

NOTICE OF COMMENT PERIOD

On August 1, 2011, the Nebraska State Bar Association filed a “Petition to Adopt Multi-State Performance Test and Uniform Bar Examination, S-36-110001. The Nebraska Supreme Court invites interested persons to comment on this petition, which requests the Court to adopt, use, and administer the “Multi-State Performance Test” as one of the components of the Nebraska bar examination; to adopt the “Uniform Bar Examination” as the testing component of the bar admission process; and to amend its Admission Requirements for the Practice of Law rules to adopt the Uniform Bar Examination.

Anyone desiring to comment on this petition should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to lanet.asmussen@nebraska.gov, no later than October 1, 2011. A PDF copy of the petition, including supporting exhibits, begins on the following page, or a hard copy may be reviewed in the Office of the Clerk of the Supreme Court and Court of Appeals upon request.

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

FILED

IN RE PETITION TO ADOPT MULTI-
STATE PERFORMANCE TEST AND
UNIFORM BAR EXAMINATION

36-110001

AUG 01 2011

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

The Nebraska State Bar Commission hereby petitions the Court to adopt, use and administer the "Multi-State Performance Test" (MPT) as one of the components of the Nebraska bar examination, to adopt the "Uniform Bar Examination" (UBE) as the testing component of the bar admission process, and to amend its Admission Requirements for the Practice of Law to adopt the Uniform Bar Examination.

MULTI-STATE PERFORMANCE TEST

The MPT was developed by the National Conference of Bar Examiners and is designed to test an applicant's ability to use fundamental lawyering skills in a realistic situation. Each test evaluates an applicant's ability to complete a task which a beginning lawyer should be able to accomplish. The MPT is not a test of substantive knowledge; rather, it is designed to examine six fundamental skills lawyers are expected to demonstrate regardless of the area of law in which the skills arise. The MPT requires applicants to (1) sort detailed factual materials and separate relevant from irrelevant facts; (2) analyze statutory, case, and administrative materials for principles of law; (3) apply the law to the relevant facts in a manner likely to resolve a client's problem; (4) identify and resolve ethical dilemmas, when present; (5) communicate effectively in writing; (6) complete a lawyering task within time constraints.

If this Petition is adopted the Commission intends to administer two 90 minute MPT questions on the same day as the Multi-State Essay Examination (MEE) so that, taken together, the two components will result in a 6-hour written examination.

The MPT has already been adopted in thirty-eight jurisdictions, including the neighboring states of Iowa, Missouri, South Dakota and Colorado.

UNIFORM BAR EXAMINATION

The UBE was developed by the National Conference of Bar Examiners and after a lengthy process of study and development has been adopted in five states to date – Washington, North Dakota, Idaho, Alabama and Missouri-and it is being considered for adoption by several other jurisdictions. In addition, the Conference of Chief Justices and the ABA Council of the

Section of Legal Education and Admissions to the Bar have adopted resolutions endorsing consideration of the UBE and those resolutions are attached as Exhibits 1 and 2. The UBE is comprised of the following components:

1. The Multi-State Bar Examination (MBE) (two hundred multiple choice questions);
2. The Multi-State Essay Examination (MEE) (six questions); and
3. The Multi-State Performance Test (MPT) (two questions).

The scores of the MEE and MPT components are scaled to the MBE to produce a written scaled score, which is combined with the MBE scaled score to produce a total UBE score for the examination. The total UBE score is stated on a 400-point scale. The current minimum passing score in Nebraska is 135 on a 200-point scale; this passing score would effectively stay the same but would be stated as 270, which is the equivalent score on the 400-point UBE scale. Nebraska would continue to also require applicants to take and achieve a minimum passing score (85 points) on the Multi-State Professional Responsibility Examination (MPRE) administered separately from the three components described above.

The UBE will consist of two days of examination, with six 30-minute MEE questions and two 90-minute MPT questions on the first day and six hours of the MBE on the second day, which will result in adding a half day to the existing one and one-half day bar examination. The Commission does not consider that the addition of a half day to the examination process creates an onerous burden on our applicants and believes that the implementation of the UBE will better reflect the abilities of the applicants.

The specific rule revisions that will be necessary if this petition is granted are to add UBE applicants to the description of Class 1-A applicants; to eliminate the reference to failing applicants being able to appeal their score/status (because UBE jurisdictions do not engage in re-grading after results have been released); to state that the subjects tested are those tested on the UBE; and to restate the minimum passing score on the 400-point UBE scale.

The additional expense of adding the MPT component and administering of the UBE is expected to be less than \$ 25.00 per applicant at current rates.

The Commission believes that the UBE will provide an important advantage to our applicants in that they will be able to transfer their scores to other UBE jurisdictions, as one of the requirements for jurisdictions adopting the UBE is agreement that UBE scores from other jurisdictions are transferable, though for limited periods of time. Nebraska currently allows

lawyers to be admitted by motion if they have taken and passed a comparable exam and Nebraska does accept the UBE as a comparable exam. If the UBE is approved our applicants will have the same privilege in other UBE states, although all states retain their right to determine appropriate character and fitness to practice in those states.

CONCLUSION

For the reasons stated above, the Commission respectfully requests that the Court adopt the Multi-State Performance Test as a component of the Nebraska bar exam, adopt the Uniform Bar Exam as the full testing component of the bar admission process, and amend its Admission Requirements for the Practice of Law to incorporate the Uniform Bar Examination.

Dated this 26 day of July, 2011.

Respectfully submitted,

Nebraska State Bar Commission

A handwritten signature in cursive script, appearing to read "William A. Tringe, Jr.", written over a horizontal line.

William A. Tringe, Jr., Chair
Attorney #14251

CONFERENCE OF CHIEF JUSTICES

Resolution 4

Endorsing Consideration of a Uniform Bar Examination

WHEREAS, the states' highest courts regard an effective system of admission and regulation of the legal profession as an important responsibility for the protection of the public; and

WHEREAS, the increased demand for lawyer mobility results in greater multijurisdictional practice and increased access to admission on motion; and

WHEREAS, the increasing use of uniform, high quality testing instruments has rendered most jurisdictions' bar examinations substantially similar; and

WHEREAS, law is the only major profession that has not developed a uniform licensing examination; and

WHEREAS, a uniform licensing examination for lawyers would facilitate lawyer mobility and enhance protection of the public; and

WHEREAS, state bar admission authorities and state supreme courts would remain responsible for making admission decisions, including establishing character and fitness qualifications and setting passing standards, and enforcing their own rules for admission; and

WHEREAS, issues relating to knowledge of local law can be addressed through a mandatory educational component, a separate assessment, or a combination thereof;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination.

Adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee at the 2010 Annual Meeting July 28, 2010.

Section of Legal Education and Admissions to the Bar

Council Resolution

Endorsing Consideration of a Uniform Bar Examination

WHEREAS, the Section of Legal Education and Admissions to the Bar of the American Bar Association regards an effective system of admission and regulation of the legal profession as an important responsibility for the protection of the public; and

WHEREAS, the increased demand for lawyer mobility has resulted in greater multijurisdictional practice and has increased utilization of admission on motion by experienced lawyers; and

WHEREAS, admission by motion does not apply to recently admitted lawyers; and

WHEREAS, adoption of a uniform licensing examination for lawyers in all jurisdictions would facilitate lawyer mobility and enhance protection of the public; and

WHEREAS, the increasing use of uniform, high quality testing instruments has rendered most jurisdictions' bar examinations substantially similar; and

WHEREAS, law is the only major profession that has not adopted a uniform licensing examination, the scores on which are transferable among jurisdictions; and

WHEREAS, after adoption of a uniform examination on legal knowledge, reasoning and skills, state bar admission authorities and state supreme courts would remain responsible for making admission decisions, including establishing character and fitness qualifications and setting passing standards, and enforcing their own rules for admission; and

WHEREAS, issues relating to knowledge of local law can be addressed through a mandatory educational component, a separate state-specific assessment, or a combination thereof;

NOW, THEREFORE, BE IT RESOLVED that the Council of the Section of Legal Education and Admissions to the Bar urges the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination.

ADOPTED by the Council of the Section of Legal Education and Admissions to the Bar on August 6, 2010.