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Alternatives for Scheduling the Bar Exam

By Mary Campbell Gallagher, J.D., Ph.D., and Professor Carol A. Buckler

For decades, freshly minted law school graduates have taken the New York State bar examination at the end of July following graduation. Recently, there has been discussion about allowing bar candidates to take the bar exam earlier. The NYSBA Committee on Legal Education and Admission to the Bar has taken several options under study.

One proposal would offer law students the choice of taking the bar exam in its current form in the summer following their second year of study or during the third year. Bar candidates could still choose to take the exam in July after graduation. Another proposal, one with possibly far-reaching consequences, would be to divide the bar exam into two parts: the first part would be taken after the first year of law school, and the second following graduation. All of these plans have advantages; they also have possible adverse consequences for law students.

Reasons to Reschedule the Bar Exam

Offering applicants the option to take the bar exam earlier could help them in several ways. Many students have the skills and knowledge to pass the bar earlier in their law school careers. Indeed, if students could take the exam closer to taking foundation courses in law school,

they might need less time for review. Those who pass an earlier administration of the exam would no longer need to worry about the exam, freeing them to pursue clinical courses, specializations, and upper-level skills courses.

Some students would realize a substantial financial benefit because they would be eligible to be licensed as soon as they graduated. Some employers, especially smaller law firms, will not hire applicants who cannot counsel clients immediately and possibly represent them

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in court. Some firms will not even interview applicants who lack a license. A delay of many months in a law graduate's ability to advise and represent clients can make a painful difference to his or her ability to start earning money and repaying student loans. Now, however, months pass between taking the July bar exam and the successful New York candidates being sworn in.

Bar Exam During the Second Summer

One proposal is to leave the test itself unchanged but give students the option of taking the exam in July following the second year of full-time studies.¹ The advantage for students who take the exam early and pass might include earlier entry into the job market and a reduced debt load. An additional advantage is that having the bar exam behind them could permit them to focus their third year

option. Students might lose that opportunity to work in a law office, to earn money to help support themselves through the final year of school, to study abroad, or to take an internship or another clinical experience. Students also would have to make decisions about their second-year course work during the spring of their first year, which might be too early to assess their job prospects and the relative value of taking the bar exam early versus using the second summer to gain practical experience.

A Two-Part Bar Examination

Another plan would be for New York to offer the bar exam in two parts, along the lines of the medical or veterinary boards, which aspiring medical professionals take in two steps during their professional training. The BOLE might offer one part of the bar exam at the end of

“Examinations are formidable even to the best prepared, for the greatest fool may ask more than the wisest man can answer.”

– Charles Caleb Colton

on externships, job searches, more skills instruction or study for greater specialization. Students with externships or part-time jobs during their third year might be more attractive job candidates if they have already passed the bar exam and would be ready immediately to begin work as a practicing lawyer.

Once the second-year law student takes and passes the bar exam, the only further steps to being a licensed attorney would be the Character and Fitness interview and the swearing-in, which would take place after graduation. Students could graduate from law school one week and, at least in theory, be sworn in the next. They might even take another state's bar exam in the July following graduation.

For bar candidates who fail an early administration of the bar exam, there is a possible advantage as well. Those students could spend time in their third year working on acquiring additional knowledge and analytical skills, aiming to improve their chances of passing the exam on their second try the following July or as early as February. They would have two chances to pass the exam within the traditional schedule, rather than one, and, if successful, such students might still pass the bar exam before they have to begin repaying student loans.

One administrative advantage is that this option does not require changing either the exam itself or the July date.² It would cause minimal administrative disruption for the Board of Law Examiners (BOLE) and thus could be implemented quickly. The disadvantage, on the other hand, is that many students now use the second summer of the three-year program to gain valuable work experience: studying for the bar exam could eliminate this

the first year, and the second part after graduation. This two-part plan would require aggressive rethinking of the relationship between what is tested on the bar exam and what is taught in the first year. Like the second-summer option, this plan would have the advantage of testing the students closer to when they take core bar exam courses. It would also allow students who pass the first part of the exam to plan their elective course work after the first year with less worry about additional study of the subjects tested on the bar exam.

Another advantage would be that the law students who are most at risk of failing the bar exam – generally those who do least well in the first year of law school – would get an early message that they need to strengthen their legal knowledge and analytic skills in order to pass. Some might see this as a sign from a neutral third-party gatekeeper that they might not be suited for the practice of law. This might encourage students to seek guidance from their law schools and other advisors to assess their chances of success in the remaining two years of law school and ultimately on the bar exam, and decide whether it might be worthwhile to pursue another professional path.

A significant practical challenge is that this plan might require designing a new first-year bar exam or extensively revising most first-year programs, or both. If the present Multistate Bar Examination (MBE) were used for the first-year part of the bar exam, most law schools would have to change their first-year curricula, since the MBE includes Evidence, which is rarely taught in the first year, and Constitutional Law, which only some schools offer in the first year. In addition, even the subjects currently

offered in the first-year curriculum are frequently taught with heavy emphasis on building skills in legal analysis, with less emphasis on the doctrinal rules also tested on the bar exam. The “depth versus breadth” discussion is perennially a lively one among law faculty, and this change would intensify and give greater urgency to that debate. At many law schools relatively recent curricular reforms have introduced training in practical lawyering skills into the first-year program, and this plan might undercut those changes.

This plan might also require designing a new test for the second part of the bar exam. In light of the many new courses aimed at making students more practice ready, the time for re-designing the bar exam may come soon, in any event. Many in the law schools and the practicing bar would welcome the opportunity to rethink how to coordinate work in law school and the bar exam. The process might encourage law faculties and bar examiners to work together more closely on pedagogy and curriculum. The process, however, would take substantial effort and time.

In addition, New York State probably cannot adopt a two-step plan by itself. Many law schools in other states send graduates to take the New York bar exam, and a significant restructuring of the exam would affect those law schools and their students.

The Arizona Option: Bar Exam During the Third Year

Another proposal is for law students to take the bar exam in February of the third year, while they are still law students.³ At the behest of the three Arizona law schools, the Arizona Supreme Court has issued an amended rule permitting eligible law students to take the bar examination after the first semester of their third year of law school.⁴ The trial runs from January 1, 2013, through December 31, 2015.

To be eligible, law students must have completed all but 10 units of their programs before beginning the second semester of the third year. Thus, the University of Arizona James E. Rogers College of Law has changed the school calendar to allow those students two months to prepare for the February bar exam and has designed a menu of new courses with emphasis on practical skills for the weeks following the February bar exam.⁵

This plan seems to offer some of the same advantages as the second-summer plan: it could accelerate admission to the bar for those who pass; it also could give law schools the opportunity to develop a curriculum for the last semester of the third year, following the February bar exam, that focuses on the transition from theory to practice. Without making such changes in the curriculum, however, allowing students to take the bar exam during their third year would risk distracting them from their course work. We will be interested to see the effect of this plan on participation in law review, moot court competitions, and other co-curricular activities as well. Implementing this option in Arizona, with three law schools

graduating several hundred bar candidates each year, is dramatically different from implementing it in New York, where thousands of law graduates take the bar exam annually, from 15 law schools within, and dozens of schools outside, the state. The results of the Arizona pilot program will be worth watching.

Conclusion

We must assess the impact of all of these plans on part-time students, on students who attend law schools outside of New York, and on foreign lawyers applying for admission to the New York bar. As the NYSBA Committee on Legal Education and Admission to the Bar continues its ongoing study of these interesting alternatives, it will carefully take account of the implications for the law schools, for the practicing bar and for the thousands of law graduates who seek admission to the bar of the State of New York. ■

1. Samuel Estreicher has proposed that students be eligible to take the bar exam after two years of a three-year J.D. program, and be admitted if they pass the exam without a J.D. degree. *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 N.Y.U. J. Legis. & Pub. Pol’y 599 (2012). That proposal was the subject of a day-long conference on January 18, 2013, sponsored by the Institute of Judicial Administration of New York University Law School. It generated considerable debate. In this article, we consider a version that would allow taking the bar exam early but still require a J.D. degree for admission to the bar.
2. It is compatible with either the present New York bar exam or with the Uniform Bar Examination (UBE). The present New York bar exam is composed of 50 New York multiple-choice questions, five New York essays, one Multistate Performance Test (MPT) task, and the Multistate Bar Examination (MBE), <http://www.nybarexam.org/TheBar/TheBar.htm#descrip> (last visited May 11, 2013). The UBE, as proposed by the National Conference of Bar Examiners and adopted to date in 13 jurisdictions, is composed of a Multistate Essay Examination (MEE), two MPT tasks, and the Multistate Bar Examination. It is graded uniformly and provides a portable score, <http://www.ncbex.org/multistate-tests/ube/> (last visited May 11, 2013).
3. The President of the National Conference of Bar Examiners, Erica Moeser, proposed this solution in 2009. *The President’s Page*, B. Examiner (Aug. 2009), p. 4.
4. Order Amending Rule 34, Rules of the Arizona Supreme Court (Dec. 10, 2012).
5. Telephone interview by Mary Campbell Gallagher with Sally Rider, Associate Dean for Administration & Chief of Staff, Director, The William H. Rehnquist Center on the Constitutional Structures of Government, University of Arizona James E. Rogers College of Law, Tucson, Ariz. (May 30, 2013).

