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ON BEHALF OF THE NEW YORK CITY BAR ASSOCIATION

BEFORE THE ADVISORY COMMITTEE ON THE UNIFORM BAR EXAM

I want to thank the Advisory Committee for the opportunity to testify on behalf of the New York City Bar Association. The City Bar, since its founding in 1870, has been dedicated to maintaining the high ethical standards of the legal profession, promoting reform of the law and access to justice, and providing service to the profession and the public. The Association, through its 24,000 members, continues to work for political, legal and social reform, while implementing innovative means to help the disadvantaged. Protecting the public's welfare remains one of the Association's highest priorities.

The City Bar supports Chief Judge Lippman's recommendation that New York State adopt the Uniform Bar Examination (UBE), effective July 2016. We believe that adoption of the UBE is an important reform that will significantly enhance opportunities for new lawyers to find employment wherever it is available. We believe that the UBE is correctly focused on testing the competence of the candidate on fundamental legal principles and lawyering skills that are important to entry-level practice. We also believe that adoption of the UBE by New York State will motivate other states to follow suit, thereby further advancing the goal of a more nationwide standard for admission to the bar and increased employment mobility for lawyers.

We recognize that moving to the UBE is a major step for New York State and, as with any major reform, there is a need to be alert for unforeseen consequences. We recommend that the New York State Bar Examiners compile rigorous performance data relating to the UBE as implemented in the State. The Bar Examiners should review the data annually to discern any demographic trends regarding bar passage rates, particularly whether the UBE has any disparate impact on historically disadvantaged groups, or any other area of potential concern. We urge that the State Bar Examiners be charged with conducting a formal review of New York's

experience in the first three years of its use of the UBE and issue a public report shortly after the end of the three-year period stating its conclusions as to whether the UBE has advanced the purpose of facilitating new lawyer mobility and improving testing techniques, whether there has been any disparate impact on underrepresented groups and analyzing any negative trends that have emerged that may require further attention or the consideration of new alternatives.

The City Bar has a long history of involvement and concern with the New York State Bar Exam. In May 1992, the City Bar's Committee on Legal Education and Admission to the Bar issued a report on Admission to the Bar in the Twenty-First Century expressing concern that the New York State bar examination did not adequately or effectively test minimal competency to practice law in New York and that the exam disproportionately excluded minority applicants. More recently, I was honored to Chair the City Bar Task Force on New Lawyers in a Changing Profession. The Task Force was appointed by then-City Bar President Carey Dunne in the fall of 2012 to address changes in the legal profession, with a focus on the "plight of new lawyers." Our mandate was to examine whether new lawyers are being given relevant development opportunities in law school and in their early careers so that they are employable, able to realize their aspirations in a reasonable time frame and ready to serve clients effectively. The City Bar Council on the Profession continues some of the work of the Task Force which issued its report "Developing Legal Careers and Delivering Justice in the 21st Century" in November 2013.

Our Task Force focused on the fact that many of the nation's new law graduates are facing diminished job prospects, unprecedented debt and limited opportunities to achieve the experience and training necessary for a professionally rewarding and financially sustainable career. We raised particular concerns with impediments to innovation that we believe have operated to artificially and unnecessarily limit professional opportunities for new lawyers.

Our Task Force found specifically that the requirement for lawyers to pass a state-specific bar examination has significantly limited lawyer mobility at a time when the practice of law is increasingly national and global. We noted the important influence of globalization on career opportunities and that opportunities may exist in parts of the nation where there are relatively few lawyers competing for available positions. A law student may take the bar in exam in one state and then find that the best employment opportunity is in a different state, but an additional bar exam will be required to practice there. Students and new lawyers

may find it necessary to relocate because a spouse or life partner finds an important opportunity in a different state.

We recognized that a bar exam may advance the important consumer protection interest of weeding out those who are not minimally competent to serve clients. A bar exam also requires applicants to focus and learn a breadth of law. But we found that in many instances state by state bar exams test skills that are of decreasing and marginal relevance to contemporary legal practice and fail to test relevant problem-solving skills.

We believe that adoption of the UBE, with its portable scores, will significantly advance the important interest of lawyer mobility in the nationwide marketplace. Also, the UBE, with its principles-based approach, will test more practical problem-solving skills than the current exam.

We agree with the Board of Law Examiners that the New York exam should continue to have a New York component. All lawyers admitted in New York should have a basic grounding in New York law and procedure. The New York component should focus on areas where New York Law or procedure differs significantly from general principles or procedures common in other states. It should be available on more dates than the current exam, including potentially on dates other than those when the UBE is administered. We believe that passage of the New York State component should be reasonably achievable by new lawyers who can demonstrate baseline competency in New York specific areas of law.

The City Bar believes that the benefits of the UBE will increase as more states follow New York and students can seek out employment opportunities nationwide with confidence that success on the New York State Bar Exam will provide most of what is needed to become licensed in another state. Conversely, adoption of the UBE also will enable New York employers to more readily draw on a talent pool of new lawyers who have taken the exam elsewhere and can become licensed in New York by successfully completing a readily accessible New York module.

I have noted that the City Bar previously has expressed concern about the impact on historically disadvantaged groups of standardized testing in contrast to other mechanisms for demonstrating a high level of competency. While no data suggest that the UBE will have a disparate impact on such groups, New York State must maintain its commitment to ensure that the bar licensing process advances the goal of setting reasonable competency standards without impeding ongoing efforts to increase diversity in the profession. To that end, as I have stated, the

City Bar urges that the New York State Bar Examiners be charged to compile and analyze data sufficient to monitor any disparate impact trends. New York State should be vocal in ensuring that any issues that are identified are addressed promptly and effectively.

Finally, we are aware that some have expressed concern about the timing of implementation of the UBE in New York. Our own earlier comments expressed the concern that a July 2015 implementation date might have upset the settled expectations of current third-year law students. We believe that a July 2016 adoption date provides a reasonable time frame for law schools to make any adjustments to their curriculum they deem advisable and for potential test takers to set their expectations. We firmly believe that there should be no further delay beyond 2016 in the implementation of this important reform.

On behalf of the New York City Bar, I thank the Committee for the opportunity to testify today.

January 20, 2015