

Meeting of the Alternatives to the Exam Task Force
Oregon State Board of Bar Examiners
October 20, 2021
Zoom Meeting – Invites are sent via Outlook Calendar
Open Session Minutes

Wednesday, October 20, 2021, 12:00 p.m.

1. Call to Order/Finalization of Agenda/Consensus Items

A. Roll of Attendees.

Task Force Members: *Will be confirmed via the video of the meeting.*

Admissions Staff: *Troy Wood, Vickie Hansen, Sarah Haugstad.*

B. Changes to Agenda.

Maya Crawford Peacock called the meeting to order in Chair Perini-Abbott's absence. No roll was taken, attendance will be confirmed by the video. Changes to the Agenda were made with the addition of Exhibit 3. With that addition the agenda is finalized.

C. Minutes from September 21, 2021 ATE Meeting.

Minutes were approved as written.

2. Review Status of Current Work Product.

A. SPP Work Product

a. Questions from Supreme Court

b. Unique Public Comments

c. Other Comments

Madeline Campbell reported one of the questions asked how other jurisdictions handle alternative admissions, and how effective such an alternative could be given it presents an alternative to something (bar exam) that isn't great in the first place. Chair Perini-Abbott reported on Delaware's "scavenger hunt" program which is similar to our ATE in that it requires completion of legal activities.

Ekua Hackman reported questions she reviewed suggested the bar exam itself must be reviewed since it will continue to be used to measure minimum competence, even though it consists of regurgitating memorized information in a timed setting rather than utilizing specific legal knowledge. Comments pointed out that lower performance by marginalized groups reflect on the limitations of the exam, not on the groups. Another theme that was repeated was concern the BBX is already stretched thin, and would not be able to adequately monitor the programs.

Comments reviewed by Stanton Gallegos could be categorized into three areas: 1. I did it so you have to too; 2. Expand the supervised practice model to ensure it covers more practice areas, as most attorneys specialize rather than practice in multiple areas; and 3. Concern this will not result in a more diverse bar.

The questions Akriti Bhargava reviewed raised the concern the new models would not test for minimal competence overall.

Kendra Matthews reviewed work done by earlier Oregon State Bar task forces regarding changes to admission. This earlier work expressed concern that the gatekeeper of bar admission would be changed from the BBX to the law schools as to the definition of minimum competency.

Ms. Crawford-Peacock reviewed questions of whether these alternatives provide the desired results. Since no empirical data exists in the U.S. at this time, this cannot be answered. Our philosophical purpose must be pursued despite the lack of data. Going forward, flexibility will be required once data is available and indicates a need to make changes to the models.

Chair Perini-Abbott agreed with the importance of data measurements. The NCBE has offered to allow the OSB to use their psychometricians for such measurements to obtain comparable measurements between the two proposed programs and the bar exam. They have offered this service at no or low cost. The NCBE's support will lend credibility to the proposed changes.

B. OEP Work Product

- a. Questions from Supreme Court
- b. Unique Public Comments
- c. Other Comments

Dr. Anthony Rosilez's group found the concerns raised in SPP were similar to those raised in OEP. He agreed the involvement of the NCBE will provide validity and reliability to these programs. The group reviewed bar standards and how they compare to the UBE. One clear advantage of this program is the practical demonstration of competency. Because we will be the first in the nation to do this, descriptions should be simple, with emphasis on gathering relevant data and making changes based on that data as the program is implemented. One such data point to monitor will be ethics complaints a few years after implementation.

Dean Brian Gallini reported his group organized the comments into five categories: 1. The bar exam tests a common set of materials all attorneys should know; 2. UBE does not test on Oregon law; 3. The bar exam ensures a high standard; 4) The bar exam measures the ability to think on one's feet, similar to a court room setting; and 5) The shared experience of the bar exam provides commonality and a bond within the profession. If the UBE measures academic or analytical skill, how do the alternatives pathways measure similar competency? The IALLS Report contains 12 building blocks of skills. While the traditional bar exam measures some of those blocks, the ATE will try to measure all of them. A curriculum framework allows students to demonstrate as much or more of a work ethic as their peers who take a traditional bar exam. The most difficult question is whether the public will be reassured that this provides an adequate measure of competency.

Dr. Rosilez stated comments such as "I did it so you have to too" are not relevant to the task of this group. Such comments do not address the competency issue, but it is important the final report reflect that such views were acknowledged. Chair Perini-Abbott pointed out the changes in the bar exam over time; a 1975 exam was very different than today's UBE. The bar exam has evolved and

thus makes this opinion moot. Troy Wood pointed out the intangibles contained in the traditional bar exam, i.e., the ability to commit to intensive preparation for months and perform under pressure. However, these are not relevant in all areas of the law, but must be addressed in the report as it will silence many critics.

JB Kim opined that the group's report highlighted two flaws of the UBE: 80% of the UBE is memorization and only 20% is skill measurements. It is a time-pressured exam, which is not how anyone practices law. She expressed concern about using the NCBE's psychometricians because their purpose is to justify the continued use of the bar exam.

Mr. Wood reported he had recently attended the International Council of Legal Regulators, much of which focused on DEI issues. One presentation posed the question whether regulators were part of the problem or the solution, and how licensing affects minority populations. The bar exam was presented as one of the primary culprits for the lack of diversity growth in the American legal system. However, the presenter's last slide was this group's report to the Court, and was described as a reason for hope given what Oregon is doing. David Wade suggested this be noted in the report. IAALS also submitted a lengthy public comment supporting these programs. Mr. Gallegos suggested that we consider the NCBE's offer of assistance of a psychometrician carefully, and also ask IAALS for assistance.

Ms. Matthews reminded the group that lawyers appreciate the portability of the UBE, and going forward with these programs we will need to be aware of what other jurisdictions are doing, and how these alternatives will fit into that bigger picture.

Mr. Wade reported he and Helen Hirschbiel attended the Conference of Northwest Bar Leaders, and there was support expressed for these programs. Several states indicated an interest in adopting similar programs in the future. This might allow portability of bar membership among those states.

3. Next Steps

- A. Deadlines for drafts of work product.
- B. Appointment of Drafting Committee
- C. OSB Staff Involvement in Response to Public Comments
- D. Next Meeting

Chair Perini-Abbott volunteered to serve on the drafting committee, which should consist of no more than four members given this smaller group. Mr. Wood emphasized that some of the intangibles this group determined are not relevant must still be addressed in the final report. Ms. Matthews and Dean Gallini volunteered to serve on the drafting committee.

The final meeting of this group is November 9th to allow the BBX to review the report at their November 12th meeting. That allows both the ATE Task Force and the BBX to provide input to the report before it is submitted to the Court. The goal is to have a draft by November 4th to consider at the November 9th meeting.

4. Adjourn.

Meeting adjourned at 1:39.