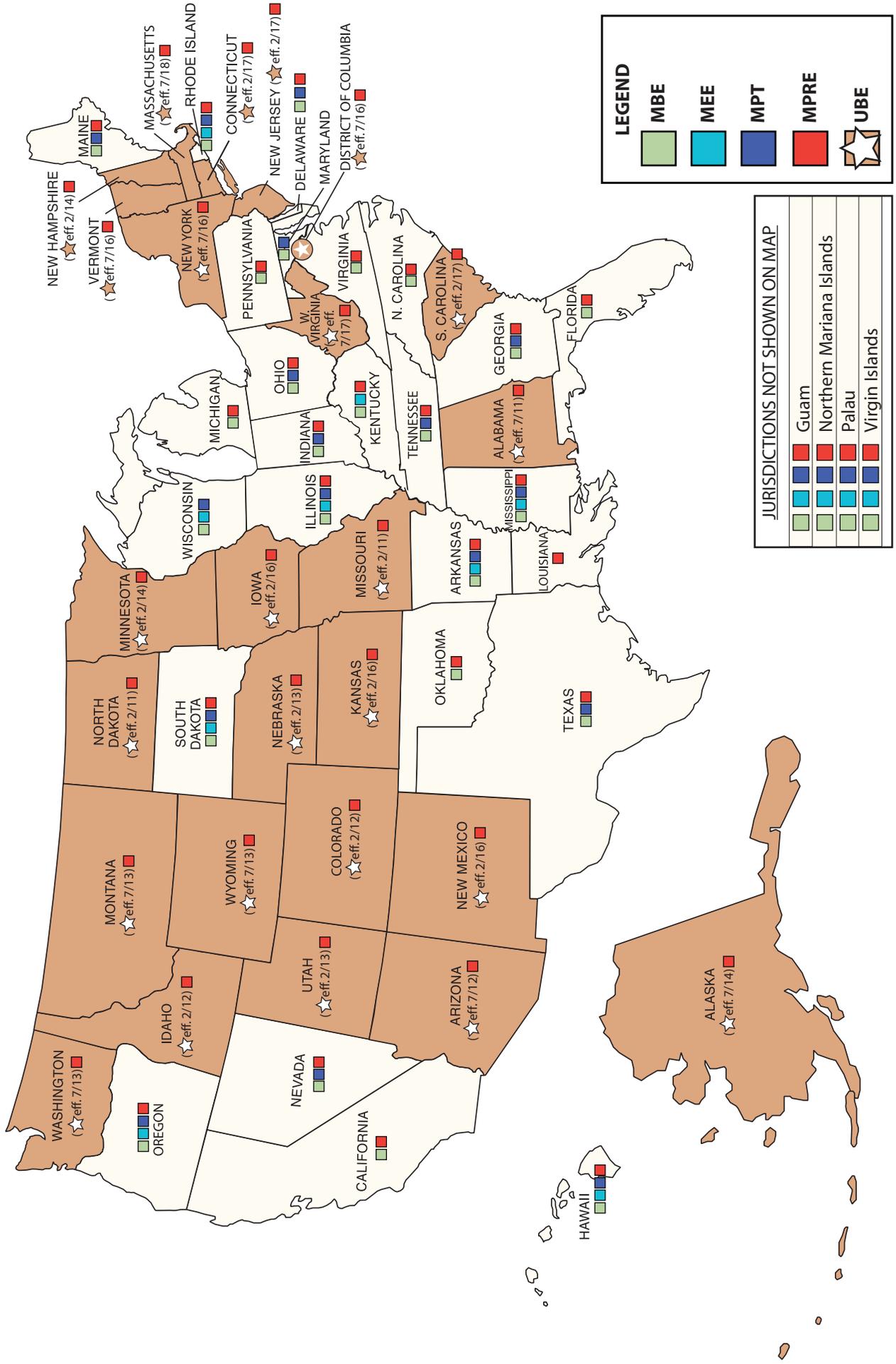
In accordance with ABA Resolution 117 and best practices established by the study of UBE data in New York, the Committee recommends that Illinois collect and evaluate the data of UBE test takers and implement a study of that data similar to that being conducted in New York.

## **VI. CONCLUSION**

Candidates for admission to the Illinois bar face unprecedented challenges in navigating the legal job market with an increasingly burdensome debt load. The complexity of law practice across state lines and the increased cost to consumers with out-of-state legal needs create additional challenges in today's legal marketplace. At the same time, state-specific laws remain important in our federal system, and no lawyer can competently practice in Illinois without some knowledge of these distinctions. The UBE represents a unique opportunity to mitigate the impact of the challenges in the legal market, while still ensuring the competence of candidates and their knowledge of Illinois-specific law. The UBE should thus be a part of the ongoing efforts to efficiently and effectively meet the legal needs of the people of the state of Illinois.

# Adoption of the Uniform Bar Examination with NCBE Tests Administered by Non-UBE Jurisdictions

July 25, 2016



**Appendix B: UBE Transfer Statistics by Source and Destination  
As of October 4, 2016 (Source: NCBE)**

	<b>Scores Earned</b>	<b>Scores Out</b>	<b>Scores In</b>
<b>Missouri (2/11)</b>	5,641	508	184
<b>North Dakota (2/11)</b>	702	201	222
<b>Alabama (7/11)</b>	4,025	54	88
<b>Colorado (2/12)</b>	6,351	824	372
<b>Idaho (2/12)</b>	848	187	173
<b>Arizona (7/12)</b>	4,860	569	218
<b>Nebraska (2/13)</b>	839	129	86
<b>Utah (2/13)</b>	1,817	181	227
<b>Montana (7/13)</b>	665	173	246
<b>Washington (7/13)</b>	4,373	310	430
<b>Wyoming (7/13)</b>	307	85	277
<b>Minnesota (2/14)</b>	2,747	135	333
<b>New Hampshire (2/14)</b>	708	99	32
<b>Alaska (7/14)</b>	261	47	57
<b>Iowa (2/16)</b>	261	11	51
<b>Kansas (2/16)</b>	210	19	310
<b>New Mexico (2/16)</b>	282	11	101
<b>District of Columbia (7/16)</b>			45
<b>New York (7/16)</b>			77
<b>Vermont (7/16)</b>	65	2	11
<b>Connecticut</b>			3
<b>New Jersey</b>			2

**UBE Scores Earned and Transferred by Exam Date (as of 10/4/16)**

	<b>February</b>		<b>July</b>		<b>Total by Year</b>	
	<b>Scores Earned</b>	<b>Scores Trfrd</b>	<b>Scores Earned</b>	<b>Scores Trfrd</b>	<b>Scores Earned</b>	<b>Scores Trfrd</b>
<b>2011</b>	216	11	1,237	43	1,453	54
<b>2012</b>	936	69	3,169	379	4,105	448
<b>2013</b>	1,401	246	4,670	742	6,071	988
<b>2014</b>	2,166	272	5,475	624	7,641	896
<b>2015</b>	2,340	264	5,197	513	7,537	777
<b>2016</b>	2,737	289	5,418	93	8,155	382
<b>Total</b>	9,796	1,151	25,166	2,394	34,962	3,545