

# Delaware Bench & Bar Diversity Project

TWO YEAR ANNIVERSARY UPDATE

March, 2024







55

SUPREME COURT  
OF DELAWARE

PLEASE USE  
CLERK'S OFFICE ENTRANCE



# Table of Contents

**Executive Summary - 3 -**

**I. The 2022 Strategic Plan - 4 -**

**II. Progress on Implementing the 2022 Recommendations - 5 -**

**A. Pre-College Engagement - 5 -**

1. DELREC initiatives - 6 -

2. Court initiatives - 7 -

**B. Colleges and Law School - 8 -**

**C. Bar Exam and Admission - 9 -**

**D. Bar Diversity - 11 -**

1. Court data collection - 12 -

2. DSBA initiatives - 12 -

3. Law firm initiatives - 13 -

4. New mentorship initiatives - 13 -

**E. Bench Diversity - 14 -**

**III. Additional Avenues for Achieving Strategic Plan Goals - 17 -**

**A. Connecting to the Community: Access to Justice - 17 -**

**B. Connecting to Delaware Agencies and Other State Courts - 18 -**

**C. Connecting to the Judicial Branch Workforce - 18 -**

**IV. Conclusion - 19 -**

**Appendix - 21 -**



**COURT IN  
SESSION  
QUIET  
PLEASE**

**COURT IS IN SESSION  
NO ENTRY WHEN DOOR IS CLOSED**



# Executive Summary

It has been two years since the Delaware Supreme Court, in partnership with the National Center for State Courts (“NCSC”) and AccessLex Institute, issued its report: *Improving Diversity in the Delaware Bench and Bar: Strategic Plan* (“Strategic Plan”). The Strategic Plan had a fundamental premise – a bench and bar that better reflects the broader Delaware community and fosters public trust and confidence in the legal system.

The Strategic Plan included fifty concrete recommendations to promote greater diversity in the Delaware bench and bar. This report provides an update on the progress made in implementing the recommendations. Some significant highlights include:

- reimagining the Delaware Law-Related Education Center (“DELREC”) to strengthen civics education in schools and increase outreach to elementary, middle, and high school students;
- providing paid internship opportunities for high school students in the courts and the legal profession;
- taking the Supreme Court on the road to hold hearings in all three counties;
- collecting demographic data on bar applicants and Delaware attorneys;
- conducting minimum competence and bar exam cut score studies;
- changing the Delaware bar exam process from application to admission, including twice a year administration of the exam;
- the formation of the Delaware Leadership Council on Legal Diversity by representatives from several large Delaware firms who are working cooperatively with the Delaware judiciary and others on recruitment and retention initiatives;
- providing opportunities for judicial officers to mentor students and new lawyers;
- providing enhanced training to judges and court staff to reduce implicit bias in the court environment; and
- reconvening the Delaware judiciary’s Access to Justice Commission.

Our work is just getting started. Much more remains to be done. With the continued commitment to increasing diversity by the leaders in our profession and community, the future looks bright for the Delaware justice system and one of the State’s vital economic engines.



# I. The 2022 Strategic Plan

In May 2021, the Delaware Supreme Court authorized the Bench and Bar Diversity Project. The project brought Delaware leaders together with thought leaders from the National Center for State Courts and the AccessLex Institute, an organization dedicated to improving legal education and the legal profession. Through the hard work of hundreds of individuals across all segments of the Delaware bench and bar and the public, the project leadership issued its January 31, 2022 report: *Improving Diversity in the Delaware Bench and Bar: Strategic Plan* (“Strategic Plan”).

As explained in the report, the Strategic Plan:

should be understood as an ongoing process with two components: (a) articulating a set of values that frame a generally unifying vision; and (b) articulating a series of steps, programs, policies or practices designed to implement that vision. If strategic planning stops at the visioning stage, it is nothing more than an articulation of bold values unsupported by practical steps. Therefore, this Strategic Plan seeks to not only refine the vision of a more diverse legal profession but to offer to the Supreme Court a series of practical recommendations that it can consider in pursuing the vision.

...

That vision [for the Strategic Plan] is to have a Delaware legal profession that grows to reflect the diversity of the people of the state so that the public’s trust and confidence in the legal system also grows.

...

[S]trategic planning in the context of the courts and the legal profession can be challenging for this reason: the courts and the legal profession reflect a series of complex and often interrelated political, social, and legal values that define their purposes. A significant purpose of the legal profession is to articulate and maintain a coherent and fair set of legal standards and values that all members of the public can rely upon in managing their affairs. It is taking often esoteric legal norms informed by political, social, and economic considerations, and translating them into a practical and reliable legal system not just a system of laws.

...

Therefore, strategic planning in this context must be framed by the constant pursuit of improving public access, public service, public understanding, and public trust and confidence in the effective administration of justice and the legal system upon which they rest.<sup>1</sup>

The Strategic Plan focused on five areas for improvement: (a) the K-12 pathway to college and law school through pre-college engagement; (b) diversity in colleges and law schools that feed into the Delaware legal community; (c) the bar exam and bar admission process by removing unnecessary hurdles that drive down diversity; (d) recruitment, retention, and promotion of diverse lawyers in the Delaware bar; and (e) diversity within the ranks of Delaware judicial officers so that the Delaware bench reflects the diverse population of our State.

<sup>1</sup> NATIONAL CENTER FOR STATE COURTS & ACCESSLEX INSTITUTE, IMPROVING DIVERSITY IN THE DELAWARE BENCH AND BAR: STRATEGIC PLAN REPORT AND RECOMMENDATIONS, at 1 (January 31, 2022), available at <https://courts.delaware.gov/forms/download.aspx?id=135148>.



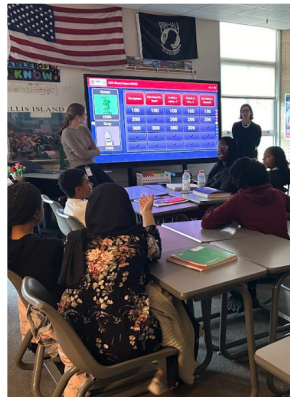
## II. Progress on Implementing the 2022 Recommendations



Students at the 2023 Delaware State Mock Trial competition at the Leonard L. Williams Justice Center.



Delaware Supreme Court Justice N. Christopher Griffiths visiting a class at Concord Christian Academy.



Volunteer attorneys at Mount Pleasant High School playing a game to teach legal concepts.



A student gives her opening statement at the 2023 Delaware High School Mock Trial competition.

In the short time since it was released, tremendous progress has been made to implement the recommendations in the Strategic Plan's five key focus areas. Our efforts are ongoing.

### A. Pre-College Engagement

The Pre-College Engagement Working Group made seven recommendations in the Strategic Plan designed to broadly increase Delaware primary school students' knowledge of and positive engagement with the Delaware legal profession and justice system.

The recommendations that have been implemented to date are:

- ✓ Reimagine DELREC and its current educational programming
- ✓ Create paid internship programs to give students opportunities for experiential learning to increase interest in pursuing a legal career
- ✓ Take the Supreme Court on the road to expose students to the work of the Court and bar

The recommendations that are in progress are:

- Create a targeted media campaign to increase student awareness of the Delaware legal profession and available career paths



- **Implement Delaware civics standards in all public schools Grades K-12, with a special focus on existing legal vocational programs**
- **Update and expand current Law Day materials and curriculum so they are more relevant to students**
- **Create a law-related analog to the Minority Engineering Regional Incentive Training (MERIT) program to stimulate underrepresented groups' interest in the law and legal profession**

## 1. DELREC initiatives

For nearly thirty years, DELREC successfully organized and ran three primary events: the annual statewide High School Mock Trial competition, Project Citizen, and the “We the People” competition. After release of the Strategic Plan in 2022, the DELREC board of trustees did a top to bottom review of its mission and organizational structure. The board now includes a diverse membership of lawyers, educators, and community leaders committed to DELREC’s renewed mission: increasing K-12 students’ knowledge of the law and the legal profession through access to age-appropriate curricula, and opportunities to engage with leaders in the bench and bar in a wide array of activities.

With substantial new funding appropriated in the State’s annual budget, and matching funds from the Supreme Court, DELREC was able to hire a new full-time executive director, Betsy Renzo. Ms. Renzo’s background and experience in the law, education, and nonprofit community service was ideally suited to advance DELREC’s vision.

Over the past year, DELREC has launched several new programs recommended by the Strategic Plan, including:

- ❖ **Media Outreach** - DELREC has started a targeted media campaign, as recommended in the Strategic Plan, to promote its programs for students. DELREC has launched an Instagram account, a TikTok account, and an electronic newsletter. It has hired a high school intern to focus promotional efforts aimed at high school and middle school students. It also has redesigned its website (<https://delrec.org/>) to make it modern, accessible, and capable of showcasing new initiatives to students and teachers.
- ❖ **Delaware Civic Standards** - DELREC has made significant progress in developing civics standards for Delaware public schools with a special focus on the law and legal careers. With the support of the Delaware Department of Education, DELREC partnered with the Social Studies Coalition and the Center for Civics Education to draft a civics curriculum along with model lesson plans and law-related topics. These standards will be distributed to all Delaware public and charter schools. Educators will also be able to access the standards on DELREC’s website, cross-indexed by grade level and topic.
- ❖ **Guest Speakers** - DELREC has started a guest speaker program to promote one-on-one connections between professionals and students. Nearly 200 legal professionals have volunteered for the program. They will collaborate with more than 20 schools through workshops such as “Know Your Rights” and “Civil Discourse,” lectures on basic understanding of the law, and discussions about the legal profession and legal careers. In December 2023, representatives from the Office of Defense Services joined with DELREC and the Delaware Criminal Justice Council for a program at Mount



## IMPROVING DIVERSITY IN THE DELAWARE BENCH AND BAR

Pleasant High School called “Juvenile Justice Jeopardy” (formatted on the television game show Jeopardy). In that program students learned how to safely interact with law enforcement, the potential consequences of breaking the law as a youth, and how to respond when peers make poor choices. The plan is to engage with students at every grade level with age-appropriate activities.

❖ ***School-Law Firm Partnerships*** - DELREC is piloting a program in the City of Wilmington that partners individual schools with Wilmington law firms. The school and the law firm work cooperatively to mentor students and develop a long-term, sustainable relationship with its school and students.

❖ ***“First Generation” Mentorship Program*** - The “first generation” mentorship program is focused on recruiting and retaining first generation law school students. It provides support and encouragement to young attorneys and law students, particularly those who do not have a network of friends or relatives in the legal community or in Delaware. The Young Lawyer’s Division of the Delaware State Bar Association (“DSBA”) and the Delaware Leadership Council on Legal Diversity (“LCLD”) are leading the program. It will include monthly meetings, meet-and-greets with judges, and workshops on topics like landing clerkships and completing bar admission clerkship tasks. The hope is to help first generation attorneys better navigate the early part of their career, mitigate attrition rates, and build long-term relationships in the state’s legal community.

## 2. COURT initiatives

The Delaware Courts also have undertaken initiatives to engage with Delaware students at both the primary and secondary levels, including:

❖ ***Supreme Court on the Road*** – On March 19, 2024, the Delaware Supreme Court held the first oral argument in Sussex County at Delaware Technical Community College’s Georgetown campus to an audience of high school and college students. The argument was followed by a question-and-answer session with the students. Court staff are using this event as a template for future “Supreme Court on the Road” programs. The Supreme Court also holds one oral argument a year at the Widener University Delaware Law School in New Castle County.

❖ ***Paid Summer Internship Program*** - In the summer of 2023, five Delaware courts participated as employers in a paid summer internship program for high school students. Students were placed within the courts through the Delaware Department of State and its Future Leaders Internship Initiative (“FLii”). FLii works with the nonprofit organization Leading Youth Through Empowerment (“LYTE”) to foster the growth of 7th-12th grade students through high school and into college and beyond. The FLii program offers paid summer internships for LYTE students looking for experience within state government. The judiciary’s program focused on LYTE students who expressed an interest in the law or the legal profession and included enhanced educational programming in partnership with Widener University Delaware Law School.

❖ ***Other Student Engagement Initiatives*** - In addition to the FLii summer internships, the Delaware Judicial Branch also resumed, post-pandemic, relationships with local vocational high schools, including Howard High School in Wilmington and Polytech High School in Woodside. This partnership offers part-time paid internships within the courts during the school year to high school students who are in criminal justice or legal-related programs. The hope is that these students will pursue a full-time career in the courts or the legal profession after their graduation.





Vice Chancellor J. Travis Laster (left) and Supreme Court Chief Justice Collins J. Seitz, Jr. (right) speak to a class of students from the University of Delaware.

## B. Colleges and Law School

The Colleges and Law School Working Group made three recommendations designed to increase diversity in law schools that feed into the Delaware legal profession.

The Working Group’s one recommendation that currently is in progress is:

- **Establish coordinated pathways to admission with students who attend Delaware State University and other external institutions and organizations that serve significant numbers of potential law school applicants from underrepresented racial and ethnic groups**

The two recommendations that are pending further consideration are:

- **Adopt a “Delaware Scholars Program,” as an alternative to the bar exam**
- **Consider the feasibility of a loan repayment program for attorneys who gain bar admission through the Delaware Scholars Program and practice law in the state for a specified length of time**

Since 2016, Widener University Delaware Law School (“DLS”) has had an articulation agreement with Delaware State University (“DSU”) that creates a law school admission pathway for DSU students. Since the adoption of that agreement, DLS also has adopted an institution-wide diversity, equity, and inclusion (“DEI”) program that included the release of a comprehensive DEI strategic plan. The strategic plan reflects DLS’s commitment to strengthening the pathways to admission for diverse students.

Another important development in Delaware was Wilmington University’s launch of its new law school. It welcomed its first class of students in the fall of 2023. Wilmington University Law School aims to provide broad access to an affordable legal education with a student-centered culture. With capped tuition and a variety of program options focused on producing Delaware practice-ready lawyers, the new law school offers another attractive option to first-generation law students and working individuals seeking a career change.<sup>2</sup>

The Delaware judiciary will work with both law schools on broadening the pathways into the Delaware bar. And, like many states, the Delaware judiciary also will engage with the other branches of government to work on financial assistance for law students and graduates who intend to pursue a career in public service.

<sup>2</sup> The singular “Law School” used to identify the working group reflected the reality in 2021 that Delaware only had one law school, Widener University Delaware Law School. In October 2022, Wilmington University opened the second law school in Delaware.





Scenes from the July 2023 administration of the Delaware Bar Exam at the University of Delaware

## C. Bar Exam and Admission

The Bar Exam and Admission Working Group made twelve recommendations to eliminate or reduce potential barriers for qualified, diverse law graduates to be admitted to the Delaware bar. The recommendations that have been implemented are:

- ✓ **Collect racial and ethnic data of bar candidates and attorneys**
- ✓ **Study minimum competence**
- ✓ **Study the bar exam cut score**
- ✓ **Revisit the substance and format of the clerkship requirement and task list**
- ✓ **Redesign the Board of Bar Examiners' website**
- ✓ **Reconsider the cost of the fee for late bar applications**
- ✓ **Consider reducing the number of essays and topics tested on the bar exam**
- ✓ **Explore the feasibility of offering two bar exams annually to include a study of the makeup of the Board and impacts on the staff**

The recommendation that is in progress is:

- **Increase "feeder school" outreach**

The recommendations that are pending further consideration are:

- **Consider an alternative pathway to bar admission, such as New Hampshire's Daniel Webster Scholar Honors Program**
- **Consider producing bar study prep materials**
- **Increase transparency relating to bar exam grading policies**

## IMPROVING DIVERSITY IN THE DELAWARE BENCH AND BAR

Many of these recommendations were implemented within months of the release of the Strategic Plan, including:

❖ **Demographic Data from Bar Exam Test Takers** - The 2023 bar exam application included new demographic questions that will help measure progress on improving diversity in the Delaware bench and bar.

Of the 273 applicants for the 2023 Delaware Bar Exam, 92 percent responded to the question about ethnicity. Of those responding, 68.5 percent identified as White, 10.4 percent identified as Black/African American, 9.5 percent identified as Asian, 8 percent identified as Latinx, and 3.6 percent identified as multiethnic or something else.

On the question of gender, of the 97.5 percent of applicants who answered, 56 percent identified as female, 43 percent identified as male, and less than 1 percent chose “non-binary/gender non-conforming” or “thon” (a gender-neutral pronoun).

❖ **Bar Exam Reform** - The Delaware Board of Bar Examiners has completed a thorough review of bar admission in Delaware. The Supreme Court approved these recommended changes to the bar exam:

- Offering the exam twice a year, in both February and July beginning in 2024 as opposed to only once in July. The first February administration of the bar took place February 27-28, 2024
- Resetting the passing score from 145 to 143
- Reducing the number of essays from eight to four
- Reducing the number of topics from fourteen to ten areas of the law

❖ **Bar Admission Process** - The Supreme Court also adopted several recommended reforms to the admissions process. Those include:

- Reducing the clerkship requirement from 21 weeks to 12 weeks
- Creating a new “checklist” of activities for candidates – where aspiring lawyers need to sit in on certain legal proceedings – to cover 18 out of 30 potential items rather than a mandatory list of 25 items
- Reducing the late application fee from \$1,400 to \$900 for law school graduates and from \$1,600 to \$1,000 for attorneys admitted in another jurisdiction

The Board of Bar Examiners also partnered with the National Conference of Bar Examiners to assist with “character and fitness” review.





Scenes from past meetings of the Delaware State Bar Association Bench and Bar Conference

## D. Bar Diversity

The Bar Diversity Working Group made eight recommendations designed to increase the recruitment, retention, and advancement of diverse lawyers in the Delaware bar.

The one recommendation that has been fully implemented is:

✓ **Collect data to support the analysis of racial, gender, and ethnic disparities in the Delaware bar and the evaluation of programs to mitigate those disparities**

The recommendations that are in progress are:

- **Provide opportunities for judicial leaders to engage in regular personal interaction with attorneys at all career stages**
- **Take steps to reduce implicit bias and identity threat in the court environment**
- **Develop and implement a coordinated career-long program of evidence-based implicit bias training for attorneys**
- **Continue and expand the Supreme Court's support of the Delaware Bar Association's summer diversity clerkship program**

The recommendations that are pending further consideration are:

- **Develop and implement a Delaware-specific diversity certification program for law firms patterned after the Mansfield Rule**
- **Establish a commission to develop a structured, cross-firm mentoring program for attorneys**
- **Engage an expert to audit and restructure the hiring process for judicial clerkships**

Addressing issues of diversity within our bar requires collaboration among the Courts, the DSBA, and the broader legal community. Since the release of the Strategic Plan, stakeholders have come together in a number of ways.

## 1. Court data collection

As previously noted, the Strategic Plan highlighted a lack of demographic data. Changes were made to the annual registration process to collect this information. Of the more than 4,700 Delaware attorneys who renewed their bar registration in 2023, 86.3 percent answered the question related to their ethnicity.

Of those responding, 91 percent identified as White, 3.5 percent identified as Black/African American, 3.5 percent identified as Asian/Pacific Islander, 1.7 percent identified as Latinx and less than 1 percent identified as Native American/Alaska Native.<sup>3</sup>

Out of 93 percent of who responded to the question on gender, 61.3 percent identified as male, 38.6 percent identified as female, and less than 1 percent identified as transgender or gender non-conforming.

Out of 83 percent who responded to the question on sexual orientation, of which 97 percent identified as heterosexual or straight, 2 percent identified as gay or lesbian, and 1 percent identified as bisexual.

Out of the 86 percent who responded to the question on disability, 95.7 percent said they were not a person with a disability, and 4.2 percent indicated that they were a person with a disability.

This data collection will assist the courts and the bar to establish benchmarks to measure the effectiveness of court and bar initiatives.

## 2. DSBA initiatives

Like DELREC, the DSBA is an active partner with the Judicial Branch, working to improve the diversity of the Delaware bar by implementing recommendations from the Strategic Plan. Since the release of the Strategic Plan, DSBA has undertaken many steps focused on improving Delaware's inclusion and retention of diverse lawyers in our bar, including:

❖ **CLE Programming** - DSBA has increased its program offerings focused on issues raised in the Strategic Plan. These include: a Bench and Bar event featuring Chief Justice Seitz and Aaron Taylor from AccessLex Institute, discussing the importance of Delaware's changes to the bar exam; a panel discussion with the Judicial Nominating Commission demystifying the judicial nomination process; a panel program with local law firm leaders emphasizing the importance and substance of diversity initiatives in the Delaware law firm community; and a seminar entitled "Raising Awareness in a Multicultural Workplace", highlighting how bias, perceptions and stereotypes can negatively impact cross-cultural working relationships and impede quality service delivery.

❖ **New Leadership Position** - DSBA created the position of Director of Member Services and Diversity, Equity and Inclusion and named LaTonya Tucker to the post in May 2023.

<sup>3</sup> According to a 2023 national survey from the American Bar Association, 79 percent of attorneys who responded identified as white, 5 percent identified as Black/African American, 6 percent identified as Asian American, 6 percent identified as Hispanic, and 3 percent identified as multiracial, and 1 percent identified as "other." ABA Profile of the Legal Profession 2023, ABA Profile of the Legal Profession - Lawyer Demographics (abalegalprofile.com). The survey also reflected that 61 percent of respondents identified as male and 39 percent as female.



❖ **Judicial Diversity Clerkship Program** - The DSBA’s Diversity, Equity and Inclusion Committee has established a program for first or second-year law school students, placing students in both state and federal courts with a focus on bankruptcy law, civil litigation, and business litigation.

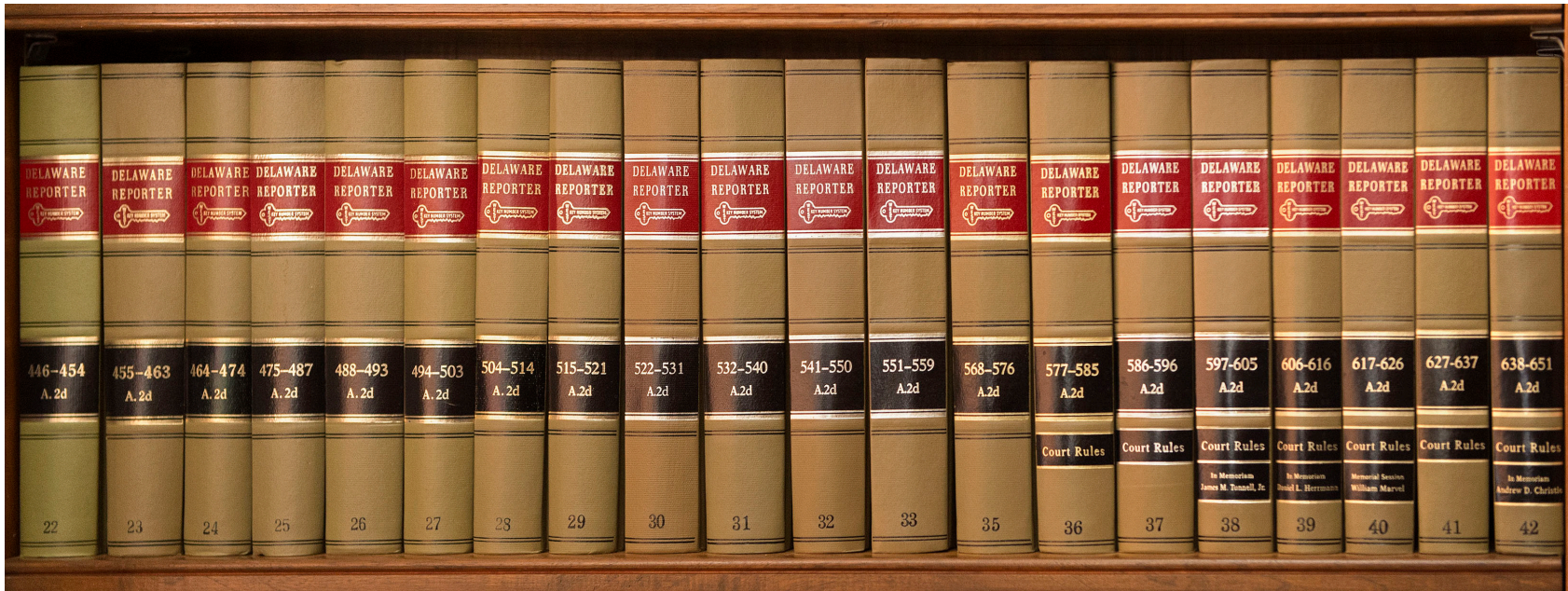
❖ **Mentoring Bar Exam Applicants** - DSBA has plans to reach out to bar exam applicants, rather than just successful candidates. The program will assist applicants through mentoring and advice on how to take the Delaware bar exam and start a legal career in Delaware.

### 3. Law firm initiatives

Many Delaware law firms have shown their commitment to diversity, equity and inclusion through new DEI positions focused on improving recruitment, retention, and advancement of diverse lawyers practicing in Delaware. Several large employers have joined the national Leadership Council on Legal Diversity (“LCLD”) and created a local Delaware chapter, seeking to empower the next generation of diverse leaders in the legal profession. The Delaware LCLD has connected with local partners, including the Delaware judiciary, Delaware State University, and the Delaware Department of Justice, to help increase pathways to the profession and to provide mentorship, fellowship, and substantive resources to rising legal talent.

### 4. New mentorship initiatives

Wilmington University Law School has established a new mentorship program to pair mentors with law students as the student moves through their legal education. The program will give students the opportunity to get to know the mentor and have one-on-one conversations throughout their time in law school. Members of the Delaware State and Federal judiciary have volunteered as mentors for the 2023-24 school year.





The Summer 2023 class of high school interns at the Renaissance Centre in Wilmington.



The Summer 2023 intern class visiting the courtroom of the Delaware Supreme Court in Dover.



The 2023 Investiture ceremony for Delaware Supreme Court Justice N. Christopher Griffiths

## E. Bench Diversity

The Bench Diversity Working Group made many recommendations in the Strategic Plan designed to increase the support and opportunities for lawyers of color that will encourage them to consider a career as a Delaware judge.

The recommendations that have been implemented are:

- ✓ Using the annual judicial retreat to introduce new data, information, and programs on ways to increase diversity
- ✓ Establishing a Diversity, Equity, and Inclusion Coordinator (“DEI Coordinator”) at the Supreme Court
- ✓ Surveying bar members about their race and ethnicity
- ✓ Before posting or circulating a judicial vacancy, confirming that draft notices accurately reflect the legal requirements for appointment as provided in the Delaware Code
- ✓ Developing continuing education for all members of the bar on the judicial appointment process

The recommendations that are ongoing are:

- Promoting the work of the Delaware Supreme Court, NCSC, and AccessLex within the legal community, including in Delaware-focused publications
- Providing direct mentorship opportunities between judicial officers and diverse members of the bar and students interested in a judicial career
- Supporting initiatives of other institutions/agencies that have a direct impact on the diversity of the bench and bar in Delaware
- Promoting diversity recruitment at major law firms and the Attorney General’s office



## IMPROVING DIVERSITY IN THE DELAWARE BENCH AND BAR

The recommendations that are pending further consideration are:

- Ensuring outreach to law firms (especially smaller law firms, which are more prevalent downstate) and diverse bar associations on the importance of a diverse bench, judicial opportunities, and the judicial appointment process
- Having trial court DEI Coordinators take direction from the Supreme Court's Coordinator
- Surveying bar members about their interest in joining the judiciary and actual and perceived barriers to entry and success
- If available to the AOC, looking at the schools that former clerks have attended
- Surveying members of the bench about obstacles they have faced in recruiting racially and ethnically diverse clerks and interns, any steps they have found helpful in improving their recruitment and hiring of diverse applicants, and any ideas they have for helping the judiciary to draw more diverse candidates into the applicant pool and accept positions
- Developing metrics and reporting requirements for each court, so that the Delaware Supreme Court can measure the success of program initiatives (e.g., applicants seeking positions, clerks hired, interns hired) and report improvements to the bench and bar
- Reviewing and, wherever necessary, seeking or supporting improvements in the clarity and consistency of statutes governing judicial appointments. More specifically, seeking or supporting the amendment of statutory residency requirements for judicial officers in ways that may increase the pool of qualified judicial applicants
- Sending notices of judicial vacancies to affinity groups to ensure a broader and more diverse distribution
- Promoting judicial vacancies across all counties. Encouraging diverse candidates to seek appointments in any county to which they would be willing to travel to serve, or to move to if the judicial position has a county residency requirement
- Creating law and/or policies that allow time for new appointees to move to the county where they will sit, if necessary
- Promoting the importance of racially and ethnically diverse membership on the Judicial Nominating Commission
- Considering (through a survey or other means) whether the use of remote participation platforms would encourage more racially and ethnically diverse candidates to seek judicial clerkships and employment in Sussex County, which may create a pathway for more diverse clerks to work in and seek judicial appointments in Sussex County in the future

Since the Strategic Plan's adoption, the Administrative Office of the Courts ("AOC") has worked on implementing the following recommendations:

❖ **Media Campaign** - Shortly after the publication of the Strategic Plan, the AOC promoted the plan with regional media and featured the report on the Delaware Judiciary's website. Copies of the full

## IMPROVING DIVERSITY IN THE DELAWARE BENCH AND BAR

report were made available to the public and the press. As a result, the report, its recommendations, and the Delaware Judiciary's commitment to the effort were highlighted in several legal publications, on television and radio news programs in the Philadelphia, Wilmington, and southern Delaware markets, and in several print and online news publications in the state including both statewide newspapers.

❖ **Judicial Branch's first Diversity, Equity, and Inclusion Officer** - The AOC worked with the other branches of government to fund and establish within the AOC the Delaware Judiciary's first Diversity, Equity, and Inclusion Officer as recommended by the Strategic Plan. Kaelea Shaner is working with the State Court Administrator and Chief Justice to manage and facilitate initiatives outlined in the Strategic Plan.

❖ **Training** - The Judiciary has incorporated diversity training into its judicial education, including programs on: creating transgender safe spaces; working with people in traumatized communities to overcome the systemic impact of historical trauma; identifying how criminal justice issues affect immigration status; judges' ethical responsibilities in dealing with individuals with behavioral health issues; and considering issues unique to transgender persons in family law matters.

A more comprehensive training curriculum is in the process of rolling out to Delaware's courts. It is a multiyear process that embodies the concept of "Conscious Inclusion," a comprehensive approach to understanding diversity, equity, and inclusion issues at a fundamental level. Rather than training that emphasizes the presence and avoidance of unconscious bias, conscious inclusion training focuses on active steps that courts can take to create more inclusive and more diverse workplaces. The training encourages each audience member to develop their own action plan, in concert with the DEI Officer, to address issues unique to its culture and workplace.

Beyond an initial introductory training, the conscious inclusion plan will rollout "Learn and Discuss" sessions that will unpack a particular issue in greater detail (for example Disability Inclusion, LGBTQ+ Inclusion, and related issues). The plan also will include a judiciary-wide mentorship program.



Graduates, their managers and presiding judges at the conclusion of a 2023 leadership training program.



# III. Additional Avenues for Achieving Strategic Plan Goals

The Strategic Plan refers to six reasons to promote diversity in the legal profession: (1) demographic—the legal profession should look like the population it serves, particularly for historically marginalized communities that do not trust the legal system; (2) business—it makes “business sense” for the legal profession to include individuals with diverse experiences and backgrounds; (3) democratic values—belief in democracy is weakened if the public does not see themselves represented and distrust democratic institutions; (4) leadership—many local and national leaders come from the legal profession; (5) public interest—research shows that legal professionals of color are more committed to public service and want to give back to the community; and (6) innovation—research also shows that diverse groups with diverse opinions may be more innovative and better problem solvers.<sup>4</sup>Achieving diversity and inclusion in the legal profession is critical if the public is to believe and trust in the fair administration of justice.

Below are three areas of focus that can enhance public trust in the legal system.

## A. Connecting to the Community: Access to Justice

The Delaware Judiciary’s Access to Justice Commission was convened in 2014. Before being interrupted by the COVID-19 pandemic, the Commission produced important work in various areas through its component subcommittees: Efficient Delivery and Adequate Funding of Legal Services to the Poor; Judicial Branch Coordination in Helping Pro Se Litigants; Promoting Greater Private Sector Representation of Underserved Litigants; and Fairness in the Criminal Justice System. The Commission produced a substantial amount of research on the barriers faced by Delawareans seeking justice, as well as potential solutions. The Commission’s work shows the interconnected nature of both DEI Initiatives and barriers to justice in Delaware. Often, those barriers fall along lines also examined in DEI work as members of marginalized communities may often experience a lack of access to justice. The Commission has been revitalized and will consider DEI initiatives as part of the larger access to justice issues in Delaware.

---

<sup>4</sup> Strategic Plan 8-9, citing American Bar Association, Diversity in the Legal Profession: The Next Steps 9 (April 2010).

## B. Connecting to Delaware Agencies and Other State Courts

There are opportunities to learn from and collaborate with local and national DEI initiatives that would promote the goals of the Strategic Plan and help with new programs.

Several agencies within Delaware have recently hired or are filling positions for DEI officers. There is an increasing need for each of these agencies to coordinate and establish unifying goals. At the national level, organizations like the National Center for State Courts and other networking groups present opportunities for collaboration across jurisdictions to establish best practices in a court setting and culture. Many state courts have either hired DEI administrators or established some type of formal DEI initiative.<sup>5</sup> Continued communication and an openness toward adapting other states' DEI strategies is a crucial component of the Strategic Plan.

For example, the Strategic Plan cites the Daniel Webster Scholars Program in New Hampshire as a model for alternative bar admission. Since the publication of the Strategic Plan, Oregon has introduced and approved the Supervised Practice Pathway for law school graduates to produce a portfolio of their work conducted over 675 hours of practice supervised by a licensed Oregon attorney. These types of programs can help us identify future programs that could be emulated in Delaware.

## C. Connecting to the Judicial Branch Workforce

Although a judicial officer is the face of the court, interaction with court personnel may be a defining experience for someone appearing in court for the first time. Our workforce is integral to the legal profession and also must be diverse and inclusive.

A change in court culture is, like most DEI work, a long-term process that requires long-term commitment. Instituting a formal mentorship program pairing seasoned employees with new employees will: promote receptiveness to differences; create opportunities for first-hand learning; reduce stigma and increase morale; and create familiarity and alignment with large DEI initiatives.

---

<sup>5</sup> Edwin Bell, School Helping Courts Address Diversity, Equity, and Inclusion, *Judicature* Vol. 106 No. 2 (2022), Helping courts address diversity, equity, and inclusion (duke.edu).



## IV. Conclusion

Delaware has made great strides in the past two years to implement the recommendations of the Strategic Plan. Of the 50 recommendations in the Strategic Plan, more than half have been completed or are ongoing. The progress is a direct result of many hours of work by judicial officers, the Administrative Office of the Courts, the Board of Bar Examiners, DELREC, the DSBA, the Department of Justice and Office of Defense Services, court staff, and members of the Delaware bar. We thank everyone for their hard work and plan to continue the momentum towards a bench and bar that reflects the population we serve.









# APPENDIX



**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

---

Introduction.....	1
I. Background on the Bar Application and Admissions Process .....	3
II. Recommended Changes to the Bar Exam .....	8
A. Recommendation 1: Implement a February Bar Exam.....	8
B. Recommendation 2: Change the Score Required to Pass the Bar Exam from 145 to 143.....	9
C. Recommendation 3: Revise the Delaware Essay Topics .....	17
D. Recommendation 4: Reduce the Essay Portion of the Exam to Four Questions and the Bar Exam to Two Days.....	20
III. Recommended Changes to the Bar Application and Admissions Process.....	21
A. Recommendation 5: Revised Application.....	21
B. Recommendation 6: Utilize the NCBE for First-Stage Application Review.....	23
C. Recommendation 7: Reduction of the Bar Application Fees.....	23
D. Recommendation 8: Reduce the Clerkship to 12 Weeks .....	24
E. Recommendation 9: Refine the Checklist.....	24
IV. Recommendation 10: Changes to the Board’s Structure.....	25
V. Conclusion .....	27



## **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.<sup>1</sup> 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;

---

<sup>1</sup> See *Delaware Bench and Bar Diversity Project’s Strategic Plan*.

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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



BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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.<sup>2</sup> The Bar Exam is administered over two-and-a-half days (covering 15 testing hours), consisting of three components.<sup>3</sup>

- 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

---

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

<sup>3</sup> 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



BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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.<sup>4</sup>

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.

---

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

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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.<sup>5</sup>

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,

---

<sup>5</sup> 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).

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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.<sup>6</sup>

## **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.

---

<sup>6</sup> 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>.



BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

**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

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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



BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

bar examination in other jurisdictions because each jurisdiction's exam is set up and graded differently than Delaware's.<sup>7</sup> 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.<sup>8</sup>

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

---

<sup>7</sup> 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/>.

<sup>8</sup> 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>.

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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.<sup>9</sup> 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.<sup>10</sup> 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

---

<sup>9</sup> 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.

<sup>10</sup> The interceding year resulted in an above average pass rate, 66.6%.



BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

competitive disadvantage to attract qualified lawyers.<sup>11</sup> 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

---

<sup>11</sup> 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).

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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



BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

- 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.<sup>12</sup>

---

<sup>12</sup> 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).

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

- 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.<sup>13</sup> 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

---

<sup>13</sup> See *supra* Section I; *infra* Section IV.



BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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:<sup>14</sup>

---

<sup>14</sup> BR 5(b).



BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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.<sup>15</sup> 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.<sup>16</sup> 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

---

<sup>15</sup> Supr. Ct. R. 51(a)-(b).

<sup>16</sup> BR 4(b).

BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

required to grade those questions is so large that the same people cannot be asked to do it twice a year.<sup>17</sup> 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.

---

<sup>17</sup> *See supra* Section II.D.



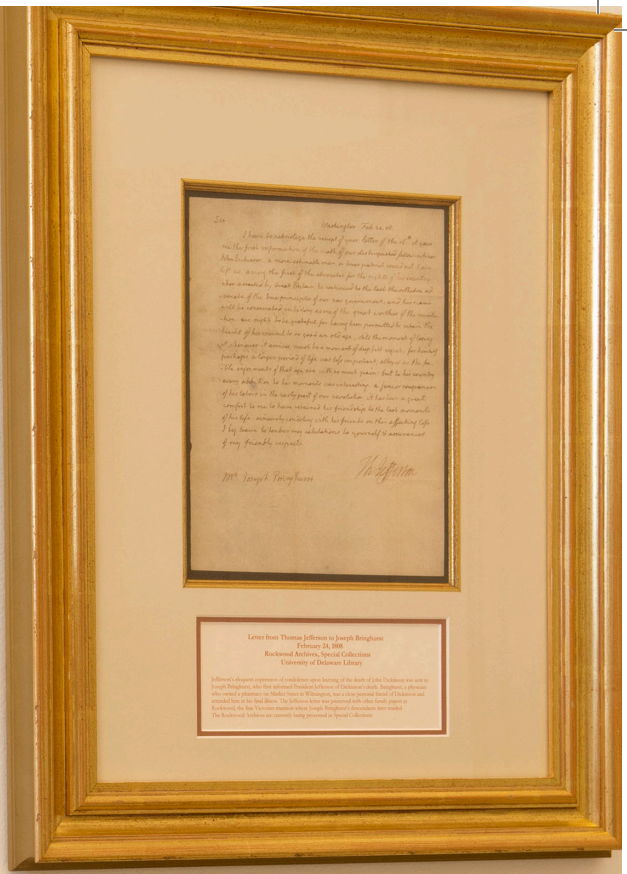
BBE Memorandum  
Justice Gary F. Traynor  
February 15, 2023

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.





Letter from Thomas Jefferson to Joseph Bingham  
February 24, 1800  
Rockwood Archive, Special Collection  
University of Delaware Library

Jefferson's original signature is visible above your listing of the date of this document as well as Joseph Bingham, who has signed "Bingham" below it. Jefferson's date, Bingham's signature, and the original document are located in the Rockwood Archive, Special Collection of the University of Delaware. The original document is located in the Rockwood Archive, Special Collection of the University of Delaware. The Rockwood Archive is located in the Rockwood Building on the University of Delaware campus.







**DELAWARE  
COURTS**  
JUDICIAL BRANCH

This report is published by the State of Delaware Administrative Office of the Courts