



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #18

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Legal Education and Admission to the Bar.

In 2010, the NYSBA Special Committee to Study the Bar Examination and Other Means of Measuring Lawyer Competence issued a report (the “Kenney Report”) recommending two sets of reforms with respect to licensure testing: (1) streamlining the current bar examination and (2) experimenting with ways of testing other skills not covered by the current examination. With respect to the latter, the Kenney report identified four specific proposals for consideration: (a) conditional licensing; (b) new evaluation techniques; (c) a public service alternative exam; and (d) a point boost program. The Kenney Report was reviewed by the Executive Committee at its November 2010 meeting, and the Executive Committee referred the report to the Task Force on the Legal Profession and the Committee on Legal Education and Admission to the Bar for further study. A copy of the Kenney Report is attached for your reference.

The Committee on Legal Education and Admission to the Bar has completed its review of the Kenney Report and has reached the following conclusions:

Streamlining the Bar Examination

The committee reports that there is a difference of opinion as to the advisability of streamlining; however, the committee does recommend the creation of the NYSBA Task Force comprised of practitioners from varied settings to collect empirical data and information to ensure that the bar examination emphasizes those rules, principles and practice points needed for new lawyers.

New Evaluation Techniques to Assess Legal Skills, Knowledge and Values

- a. **Criteria-Referenced Assessment of Skills.** The committee concludes that criteria-referenced assessment, coupled with the development of a well-structured portfolio, would assist in measuring skills beyond analytic reasoning.
- b. **Performance-based Approach to Licensing Lawyers.** A program implemented in New Hampshire allows a performance-based alternative to the bar examination, integrating both traditional and experiential learning. The committee notes that there

are serious logistical challenges to implementing such a program in New York, but that the New Hampshire model provides an excellent model for study.

Credit for Participation in Clinical Courses

This recommendation calls for an adjustment to the bar examination grading system to give credit for successful completion of a law school clinical program. The committee supports this recommendation by a slight majority.

Public Service Alternative to the Bar Examination

The committee recommends the development of a pilot project through which qualified applicants would undertake a 10-week placement during which their work would be assessed. Participants in the pilot project would be monitored and evaluated for two years afterward.

“Speededness”

The committee recommends further study of whether unnecessary “speededness” creates a disparate impact on the diversity of the profession.

Four members of the committee submitted written dissents, which are appended to the report. In addition, comments have been submitted by the State Board of Law Examiners and the Young Lawyers Section, both of which are appended. Both groups express serious reservations about the committee’s recommendations.

The report will be presented at the January 24 meeting by committee co-chairs Eileen Kaufman and Eileen D. Millett.