

Comments Received in Response to March 20, 2023 Public Notice:

1. April 25, 2023 – Claudia Angelos, Clinical Law Professor, New York University School of Law, Comment in support of curricular alternative to bar examination
2. April 26, 2023 – Andrea Curcio, Professor of Law, Georgia State University College of Law and Marsha Griggs, Professor of Law, Washburn University School of Law, Support for Exploration of alternative law licensing pathways
3. April 26, 2023 – Eileen Kaufman, Professor of Law Emerita, Touro Law School, and Mary Lu Bilek, Former Dean and Professor of Law, UMass Law School and CUNY Law School
4. May 1, 2023 – Carol Chomsky, Professor, University of Minnesota Law School, Comments on Proposed Recommendations Related to the Bar Exam
5. May 1, 2023 – Joan Howarth, Distinguished Visiting Professor, William S. Boyd School of Law, MSU Law Dean Emerita, Comments on BLE Recommendations
6. May 1, 2023 – Deborah Jones Merritt, Distinguished University Professor and John Deaver Drinko/Baker & Hostetler Chair in Law Emerita, Moritz College of Law, The Ohio State University, Support for Proposed Recommendation Related to the Bar Exam
7. May 1, 2023 – Gary W. Jenkins, Dean and William S. Pattee Professor of Law, University of Minnesota
8. May 1, 2023 – Anthony Niedwiecki, President and Dean, Mitchell Hamline School of Law (Appendices omitted.)
9. May 1, 2023 – Joel Nichols, Interim Dean and Mengler Chair in Law, University of St. Thomas
10. May 1, 2023 – Cheryl Dalby, Minnesota State Bar Association

Sydnee Burud Swenson

From: Angelos, Claudia <angelos@mercury.law.nyu.edu>
Sent: Monday, April 24, 2023 1:50 PM
To: BLE
Subject: Comment on Bar Licensing Recommendations
Attachments: Comment on Recommendation 6 - Claudia Angelos.pdf

Dear Mr. Koneck and Board of Law Examiners,

I attach a comment in support of the MBE's Recommendation 6 on attorney licensing.

I am grateful for the opportunity to comment on this important proposal.

Very truly yours,

Claudia Angelos
Clinical Professor of Law
New York University School of Law



New York University
A private university in the public service

School of Law
Furman Hall
245 Sullivan Street
New York, New York 10012-1301
Telephone: (212) 998-6462
Fax: (212) 995-4031
Email: claudia.angelos@nyu.edu

Professor Claudia Angelos

To: Minnesota State Board of Law Examiners
From: Claudia Angelos
Clinical Professor of Law
New York University School of Law
Re: Comment in support of curricular alternative to bar examination
Date: April 25, 2023

For more than thirty years I have been a clinical law professor at New York University School of Law. I am one of the now many hundreds of faculty members from law schools across the nation who teach clinical courses in which law students learn to identify and research applicable law and to engage in legal analysis. More important, however, under real-world conditions of uncertainty but under close supervision, our students learn to counsel and represent clients, explore facts, generate strategies, work to achieve outcomes, improve communication skills, develop professional identities, and internalize the habits of preparation and reflection that make lifelong learners and trustworthy attorneys.

I write at your invitation to comment on – and to support - the MBLE's Recommendation 6, which calls for the creation of an Implementation Committee to develop a pathway to attorney licensing based on assessment of an applicant's work in clinical courses during law school. It is certainly time for law schools to have the opportunity to take responsibility for graduating people who have the foundational knowledge, skills, and professional values necessary to entry into the profession.

The many recent criticisms of the current written, timed, memory-based bar examination as the only means of attorney licensing are proving increasingly well-founded. It excludes people of color at disproportionate rates. Success depends on economic resources for bar prep courses and time away from work. It rests more on tradition than on validation. Its passing scores seem random. It fails to assess whether applicants have many of the skills and values demanded by our profession for practice. Artificial intelligence tools pass it at higher scores than human law graduates. A better written bar examination such as the upcoming NextGen exam under development by the National Conference of Bar Examiners will be better. But it will not be as good as a sound education in lawyering.

Clinical law professors, including many in Minnesota, have now spent decades studying, writing about, and applying learning theory to the education of lawyers. We know how to assess and to improve the performance of students in attorney roles. No matter what clients and matters our students handle, they learn skills that they can transfer to other practice settings. We engage them in the challenges of cross-cultural work. We teach them the urgency and the professional satisfaction of providing access to justice for the underserved.

The clinical programs at Minnesota's three law schools are very well-regarded nationally, each well known for the rich and rigorous experiential education they provide. While the development of an innovative and forward-looking program such as that outlined in Recommendation 6 will present challenges, the Implementation Committee will have an exceptional opportunity to lead in the development of a law-school based licensure assessment program.

I envy the promise of this possibility in Minnesota and would be very happy to help in any way I might.

Sydney Burud Swenson

From: Andrea Anne Curcio <acurcio@gsu.edu>
Sent: Wednesday, April 26, 2023 5:53 AM
To: BLE
Cc: Marsha Griggs
Subject: Comment on Recommendations for Alternative Pathways for Lawyer Licensing
Attachments: comment to MN April 26.docx

Attached please find our comments on the recommendations for alternative pathways to lawyer licensing.

Thank you for all your work on this issue.

Sincerely,

Professors Curcio & Griggs

Andrea [Andi] Curcio
Professor of Law
Georgia State University College of Law
85 Park Place
Atlanta, GA 30303
404 413-9157

you can read my most recent publications at: https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=55478

To: Minnesota State Board of Law Examiners

Fr: Professors Andrea A. Curcio, Marsha Griggs

Re: Support for Exploration of alternative law licensing pathways

April 26, 2023

We are law professors who have extensively researched and written about legal education, law licensure reform, and equity issues, and we either teach in or are familiar with the experiential offerings in our own and other law schools around the country. We write to applaud the work the MBLE has done as part of its comprehensive study of attorney licensing and to encourage you to explore both law-school based (Recommendation 6) and supervised practice (Recommendation 7) alternative law licensure pathways.

As recognized in the reports underlying your Recommendations, there is ample evidence of the disparate impact of the bar exam on people with limited financial resources, people of color, and those with disabilities, and substantial questions have been raised about the validity of the exam as a measure of competence to practice law. We support and admire Minnesota's willingness to take a leadership role in the exploration of alternative pathways to licensure to address these issues.

A pathway based in experiential education during law school has wonderful potential to establish that law graduates who follow that pathway possess minimum competence to practice law because they will have demonstrated a much wider range of necessary skills and shown the ability to use those skills to represent clients. It also would address disparities we see in the current exam process that affect people of color and those with disabilities. Graduates choosing that pathway would not have to stop working for eight to ten weeks and pay thousands of dollars to bar prep companies to become licensed. And they would prove their competency without having to take a high stakes standardized exam known to have disparate outcomes. The Minnesota law schools all have strengths that make them particularly well-suited to developing an experiential curricular pathway to licensure: Mitchell Hamline has a nationally respected experiential education program; St. Thomas is a leader in work on professional identity formation; and the University of Minnesota is a flagship school that is one of the strongest public law schools in the nation with a vibrant set of diverse clinical and experiential offerings. Relying on them to work together to build an experiential pathway to licensure is likely to produce a program that can serve as a role model throughout the country.

While we recognize that the Board's focus for now is on an experiential curricular pathway, we respectfully suggest that a supervised practice pathway is also worth exploring at the same time – particularly because much of the work being done to develop a curricular pathway could be easily adapted to a supervised practice pathway. We also note that data from a temporary supervised practice program in California (currently being analyzed by Professor Curcio) shows success in developing and demonstrating lawyering skills in the participants, and the program

particularly benefitted California lawyers in rural areas, potential licensees of color, and graduates working in access-to-justice organizations and those without significant financial resources. It is likely that a program in Minnesota would yield similar results.

Whether you decide to pursue development of only an experiential pathway or both pathways, we will be happy to lend our expertise to this project should you need it.

Thank you for allowing us the opportunity to submit this comment and thank you for all your work exploring these important developments in attorney licensing.

Sincerely,

Andrea A. Curcio

Professor Andrea [Andi] Curcio
Georgia State University College of Law

Marsha Griggs

Professor Marsha Griggs
Washburn University School of Law

Sydnee Burud Swenson

From: Eileen Kaufman <Ekaufman@tourolaw.edu>
Sent: Wednesday, April 26, 2023 2:33 PM
To: BLE
Subject: public comments
Attachments: Comment to Minnesota State Board of Law Examiners.docx

Attached please find our written comments to the Board's recommendations regarding alternative pathways to licensure.

Thank you for your attention.

Sincerely,

Eileen Kaufman

Eileen Kaufman
Professor of Law Emerita
Touro Law School
225 Eastview Drive
Central Islip, NY 11722
email: ekaufman@tourolaw.edu

Proud past Co-President of the **Society of American Law Teachers (SALT)**. SALT is a community of progressive law teachers working for justice, diversity, and academic excellence. To become a member, join at saltlaw.org.

Dear Members of the Minnesota State Board of Law Examiners:

We write to applaud the Board for using an open, thoughtful, and thorough process to consider modifications to the lawyer licensing rules in Minnesota. We also write to support Recommendation 6, proposing the creation of an Implementation Committee to explore and develop an alternative to the bar exam that candidates could complete during law school. Finally, we write to encourage creation of a second Implementation Committee that would complement the work of the first Committee by exploring and developing a limited pilot project in which graduates could demonstrate their competence while working after graduation for public service organizations designated by the Minnesota Supreme Court. This pathway, known as a “Lawyers Justice Corps (LJC),” would complement a curricular pathway, assist graduates who were unable to participate in a curricular pathway, and expand access to justice for the many Minnesotans who currently lack representation.

In its recommendation 7, the Board has noted that a licensing path based on post-graduation supervised practice would benefit the public. At the same time, it expressed concern about the cost involved in developing such a program and uncertainty about “new challenges and unforeseen consequences.” We suggest that, given the groundwork already laid by other states considering proposals for, or actually implementing, supervised practice, the resources involved in developing a Lawyers Justice Corps post-graduation pathway would be significantly less than the MBLE fears. Under the LJC concept, public interest employers would hire graduates through their ordinary hiring process and pay them their usual salaries. Such employers would train the graduates using their existing programs, which data indicates are already extensive (see below). Our research also suggests that public interest employers are eager for a licensing path like the LJC because graduates would be able to start working during the summer, the pathway offers a rigorous assessment of competence, and candidates can continue their work without interruptions from bar study or test failure.

A Justice Corps thus offers compelling benefits: it provides a valid, feasible, reliable, and fair way to measure minimum competence; it addresses and ameliorates the crisis in access to justice; and it increases much needed diversity in the profession.¹ An LJC would require little additional time or resources beyond what will be required for the curricular pathway described in Recommendation #6. Development of an LJC would put Minnesota in the forefront of the national effort to provide a better

¹ ABA data reveals a shocking 24% disparity between white and black first-time test takers in 2021. https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2022/2022-bpq-national-summary-data-race-ethnicity-gender-fin.pdf.

way of licensing lawyers and to promote diversity and expand legal services to the poor. In the remainder of this comment we offer some additional detail about the Lawyers Justice Corps and the evidence supporting that concept.

What Is the Lawyers Justice Corps? The basic concept of a Lawyers Justice Corp is to provide a cadre of public interest lawyers, committed to providing legal services to underserved individuals and populations, who are able to begin work immediately upon graduation. The Minnesota Supreme Court would designate qualifying organizations, who would themselves select participants via their ordinary hiring practices and pay the participants an entry-level salary. Candidates would commit to working for the organization for at least one year and would be trained and closely supervised for a six-month period. This pathway would require rigorous review of the candidates' competency through specially designed rubrics, already in use in Oregon, applied to portfolios of work product. Or the rubrics could be adapted based on the rubrics developed by the Implementation Committee for a curricular pathway created based on recommendation 6. Work product would be evaluated, not only by the supervising attorney, but also by outside evaluators. Candidates would begin working at legal services offices in May instead of August and thus the roughly 500 hours that candidates typically spend on bar prep would instead be spent representing under-served clients.

Psychometric Principles Supporting a Lawyers Justice Corps. Researchers associated with IAALS (the Institute for the Advancement of the American Legal System) and NCBE have written about the validity, reliability, fairness, and feasibility of assessment systems based on supervised practice.² Their research guide cites some of the extensive psychometric literature supporting the growing use of workplace-based assessments for licensing and other purposes. Those guidelines would inform development of a pilot Lawyers Justice Corps.

Empirical Support for a Lawyers Justice Corps. The validity, feasibility, and fairness of a supervised practice pathway, and particularly one structured as a Lawyers Justice Corps, are supported by data from California's Provisional Licensure Program (PLP). Professor Deborah Merritt (The Ohio State University) and Logan Cornett (IAALS) worked pro bono with the California State Bar to develop a survey administered to PLP participants. Professor Eileen Kaufman (one of the undersigned) is now analyzing that data with Professor Merritt and Professor Andrea Curcio (Georgia State University). The survey responses demonstrate the fairness and feasibility of a supervised practice pathway, and they lend particular support

² Logan Cornett, Danette McKinley, & Deborah Jones Merritt, Guidelines for a Licensing System Based on Supervised Practice (2022).

to a pilot pathway developed in collaboration with public defenders, legal aid offices, and other nonprofits. Here are just some of the data supporting that type of pilot program:

- The public interest organizations who participated in the PLP were significantly more likely than other employers to have training and mentoring programs in place for new lawyers.³
- The PLP was broadly inclusive, but this was especially true for public interest organizations. Those organizations were more likely than other employers to hire first-generation college graduates, licensees who identified as GLBTQIA+, licensees who identified as people with disabilities, women, and people of color.⁴
- Provisional licensees allowed public interest organizations to serve more clients. Fully 95% of supervisors working for those organizations reported this benefit from California's PLP.⁵
- Supervisors at public interest organizations also praised the PLP for increasing the diversity of their practice teams. More than 93% of public interest supervisors cited this benefit.⁶
- Supervisors at public interest organizations were particularly likely to express willingness to continue supervising current or future licensees. 85.6% of the public interest supervisors indicated immediate willingness to do so, and another 11.3% were unsure. Only 3.2% of public interest supervisors ruled out further participation.⁷

Given these results and the Minnesota State Board of Law Examiners' agreement "that the public would benefit from a high-quality post-graduation pathway to licensure that involve intense supervision by licensed practitioners," we respectfully suggest that such a committee be designated to look closely at a supervised practice pathway, and to begin development of a pilot Lawyers Justice Corps.

Sincerely,

³ 98.3% of supervisors at public interest organizations reported those programs, compared to 72.1% of supervisors working for other employers ($p < .001$).

⁴ On the first three criteria, the differences between public interest organizations and other employers was statistically significant: $p = .027$ for first-generation college graduates; $p < .001$ for licensees who identified as GLBTQIA+; and $p < .001$ for licensees who identified as people with disabilities. The race/ethnicity and gender differences both approached significance at the conventional level: $p = .055$ for race/ethnicity; $p = .078$ for gender.

⁵ Provisional licensees expanded client service at other organizations, but the benefit was not as large. 85.4% of supervisors in other organizations reported this benefit ($p = .005$).

⁶ About three-quarters (74.3%) of other supervisors in other organizations cited this benefit ($p = .007$).

⁷ A substantial majority of supervisors working in other places were also willing to consider continued work with provisional licensees. Two-thirds (67.6%) expressed immediate willingness to do so, and 17.4% were unsure. The interest expressed by supervisors in public interest organizations, however, was significantly greater ($p < .001$).

Eileen Kaufman
Professor of Law Emerita
Touro Law School

Mary Lu Bilek
Former Dean and Professor of Law
UMass Law School and CUNY Law School

Sydney Burud Swenson

From: Carol Chomsky <choms001@umn.edu>
Sent: Monday, May 1, 2023 11:51 AM
To: BLE
Subject: Comment on the MBLE Recommendations on attorney licensing
Attachments: Chomsky Submission to MBLE May 2023.pdf

Please find attached my comment on the Board recommendations, in response to the Public Notice on March 20, 2023. Thank you.

Carol L. Chomsky
she/her/hers
Professor, University of Minnesota Law School
612-625-2885
Faculty Profile at <http://www.law.umn.edu/facultyprofiles/chomskyc.html>
Past Co-President, Society of American Law Teachers (saltlaw.org)

UNIVERSITY OF MINNESOTA

Twin Cities Campus

*The Law School
Walter F. Mondale Hall*

*Room 285
229–19th Avenue South
Minneapolis, MN 55455
612-625-1000
Fax: 612-625-2011
<http://www.law.umn.edu/>*

TO: Minnesota State Board of Law Examiners

FROM: Prof. Carol Chomsky, University of Minnesota Law School

RE: Comments on Proposed Recommendations Related to the Bar Exam

I commend the Board for the extensive work it has done to explore Minnesota's attorney licensing process and the thoughtful set of recommendations it has presented for public comment. I attended the meetings held by the Board starting in October 2021 when it began its comprehensive review and offered some initial thoughts about the problems with the current attorney licensing process based on my scholarly work in this field. I served as co-chair of one of the Working Groups convened by the Board in January 2022 and I participated in each of the four public listening sessions the Board has held regarding its emerging recommendations. As a result, I have seen the care with which the Board has acted throughout this process and I commend the Board for producing a set of forward-looking proposals built on the information gleaned through that work. I support all seven of the Board's recommendations, though I urge the Board, and the Court, to go a bit further with respect to the last one. I submit my comments on the recommendations on my own behalf as a scholar who has published and advocated in the field of attorney licensing.

Recommendation 1: Adoption of the NextGen Bar Exam. The shortcomings of the current bar exam are well documented, and some of them are likely to be addressed in the NextGen exam being developed by the NCBE. According to the NCBE, the test will substantially reduce the amount of memorization required to be successful and it will incorporate at least some testing about lawyering skills, not just examination of knowledge and application of the law. I therefore support the recommendation to adopt the NextGen Bar Exam as an improvement over the current exam. It will be important for some license applicants to take an exam that will provide a portable score that can be used to be licensed in other states.

But we do not yet know enough about the content of that new exam or the nature of the questions that will be asked of test-takers. To help establish that the exam will be a fair test for applicants, the MBLE should ensure that NCBE provides sufficient guidance to applicants and law schools about what will be on the exam—both the substance that will be tested and the manner of testing. And

given the disparate outcomes of the current exam,¹ the MBLE should ask the NCBE to collect and share data on the outcomes as the NextGen tests are administered, both in prototype and when used for licensing, including results for various demographic groups.

Recommendation 2: Standard Setting. At this stage, the Board simply recommends participating in a standard setting exercise through the NCBE to determine the appropriate cut score and notes that Minnesota currently requires a 260, while other jurisdictions range from 260 to 273. It is premature to address the specifics of setting the cut score of an exam that has not yet been fully developed, but I urge the Board and the Court to consider that we have no evidence that maintaining a lower cut score compared with other jurisdictions has led to any concerns about competency of new attorneys. Especially given the history of racial disparities in high stakes testing and evidence that unduly high cut scores exacerbate those disparities, we should be loath to make the cut score more difficult to attain.

Recommendation 5: Amending the Supervised Practice Rules. In keeping with my comments below about the efficacy of a supervised-practice pathway to licensing, and the problems associated with high stakes testing, I support this change. It recognizes that if a graduate has been working effectively under supervision of a licensed attorney, and the supervising attorney is willing to continue such supervision, the fact that the graduate has failed the written exam should not automatically terminate their ability to continue those arrangements.

Recommendation 6: Creating an Implementation Committee to Explore and Develop an Alternative Experiential Curricular Pathway to Licensing. I strongly support this recommendation. Although the NextGen Bar Exam will be better than the exam's current incarnation, it will remain a test of knowledge *about* lawyering skills, not a test of those skills themselves, and it may continue to have a disparate outcome, as do many high stakes standardized tests. An experiential curricular pathway to licensing—one allowing some applicants to document their competence through coursework in clinics, externships, and simulations and through presentation to the examiners of portfolios of their work—will ground licensing in a demonstration of actual lawyering skills applied to real rather than (only) manufactured scenarios.

While I am most familiar with the offerings at the University of Minnesota, I know that the programs at all three Minnesota law schools offer robust experiential opportunities for law students to develop and demonstrate their knowledge and skills while working with faculty who provide the appropriate feedback and supervision. We already have in our law schools the curricular experiences that can be the basis for licensing. As noted in Recommendation 6, the Implementation Committee envisioned by the Board can use insights gleaned from the Daniel Webster Scholar Honors Program, the various practice analyses, and the IAALS study to design a pathway that will be valid, fair, and reliable—and feasible using the experiential programs already in place in our law schools. The outline provided by Mitchell Hamline is a helpful foundation for that work.

¹ The racial disparities have been documented repeatedly, most recently in Scott DeVito, Erin Lain, and Kelsey Hample, *Onerous Disabilities and Burdens: An Empirical Study of the Bar Examination's Disparate Impact on Applicants From Communities of Color*, *Pace Law Review* 2023 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4406981).

The stunning recent developments in artificial intelligence (AI), coming too late for the MBLE to consider in its discussions, make even clearer the relevance of a curricular (and supervised-practice) pathway to licensing. ChatGPT's performance on versions of the bar exam—achieving a score better than 90% of humans taking that exam²—makes abundantly clear that a written examination focused on remembering legal rules and writing quick analyses of hypothetical sets of facts will not test competence to *be* a lawyer. Experts agree that AI will have an enormous impact on all types of law practice. This does not mean that AI will replace lawyers; it means that AI will profoundly affect the way in which each lawyer practices. As a result, our definition of minimum competence will shift substantially. Knowing how to use AI intelligently will become a central component of that competence, and skills like client counseling, fact gathering, legal research, project management, and creative problem-solving will become even more important than they are now. Those skills—including the ability to use AI intelligently in law practice—are precisely the skills that will be tested in any experiential pathway, but that can be tested in only a limited fashion on a written exam. To protect the public, Minnesota will want to embrace assessments conducted in law school experiential courses or the workplace, which can determine over time whether the candidates can handle the complexities of a legal practice.

Recommendation 7: A Supervised Practice Pathway. While acknowledging that “the public would benefit from a high-quality post-graduation pathway to licensure” that would involve supervision by licensed practitioners, the Board expressed concern whether it has the tools and resources to successfully develop and implement such a program at this time. The Board suggests that “[a]dopting and developing Recommendation 6 would provide additional data and time for continued analysis, and may produce standards and tools that can be utilized in a post-graduation pathway.” Nonetheless, the Board concludes that “if the Court determines that it is interested in pursuing this pathway that the Court create a Committee to design and provide additional guidance to the Court.”

I urge the Court to create such a Committee to explore a post-graduation supervised-practice pathway to licensure, which can work with the Implementation Committee for Recommendation 6 to establish the foundations for both pathways. Working together will make it more likely that the standards and tools developed for the curricular pathway will, indeed, work with a post-graduation pathway. And working together will ensure that the standards and tools developed for the curricular pathway will satisfy the practicing bar that the result will be a program that will indeed establish minimum competence for those who follow and satisfy it.

Although I understand the Board's concerns about resources, the fact that Oregon has already implemented a limited supervised-practice pathway (materials available at <https://www.osbar.org/plp>) and has already circulated a well-developed plan for a broadly applicable post supervised-practice pathway (available at <https://lpdc.osbar.org/>) provides confirmation that such a pathway can be developed with a manageable devotion of resources. It

² Daniel Martin Katz, et al., *GPT-4 Passes the Bar Exam*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4389233, (Mar. 20, 2023); see also Michael James Bommarito & Daniel Martin Katz, *GPT Takes the Bar Exam*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4314839, (Dec. 31, 2022).

also responds to the Board's expressed need for "guidance on how to reduce subjectivity; recruit, evaluate, and train supervisors; and effectively administer such a program." Oregon has addressed those issues in its planning and may well be far along in implementing their plan as we develop our own.

The Board also expressed uncertainty over the extent to which a supervised practice pathway would increase access and diversity and/or create new challenges and/or unforeseen consequences. The experience in both Oregon and in California (which has implemented a limited supervised-practice pathway for those who received exam scores that would be passing under the recent reduction of the California cut score) reduces the possibility of such unforeseen challenges and consequences. Moreover, data from the California experience suggests that a supervised-practice pathway would increase the diversity of workplaces and would also address equity concerns that already exist in law practice but often go unaddressed. I have copied below analysis of the relevant California data presented by Professor Deborah Merritt as part of her recent comment to the California Blue Ribbon Commission.

As with Recommendation 6, an implementation committee for a supervised-practice pathway may focus on creating a limited pilot program "that would provide guidance on future expansion." Such a pilot might include, for example, applicants who narrowly failed the current bar exam in the past five years, recent graduates who are hired to work in designated public interest organizations that already have or are willing to develop supervision for their new attorneys, and/or graduates of non-ABA-approved schools (including foreign lawyers) who are able to find a supervisor in Minnesota. With the California and Oregon experiences as a base, Minnesota is poised to create its own pilot supervised-practice pathway to lay the groundwork for possible future expansion. I urge the Court to pursue this opportunity now rather than wait until a curricular pathway is further developed in order to build on the foundation already laid and to ensure parallel developments of both experiential pathways.

APPENDIX

April 10, 2023

TO: State Bar of California

FROM: Deborah Jones Merritt, Distinguished University Professor Emerita
Moritz College of Law, The Ohio State University

RE: Public Comment on Report and Recommendations from the Blue Ribbon
Commission on the Future of the California Bar Exam

....

I. Inclusiveness of the Pathway Provisional Licensure Program (Pathway PLP)

The California Supreme Court directed the Commission to consider “any information that may be gleaned from California’s experience with its temporary provisional licensure program.” As the Report notes (p. 30), survey data related to that program was not available when the Commission voted on resolutions in early November. Basic data about program participation rates, however, was available and is quite relevant to some of the Commission’s concerns about assessing minimum competence through supervised practice.¹

The Pathway PLP allowed some candidates who had failed the California bar exam to establish their minimum competence by performing 300 hours of supervised legal work and obtaining a positive evaluation from their supervisor.² Some of the individuals who were eligible for this program bypassed it, retaking the bar exam and obtaining a passing score.³

Of the remaining 1,827 (who had not retaken or passed the bar exam), 673 had enrolled in the Pathway Program by September 2022. State Bar data shows that white men were the second largest demographic group eligible to participate in the program, yet they enrolled at significantly lower rates than women of color, men of color, and white women. Provided the

¹ I received the data in connection with my pro bono work assisting the California State Bar in designing surveys addressed to PLP participants. My agreement with the State Bar allows me to analyze the data and publish results, as long as I do not divulge personally identifiable information. I am not sure if the BRC previously requested basic data about program participation from the State Bar, but I urge the Commission to review this important data before finalizing its Report.

² This program was offered to individuals who had obtained a score between 1390 and 1439 on a California bar exam offered between July 2015 and February 2020. See <https://www.calbar.ca.gov/Admissions/Special-Admissions/Provisionally-Licensed-Lawyers>.

³ According to the State Bar, 863 individuals took this course. I do not have demographic data about those individuals, although the Commission could request that information from the State Bar if desired. Given the disparate impact of the California bar exam, discussed further below, adding that data to the analyses almost certainly would show that the Pathway Program was even more advantageous to women of color, men of color, and white women than I report here.

same opportunity to pursue a supervised-practice route to licensure, in other words, women of color, men of color, and white women were more likely than white men to pursue that opportunity. This table shows the numbers and percentages for each demographic group:⁴

	Number Eligible for Pathway	Number Participating in Pathway	Percentage Participating in Pathway Program
Women of Color	503	217	43.1%
Men of Color	373	138	37.0%
White Women	408	145	35.5%
White Men	453	143	31.6%

The differences in this table are both statistically ($p = .003$) and practically significant. Women of color, men of color, and white women were substantially more likely than white men to participate in the Pathway Program.

This participation addresses a key question raised by Commission members: whether members of historically disadvantaged groups would be able to find supervisors for a supervised-practice licensing pathway. Clearly those groups were able to do so; in fact, they were more likely to participate than white men.⁵

Data from the Pathway Program also shows that, as of September 2022, women of color, men of color, and white women were slightly more successful than white men in completing the program. This table shows the numbers and percentages of completion rates for each demographic group:

	Number Enrolled in Pathway	Number Who Had Completed Pathway	Percentage Who Had Completed Pathway
Women of Color	217	183	84.3%
Men of Color	138	117	84.8%
White Women	145	122	84.1%
White Men	143	116	81.1%

⁴ The table omits 90 individuals for whom the State Bar lacked information about race and/or gender. The omitted individuals account for only 4.9% of the population. The table also omits two individuals who identify as nonbinary. That number is too small to support statistical comparisons and, when combined with information about race/ethnicity, would risk identifying the individuals.

⁵ We do not know why particular individuals failed to enroll in the Pathway Program. They might not have heard about the opportunity, might have been unable to find a supervisor, or might have lost interest in obtaining a California law license. The reasons for non-participation don't affect the bottom-line reported above because the Commission was justifiably concerned about equitable access to a supervised-practice licensing path. Women of color, men of color, and white women may have been more likely than white men to hear about the program, to decide to participate, and/or to find a supervisor. All of these factors relate to access.

The differences in this table are not large enough to be statistically significant, but they are informative.⁶ Contrary to the concerns of some Commission members, biases or harassment did not prevent women of color, men of color, or white women from obtaining licenses based on supervised practice—even though they needed to obtain positive evaluations from their supervisors. Indeed, the candidates from these historically disadvantaged groups were more likely than white men to have completed the program successfully by September 2022.⁷

The basic participation data gathered by the State Bar does not include sufficient information to assess the experience of first-generation college graduates, candidates who identify as LGBTQIA+, or candidates with disabilities. The survey response data does contain that information and would reassure Commission members on numerous points. That data also shows that the percentage of Pathway participants reporting discrimination or harassment (6.8%) is considerably lower than the percentage of Canadian articling candidates reporting those experiences. Pathway participants who reported discrimination and harassment, moreover, were as satisfied with the program as other participants—perhaps because those problems exist in many parts of our educational system and profession. We should address those endemic problems, but California-specific evidence shows that they are not a reason to deny women of color, men of color, and white women the opportunity to demonstrate their competence through supervised practice.

I understand that the Commission will not have time to review the extensive results from the PLP surveys before finalizing its Report and Recommendations. But even without those survey results, the Pathway data cited above provides strong, California-specific evidence that a supervised-practice licensing path would benefit demographic groups historically disadvantaged by the bar exam. I urge the Commission to include this information in its Report and to recommend establishing a group that will further explore licensing paths based on supervised practice and/or experiential education.⁸ That working group can build on results of the PLP survey as well as initiatives in other states.

• • • •

⁶ When analyzing a full population, as here, statistical significance is relatively unimportant. The percentages reported in the table represent the actual outcomes for all members of the population, not merely an estimate based on a sample of the population.

⁷ Most other participants were still active in the program. Only a small percentage (5.8%) had suspended or terminated their participation.

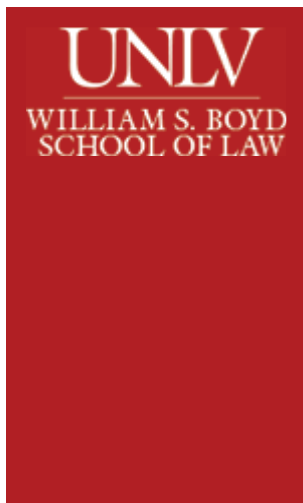
⁸ Although the Pathway data relates only to a supervised-practice pathway, there is no reason to exclude experiential education pathways from consideration by any new working group. That pathway has proven highly successful in New Hampshire and is being explored by other states. A licensing path rooted in experiential education would be the least costly licensing path for licensees and would be likely to show high levels of inclusiveness. These pathways, like ones based in supervised practice, can offer valid, reliable, fair, and feasible assessments of minimum competence.

Sydney Burud Swenson

From: Joan Howarth <joan.howarth@unlv.edu>
Sent: Monday, May 1, 2023 1:38 PM
To: BLE
Subject: Comment on BLE Recommendations [attn: John Koneck]
Attachments: Howarth Minn 050123.pdf

Thank you for the opportunity to comment. My comment is attached.

Kind Regards,
Joan Howarth



Joan Howarth

Distinguished Visiting Professor

William S. Boyd School of Law

Dean Emerita, MSU College of Law

author of *Shaping the Bar: The Future of Attorney Licensing*, <https://www.sup.org/books/title/?id=32230>



joan.howarth@unlv.edu

TO: Minnesota Board of Law Examiners [attn: John Koneck, Chair]
FROM: Joan Howarth, UNLV Distinguished Visiting Professor; MSU Law Dean Emerita
RE: Comments on BLE Recommendations
DATE: May 1, 2023

Thank you for the opportunity to comment on the Board's impressive project to consider its licensing practices. I am heartened and impressed that many of the values and concerns you have noted – data-driven decision making; public protection; access and equity, portability; reduction of cost – track the principles I have identified in my recent book, [SHAPING THE BAR: THE FUTURE OF ATTORNEY LICENSING](#) (Stanford University Press 2023).

SHAPING THE BAR starts with some history of our licensing practices, bar exams *and* legal education, because our current licensing problems are a product of that history. Our task today is to design licensing for the inclusive, client-oriented profession that the public needs without complacency about the problems of licensing methods that originated when the profession held different values.

SHAPING THE BAR offers guidelines for designing valid, reliable, fair, and feasible ways to assess competence, whether through written exams or pathways that do not rely on high stakes written exams. SHAPING THE BAR supports the BLE's recommendations, including adoption of the *NextGen* and consideration of portfolio pathways, whether within legal education or through post-graduation supervised practice. *See Clinical Residencies*, Chap. 12. One theme of SHAPING THE BAR is that we should ask less of bar exams and more of law schools. No one should be licensed to practice without supervision without some experience having practiced with supervision.

Yes, the *NextGen* promises to be a better bar exam. *See SHAPING THE BAR*, chap. 15. I applaud your recommendations regarding the need for Minnesota's careful attention to standard setting, including public notice, for the *NextGen*. The standard setting, or cut score decisions, could exacerbate unjustified racial and ethnic pass rate disparities, or reduce them. Minnesota shines as a jurisdiction that has adopted a fair and reasonable UBE cut score, impressive in a national landscape in which too many cut scores are based on protectionism, uninspiring standard setting protocols, or no protocols at all. I remember that former Justice Alan Page was an important voice in Minnesota's standard-setting. Minnesota's historic and ongoing understanding that cut score decisions implicate equity concerns and your reasonable, non-protectionist cut score stand out. I urge Minnesota to be active in NCBE's efforts regarding standard setting, not just waiting to make the least bad choice

from options the NCBE offers. Standard setting is a policy decision in which your values, history, and experience are important, nationally.

We have the opportunity to rethink licensing – whether bar exams or supervised practice requirements – to advance the core values of public protection and equity. Thank you for undertaking this work so thoughtfully. I am available to try to be helpful in any way I can.

Sydnee Burud Swenson

From: Merritt, Deborah <merritt.52@osu.edu>
Sent: Monday, May 1, 2023 9:53 AM
To: BLE
Subject: Attn: John Koneck (public comment)
Attachments: Merritt.MN Comment.pdf

Please see the attached comment supporting the Board's recommendations. Thank you for the invitation to comment.

Deborah Jones Merritt
Distinguished University Professor
John Deaver Drinko/Baker & Hostetler Chair in Law Emerita
The Ohio State University Moritz College of Law
Cell: 614-361-6402

April 25, 2023

TO: Minnesota State Board of Law Examiners

FROM: Deborah Jones Merritt, Distinguished University Professor and
John Deaver Drinko/Baker & Hostetler Chair in Law Emerita
Moritz College of Law, The Ohio State University

RE: Support for Proposed Recommendations Related to the Bar Exam

I commend the Board for its thoughtful review of Minnesota's licensing process and for the seven recommendations it has announced for public comment. As a scholar who has studied minimum competence extensively and who has worked with several states to evaluate their licensing systems, I support all seven of the Board's recommendations. I write here to elaborate briefly on my support for three of those recommendations.

Recommendation 1: Adoption of the NextGen Exam. I had the privilege of serving on NCBE's Content Scope Committee and then helped draft several of the prototype NextGen questions that are being piloted nationally. From that experience, I strongly support the Board's decision to adopt the NextGen exam. The exam will offer a much more effective assessment of entry-level lawyering competence than the current exam. NCBE appears committed to reducing the amount of memorization required for the exam, to testing more lawyering skills, and to achieving a better balance of multiple-choice and constructed-response questions.

The NextGen exam, however, will require significant changes in the way that students prepare for the bar exam. That process of change may impose particular burdens on students who are first-generation law students and/or lack confidence in their lawyering abilities. Ultimately, I believe that these students will be more successful on NextGen than on the current UBE, but the transition may be difficult. I encourage the Board, as it adopts NextGen, to press NCBE to share sample questions, a detailed content outline, and other exam information as soon as possible. Law schools are already anxious for this information, and it is essential to support faculty who will be preparing students for the new exam.

Recommendation 2: Standard Setting. I applaud the Board for recognizing the importance of standard setting and for recommending that Minnesota participate in any standard-setting exercise for the NextGen exam. I encourage the Board to engage fully in that process and to consult widely with others about the best method for setting the NextGen cut score. I have

followed standard-setting exercises as a scholar for more than 20 years,¹ and have seen that lawyers struggle more than other professionals to define minimum competence. We are much more accustomed, as lawyers, to comparing ourselves to others and grading on a curve than to setting a standard for minimum competence.

Previous standard-setting exercises in law have suffered from numerous flaws, including a failure to require the standard setters to take the exam and review their own scores before attempting to set an appropriate passing score. This step is an essential best practice for standard setting, and it is particularly important in a profession that is marked by a wide range of specialties and practice areas. Indeed, the best way to set an appropriate passing score for the NextGen exam may be to draw that score from samples of practicing lawyers who complete portions of the exam.

Recommendation 6: Exploration and Development of an Alternative Assessment That Can Be Completed During Law School

This is the most important of the Board's recommendations and one that I very strongly support. NextGen will be a better exam than the UBE, but it will still fall short of assessing key competencies; it is likely to continue the current exam's disproportionate racial impact; and it will still impose significant financial burdens on test-takers. A well-designed curricular pathway can offer a valid, reliable, fair, and feasible way to assess the minimum competence of candidates for bar admission.²

I had the honor of consulting with a committee of Mitchell Hamline faculty and staff who conducted an initial exploration of the feasibility and desirability of creating an experiential curricular licensing path. That very thoughtful group generated a set of principles that would provide an excellent foundation for the Implementation Committee recommended by the Board. I know faculty and staff members at the other two Minnesota law schools who are equally excited about the possibility of creating a licensing path based in experiential education. Minnesota's three law schools are nationally recognized for their strong clinical, externship, and other experiential courses, so the Board and Minnesota Supreme Court have an opportunity to lead other states in this area.

In my own work as a faculty member, I moved from teaching purely doctrinal courses to actively supervising two in-house clinics. That transition made clear to me the importance of clinical work in solidifying students' understanding of doctrinal principles, in developing

¹ I published my first article on this topic in 2001: *Raising the Bar: A Social Science Critique of Recent Increases to Passing Scores on the Bar Exam*, 69 U. CINCINNATI L. REV. 929 (2001) (with Lowell Hargens and Barbara F. Reskin). I believe that Minnesota relied upon some of the ideas from that article when evaluating a proposed increase in its passing score.

² The psychometric literature offers numerous guides for constructing this type of licensing path, and I have attempted to summarize that literature for jurisdictions interested in adopting an experiential education licensing path. See Deborah Jones Merritt, *Client-Centered Legal Education and Licensing*, 107 MINN. L. REV. __ (forthcoming 2023); Deborah Jones Merritt & Logan Cornett, *Guidelines for Developing a Lawyer Licensing System Based on Experiential Education* (2022).

essential lawyering skills, and in preparing graduates to work directly with clients. By requiring participants in a curricular licensing path to complete significant experiential work (including several credits in a closely supervised clinic or externship), Minnesota will assure a higher level of public protection than any written exam can achieve.

From my experience as a clinical professor, finally, I know that experiential courses offer an excellent context for evaluating minimum competence. Students will be able to gather work product in portfolios that bar examiners can evaluate independently. Experiences in New Hampshire and Oregon suggest that bar examiners find this task quite suitable.³ Indeed, it may be easier to judge the minimum competence of authentic work product than to grade essay questions produced under time pressure.

Conclusion

Thank you for the opportunity to comment on the Board's proposed recommendations. I am very impressed by the work of the Board and its working groups, and I would be happy to assist pro bono with any further exploration and development of new licensing pathways in Minnesota.

A handwritten signature in black ink, reading "Deborah Munt". The signature is fluid and cursive, with the first name "Deborah" written in a larger, more prominent script than the last name "Munt".

³ Oregon's bar examiners recently completed grading a small number of portfolios submitted as part of that state's provisional licensure program. I helped the Oregon State Bar draft the rules and rubrics for that program, and I currently serve as the program's ombudsperson.

Sydnee Burud Swenson

From: Law School Dean's Office <lawdeansoffice@umn.edu>
Sent: Monday, May 1, 2023 3:52 PM
To: BLE
Cc: Katy Hunt
Subject: Implementation Committee Feedback
Attachments: BLE Implementation Committee 05012023.pdf

Hello,

Please see the attached letter from Dean Garry Jenkins.

Many thanks,
Katy Hunt

Katy Hunt | Executive Assistant to the Dean

[University of Minnesota Law School](#) | 229 19th Avenue South | Minneapolis, MN 55455
hunt0901@umn.edu | P. 612-625-8086

Personal Pronouns: She/Her

(More about pronouns and why I list them [here](#))

UNIVERSITY OF MINNESOTA

Twin Cities Campus

Law School

Office of the Dean

*Walter F. Mondale Hall
229 - 19th Avenue South
Minneapolis, MN 55455*

*Phone: 612-625-4841
www.law.umn.edu*

May 1, 2023

John Koneck, Esq.
President, Minnesota Board of Law Examiners
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd, Suite 110
St. Paul, MN 55155
ble@mbcle.state.mn.us

Dear Mr. Koneck,

Thank you for the opportunity to provide comments on the recommendation submitted to the Minnesota Supreme Court by the Minnesota Board of Law Examiners to convene an Implementation Committee to explore an alternative assessment supplemental to the bar exam.

On behalf of the University of Minnesota Law School, we would welcome the opportunity to be part of a conversation about the possibility and design of an alternative assessment model for the licensure in Minnesota as we continue to consider whether such an option would be viable and appropriate for Minnesota Law.

We do think it is critical that any potential alternative assessment model fit alongside the current curriculum and experiential learning opportunities at the Law School. If the Court does ultimately decide to create an Implementation Committee, we would likely participate and seek to ensure that any proposed requirements fit with the Law School's existing curricular program and available fiscal resources, without requiring additional curriculum, additional staffing, or unintentionally distorting the curricular choices presently undertaken by students. Moreover, we would also seek to better understand how any potential proposal that we might consider implementing would ultimately fit the needs of our student and alumni population, especially in light of the likely limited portability of the resulting license. Finally, with the NextGen Bar Exam scheduled to be introduced in 2026 (and to incorporate new testing of legal skills), we anticipate devoting substantial efforts to fully understand and respond to any new needs and impacts of that significant change. Accordingly, our final decision making and efforts to develop an alternative assessment model may depend on new developments with the NextGen bar exam.

With the information we have to date, we have not yet decided if an alternative assessment is right for the University of Minnesota Law School, but we are open to continued discussion should the Supreme Court decide to move further.

Sincerely,



Garry W. Jenkins
Dean and William S. Pattee Professor of Law

Sydney Burud Swenson

From: Niedwiecki, Anthony <Anthony.Niedwiecki@mitchellhamline.edu>
Sent: Monday, May 1, 2023 12:08 PM
To: BLE
Subject: Comment on BLE Recommendations on Bar Exam
Attachments: Board of Law Examiners - 5-23.pdf; Report of Mitchell Hamline Curricular Pathway Working Group_04_28_2023.pdf; Report of Mitchell Hamline Curricular Pathway Working Group_with appendices.pdf

Board of Law Examiners:

I have attached a letter and a proposal in support of Recommendation #6. Please let me know if you have any questions.

Anthony Niedwiecki | President and Dean
Bonner Family Chair
651-290-7510 | Fax: 651-290-6426

Pronouns: he|his|him

Mitchell Hamline School of Law
875 Summit Ave. | St. Paul, MN 55105

Great in theory. **Even better in practice.**

May 1, 2023

Board of Law Examiners,
Attn: John Koneck, Board Chair
180 E. 5th Street, Suite 950
St. Paul, MN 55101

Chair Koneck:

I am writing to comment on the Board of Law Examiner's (BLE) recommendations published on March 20, 2023. Specifically, I am attaching a proposal that is responsive to Recommendation #6. As you know, I have been a big proponent of offering alternatives to the bar exam, and I participated in Working Group 2.

To provide the BLE and the Minnesota Supreme Court with more details about how a pilot experiential curricular pathway would work, I formed a working group at Mitchell Hamline to develop a more detailed proposal. Our goal is to help decision makers better understand how this kind of pathway might work.

In March, the Board of Law Examiners published recommendations from its competency study, including the recommendation that an implementation committee be formed with representatives from all three Minnesota law schools to further explore the development of an experiential curricular pathway. I strongly support this recommendation. The attached proposal details some of our ideas on how this pathway would work and frames some of the issues that an implementation committee would face.

Our proposal is based on the idea that an experiential curricular pathway would benefit the public while also being more equitable. First, this pathway could be a more valid and rigorous evaluative tool of minimal competency because it will evaluate real legal work done by the applicant. Second, this will be a more equitable option for many students, especially part-time students who are unable to spend any significant time studying right before a bar exam because of family or work obligations. As the only school in Minnesota with a part-time program, this is especially true at Mitchell Hamline.

We would be willing to participate in a pilot program once the implementation committee completes its work and will take any steps or incur any costs associated with implementing a pilot program at Mitchell Hamline. We believe these costs would be minimal compared to the

costs associated with preparing for and taking a bar exam. As detailed in our proposal, this may require us to provide additional support to students throughout law school to ensure that they are successfully completing the requirements of an experiential curricular pathway.

We plan to share this proposal with the Minnesota Supreme Court when the BLE makes its final recommendations to the Court. We welcome any comments or suggestions about our proposal from the BLE or BLE staff in the meantime.

Once again, I want to thank everyone who worked so hard on the review of attorney licensing in Minnesota and for including the law schools in the process. The close working relationship between the BLE and the Minnesota law schools is something that I have not previously witnessed in my 25 years in legal education.

I look forward to continuing our work together as we implement significant changes to the bar exam and attorney licensing in Minnesota.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Niedwiecki", written over the word "Sincerely,".

Anthony Niedwiecki
President and Dean

TO: Dean Niedwiecki

FROM: Working Group on Experiential Curricular Pathway to Bar Licensing

DATE: April 28, 2023

In January 2023, in response to the Minnesota Board of Law Examiner's competency study of the Minnesota bar licensing process, a working group of interested faculty and staff members formed at Mitchell Hamline to study the feasibility and desirability of developing an experiential curricular pathway. At that time, the Board of Law Examiners had issued a preliminary report suggesting an interest in developing a pilot program for a curricular pathway, and the Mitchell Hamline working group was focused on how Mitchell Hamline could develop such a pilot program within our curriculum.

The Mitchell Hamline working group included faculty members with teaching experience in both doctrinal and skills courses, including clinics, externships, and legal writing; staff members from our instructional design team with expertise in the development of rubrics to assess learning outcomes; and faculty and staff persons with leadership in career and professional development, lawyer formation, and in student affairs.

The group has met every other week since the end of January 2023. Beginning in February, our meetings also included two national experts on bar licensure, Joan Howarth and Deborah Merritt, who served as consultants to our group. We have reviewed materials from the Daniel Webster Scholars program in New Hampshire and examples of portfolio materials from the ongoing work in Oregon, which has already implemented a limited supervised practice pathway to bar licensure; has published a more permanent version of that program for public comment; and is developing a complementary curricular pathway to licensure.

In March, the Board of Law Examiners published recommendations from its competency study, including the recommendation that an implementation committee be formed with representatives from all three Minnesota law schools to further explore the development of an experiential curricular pathway. We support this recommendation, and it has shifted the focus of our working group to how we could memorialize and share some of the knowledge and general recommendations gained from our preliminary internal discussions in a way that might usefully frame some of the issues that an implementation committee would face.

We believe that an experiential curricular pathway would be both feasible and desirable as an alternative to the bar exam if developed in accordance with the following principles, which have emerged from our preliminary discussions:

- A curricular pathway should provide a genuine alternative to the bar examination by measuring the skills and competencies needed for entry-level practice.

- A curricular pathway should be based on bar examiners' independent assessment of a portfolio of student work completed in already-existing experiential courses rather than requiring law schools to develop a sequence of new courses.
- A curricular pathway should address racial, ethnic, and gender disparities in bar licensing as if required by law.¹
- Portfolio materials should be appropriately redacted to permit anonymous assessment of applicants' work.
- Applicants should satisfactorily complete appropriate experiential and doctrinal coursework in law school.
- A pilot program should initially be limited in size and provide opportunities for interim feedback for applicants on their portfolio materials.

This report addresses these points and identifies additional issues that would need to be resolved in the development of a curricular pathway, including: (1) the skills and competencies to be assessed in an experiential curricular pathway; (2) what a portfolio of materials might include; (3) what curricular requirements should be required in addition to the portfolio; and (4) the kinds of infrastructural and student support that would be needed in a pilot project.

Skills and competencies

The first step in developing an experiential curricular pathway would be to identify the skills and competencies that would be assessed to determine entry-level competence for law practice. The identification of these skills and competencies is important in establishing the validity and reliability of a licensing system based on portfolio review.²

The validity of an assessment method is defined by how closely the assessment criteria measure the skills and competencies that candidates should possess to competently practice law. The traditional bar licensing system requires applicants to demonstrate knowledge of substantive law through a test format that requires memorization of a diverse body of legal standards and performance under time pressure. Critiques of traditional bar examination licensing have noted that competent law practice differs from this assessment method in several ways. Rather than relying on memorized content of general knowledge under time pressure, law practice requires careful and thorough legal research of focused questions based on the law of a specific jurisdiction. Moreover, some skills required in entry-level practice go untested in a bar examination format, such as legal research and client management, advising, and counseling skills. These critiques go to the validity of the traditional bar examination format.

¹ We draw this criterion from the "twelve guiding principles" for licensing in Joan W. Howarth, Shaping the Bar, Chapter 11, which is attached as an appendix. Although the racially disparate outcomes produced by traditional bar testing have survived Title VII scrutiny on grounds that they are not employment tests, Howarth argues that bar licensing systems apply rigorous self-scrutiny to the persistently disparate results produced by high-stakes testing.

² We are indebted to Deborah Merritt for her analysis of validity, reliability, and fairness in portfolio review assessments in an article that is forthcoming for publication in the Minnesota Law Review, which is attached as an appendix.

Because a portfolio review process would be based on assessing applicant work produced under conditions that more closely resemble entry-level law practice, it holds out the promise of producing a high level of validity. To validate the specific skills and competencies necessary for entry-level practice, an implementation committee would benefit from reviewing the work that has been conducted by the National Conference of Bar Examiners in their practice analyses and by the Institute for the Advancement of the American Legal System (IAALS) in their study and report, *Building a Better Bar*. The NCBE analysis was based on a nationwide survey of practicing lawyers, while the IAALS study drew on focus groups with newly licensed lawyers and supervisors. The two studies offer complementary insights into the kinds of tasks required in entry-level practice and provide an important baseline for entry-level competence.

As a result of the NCBE's validity analysis, the NCBE is in the process of revising the bar examination materials it produces and supplies to states. The NextGen bar examination will focus less on memorization and more on integration of legal knowledge and skills. Although these changes are welcome, the NextGen bar examination will still be a high-stakes test offered in a time-pressured setting, a format that has been shown to produce racially disparate outcomes. A licensing system based on the review of portfolio materials would move the assessment of entry level competence even closer to the aims of the NextGen bar examination by integrating knowledge and skills while avoiding the pitfalls that are likely to persist in any regime based solely on high-stakes testing.

In addition to being valid, an assessment method needs to be reliable. The reliability of an assessment method is its ability to produce the same results each time it is used. In a portfolio-based assessment, reliability can be achieved through assessment of the same underlying skills and competencies across numerous items in a portfolio and by different examiners who calibrate their assessments. Each piece of work in an applicant's portfolio would also need to be evaluated using standardized rubrics.

As an example of how this might be achieved, we reviewed Oregon's supervised practice rubrics for assessing minimum competencies in two types of practice-based written materials, client encounters, and negotiations, which we have included as an appendix. We think it would be feasible to create similar materials for a pilot project in Minnesota. At Mitchell Hamline, we have the benefit of an experienced instructional design department with expertise in developing rubrics that measure learning outcomes and align assessments of student work with course-level outcomes. Should an implementation committee be formed to develop materials for a pilot program, Mitchell Hamline would be well-positioned to assist in that effort.

Portfolio materials

In our discussions, we considered what kind of work might be included in a portfolio, and we share our thoughts from these preliminary discussions.

Portfolio contents: To help standardize the evaluation of portfolio materials and to ensure that applicants can demonstrate a range of entry-level lawyering competencies, the implementation

committee will need to develop a content list for portfolio materials. We were impressed with the portfolio materials that are being developed for the supervised practice pathway in Oregon, and several features of those materials could be easily transferred to work produced by students while in law school. For example, the Oregon supervised practice portfolio requirements include:

- 8 pieces of written work that address a substantive legal matter and provide a prediction, recommendation, or conclusion;
- 2 client interviews or counseling sessions that are assessed by a supervisor; and
- 2 negotiations assessed by a supervisor.

This list of Oregon materials from the supervised practice pathway recognizes that an applicant's work product will occur in a particular legal setting that might be limited in the type of work that can be produced. Applicants in a curricular pathway, however, would have the opportunity to take law school courses that expose them to a broader range of experiences and produce a wider variety of types of work, such as:

- An example of persuasive advocacy (e.g. briefs, motions, petitions, oral arguments)
- An example of objective analysis (e.g. memos, letters/emails to clients)
- An example of transactional drafting (e.g. contracts, leases, or other documents with the force of law)

Work product from real-practice settings: In a curricular pathway, applicants would have the opportunity to submit coursework based on simulated practice assignments from legal writing courses, competitions, trial advocacy courses, or other courses like client counseling or negotiation. To demonstrate entry-level competence, however, applicant portfolios should include at least some material produced in a real practice setting, such as a clinic or an externship. Simulated problems created for classroom teaching or intermural competition are valuable for developing and demonstrating skills, but they are often constructed in simplified ways. To demonstrate entry-level competence, applicants should also demonstrate their ability to address the needs, interests, and values of an actual client in the context of the law of a particular jurisdiction.

We considered whether it might be possible for applicants to submit portfolio materials produced from non-curricular sources, such as part-time jobs, work as research assistants, or volunteer opportunities with the Minnesota Justice Foundation. We recommend that, at least in the pilot period, the source of real practice work product should be experiential coursework. The ABA has specific standards defining what counts as experiential coursework, which require that experiential courses "integrate doctrine, theory, skills, and legal ethics and engage students in performance of one or more . . . professional skills."³ These standards also require direct supervision of student work by a faculty member or externship supervisor, opportunities for feedback on student performance, and opportunities for reflection. Because Minnesota does not

³ ABA Standards for the Accreditation of Law Schools, Standard 304(a)(1).

yet have a program for recruiting and training supervisors in a supervised practice pathway, the pilot program would benefit from using the existing framework for supervision and feedback in the ABA standards.

We also discussed the client confidentiality issues of including materials from real practice settings. In the Oregon supervised practice materials, this protection is accomplished through client consent, redaction, and conflict checking to ensure that bar examiners have not been involved in the matter from which portfolio materials are submitted.

Contextualizing the work product: To properly evaluate portfolio materials, bar examiners should be able to understand the materials in the context in which they were produced. This can be accomplished by requiring that portfolios include contextual materials, such as an overview memorandum addressing the applicant's learning plan; a description of the applicant's coursework and experiential learning experiences; and where/how the applicant's materials demonstrate each of the entry level skills or competencies specified in the pathway.

Each example of work in the portfolio might also include a cover memo explaining the context in which it was produced, and the steps taken in producing it. For example, cover memos in the Oregon supervised practice materials include questions to provide context for practice-based work product, such as:

- What is the purpose of this work product? How does it fit within your overall strategy for the matter?
- List 3-5 legal rules, principles, or practices that you needed to know to complete this work product. Then note how you acquired knowledge of each rule, principle, or practice.
- How did you acquire the factual information you needed to complete this work product?
- Did you rely on a sample or template to create this work product? If so, why did you choose that sample or template? What challenges did you face in adapting the sample or template to your project?

Portfolio materials might also include supervisor evaluations of the work, which can be used both to authenticate that the work product was completed by the applicant and to attest that it demonstrates accurate legal analysis. Portfolio materials might also include reflective memos written by the applicant, particularly for portfolio materials like client interviews, client consultations, and negotiations.

Redaction to permit anonymous assessment: When we first began discussing what a portfolio might include, we considered including materials such as law school transcripts, a resume, and recordings demonstrating the applicant's skills, such as recorded direct or cross-examinations or oral arguments. However, to ensure fairness in the bar admission process, we became mindful of the ways in which the identities of the applicants would need to be protected. We discussed how this might be accomplished through redaction of work product materials to remove identifying

information; transcription of oral work product; and law school certification that curricular requirements had been met.

Curricular requirements

In addition to the portfolio of work product demonstrating skills and competencies, a curricular pathway should include some basic distribution requirements in the applicants' coursework that ensure that the applicant has successfully completed experiential and doctrinal courses of an appropriate range and depth.

Experiential coursework: To demonstrate depth of experiential learning, one of our national experts has recommended that a curricular pathway should include at least 15 credits of experiential coursework, 6 of which would involve direct client work in clinics or externships.⁴ Fifteen credits is roughly the equivalent of one semester of law school, and would represent approximately 675 hours of experiential coursework, 270 hours of which would be earned through direct client work in supervised practice settings of clinics or externships. Current ABA standards require that all law school graduates take at least 6 experiential credits, which can be earned through any combination of simulation courses, clinics, or externships.⁵ This pathway would more than double that baseline requirement.

The requirement of fifteen experiential credits is consistent with the requirement that applicants in Oregon's supervised practice pathway complete 675 hours of supervised practice and the curricular requirements in the Daniel Webster Scholars program. The Daniel Webster Scholars program is based on a specialized track of simulation courses that cover trial advocacy, transactional drafting, negotiations, and client counseling, which the Daniel Webster scholars complete over the course of two years in law school. In addition to these simulation courses, the program requires six credits of a clinic residency.

Although the Daniel Webster Scholars program has demonstrated success,⁶ we would not recommend creating a similarly specialized track of coursework for Minnesota applicants on a curricular pathway. The Daniel Webster Scholars program was created in 2005 at a time when the ABA experiential education requirements were lower and when law schools offered fewer experiential courses. Each law school in Minnesota already offers a robust menu of experiential courses to its students. It would be unduly burdensome for each law school in Minnesota to create a specialized track of classes for applicants rather than permitting applicants to utilize already-existing curricular opportunities to meet an experiential education requirement.

⁴ Joan Howarth, Shaping the Bar, Chapter 13.

⁵ Mitchell Hamline currently meets this requirement through two 3-credit courses: Advocacy (which teaches basic advocacy skills) and either Transactions & Settlements or Negotiation (each of which teaches basic problem-solving skills).

⁶ The IAALS conducted a study showing that Daniel Webster Scholars outperformed lawyers who had been licensed through a bar exam. Their study is published in a monograph entitled Ahead of the Curve: Turning Law Students into Lawyers.

We considered whether an experiential education requirement—particularly the requirement of direct client experience in clinics or externships—might create a barrier to our part-time students, who often combine law school with full-time jobs. To complete 6 credits of clinics or externships, applicants would need to invest a total of 270 hours of time in supervised practice.⁷ Our experience in developing clinic and externship opportunities for part-time students in our blended program indicates that many part-time students are able to find the flexibility in their schedules to complete experiential coursework despite the other demands on their time. Moreover, because studying for the bar examination also requires a significant investment of hours during a relatively short period of time,⁸ part-time students may appreciate the option to invest the time in experiential coursework and supervised practice that could be spread over multiple semesters and summers rather than concentrated in a comparatively limited span of time for bar review.

Doctrinal coursework: In creating the NextGen bar examination, the National Conference of Bar Examiners has refined the scope of its bar-tested content, cutting back on bar-tested doctrine and expanding its testing of foundational skills. A portfolio assessment method would be consistent with the integrated format adopted by the NextGen bar examination of testing foundational knowledge within the context of demonstrating foundational skills. However, a curricular pathway could also include certification that applicants successfully complete coursework in defined areas of foundational knowledge.⁹

Most of the foundational knowledge content tested on the bar examination is covered in required first-year courses in law school, and students must successfully complete them to advance in their legal studies. For example, in their first year of law school, Mitchell Hamline students complete required courses in criminal law, torts, civil procedure, contracts, property, and constitutional law.¹⁰ A curricular pathway could include a requirement that students complete a slightly longer list of required courses that track all the areas of foundational knowledge tested on the bar examination. For example, to complete coursework that covers the newly designed doctrinal content scope, Mitchell Hamline students would need to take three 3-credit courses beyond what is currently required for graduation: Evidence, Constitutional Criminal Procedure, and Business Associations.¹¹

We discussed what it would mean to “successfully complete” required doctrinal coursework. For example, to remain in good academic standing, Mitchell Hamline students must maintain a 2.2

⁷ Consistent with ABA standards for in-class and out-of-class time per credit, Mitchell Hamline requires students in clinics and externships to log 45 hours for each academic credit.

⁸ Most bar preparation programs suggest 500-600 hours of study over the course of two months.

⁹ The NextGen bar examination has designated eight subject matter areas as foundational knowledge: business associations and relationships; civil procedure; constitutional law; contracts; criminal law and constitutional protections of accused persons; evidence, real property, and torts.

¹⁰ Part-time students complete these courses over the first three semesters of law school.

¹¹ Depending on content coverage in our two constitutional law courses, students might also need to take Administrative Law.

GPA, which is between a C and C+ average. To demonstrate minimum competence, it seems appropriate to require that level of performance in the courses designated as foundational content scope courses. We discussed whether students should be required to earn at least a C or C+ in each of the classes on the list. However, we noted that this might preclude students who have a difficult time during their first year of law school but are subsequently able to gain and maintain good standing in law school. Many of our students are the first generation in their family to graduate from college, and it sometimes takes time for them to understand and adjust to the expectations of law school. As noted above, success in bar-style assessments requires skills of memorization and performance under time pressure that do not correlate well with entry level law practice. We would not want an unduly high standard of performance on law school exams, which also test memorization and performance under time pressure, to hinder applicants' ability to pursue a pathway to licensure that is designed to provide an alternative measure of entry level competence. And, as members of our working group noted, not even the bar examination requires an applicant to demonstrate minimum competence in each doctrinal area of law; it scores applicants based on their overall performance across multiple subjects.¹²

As discussed above, we are mindful of the need for anonymous review of applicant materials, which would preclude the use of law school transcripts to authenticate successful completion of specified coursework. An implementation committee, however, could define uniform standards for required experiential and doctrinal coursework so that a law school could certify that applicants had met the standards through the curriculum offered at their law school.

Infrastructural and student support

We recognize that a pilot program for a curricular pathway will be a learning experience for the law schools and for the Board of Law Examiners. Even a thoughtful and comprehensive planning process is unlikely to anticipate every issue that will arise in the process of implementation. We therefore recommend that the initial applicant pool be limited in size and that there be systems developed to facilitate regular communication between the law school and the Board of Law Examiners.

Within the law school, we recommend that a person be designated as the liaison or coordinator of the licensing pathway. Our current bar passage support includes academic advising about coursework, student affairs counseling about character and fitness review, and bar passage tutoring and support. We anticipate that an additional type of academic advising will be necessary to support students' choices about what experiential courses to take so that they will produce the work product necessary for a strong portfolio. We also anticipate that support will be needed to assist students in compiling and appropriately redacting their portfolio materials.

From the Board of Law Examiners, we recommend that a system be developed for interim review of portfolio materials so that students can be properly advised about the appropriateness of the

¹² For example, an applicant can pass the bar by scoring well overall, even if their score on questions testing a particular subject—like civil procedure—fell below minimum competence.

materials they are including in the portfolio. We note that interim review is part of the process in both the Daniel Webster Scholars program and the supervised practice pathway in Oregon.

Although adopting an experiential curricular bar licensing pathway will impose some costs on both participating law schools and the Board of Law Examiners, we believe that those costs will be relatively modest, especially if an experiential curricular pathway can be built on the basis of existing experiential courses. The current licensing system is expensive for students, who pay for bar preparation courses and forego income while studying for the bar exam. Investing modest sums in an alternative pathway can help to align licensing with entry-level practice, ease the financial burdens on law students, and make the legal profession more inclusive.

Conclusion

We thank you for the opportunity to study the possibility of an alternative experiential curricular bar licensing pathway in Minnesota. We have learned a lot through this process, and we look forward to continuing to work on implementation if approved in Minnesota.

Working Group on Experiential Curricular Pathway to Bar Licensing

Leanne Fuith (co-chair)

Kate Kruse (co-chair)

Octavia Carson

Tom Cobb

Lynn LeMoine

Kelli Simpson

Amanda Soderlind

Sydnee Burud Swenson

From: Nichols, Joel A. <joel.nichols@stthomas.edu>
Sent: Monday, May 1, 2023 3:47 PM
To: BLE
Subject: Letter to the Board of Law Examiners on Report/Recommendations to the MN Supreme Court
Attachments: BLE letter from St Thomas on May 1 2023.pdf

Dear Board of Law Examiners,

Please see the attached letter regarding the Competency Study. Feel free to contact me with any questions. Thank you for your consideration and the opportunity to comment.

Best regards,
Joel

Joel A. Nichols
Interim Dean and Mengler Chair in Law
School of Law
Minneapolis, Minnesota 55403

joel.nichols@stthomas.edu
p (651) 962-4827
University of St. Thomas | stthomas.edu/law





May 1, 2023

Minnesota Board of Law Examiners
Attn: John Koneck, Board Chair
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear John,

Thank you for the opportunity to comment on the Board of Law Examiners' proposed report and recommendations to the Minnesota Supreme Court regarding the bar examination and non-exam pathways. We continue to appreciate the BLE's partnership, and the work of the Board and so many members of the bar on this comprehensive project.

The University of St. Thomas School of Law strongly favors adoption of the NextGen Bar Exam (*Recommendation 1*). We also endorse Recommendations 2-4 regarding setting a cut score and related rule changes. We encourage cooperation with other jurisdictions, as much as possible, to ensure the continued portability of the bar exam that has occurred over recent years as states adopted the Uniform Bar Exam.

If the Court creates an Implementation Committee to further explore an alternative assessment to the bar exam that could be completed within law school, the University of St. Thomas would willingly participate. We readily acknowledge the limitations of admission by bar exam only, which hopefully will be less acute with the shift to the NextGen Bar. At the same time, we also acknowledge several concerns that were raised during the Working Groups of the competency study regarding possible unintentional incentives generated by curricular pathways – that might impact portability for graduates/applicants; that might influence curricular and pedagogical choices; and, particularly, that might negatively impact resource considerations at the law schools.

Because more work and study remain about what any alternative pathway would look like, the University of St. Thomas is not certain how it would participate in such a program but we would imagine doing so if it could benefit our students as a whole and also be feasible from an administrative standpoint.

With warm regards,

A handwritten signature in black ink, appearing to read "Joel A. Nichols".

Joel A. Nichols
Interim Dean and Mengler Chair in Law

Sydney Burud Swenson

From: Cheryl Dalby <cdalby@mnbars.org>
Sent: Wednesday, April 26, 2023 4:42 PM
To: BLE
Subject: MSBA Comments RE: BLE Recommendations
Attachments: Dalby Letter to Koneck re bar exam.pdf

Good Afternoon,

Attached please find comments from the Minnesota State Bar Association regarding the Board of Law Examiners' recommendations concerning the bar exam and alternative pathways to attorney licensure.

Please feel free to contact me with any questions.

Sincerely,
Cheryl Dalby

Cheryl Dalby (she/her) | **Chief Executive Officer**
612-278-6334 | cdalby@mnbars.org

Minnesota State Bar Association
Hennepin County Bar Association
Ramsey County Bar Association





April 25, 2023

Minnesota
State Bar
Association

600 Nicollet Mall
Suite 380
Minneapolis, MN
55402-1039

www.mnbar.org

Telephone
612-333-1183
National
800-882-MSBA
Fax
612-333-4927

President
Paul D. Peterson
Woodbury

President-Elect
Paul Floyd
Minneapolis

Treasurer
Samuel Edmunds
Mendota Heights

Secretary
Thomas R. Pack
Minneapolis

Chief Executive Officer
Cheryl Dalby

Minnesota Board of Law Examiners

Attn: Jon Koneck, Board Chair

Minnesota Judicial Center

25 Rev. Dr. Martin Luther King Jr. Blvd, Suite 110
St. Paul, MN 55155

Dear Mr. Koneck,

On behalf of the MSBA, I submit the following comments in response to the recommendations of the Board concerning the bar exam and alternative pathways to attorney licensure.

1. NextGen Bar Exam:

The MSBA has significant concerns regarding the bar exam's impact on BIPOC test-takers in terms of inherent bias and notes this issue is not fully addressed in the Board's recommendations. An ABA report from May 2022 revealed bar exam passage rates broken down by race, ethnicity, and gender. The report revealed that white test takers were more likely to pass the bar exam in 2021 than test takers of other races and ethnicities. Among white men and women taking the bar exam for the first time, 85% passed. By comparison, 61% of Black first-time test takers passed, 72% of Hispanics, 47% of Hawaiians, 70% of Native Americans and 79% of Asians.¹

Based on early information released by the National Conference of Bar Examiners about the forthcoming NextGen Bar Exam, the Board's recommendation that Minnesota adopt the NextGen Bar Exam is a preliminary step toward a better system of attorney licensing in Minnesota, but it does not fully address the substantial racial, ethnic and gender disparities documented in the examination process itself. The MSBA strongly encourages the Board to explore alternative pathways to attorney exam passage rates. We cannot stop with the adoption of the NextGen Bar Exam.

Overall, the MSBA believes it is likely the NextGen Bar Exam will be an improvement over the current uniform bar exam. The practice of law has changed and the bar exam needs updating to test important lawyering skills. The Board's recommendations appear to indicate that the NextGen Bar Exam will do that.

¹ Stephanie Francis Ward, In recently released data, ABA parses out bar passage rates by race, ethnicity and gender, ABA Journal (May 2, 2022, 10:29 AM) <https://www.abajournal.com/web/article/data-on-bar-passage-rates-by-race-released-by-aba>.

Additionally, given the number of people who come to Minnesota after taking the bar elsewhere, and the number of Minnesota graduates who proceed to practice elsewhere, the MSBA also agrees portability is an important and legitimate concern and the NextGen Bar Exam will address this. Minnesota graduates should not be at a disadvantage if they choose to practice elsewhere.

The MSBA further questions how students will adequately study for NextGen during the transition phase. Bar exam study currently focuses on reviewing many questions and topics that were included on prior bar exams. When the NextGen Bar Exam is rolled out, there will be no old exams to assist students in preparation. The MSBA requests that the Board partner with Minnesota's law schools to ensure students will be able to adequately prepare for NextGen with appropriate study tools and aids. As a consumer of NCBE products, the Board is in a position to press the NCBE to create preparation materials that will help students in this process.

Finally, the MSBA notes there is no appeal process for someone who fails to pass the bar exam, and perhaps there should be. Alternatively, the MSBA suggests those who fail the exam be allowed to become licensed through supervised practice or other means. The MSBA recommends the ability to appeal apply only to the human-graded portion of the exam (i.e. the essay portion) and only where the examinee was within five points of passing. The appeal could consist of writing a brief or something similar on a topic of the Board's choosing. Particularly because NextGen will be new, an appeals process is important.

2. Review of Minnesota Cut Score:

The MSBA supports the Board's request for further study and comment regarding the appropriate cut score for Minnesota after it adopts the NextGen bar exam. A study of cut scores in other markets and having the Board administer sample NextGen bar exams to a population of law students from representatively diverse backgrounds to determine the most appropriate cut score will be important prior to administration of the new exam. The Board should ensure there is transparency in the composition of the practice test takers. Data from a few years of administering NextGen will also be critical in helping determine whether the chosen cut score was appropriate or needs adjustment for the future.

3 and 4: Adopt rule changes for the UBE and NextGen related to admission by motion and transfer of UBE scores:

The MSBA supports the Board's proposed amendments to Rules 7B and 7C and agrees these changes will aid in the transition from UBE to NextGen.

5. Revision of Supervised Practice Rules:

The MSBA supports the Board's recommendation that a student practitioner who fails the bar exam be allowed to continue in supervised practice so long as they notify their supervising attorney of the fact within ten days, and the attorney agrees to continue the supervision.

6. Alternative assessment to the bar exam to be completed in law school:

The MSBA strongly supports creation of alternatives to the bar exam, including a pathway with a foundation in the work a new graduate completes while in law school. No law school would be required to offer such a program but doing so is likely to provide a competitive advantage. All schools already offer experiential clinic opportunities to students that would support the development of an alternative curricular pathway to licensure.

The MSBA fully supports the Board's recommendation for a Court-appointed Implementation Committee to bring to fruition an alternative assessment to be completed in law school. Rather than an interested member of just one affinity bar, the MSBA recommends a representative from each affinity bar be invited to participate on the Implementation Committee. The MSBA further believes that the Board should continue to be responsible for the successful completion of this initiative rather than shifting responsibility for bar exam alternatives entirely to the Implementation Committee. Alternatively, the Court may choose to be responsible for completion of this initiative.

7. Supervised Practice:

Among other things, the Board raises a concern over whether the necessary support exists within the practicing bar to support supervised practice and suggests the Court form a Committee to further develop the idea if it is so inclined. The Board indicates supervised practice may be a more viable alternative if and when an alternative assessment option is developed since the programmatic elements may be similar for both.

The MSBA acknowledges that certain segments of the legal market, for example large firms, may initially be reluctant to participate in a supervised practice program in part because of the cost of training first-year associates. However, big law represents a small portion of the legal field overall. Legal aid is one aspect of the legal profession that might benefit greatly from supervised practice as demonstrated by efforts to embrace the use of professional practice technicians to help close the access to justice gap in Minnesota and around the country.

Finally, the MSBA is concerned that in the absence of a structured, uniform standardized system of supervised practice, any program could lead to financial exploitation and disparate results.

Despite these concerns, the MSBA strongly supports a supervised practice pathway to licensure, believing the potential benefits of a supervised practice pathway in addressing the racial, ethnic, and gender barriers of a bar exam outweigh the possible pitfalls. The MSBA encourages the Board to affirmatively recommend to the Court that a supervised practice pathway be further explored. The MSBA recognizes the Board's hesitancy to embrace this pathway may be due in part to the staff resources required to recruit sufficient attorneys to participate. The MSBA notes a pilot project may be an appropriate first step and the MSBA is a likely partner in this work. The Board and the Court could monitor the results and curtail or expand the program as warranted.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Dalby". The signature is written in black ink on a light-colored background.

Cheryl Dalby