

The Arizona Bar Examination: Pandemic Edition

By Chief Justice Robert M. Brutinel and Vice Chief Justice Ann A. Scott Timmer

Taking the bar exam perennially looms as a daunting experience for law students. When we took the Arizona exam, it lasted two and a half days and consisted of the multistate exam and two days of essay questions written by Arizona practitioners. If people failed the multistate exam, their essays would be unscored, and they would fail the entire exam. The exam covered twenty-seven subjects ranging from criminal law to tax to every article in the Uniform Commercial Code. It was structured so that we were required to answer at least one federal tax question. Neither of us used much of this knowledge in practice (who needs to know bulk transfers?), just as we didn't draw on every subject learned in law school. But the exam allowed us to demonstrate our mastery of core legal principles as well as our ability to quickly digest new concepts, analyze issues, and clearly communicate that analysis, which are vital skills for all lawyers. Like legions of law graduates before us, we ran the gauntlet with our classmates, passed the exam, and on we went, joining the ranks of lawyers.

Much about the bar exam has improved since we took it. Arizona has opted for the Uniform Bar Exam (UBE), which permits score transfers among most of the states (the fortieth state just committed to join the UBE). The subjects have been streamlined, making the exam two days, and the multistate and essay scores are now compiled into one final score. But the pandemic threw a monkey wrench into the bar exam process, forcing us to quickly implement workarounds to traditional testing methods and simultaneously unnerving students and law schools. As the pandemic wanes (hopefully), the dust settles, and the July 2021 bar approaches, we think it appropriate to inform students of what steps the Court took and is taking to safely administer the bar exam in these unprecedented times.

When the pandemic hit last spring, our initial focus was on keeping Arizona's courts open and functioning. We quickly turned our attention to the July 2020 exam; could we keep that date? Continue it? What would happen to the applicants if licensure was delayed? Not knowing whether we could hold an exam in any format, the first thing we did was implement a strategy to permit graduates to temporarily practice law without passing a bar exam. Thus, in early April, the court amended Rule 39 of the Arizona Rules of the Supreme Court on an emergency basis, which, among other things, "authorized the limited practice of law by law graduates," upon meeting specified conditions, without the need to sit for an exam until February 2021. See Administrative Order no. 2020-80.

As matters progressed, the Court explored its options on administering the July exam. The National Conference of Bar Examiners, which drafts the UBE, provided state Supreme Courts with options for delivering the exam in person or remotely. Rather than provide one exam, the Conference was willing to provide multiple versions to accommodate different delivery methods and testing dates. But it did not have the ability to provide an online UBE test remotely in a compressed time frame, meaning its reduced remote exam would not be the regular UBE exam, and the scores from the remote exam would not be transferrable unless the state Supreme Courts agreed to it.

Our Court recognized that many graduates wanted the transferrable UBE score, which would require an in-person exam. Yet other students were understandably concerned about the safety of an in-

person exam. Thus, recognizing the strain it would place on its certification and licensing division, the Court decided to accommodate both groups, holding an in-person exam in July and a remote non-UBE exam in October. We didn't have the option of offering a remote exam any sooner.

We took all possible steps to ensure that the in-person exam was as safe as possible. We contracted for three examination rooms at the Phoenix Convention Center instead of the customary one room and used two separate ballrooms for staging and lunching areas. The rooms were set up for social distancing and individuals were given pre-assigned seats with staggered reporting times and escorts. We learned about HVAC filters (the Convention Center's are hospital quality) and gave appropriate precautionary instructions to attendees and cleaning staff. See Administrative Order No. 2020-78. We coordinated closely with the City of Phoenix concerning our plan. Maricopa County's health department reviewed and eventually approved our plan as a condition for holding the exam at the Convention Center. City staff also attended and monitored the exam. Rest assured that had we not been convinced that our staff and the graduates would be safe during the exam, we would have cancelled it and permitted graduates to take the October remote exam, the February exam, or simply obtain a refund of testing fees. Almost four hundred people took the exam with no reported Covid transmissions.

The October and February exams were held remotely, with the latter being a full, transferable UBE exam. Both exams went well. We opted not to have an in-person exam for February (the Conference would only provide one test, this time) because we could not guarantee that a site would be open for testing during the post-holiday surge in Covid cases, and because a UBE option was available remotely. Despite the pandemic distraction during the July/October bar exam, the combined passage rate was higher than the prior year's rate for first time takers in July. (We're awaiting February scores.) Other states have reported similar results.

So why not just admit students with a diploma privilege and not require any exam as requested in a petition? That would certainly have been easier for us. But the Court takes its regulatory role seriously. We are tasked with protecting the public by ensuring that only qualified law graduates are licensed to practice law in Arizona. Although graduates have demonstrated their qualifications in part by graduating from an ABA-accredited law school, we play no part in setting admission standards, establishing the curriculum, or deciding whether students should be passed to the next year or awarded a degree. In short, as the regulator, we must be assured that graduates have mastered an understanding of basic principles of law, ethics, and relevant jurisprudence. That assurance, for better or worse, currently comes in the form of the bar exam. Could better methods be devised? Maybe. But exploring and implementing those methods on the fly during an emergency would have been ill-advised. And we rejected the idea of granting a diploma privilege only to those with a high GPA or who had graduated from a school with high passage rates. The Court felt strongly that all graduates should be treated equally.

In retrospect, we could have done a better job of communicating our reasons for denying the petition seeking the diploma privilege. The Court read and discussed the petition at length and wanted to issue its denial quickly so graduates could know how to proceed. We were able to move quickly because we had previously examined and discussed the issues. We were certainly aware of students' concerns and respected them.

We recently made the decision to administer the July exam remotely. Although the pandemic is diminishing, we have no guarantee that another surge will not emerge in Arizona, as it has in other states. Nor is the availability of the testing facility guaranteed, making the feasibility of an in-person exam

uncertain. Because the exam will be a full UBE exam with a transferrable score, there is no need to risk the uncertainty of an in-person exam.

On behalf of the entire Court, we congratulate you on your achievements in law school, which have been particularly challenging, we're sure, during the pandemic. We also wish you well in taking the bar exam and soon, in practicing law.