

National Conference of Bar Examiners

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December 18, 2014

Dean Kathryn R.L. Rand
University of North Dakota
School of Law, Room 108
215 Centennial Drive, Stop 9003
Grand Forks, ND 58202-9003

Dear Dean Rand:

I am writing as promised to convey the response of the National Conference of Bar Examiners to both your letter of November 25 and the statement you attached. Given the importance of the subject matter to most deans, I am sharing this communication with all deans of accredited law schools.

We are confident that the July 2014 administration of the Multistate Bar Examination was scored correctly. Every aspect of our methodology and execution has been reviewed and re-reviewed. While we will continue to investigate the scoring of the test, the results of our studies will not be revealed publicly. Our systems are proprietary, and security is essential. Of course, were we to discover a flaw in scoring, we would address that publicly and correct it. I believe I made that clear in my earlier memorandum.

I can tell you that nothing changed with regard to the creation and scoring of the July 2014 MBE from the tests that preceded it. I have confirmed this with the MBE Program Director who had responsibility for selecting equating items for the test. I also asked a seasoned psychometrician who joined our staff after July test scores were released to independently equate not only the July 2014 MBE but the July 2013 MBE in order to determine if there were any unintended differences in the processes used to perform the equating of the more recent test. He found none.

To the extent that the statement you attached references both administration and scoring of the July 2014 bar examination, note that NCBE does not administer the examination; jurisdictions do. Further, jurisdictions grade the written components and set the weights and methodologies for combining scores. (Those jurisdictions adopting the Uniform Bar Examination employ a common weighting system that has been endorsed by measurement professionals as a best practice.)

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Your statement references the reliability of the test. Reliability, as I assume most know, is a term of art that expresses the degree of reproducibility; that is, it is a mathematical estimate of the likelihood that the same candidates would do as well – or less well – if they took another form of the same test. The July 2014 MBE was highly reliable at .92. You would need to look to individual jurisdictions to determine what the state-by-state reliabilities were for their respective test configurations.

As to your reference to integrity with regard to the July 2014 MBE, it surprised me that the statement raised it as an issue. It hardly merits response. Those associated with our test development and scoring processes are capable, dedicated, and honest. Recently I wrote a column in our quarterly magazine, *The Bar Examiner* (available online) that listed the many law schools from which our test drafters come and noted that 75% of our drafters are academics. The balance are drawn from the courts and private practice in roughly equal measure. Our test editors are all lawyers with strong credentials. All participants in the process possess an understanding of the importance – and the sanctity – of the work they perform.

We have devoted considerable effort and ink to producing articles that explain our testing program in the magazine noted above. A review of past issues, and particularly the feature appearing there known as the Testing Column, may be instructive for those who wish to gain greater understanding of how our licensing tests are constructed and scored.

I would be happy to meet with a group of deans, or to host a meeting here in Madison, to go into greater detail about what our tests include and why, and what steps we take to write test items, construct test forms, and score answer sheets. (We have done similar programming on five or six occasions, inviting representatives of law schools to attend seminars we funded in Madison in an effort to explain the bar examination and make recommendations about how students might better prepare. They have been attended largely by academic support personnel. For this purpose I am envisioning a meeting with deans who fund their own travel.)

I would also be willing to share thoughts about how academic support, frequent feedback, and required course work can benefit students who are at risk. The data I have been reviewing that tracks law school admissions suggests that more intervention during law school will help students succeed. To the extent that I can assist with developing ideas about how to meet student needs, I would be happy to do so.

A word concerning my use of the term “less able” to describe the cohort that sat for the July 2014 MBE may be in order. “More able” and “less able” are terms of art that are in common usage among measurement professionals, as are the terms “more proficient” and “less proficient.” A review of writings that have appeared in our magazine reveals that these terms are used to express comparative information about performance by groups. To the extent that my use of the term distracted or

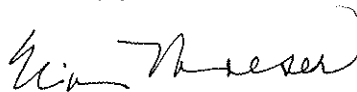
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offended anyone, I regret that. The fact remains that the candidates who sat for the July 2014 MBE performed less well than did the candidates who sat the previous July.

I am enclosing my column in the December 2014 issue of our magazine, as it covers some additional issues that may be of interest to deans. I also encourage those interested in learning more about the job analysis that we conducted a couple of years ago to inform our discussions about test validity to visit the research area of the NCBE website.

Finally, I note that the American Bar Association's Section of Legal Education and Admissions to the Bar has begun the release of 2014 law school data. It is clear that legal education is not out of the woods yet. I am prepared personally to put my 37 years of work in bar admissions, with 30 of those years as a Section volunteer participating in accreditation matters, to use to help, given the forecast that this will likely remain a difficult time for law schools.

Cordially yours,



Erica Moeser
President

em/dk
cc: Law School Deans
Enclosure