



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #18

Attached are comments received from the Committee on Diversity and Inclusion with respect to the report and recommendations of the Committee on Legal Education and Admission to the Bar.



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 • PH 518.463.3200 • www.nysba.org

COMMITTEE ON DIVERSITY AND INCLUSION

BETTY LUGO

Co-Chair
Pacheco & Lugo, PLLC
340 Atlantic Avenue
Brooklyn, NY 11201
718/855-3000
FAX 718/855-6565
blugo@pachecolugo.com

KENNETH G. STANDARD

Co-Chair
Epstein Becker & Green, P.C.
250 Park Avenue
New York, NY 10177
212/351-4670
FAX 212/661-0989
kstandard@ebglaw.com

January 11, 2013

Comments of the Committee on Diversity and Inclusion on the Report on Legal Education and Admission to the Bar

These are the comments of the Committee on Diversity and Inclusion with respect to the recommendations for implementation of the Report of the Special Committee to Study the Bar Examination and Other Means of Measuring Lawyer Competence, recently issued by the Committee on Legal Education and Admission to the Bar (CLEAB).

Our thanks to the CLEAB members for laboring long and hard in this complex area so crucial to our profession. We are particularly grateful that the Committee was willing to share its thought process on these challenging issues.

After review by our Committee, we write in full support of the recommendations set forth the CLEAB.

In particular,

(1) a time-limited NYSBA task force of “practitioners and clinicians” to provide input to the Board of Law Examiners on the legal knowledge and skills necessary for competent practice by new lawyers;

(2) the pilot project for the Practice Readiness Evaluation Program (PREP) which would offer a point boost on the bar exam for candidates who successfully complete a duly certified clinical course;

(3) a pilot project for a Public Service Alternative to the Bar Exam, that is, an experiential based bar exam located in the New York Courts, where applicants would engage in a variety of learning tasks over a ten-week period in a real life setting where they would be assessed by designated supervising attorneys; and

(4) A study of the issue of “speededness,” which seemingly disadvantages minority bar-exam takers.

With respect to the first proposal, a time-limited NYSBA task force, this Committee agrees with CLEAB that a task force of “practitioners and clinicians” engaging in a collegial dialogue with the Board of Law Examiners can only serve to assist the Board and increase the focus of the bar exam on the “general rules, principles and practice points that new lawyers must know to practice competently.” (pg. 9, CLEAB Report).

With respect to the second and third proposals, this Committee agrees with CLEAB that pilot projects that focus on “the doing” of law and the development of practical judgment through supervised clinical programs or a period of supervised public service will be better for clients, diversity and access to justice as a whole. We believe that at least some law schools are very open to the notion of a pilot project for the Practice Readiness Evaluation Program (PREP), and that the proposed time frame for developing such a pilot is reasonable.

With respect to the public service alternative to the Bar exam, the pilot project proposed would, of course, have to meet with approval by the Unified Court System, on which it would depend. Of particular import to the Committee on Diversity and Inclusion is the personal experience of the legal educators who serve on the CLEAB and report “a solid anecdotal basis for recognizing a significant group of students who do not do well on standardized tests or speeded (*sic*) exams but do very well in clinical settings and who will be competent lawyers.” (pg. 16, CLEAB Report). We are persuaded especially knowing that a substantial majority of the CLEAB, familiar with recently developed experiential assessment models, believe that a public service alternative bar exam will better test “lawyering skills and values, without further burdening takers, substantially increasing costs, or creating/perpetuating disparate impact.” The Committee also suggests that the Executive Committee and CLEAB consider the impact of Chief Judge Lippman’s 50-hour pro bono admission requirement on the public service alternative and whether this public service must be performed post-graduation.

Finally, with respect to the issue of “speededness,” we agree with the majority of the CLEAB and with one of its dissenting members, James A. Beha II, who states that “the avoidance of cultural or ethnic bias, however unintentional and subtle, is too important a goal for the examination and admission process not to pursue this topic further.” (pg. 29, CLEAB).

To reiterate, the Committee on Diversity and Inclusion supports the four recommendations of the CLEAB Report in their entirety. If we can provide you with any additional information, please do not hesitate to contact us.

Sincerely Yours,

Betty Lugo and Kenneth G. Standard



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