

OREGON STATE BOARD OF BAR EXAMINERS

16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, OR 97281-1935
(503) 620-0222 or (800) 452-8260 • www.osbar.org

Testimony before the House Committee on Judiciary Subcommittee on Civil Law

February 1, 2021

Chair Power and members of the committee:

My name is Joanna Perini-Abbott. I am in private practice in Portland and am joined today by the honorable Judge Angela Lucero from the Multnomah County Circuit Court. We are speaking to you today as the chair and past chair of the Oregon State Board of Bar Examiners. It is a pleasure to be here today and we welcome the opportunity to talk with you about the Board of Bar Examiners and the Oregon bar exam.

Overview

The admission and regulation of lawyers is handled differently in each of the fifty states. In Oregon, the ultimate authority over the practice of law is the Oregon Supreme Court.

The Court appoints members to the Oregon State Board of Bar Examiners (BBX) to oversee the admissions functions of the Oregon State Bar. The primary purpose of the BBX is to safeguard the public by ensuring that bar applicants admitted to practice law in Oregon possess the requisite learning and ability, and character and fitness to practice law. The Court has delegated the authority to the BBX to conduct bar examinations and to investigate the character and fitness of bar applicants.

The Oregon State Bar is charged with the regulation of lawyers in Oregon. As part of that charge, the bar works to ensure Oregon lawyers meet competency requirements and provides the administrative support to hold two bar exams each year.

Oregon Bar Exam prior to July 2020

Oregon is a Uniform Bar Exam (UBE) jurisdiction which provides applicants flexibility to sit for the exam in Oregon but use their score on Oregon's exam to become admitted in other states without further testing. Likewise, this allows out-of-state applicants to test in another state, transfer their score from that exam to Oregon, and seek admission to practice law in our state as though they sat for Oregon's exam.

Prior to the COVID-19 pandemic, the BBX, the Oregon State Bar, and the Oregon Supreme Court hosted two UBEs each year. In order to secure a license to practice law in Oregon, each applicant was required to complete three steps.

First, each applicant was required to pass an ethics exam on the Rules of Professional Conduct (the Multistate Professional Responsibility Exam or MPRE). This exam is often taken during law school.

Second, as part of the UBE, each applicant was required to complete a two-day multi-topic exam. The first day includes multiple essay questions and the second day is the Multistate Bar Exam (MBE), which is a day-long multiple choice exam. The exam was held twice a year, in July and February. The majority of applicants take the exam during the summer.

And finally, and equally importantly, each applicant was required to complete a character and fitness review. Applicants must demonstrate good moral character and fitness to practice law.

2020 Summer Exam

The Oregon Legislature adopted the statutory requirement for a Bar examination in the 1860s. Prior to 2020, neither the legislature nor the Court has previously suspended or waived the Bar examination.

The Court recognized that the COVID-19 pandemic and the civil unrest engendered by the killing of George Floyd presented extraordinary challenges to applicants preparing for and taking the July exam and to the entities charged with administering that exam.

In response, the Oregon Supreme Court, the Bar of Board Examiners, and the Oregon State Bar, upon the request of the three law schools, members of the public, and applicants, developed three pathways for bar applicants to qualify for licensure. Regardless of pathway, applicants were still required to complete the ethics exam (MPRE) and the character and fitness component of the licensing process.

Diploma privilege. Oregon is one of only four jurisdictions in the United States that granted a diploma privilege in response to COVID-19. The court considered a request by the Oregon law school deans and in response to the extraordinary circumstances faced by law students this spring, the Oregon Supreme Court waived the requirement to take the bar exam for 2020 graduates of Oregon law schools and of certain out-of-state law schools who timely applied for the July Oregon Bar Exam.

In-person bar exam. In addition, we continued to offer the in-person bar exam to applicants who wanted to take the exam. In response to the public health requirements, the bar exam was held at multiple locations with strict masking and social distancing protocols in place.

Remote bar exam. Finally, for those who did not qualify for diploma privilege and were unable to take the in-person bar exam in July, we offered a remote bar exam in October 2020.

In 2020, Oregon was a leader in the efforts to license qualified law students. Not only did the three entities pivot in a week from a traditional bar exam process to offering three separate pathways to licensure, they were able to provide processes that were safe for applicants as well as maintain a secure exam.

Next Steps

Supreme Court Task Force. In early September, Chief Justice Martha Walters requested that the Oregon Board of Bar Examiners convene a workgroup to consider diploma privilege. This group is expected to begin work later this month.

Additionally, the Alternatives to Bar Exam Taskforce was activated last year to consider a “read for the law” program which would provide a non-law school apprenticeship path to licensure. This group’s work had to be suspended due to the effort required for the three admission pathways created in 2020, but we intend to restart this group in early spring. Finally, a third work group will begin to review exam scoring this spring. The Board undertakes a review of the exam pass score every five years but is reconvening a year early.

All three of these work groups will consider and review proposals through an equity lens to ensure that the bar application process is open and accessible. The bar exam is not a perfect process and we look forward to working with the law schools, practitioners, applicants, and stakeholders to review best practices, the bar’s current process, and proposals culled from our experiences in 2020 as well as recommendations from the National Conference of Bar Examiners (NCBE) and the Institute for the Advancement for the American Legal System among others. The NCBE is also undergoing a large-scale process to re-draft the UBE to align with the changing nature of legal practice.

Topics of discussion for these three groups are expected to be alternate pathways to the bar (including reading for the law and diploma privilege), institutional barriers, and the exam score. A priority topic is expected to be how to ensure all applicants are ready to practice law in an equitable manner and without unnecessary barriers.

2020 was a unique and challenging year for all Oregonians. As the chair and past chair of the Board of Bar Examiners we are proud of the hard work our volunteers, staff, and board members put in to host not one, but three separate and distinct licensing processes: diploma privilege, an in-person exam, and a remote online exam for Oregon bar applicants. We look forward to taking the lessons learned from 2020 and applying them as necessary to future bar exams and alternative pathways to licensure.

Thank you for your interest and we are happy to answer any questions.

For more information contact:

Susan Grabe, OSB Public Affairs Director - sgrabe@osbar.org

Amy Zubko, OSB Public Affairs Legislative Attorney - azubko@osbar.org