

**THE BOARD OF BAR EXAMINERS
OF THE
DELAWARE SUPREME COURT**

MEMORANDUM

To: Justice Gary F. Traynor

From: The Board of Bar Examiners

CC: Patricia Schwartz, Executive Director

Re: Recommended changes to Delaware Bar Examination and admissions process

Date: February 15, 2023

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Introduction

Beginning in 2020, at the Court’s request the Board of Bar Examiners (the “Board”) analyzed and considered changes to the Delaware Bar Examination (the “Bar Exam”) and other aspects of the process for admission to the Bar of the Supreme Court of Delaware (the “Bar”). During this process, the Court issued the Delaware Bench and Bar Diversity Project’s Strategic Plan.¹ Thereafter, the Board’s analysis developed into a holistic review of the Bar application, examination, and admission process to encourage any and all applicants to seek admission in Delaware. The Board created several committees to gather information and make recommendations regarding various aspects of the admissions process.

Over the course of four lengthy Board meetings held in 2022, the Board debated and ultimately approved the following recommendations:

1. Administer a Bar Exam in February each year beginning in 2024 in addition to the July Bar Exam;
2. Reduce the score required to pass the Bar Exam from 145 to 143;
3. Refine the list of Delaware essay question topics that are tested;

¹ See *Delaware Bench and Bar Diversity Project’s Strategic Plan*.

4. Reduce the duration of the Bar Exam to two days by reducing the number of Delaware essay questions from eight to four;
5. Streamline the Bar application;
6. Utilize a service offered by the National Conference of Bar Examiners (“NCBE”) to assist with the first-stage review of Bar applications;
7. Shorten the preadmission clerkship from 21 weeks to 12 weeks;
8. Reduce Bar application fees;
9. Refine the list of clerkship activities; and
10. Reorganize the Board to facilitate the increase in members needed to implement the biannual exam structure.

This Memo (I) summarizes the admissions and examination process as it currently exists to orient the recommendations, (II) recommends changes to the Bar Exam, (III) recommends changes to the Bar application and admissions process, and (IV) and recommends changes to the Board structure. For the reasons that follow, the Board respectfully requests that the Court adopt the recommended changes to the Bar Exam and the application and admission process.

I. Background on the Bar Application and Admissions Process

Delaware administers the Bar Exam once a year, during the third week of July. An applicant seeking to sit for the Bar Exam must file an application no later than

May 15. The application requires the applicant to disclose information to show the applicant meets the qualifications for admission to the Bar under Supreme Court Rule 52(a), including proof the applicant meets the educational requirements and questions regarding the applicant's character and fitness. The application is submitted online. An applicant who submits a completed application including proof of meeting the minimal educational requirements may sit for the Bar Exam; review of the applicants' character and fitness comes later.

Like any professional licensure examination, the Bar Exam is intended to ascertain whether each applicant is minimally competent in terms of knowledge and learning in the law to practice law in this State.² The Bar Exam is administered over two-and-a-half days (covering 15 testing hours), consisting of three components.³

- The Delaware essays, which consist of eight essay questions drawn from the topics listed in Board Rule 12.
 - Each essay question and corresponding scoring key is drafted by a member of the Board, with the assistance of her associate member. Draft essays go through multiple rounds of review by

² *In re Reardon*, 378 A.2d 614, 617 (Del. 1977).

³ There is a fourth examination component: applicants must earn a score of at least 85 on the Multistate Professional Responsibility Examination (the "MPRE"), which is administered by the NCBE, within four years before, or one year after, taking the Bar Exam. Supr. Ct. R. 52(a)(6); BR 8. Applicants can go through the other steps of the admissions process without having yet passed the MPRE, but must pass the MPRE before they may be admitted.

teams of drafting partners, the Board's essay review committee, and finally the full Board. At each step, the review includes scrutinizing whether the question (i) tests matter that is necessary for minimal competence; (ii) can feasibly be answered in approximately 45 minutes by an applicant with no experience as a Delaware lawyer; and (iii) is free of errors, ambiguities, or bias. The Board also evaluates the essay questions as a group with an eye toward whether, as a whole, they are fair, too difficult, or too lengthy.

- Each applicant's answer to each essay is graded by both the Board member who drafted it and her associate member over an approximately six-week period after the Bar Exam is administered. They confer regularly during that process to ensure their scores match and to resolve any discrepancies in their view as to a given applicant's performance.
- Essays are graded using the "absolute" method on a scale in which applicants can receive up to 100 points. An applicant receives points for each correct, responsive statement. Graders are trained to err on the side of awarding points. Points can never be deducted.
- The multistate performance test ("MPT"), consisting of two questions prepared by the NCBE designed to test an applicant's real world lawyering ability. The questions generally consist of a fact pattern and a closed universe of materials, such as a hypothetical case file or authorities, from which applicants are instructed to prepare work product as might be done in practice, such as a memorandum to a senior partner or a brief to a court in support of a motion.
- The multistate exam ("MBE"), consisting of 200 multiple choice questions prepared and graded by the NCBE. All applicants nationwide who sit for a given administration of the bar exam receive the same questions. Out of the 200 questions, 175 are scored. There are 25 questions on each of the following topics: civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts. There are 25 additional unscored questions (the

applicants do not know which) that are “pretest” questions being tested by the NCBE for fairness and errors.

After all applicants’ Bar Exams are graded, the Board’s psychometrician, an outside consultant, scales the applicants’ scores in accordance with Board Rule 13. The essays, MPT, and MBE components are weighted 40%, 20%, and 40%, respectively. The scaling process is (in lay terms) a curve that adjusts the raw scores based on the performance of all applicants nationwide on the MBE and all Delaware applicants on the essays and MPT. Applicants need a final, scaled score of at least 145 to pass the Bar Exam, which in absolute terms is the highest passing score in the country.⁴

The grading and scaling process is anonymous. The essay and MPT graders do not know how any applicant has performed on any other part of the Bar Exam. No part of the grading or scaling process is done with the aim of resulting in a particular percentage of passing or failing applicants. . Despite requiring among the highest passing scores in the country, Delaware’s average pass rate of 63.2% is generally above the national average over the last 19 administrations of the Exam, which is in the high-50s or low-60s.

⁴ However, as noted below, test components, scoring criteria and grading process differ by state.

Applicants who earn a passing score on the Bar Exam are then reviewed by a member of the Board for character and fitness. The review entails ensuring the application is complete and free of discrepancies. Applicants are usually interviewed by the character and fitness reviewer, who may question the applicant about negative events or counsel the applicant about the Court's expectations for Delaware lawyers. The overwhelming majority of applicants sail through the character and fitness review; when further action is needed, it is usually limited to supplementing incomplete or out-of-date information on the application. On rare occasions, an applicant will be required to take further action to demonstrate character and fitness, or the Board will deny the application due to a failure to demonstrate character and fitness.⁵

There are three other major steps in the admissions process. During or after law school, an applicant to the Delaware Bar must (i) complete a Clerkship, consisting of 21-weeks of substantially full-time work in Delaware under the supervision of a Delaware attorney (the "Clerkship"); and (ii) complete a checklist requiring observation of a variety of legal proceedings throughout the State,

⁵ An applicant whose application is denied on these grounds has the right to an evidentiary hearing before the Board and, if unsuccessful following a hearing, to appeal to the Court. *See* BR 29; Supr. Ct. R. 52(e).

including trials, motions hearings, appeals, administrative hearings, and ADR proceedings (the “Checklist”). Also, an applicant’s admission must be recommended by a Preceptor, a senior member of the Bar who vouches for the applicant’s character and fitness and completion of the prerequisites for admission. These requirements provide an opportunity for senior Delaware lawyers to pass on the best practices of the Delaware Bar, complement applicants’ formal legal education, and give the Court confidence that applicants are indeed qualified.⁶

II. Recommended Changes to the Bar Exam

A. Recommendation 1: Implement a February Bar Exam

The Board unanimously recommends the Court authorize the administration of a February Bar Exam each year. Delaware is currently the only state to administer the Bar Exam just once a year. Adding a February Bar Exam will alleviate any perceived hardship on applicants who seek employment in Delaware midyear or who have failed the exam.

⁶ Randy J. Holland, *The Delaware Clerkship Requirement: a Long-Standing Tradition*, 78 THE BAR EXAMINER 28, 34 (Nov. 2009), available at <https://courts.delaware.gov/forms/download.aspx?id=103428>.

B. Recommendation 2: Change the Score Required to Pass the Bar Exam from 145 to 143

1. Background

Beginning in late 2021, the Board began a thorough process to evaluate the passing score. In March 2022, the Board conducted a standards setting study coordinated and guided by ACS Ventures, LLC (“ACS”), an industry leader in professional licensure and credentialing. ACS has worked with numerous jurisdictions to evaluate professional accreditation processes, including recently performing similar standards setting studies for the bars of California and Puerto Rico.

A full description of the procedures used to conduct the study and ACS’s conclusions can be found in its Conducting a Standards Setting Study for the Delaware Bar Exam report dated April 1, 2022. The study involved a panel of 13 members of the Delaware Bar, representing a cross-section of gender, race, practice areas, and experience. After providing training, ACS guided the panelists through the process of examining questions and answers used during the 2021 administration of the Bar Exam. ACS stressed that the panelists were very engaged and enthusiastic, leading to reliable feedback on the Bar Exam and what constitutes a minimally competent applicant. As demonstrated by ACS’s presentation to the

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Board (described below), ACS's process was rigorous, and its conclusions were well supported.

The study used two methods by which panelists considered the characteristics of a minimally competent applicant and then made judgments about expected performance on the Bar Exam. With respect to the MBE, the panelists were asked to evaluate whether a minimally competent applicant would be expected to get the answer right. With respect to the Delaware essay questions, panelists were asked to evaluate whether a sampling of answers were reflective of a minimally competent applicant.

ACS gathered the panelists' conclusions and analyzed the results. The panel's work resulted in a median passing score of 144.8. In other words, the panel concluded that a score of 144.8 represented the median dividing line between an applicant who is minimally competent or not. ACS went on to conclude the panel's determinations would support a passing score in the range of 144.8 to 140, which is two standard errors of the mean below 144.8. The Report also stated a passing score in the vicinity of 142.3, which is one standard error below the recommended score of 144.8, might be more appropriate for the Board to consider than a passing score of 140. ACS included a range in the Report because it is possible that, due to limitations in the data, a lower score on some of the essays might have been

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indicative of a minimally competent applicant. ACS included the example of 2021 essay 3, which the panel concluded a score of 56 showed a minimally competent applicant, while a score of 52 did not. There were no answers scored 53, 54 or 55; it is possible that a score within that range might have been adjudged minimally competent, which in turn could have affected the median.

At the April 21, 2022 Board meeting, Chad Buckendahl, PhD, of ACS presented ACS' findings and fielded questions from the Board about the study, Report and ACS' recommendations.

Following Buckendahl's presentation, the Board engaged in a lengthy discussion about modifying the passing score. The Board would again discuss modifying the passing score at each of its next two meetings. While doing so, the Board considered: (1) the study; (2) the Report; (3) Buckendahl's presentation and remarks; (4) Delaware's historical Bar Exam passage rates; (5) Board members' experiences taking and administering the Bar Exam; (6) comments Board members had received from other members of the Bar; (7) how a change in the passing score would interact with the Board's other recommended changes to the Bar Exam, including modifying the Delaware essay topics and reducing the number of Delaware essays; (8) other factors specific to Delaware that may discourage

applicants to the Bar when compared to other states; (9) the policy considerations that underlie the passing score; and (10) comments from members of the Court.

ACS advised, “the next step in the process is for the [Board] to consider the results from this study in combination with related policy factors to make a final determination of the passing score for the [Bar Exam].” That is so because the passing score for the Bar Exam, like any licensure examination, is ultimately a policy choice. Perhaps reflective of the policy-based nature of the passing score decision, this was the subject on which the Board spent the most time deliberating. Despite debating the issue for several hours at three Board meetings, ultimately, the Board was unable to reach a unanimous decision. Put simply, reasonable minds can—and did—differ about how the various policy factors balance out.

2. Rationale

The recommendation by a majority of the Board that the cut score be changed to 143 stems from several considerations. First, one factor on which the Board members were in consensus is that there is no support for a large change to the passing score. While the Bar Exam is difficult—and likely one of the more difficult in the country—to pass, ACS debunked the argument that Delaware’s passing score of 145 alone makes the Bar Exam the *most* difficult. Buckendahl explained it is meaningless to compare Delaware’s passing score to the score required to pass the

bar examination in other jurisdictions because each jurisdiction’s exam is set up and graded differently than Delaware’s.⁷ In his words, it is a “fallacy”—comparing apples to oranges—to say the Bar Exam is harder to pass than exams in other states based solely on the fact Delaware’s passing score is higher than all other jurisdictions. That conclusion is reinforced by the standards setting study and Delaware’s historical bar passage statistics, which are usually above the national average; if indeed Delaware was *the* hardest Bar Exam, one would expect Delaware to be near the bottom of the list of pass rates most years.⁸

Thus, the Board rejected recommending reducing the passing score by two standard errors (i.e., to 140) or lower. Doing so would transform the Bar Exam from

⁷ While every jurisdiction’s exam includes the MBE (except Louisiana), the similarities stop there. Other bar exams run the gamut in terms of the number of essays, subjects tested, formats for the exam, whether and to what extent they include the MPT or other practical examination. Many jurisdictions also use a different method—sometimes called the “relative” method—to grade essays, in which, instead of awarding points, graders “mak[e] distinctions between papers and rank-order[] them according to whatever score scale the jurisdiction has in place.” Judith A. Gunderson, *It’s All Relative—MEE and MPT Grading, That Is*, THE BAR EXAMINER (June 2016), available at <https://thebarexaminer.ncbex.org/article/june-2016/its-all-relative-mee-and-mpt-grading-that-is-2/>.

⁸ As an example to show the lack of correlation between passing scores and difficulty passing a bar examination, Alabama has the lowest required passing score (130 on the scale used by Delaware). Yet Alabama typically ranks near the bottom in passage rate. See <https://www.casefleet.com/blog/bar-exam-analysis-state-breakdown-pass-fail-rates>.

an above-average passage rate to being among the nation's easiest to pass. This would conflict with the Board's view that Delaware holds applicants—as it does all members of the Bar—to a high standard for a good reason. It would also conflict with the Board's view that there is no evidence to suggest that a momentous change, such as going to the bottom of the range recommended by ACS, is warranted.

Nonetheless, the Board considered Delaware's reputation as having one of the most difficult Bar Exams as it weighed the policy considerations that go into setting an appropriate passing score. The Board spent considerable time debating the weight that should be given to the fact Delaware has the highest passing score in the country by five points.⁹ Although historically Delaware's pass rate has been above average, two of the last three administrations of the Bar Exam have resulted in pass rates around 52%, the lowest rates recorded since 2004.¹⁰ The Board considered the likely chilling effects of the high passing score coupled with declining pass rates, and how those factors might be viewed as discouraging applicants from seeking admission to the Delaware Bar, thereby potentially putting Delaware employers at a

⁹ In 2020, California, the jurisdiction formerly with the second-highest passing score, lowered its passing score from 144 to 139. Several jurisdictions require a score of 140.

¹⁰ The interceding year resulted in an above average pass rate, 66.6%.

competitive disadvantage to attract qualified lawyers.¹¹ On balance, the Board concluded those factors pointed toward lowering the passing score.

Another policy factor the Board debated is error tolerance. As ACS explained in the Report, in any type of licensure examination, there are two potential types of error: a “Type 1” error represents an applicant who passes the exam who is not competent (a false positive); a “Type 2” error represents an applicant who fails the exam but was minimally competent (a false negative). Some errors of both types are inevitable in any examination. A key question when drawing the line is, as a policy matter, the level of tolerance the licensing body has for each type of error. Stated simply, does the body prefer to err on the side of false positives or false negatives?

The Report supported the conclusion that a score within two standard errors of 144.8 would not pose an undue risk of Type 1 errors. This conclusion, coupled with the recent decline in the pass rate, gives the Board concerns that the passing

¹¹ See *In re Order Amending Rules 102, 202, 203, 204, 205, 206, 304, 311, 341 & Adopting Rule 207 of The Pennsylvania Bar Admission Rules*, 2022 Pa. Reg. Text 579885 (Pa. Jan. 4, 2022) (Baer, C.J., dissenting) (describing concerns of this nature in response to the decision to adopt an “outlier” Uniform Bar Exam (“UBE”) passing score higher than other UBE jurisdictions in the region).

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score is not striking an appropriate balance between Type 1 and Type 2 errors, again supporting a reduction in the passing score.

Third, the Board recommends changing the passing score to 143 against the backdrop of making several other changes to the Bar Exam, including reducing the number of Delaware essay topics that must be studied, reducing the number of essay questions, and shortening the duration of the Bar Exam. The significance of these changes, and the inability to predict their overall effect on pass rates, supports only a modest adjustment of the passing score at this time to avoid the risk of new problems arising from overcorrection.

In the Board's view, setting the passing score to 143—the midrange of ACS's recommendation—strikes the appropriate balance among all the factors considered. Had the passing score been 143, Delaware's average pass rate over the last five administrations of the Bar Exam would be 66%, above the national average pass rates in each of the years 2017-2021.

Finally, if any change to the passing score is made, the Board strongly recommends the Court's order adopting the change provide: (i) the change takes effect with the July 2023 administration of the Bar Exam and is not retroactive; and (ii) neither the Court nor the Board will entertain any petitions seeking admission to

the Bar premised on a petitioner having received a score on an earlier administration of the Bar Exam that would have been passing under the amended rule.

C. Recommendation 3: Revise the Delaware Essay Topics

As set forth herein, the Board recommends a proposed amendment to Board Rule 12 that reduces the number and scope of the Delaware essay topics that may be tested on the Bar Exam and also revises certain Delaware essay topics.

Board Rule 12 sets forth the “Matters Covered by the Examination” and includes the following 14 Delaware essay topics:

- Agency
- Constitutional Law
- Contracts
- Corporations
- Criminal Law (including the Delaware Criminal Code)
- Equity
- Evidence
- Partnerships
- Procedure in the Supreme Court of the State of Delaware, the Court of Chancery of the State of Delaware, the Superior Court of the State of Delaware (Civil and Criminal), the Family Court of the State of Delaware, the United States District Court for the District of Delaware and the original and appellate jurisdiction of the courts of Delaware

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- Property
- Torts
- Trusts
- Uniform Commercial Code
- Wills

The Strategic Review Committee of the Board met and discussed modifications to Board Rule 12 and reported its recommendations at the Board's April 21, 2022 meeting. The Strategic Review Committee and the Board discussed and considered whether the Delaware essay topics in Board Rule 12 are necessary to test minimum competency. The Strategic Review Committee and the Board also compared other states' essay topics and the UBE's essay topics. Based on these considerations and discussions, the Board approved a recommendation to the Court to amend Board Rule 12 (the "Proposed Board Rule 12 Amendment"). In general, these changes are intended to make the Delaware essay topics consistent with the majority of jurisdictions, modernize the list of topics, and eliminate topics that are not necessary for minimal competence. The specific changes involve reducing the number of Delaware essay topics from fourteen to ten and revising other Delaware essay topics as follows:

- Deleting Agency, Partnership, and Uniform Commercial Code as potential Delaware essay topics. The Board concluded those topics are not necessary for minimal competence, a conclusion reinforced by the fact that these topics are not tested in most jurisdictions.
- Limiting the scope of Criminal Law to eliminate the need for applicants to identify the degree of the offense and the quantity tiers of drug offenses. Again, the Board concluded memorization of these granular details is not necessary for minimal competence.
- Modifying the Corporations topic to be “Business Entities (including Delaware corporations, limited liability companies and limited partnerships).” Testing on alternative entities is consistent with the approach in most other states and the UBE, and consistent with the fact an average applicant who is not a corporate law practitioner is more likely to encounter alternative entities than corporations in their practice.¹²

¹² See Delaware Division of Corporations: 2021 Annual Report, *available at* <https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2021-Annual-Report.pdf> (explaining that 247,003 limited liability companies were formed in Delaware in 2021 compared to 62,510 corporations).

- Combining Wills and Trusts into one essay topic, which again is consistent with the approach to these topics in most jurisdictions that test them.

For these reasons, the Board respectfully recommends the Court approve the Proposed Board Rule 12 Amendment.

D. Recommendation 4: Reduce the Essay Portion of the Exam to Four Questions and the Bar Exam to Two Days

The Board recommends reducing the number of Delaware essays on the Bar Exam from eight to four. The recommended second Bar Exam will require additional Board members to be added to the Board, and specifically, additional Board members to draft, revise, and grade the Delaware essays.¹³ The reduction of the Delaware essays from eight to four will reduce the number of additional Board members by half. Moreover, reducing the number of Delaware essays to four will enable the Bar Exam to be held on two days, rather than two-and-a-half days.

The Executive Committee requested the Board's psychometrician, Dr. Roger Bolus, assess: (1) the reliability of scoring the Bar Exam if the number of Delaware essays is reduced from eight to four; and (2) the appropriate weighting that should be applied. Dr. Bolus prepared a Report on Potential Modifications to the Delaware

¹³ See *supra* Section I; *infra* Section IV.

Bar Examination, which found that reliability would be “lowered to minimally accepted industry standards, [but] an alternative weighting of the respective sections of the [Bar Exam] (i.e., the Written and Multistate Bar Examination (MBE)) during the scoring process would most likely increase the reliability to higher target levels.” Thus, Dr. Bolus recommended adjusting the weighting of the portions of the Bar Exam such that the MBE will receive 50% weight (up from 40%) and the four Delaware essay questions and two MPTs will receive the remaining 50% (down from 60%). Implementing this recommendation will require amending Board Rule 13.

III. Recommended Changes to the Bar Application and Admissions Process

The goal of this series of recommendations is to guard against unnecessary burdens to admission to the Delaware Bar. The Board scrutinized all the steps of the process to be assured there is a reason for each of them.

A. Recommendation 5: Revised Application

The current Bar application is unwieldy, burdensome, and unnecessarily repetitive. The Board recommends a bifurcated application process: one application to obtain the information necessary for the applicant to sit for the Bar Exam the “Exam Application,” and a second application to obtain the information and documentation necessary for the Board to conduct the character and fitness

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evaluation after the applicant passes the Bar Exam, the “Character and Fitness Application.”

The Board analyzed the current application to determine: (1) what questions specifically elicit information necessary to determine if an applicant is eligible to sit for the Bar Exam; and (2) what questions elicit information necessary to determine whether an applicant is eligible for admission to the Bar once they have passed the Bar Exam. A significant majority of the questions involved information that centered on the latter, i.e., character and fitness issues. Only a small percentage of the questions centered on information required to sit for the Bar Exam.

The current application requires an applicant to gather all documentation associated with their answers before they can file their application to register for the Bar Exam regardless of subject matter. The number of pages of a completed application may range from 75 to (in rare cases) significantly more depending on how an applicant answers some of the questions. As such, the Board determined two separate applications would streamline the overall application process and reduce the burden on the applicant.

The Board recommends continuing to retain Doelegal to maintain and support the Bar Exam application containing the information necessary for the applicant to sit for the Bar Exam.

B. Recommendation 6: Utilize the NCBE for First-Stage Application Review

The Board recommends utilizing the NCBE to conduct the first-stage review of the Character and Fitness Application. The Board worked closely with the NCBE to develop a Character and Fitness Application that seeks all the information requested in the current application but does so in an orderly and concise manner unlike the current application. A benefit of using NCBE for the Character and Fitness Application is the NCBE will be responsible for verifying the information in the application and obtaining any supporting documentation. In turn, the applicants will not be burdened with the responsibility of gathering the required documents during the final months of law school.

The Board's website will have instructions and a link to the NCBE website. Most if not all applicants will already be familiar with the NCBE website since the NCBE administers the MPRE.

C. Recommendation 7: Reduction of the Bar Application Fees

The current fee structure to take the Bar Exam is as follows:¹⁴

¹⁴ BR 5(b).

Registration Deadlines	Early (April 1 for July Exam)	Late (May 1 for July Exam)
Law school graduates	\$700	\$1,400
Lawyers admitted in another jurisdiction	\$800	\$1,600

The Board recommends no change to the early registration fees. For the late registration fees, the Board recommends \$900 for law school graduates and \$1,000 for lawyers admitted in another jurisdiction.

D. Recommendation 8: Reduce the Clerkship to 12 Weeks

The Board recommends reducing the Clerkship from 21 weeks to 12 weeks. Twelve weeks—or, in other words, roughly the length of summer, or the time between the Bar Exam and the December admission ceremony—ensures applicants are exposed to the Delaware legal community.

E. Recommendation 9: Refine the Checklist

The Board recommends that the Court endorse the attached revised Checklist. The Checklist has been revised in response to concerns from applicants that certain items could be arbitrarily hard to complete because they are scheduled irregularly or cancelled without much notice. The revised Checklist provides 30 options and requires applicants to complete a total of 18. Certain core activities remain mandatory, while for other activities, applicants must do only some (for example, 2 out of 4 types of criminal proceedings). The revised Checklist ensures that

applicants will continue to be exposed to a broad base of Delaware legal proceedings and activities.

IV. Recommendation 10: Changes to the Board's Structure

The Board currently consists of a Chair and Vice Chair, who are appointed to two-year terms, and members who serve three-year terms, all of whom are appointed by the Court.¹⁵ Although the Court's rules do not specify the size of the Board, in recent years its size has consistently been in the low-20s. Decisions are made by the full Board at meetings, which requires a quorum of a majority of all members.¹⁶ The Board designates a series of committees to carry out its responsibilities, such as essay drafting, and conducting character and fitness review.

The Board reevaluated its structure in light of the decision to recommend administering a second Bar Exam in February. Under even the most conservative estimates of the personnel needed to administer the Bar Exam twice a year, the Board would need to expand to over 30 members. For example, adding a February administration of the Bar Exam will require adding a Board member for every Delaware essay and MPT question on the Bar Exam because the time commitment

¹⁵ Supr. Ct. R. 51(a)-(b).

¹⁶ BR 4(b).

required to grade those questions is so large that the same people cannot be asked to do it twice a year.¹⁷ This observation, in turn, led to concerns about whether the Board would be too large to be an effective deliberative body, including difficulty establishing a quorum at Board meetings.

To alleviate those concerns, the Board recommends moving to a decentralized organization. Under the proposed arrangement, the deliberative and decision-making powers currently wielded by the full Board would be vested in a Management Committee. The past Chair of the Board may serve on the Management Committee as an advisory member, with the power to vote only to break a tie.

The other members of the Board would be divided among an Essay Committee and Character and Fitness Committee. The Essay Committee's two co-chairs would each be responsible for supervising the preparation of the essay questions for either the February or July administration of the Bar Exam. The committee members will draft, revise and grade the essay questions, which will ultimately be approved by the Management Committee. The Character and Fitness Committee members will review applications throughout the year.

¹⁷ *See supra* Section II.D.

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From the Court's point of view, this proposed reorganization will require the Court to appoint at least 32 members per year to accommodate administration of two Bar Exams. Certain rule amendments may also be required.

V. Conclusion

The Board respectfully requests the Court adopt the foregoing recommended changes to the Bar Exam and its application and admission process. If the recommendations are approved, the Board will provide the Court with proposed amended Rules for its consideration. The Board is available at the Court's convenience if any additional information is needed.