

**STATE BOARD OF LAW EXAMINERS  
MINUTES OF THE COMPREHENSIVE COMPETENCY COMMITTEE MEETING**

Wednesday, December 8, 2021  
Minnesota Board of Law Examiners - Committee

Present at the meeting via Zoom were the following members of the Committee: Tom Boyd, Committee Chair; Patricia Beety; Wilbur Fluegel (by phone); Hon. Juan Hoyos, Board Secretary; John Koneck (Board President); and Shawne Monahan. Also present were staff members Emily Eschweiler, Director; Natasha Melchionne, Managing Attorney; AJ Dordel, Staff Attorney; Emily Corson, Bar Admission Administrator; and Mariah Colvard, Executive Assistant.

In attendance from the NCBE were Dr. Danette McKinley, Director, Diversity, Fairness, and Inclusion; Kellie Early, Chief Strategy Office; and Judy Gundersen, President/CEO.

Additional guests in attendance were: Carol Chomsky (University of Minnesota), Kim Ronning (University of Minnesota); Lynn LeMoine (Mitchell Hamline); Leanne Fuith (Mitchell Hamline); Landon Ascherman (MSBA BAAC representative); Andrew Rhoades; Dan Stein (New Lawyer); Tim Wong; Nancy Mischel; Jennifer Thompson (MSBA President) and Dr. Rosemary Reshetar (NCBE).

Tom Boyd started the meeting at 2:32 p.m. by welcoming everyone and thanking Dan Stein for providing comment and the NCBE for providing additional information during the course of the meeting.

**Public Comments - Daniel S. Stein**

Daniel Stein thanked the Committee for the opportunity to provide additional information. He stated that he graduated from Yale in May and took and passed the July 2021 bar examination. He stated that everyone he encountered during the bar examination process had been very kind. He stated that he supports consideration of an alternative pathway to the bar exam. He asked the Committee to consider whether the examination was a test of competence or a test of resources. Those who are able to focus solely on studying for the examination have an advantage. He also stated that he prepared for the examination like he would prepare for Jeopardy and noted that there is too much of a focus on memorization.

Tom Boyd asked Mr. Stein if there was any part of the examination that he thought was beneficial. Mr. Stein noted the comradery of his fellow examinees. Andrew Rhoades asked Mr. Stein if he had any thoughts on how to measure legal rigor to ensure that those who pass the bar exam can truly serve the public's needs. Mr. Stein stated that he recognized that the purpose of the exam was to protect the public and he did not want to question the intent or purpose. He stated that he believes there are interpersonal, research driving, and critical thinking that are more aligned with the kind of work lawyers do on a day to day basis. He stated that he had reviewed some of the previous minutes. Some of the pathways highlighted would be a good direction: clinical hours, portfolios,

mentorship and ensuring law schools have that to form that bridge from law school to practice of the law.

### **National Conference of Bar Examiners**

Tom Boyd and Emily Eschweiler thanked the National Conference of Bar Examiners for taking the time to present to the Committee.

Kellie Early presented first, thanking the Committee for the opportunity to speak with the Committee about the next generation of the bar exam which the National Conference has been working on for years, and will continue to work on for years.

Ms. Early noted that the presentation would cover:

- Highlights of the changes to the examination and timeline for implementation
- Test content specifications and drafting item prototypes
- Fairness in testing
- Psychometric procedures to support reliability and validity of scores
- Opportunity to ask questions and answers.

Ms. Early summarized the work that they had been done over the last three years and thanked Minnesota for the significant participation by lawyers in the Practice Analysis survey. She then presented the guiding objectives for the NextGen Exam:

- Testing fewer subjects and less deeply within the subjects covered;
- Placing a greater emphasis on lawyering skills;
- Maintaining exam affordability;
- Ensuring fairness and accessibility for all candidates; and
- Maintaining score portability.

Additional information on the recommendations can also be found on the NCBE's website: <https://nextgenbarexam.ncbex.org/>

The revised examination will test in 8 foundational topics: civil procedure; contract law, evidence, torts, business associations, constitutional law, criminal law, and real property. It will also focus on 7 foundational skills: legal research, legal writing, issue spotting and analysis, investigation and evaluation, client counseling and advising, negotiation and dispute resolution, and client relationship and management.

The first administration of the examination will likely be July 2026. The test content and drafting committee is working on prototypes currently.

Ms. Early advised that a Content Scope Committee comprised of 21 members from 16 jurisdictions provides guidance to the Implementation Steering Committee regarding how broadly and deeply to test the doctrinal and skill areas. The Committee has representation from 15 law schools and includes 10 women and 11 men. The Committee

is comprised of 12 white members, 5 black members, 3 latinx members, and 1 Asian member.<sup>1</sup>

In looking at breadth of coverage, the Committee has been asked to review:

- Frequency: does this come up often in entry-level practice?
- Universality: is this common to multiple practice areas?
- Risk: does ignorance of the topic create a significant risk of malpractice or poor client outcomes?

The Committee is also looking at depth of knowledge:

- Level 1 (general familiarity): newly licensed lawyers (NLLs) should be able to spot issues and work efficiently with legal resources
- Level 2 (detailed knowledge): NLLs should know the relevant details of the doctrine without consulting legal resources
- Factors considered: complexity of topic, context in which topic typically arises, are the legal rules and rule components relatively stable and universal?

The Content Scope Committee will also be asked to look at the lawyering tasks identified during the practice analysis (i.e. responding to client inquiries, informing clients on the status of a matter, preparing clients and witness, etc.) and determining what specific aspects of the skills should be tested on the exam.

MPT-type questions will likely continue, but may be shorter and might include short-answer questions. They might also include fillable forms.

The NCBE's objectives in 2022 include:

- Publish draft test content specification to seek stakeholder comments and feedback
- Begin a formal pilot-testing process to gather data and evaluate new item types and methods of assessing Foundational Skills.

Landon Ascheman raised the topic of differing state laws and how that impacts a national examination. Kellie Early noted that it is a topic that the NCBE already addresses with the UBE. Specifically, the MPT provides examinees with the law to be applied. What the NCBE is trying to assess is balancing the work with the law, applying the law, and the base of foundational knowledge, and how the law would be applied. If there are significant differences in how the jurisdiction approaches the law, some jurisdictions have developed local law components.<sup>2</sup> If you have demonstrated the skills to apply the law in one state, then chances are you are able to apply the law in any state. The NCBE anticipates that testing should be at a level where it is not in the weeds or picky details.

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<sup>1</sup> Additional information on the composition of the committee can be found here: [Announcing NCBE's Content Scope Committee – Next Gen Bar Exam \(ncbex.org\)](#)

<sup>2</sup> Minnesota tested uniform law before the UBE and did not recommend adopting a local law component when the UBE was implemented.

Dr. Danette McKinley's presentation focused on fairness in testing. She advised that the NCBE follows the Standards for Educational and Psychological Testing that was last updated in 2014.

She provided the definition for testing in Professional and Occupational Credentialing: "Licensing requirements are imposed by federal, state and local governments to ensure that those who are licensed possess knowledge and skills in sufficient degree to perform important occupational activities safely and effectively." (p. 174)

In looking at fairness in testing, testing organizations look to:

- Test design, development, administration, and scoring;
- Validity of test score interpretations for intended uses from the intended examinee population;
- Accommodations to remove construct-irrelevant barriers; and
- Safeguards against inappropriate score interpretations and uses.

Psychometric procedures include:

- Pilot test/field testing:
  - MCQs and various constructed response (CR) formats
  - Practice-based item sets
  - Constructed response (rubric development and tryout)
  - Subgroups analyses (gender, race)
- Score linking (equating) and scaling
  - Goal: to ensure that the scores are interchangeable across jurisdictions and over time.
  - Method: depends on final test design and nature of integration
    - Scaling to MBE (classical test theory)
    - Mixed format equating (item response theory)
    - Ongoing analyses to monitor scale stability
  - Standard setting
    - Passing scores finalized at jurisdiction level
    - NCBE to facilitate standard setting exercise to assist jurisdictions
    - Will incorporate empirical data into standard-setting process

Tom Boyd thanked the NCBE for taking the time to present a comprehensive and informative presentation. Ms. Early and Dr. McKinley noted that the NCBE is happy to answer any additional questions that the Board has as it continues to study this issue.

Kim Ronning asked if the NCBE for additional information to explain the disparities on the examination in light of the safeguards in place and for information on what the NCBE was doing to address those in the next generation model. Dr. McKinley advised research is ongoing but that an important factor may be access to resources.

### **Working Group Discussion**

The meeting concluded by discussing the working groups and moving into the next phase of the study. We discussed that some of the stakeholders who have a strong interest in the topic do not have the time to devote to the working groups and so we will want to consider how we solicit targeted feedback. We will also continue to reach out to others to solicit additional information.

The meeting adjourned at 3:54 p.m.