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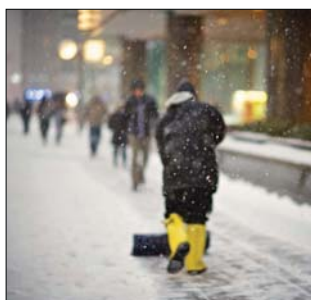
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ANNUAL MEETING 2015

Networking, fun and some very nice food were the orders every day during Annual Meeting. See some scenery.

PAGES 16-20



BEHIND THE SNOW

In the end, it was not Snowmageddon. But, we made the best of a snowy Annual Meeting day.

PAGE 21

NEW YORK STATE BAR ASSOCIATION

State Bar News

Waiting on tenterhooks for decision on UBE

By Patricia Sears Doherty

The Court of Appeals soon will decide whether to scrap the current New York bar exam and replace it with the Uniform Bar Exam. The question for New York's legal community is whether it will diminish the practice readiness of the state's newest lawyers.

"Should our members care?" asks President Glenn Lau-Kee.

Yes, he says, "The question for the bar association is whether replacing the current New York examination with the UBE will adversely affect the readiness of a newly admitted attorney to practice law in New York. The answer to this question, which is a complicated one, affects both attorneys and clients."

The Advisory Committee on the Uniform Bar Exam, appointed by Chief Judge Jonathan Lippman, will present its report and possible recommendations to the entire Court of Appeals at some point after the comment period ends at noon on March 4. But, the committee's report and recommendations is expected soon after the end of the comment period. It is unclear when the court will make its decision.

In October 2014, Lippman proposed that New York adopt the Uniform Bar Exam (UBE) and, if the Court of Appeals approved, the test would be administered in New York in July 2015.



Test-takers—As the practicing bar wrestles with whether to move from the New York State Bar Exam to the Uniform Bar Exam, the need for law students like these 1Ls at Albany Law School to help each other while studying will not change. Above, studying for midterms at Albany Law School's Schaffer Law Library on Oct. 8, 2013 are, (top) L-R, Richard Frontero of Florida, Caitlin O'Brien of Binghamton, Ashlynn Savarese of North Carolina, and Abbey Roudebush of Indiana. [Photo by Mark Mahoney]

Responding to State Bar concerns, he later postponed the implementation

date indefinitely so the plan could be studied further.

Continued on page 4

Brooklyn DA expanding Conviction Review Unit

By Christina Couto

Brooklyn District Attorney Kenneth P. Thompson used a keynote speech during the State Bar Annual Meeting to announce his intention to include non-homicide cases in his office's Conviction Review Unit.

Thomas has made nationwide headlines by revitalizing and expanding the wrongful conviction review unit after taking office in 2014. Since then, the unit has vacated convictions in 11 of 31 murder cases it has reviewed.

Thompson made his pledge to review non-homicide cases during the Presidential Summit in New York City.

"We are now going to look at cases of wrongful conviction, such as gun possession, burglary, and the like," said Thompson. "We are going to do so

by applying the same principle [as in the murder cases], and that's to make sure justice is done."

Those in the criminal justice system need to admit that they are not infallible and acknowledge mistakes, he added. "There is no perfection in the criminal justice system, but we must do more—we must act to correct the miscarriages of justice."

The criminal justice system's primary duty should not be to convict, but to do justice, he said. "If we don't safeguard the integrity of the criminal justice system, then innocent men and women will be convicted wrongfully," Thompson said. "And many guilty people will be wrongfully acquitted."

"When that happens, we all lose

Continued on page 4



Ex-pressly speaking—Brooklyn District Attorney Kenneth P. Thompson speaks with reporters following his keynote address at the Presidential Summit January 28. [Photo by Jacques Cornell/Happening Photos]

State Bar leaders offer thoughtful testimony at hearings on proposed Uniform Bar Exam

Continued from page 1

In the meantime, the legal community in New York and throughout the country is wondering out loud whether the changes occurring in the profession are pointing lawyers in a more multi-jurisdictional way than the more traditional state-by-state practice model, said Lau-Kee.

"In the current practice environment, strict jurisdictional lines are becoming blurred," said Lau-Kee, "and the rationale of portability underlying the UBE may make sense for some states. But does it make sense for New York at this time?"

One concern of many State Bar leaders and members is whether the uniform exam will flood New York with lawyers from other states, "making a tough job market even tougher."

The current New York bar exam lasts for two days. On the first day, New York law is tested through five essay questions and 50 multiple choice questions. Multi-state material is tested on the second day.

The UBE exam, as currently formatted, is also a two-day exam. However, multi-state material is tested for almost the entire two-day period. The proposed format for the New York exam would allow only one hour of testing for New York law through 50 multiple choice questions. A more extensive testing of New York law would require a third day of testing, which would add substantial expense for those taking the test. A major concern is whether a one-hour test of New York law would be a sufficient incentive to study New York law adequately.

"In an environment in which clients are less willing to pay for what they perceive as the training of law firm associates, the question of practice readiness is significant. For the increasing number of newly admitted attorneys entering solo or small firm practice, the question of practice readiness is even more urgent," said Lau-Kee.

But reading the tea leaves for the Court of Appeals' final decision on the UBE is difficult. "We've raised our concerns and given our testimony before the study committee. We know that they will consider all of the issues carefully, but we don't know what they will recommend," said Lau-Kee.

Hearing testimony

The Chief Judge's Advisory Committee held four hearings: January 21 at the City University of New York School of Law, Long Island City; February 3 at the state Court of Appeals, Albany; February 26 at the Appellate Division in Rochester; and a final hearing on March 4 at the New York City Bar Association.

President-elect David P. Miranda,

Eileen Millett, co-chair of the State Bar's Committee on Legal Education and Admission to the Bar, and Sarah Gold, Young Lawyers Section chair, spoke at the Albany hearing.

Immediate Past President David Schraver provided testimony in Rochester.

In Albany, Miranda said the State Bar strongly supports the view that newly admitted attorneys in New York need to be practice ready, "and in order to get there, our old testing models need to be challenged and improved."

However, he said State Bar members, the practicing attorneys in New York, are very concerned that the proposed UBE "as it is currently configured, will not lead us in the right direction, but rather is a step backward from the current New York State bar exam."

Miranda said lawyers worldwide consider a license to practice law in New York as "the gold standard."

"And that must not change, or be tinkered with, without long and careful deliberation and not without substantial good cause shown," Miranda testified. In advocating for thorough study of the proposal, Miranda noted that "we have seen scant proof regarding the potential disparate impact of this new exam."

"Without further study, we may well be disenfranchising important groups of people from the privilege of practicing law in New York," Miranda said.

Prior to his appearance before the advisory committee in Rochester, Schraver said he planned to speak about the effect of the UBE proposal on three other issues: the State Bar's response to the Board of Law Examiners (BOLE) draft content outline, the International Section's concern that the UBE is counter-productive for the thousands of foreign-educated candidates who take the bar exam in New York each year, and its potential disparate impact on minority candidates.

"The scope of the BOLE Content Outline reinforces the Association's concern that a one-hour, 50 multiple choice question New York law exam is not adequate to test New York-specific law," said Schraver. He noted that the content outline did not include some important topics, such as the commercial divisions of the Supreme Court and their special practices and procedures or New York trade secret law, and other areas where New York law differs from Uniform Acts.

Based on the information from the New York Board of Law Examiners, Schraver said that 4,813 foreign-educated candidates took the New York bar exam in 2014, 31 percent of the candidate pool in New York that year.

Schraver said International Section

members are concerned that the UBE proposal would, if adopted, lead to the admission of foreign-educated candidates "who have an inadequate competency in New York law, and, over time, would lessen the internationally recognized value of New York licensure and the primacy of New York law" in international transactions and as a forum for international dispute resolution.

Schraver also planned to highlight the State Bar's concern over the UBE's potential disparate impact on minority candidates.

"We urge that the potential impact on minority bar exam candidates be evaluated," said Schraver. "To adopt the UBE without a meaningful effort to do so, and to plan to evaluate the impact on minority candidates after three years, is not a risk this state should take."

Recommended reading

The February 2015 edition of the NYSBA Journal featured an article comparing the current New York Bar Examination and the UBE, an opinion article promoting the UBE for New York and Miranda's remarks to the Chief Judge's Advisory Committee. To read those articles, go to www.nysba.org/UBE.

To read the latest update on the Committee on Legal Education and Admission to the Bar's November 2014 report, go to www.nysba.org/LegalEdUBEReport.

To view the discussion of latest update to the report at the January House of Delegates meeting, go to www.nysba.org/webcastarchive. ♦

Sears Doherty is State Bar News editor.

Thompson moving in right direction

Continued from page 1

and when the system fails and people are wrongfully convicted, you have the guilty who remain among us to continue to commit murder, rape, robberies, and continue to terrorize our communities."

"I stand with this Association to do all we can as the Brooklyn DA and all we can in this country to do what is right—to protect the public and do justice," Thompson said. "We don't have all the answers in Brooklyn, but I think we are headed in the right direction."

President Glenn Lau-Kee, in introducing Thompson, said that wrongful

conviction settlements cost New York City and state taxpayers \$98.7 million in 2014, and 2015 has already seen a \$17 million wrongful conviction settlement.

Lau-Kee praised the State Bar's Task Force on Wrongful Convictions and its "ground-breaking" 2009 report on wrongful convictions.

The report "contributed significantly to raising public awareness of this issue and shaping reform efforts," Lau-Kee said. ♦

Couto is NYSBA's senior media writer.



State champions—The Capital Region BOCES Career & Technical School's New Visions: Law & Government team, consisting of students from Capital Region BOCES and Questar III, are the winners of the 2015 "We the People: The Citizen and the Constitution" competition, which was held February 7 in Albany. The team is coached by Richard Bader, who was the 2013–2014 Law, and Youth and Citizen Committee chair. It is the first win by an upstate team in the competition's 28-year history. The team will compete in the national competition in Washington, D.C., April 24–27. LYC sponsors the New York state competition of We The People. [Photo by Shannon Decelle]