Washington State Bar Licensure Task Force

A Proposal for the Future of WA State Bar Admissions Updated Following Public Comment February 28, 2024

Contents

Mission/Purpose 2

Summary of Updates to the Previous Proposal, Following Review of Public Comments and Executive Summary 2

Background 5

Around the Country 6

Our Recommendations 8

- **1) The Bar Exam** 8
- **2) Graduate Apprenticeship** 9
- **3) Law School Experiential Pathway** 10
- **4) APR 6 Apprenticeship** 11
- **5) Alternative Assessments and Interventions** 12
- **6) Reciprocity** 12
- **7) Bar Pass Score** 13

Frequently asked questions 13

A Proposal for the Future of WA State Bar Admissions

Mission/Purpose

The Washington Bar Licensure Task Force (WBLTF) was created in November 2020 with the goal to "evaluate & assess the efficacy of the Washington state bar licensure requirements for licensing lawyers and whether the [WA State Supreme Court] should consider alternatives to the current licensure requirements, and to analyze those potential alternatives." This proposal outlines the work that has been done in evaluating the bar licensure requirements and recommends reforms to the licensure process. This proposal gives the Washington Supreme Court more responsibility for and control over entry into the legal profession in order to: protect the public and improve trust in the legal profession, advance the cause of diversity equity and inclusion, facilitate lawyer competency, and reduce barriers to entry into the legal profession.

Summary of Updates to the Previous Proposal, Following Review of Public Comments

On October 11, 2023, the WBLTF presented its Proposal for the Future of Washington State Bar Admissions to the Court. The Proposal included seven recommendations for changes to the state's current attorney licensure pathways and four changes to the scope and procedural rules for the character and fitness assessment. The Court made the Proposal available to the public and invited the public to comment on the recommendations by emailing an address that the WSBA monitored. The public comment period began on October 11, 2023, and concluded on January 11, 2024. 73 comments were received from an array of sources, including attorneys practicing in Washington State, current or past APR 6 Law Clerks, law students and recent graduates, legal aid and volunteer legal services representatives, and law professors. The WSBA made the comments available to the WBLTF and provided a brief summary of the comments for the Task Force's review. Upon reviewing the comments, the Task Force has addressed those clustered around three recommendations: (1) the timing of the adoption of the NextGen Bar Exam; (2) the APR 6 Law Clerk Apprenticeship; and (3) revisions to the Character and Fitness review. Immediately below, please find a brief summary of the Task Force's responses to the public comments. And further below, where appropriate, the Task Force has updated other portions of this proposal to reflect its reflections and responses to the public comments.

NextGen Bar Exam Adoption

The Task Force's Proposal recommended that the Court maintain a bar exam as a pathway to attorney licensure, and that the Court adopt the NextGen Bar Exam for administration when it first becomes available in July 2026. Several writers, including prominent law professors who

are involved in the attorney licensure reform movement, recommended delaying the adoption of the NextGen Exam until 2027 or 2028 to give law schools more time to prepare graduates for the new exam and to give the NCBE time to refine the exam and work out any issues with its administration. The comments resonated with the Task Force. We suggest the Court delay adopting the exam until 2027. Law school representatives on the Task Force emphasized the importance of getting clarity on when Washington State will begin administering the NextGen Exam. The sooner law schools know when the state will adopt the exam, the better.

Character and Fitness Review

The Task Force's Proposal recommended the following changes to the Character and Fitness assessment: (1) changes to APR 21 and 24.1, which govern the scope and burden of proof for the character and fitness assessment; (2) the implementation of a conditional admission process; (3) adjusting the timing of the character and fitness review process; and (4) creating an information resource for applicants and assigned counsel ombudsperson. The Task Force publicly and privately received comments about the recommendations from individuals and organizations. The feedback overwhelmingly supports the recommendations and included multiple offers to join any future work groups or task forces created by the Court to conduct review and analysis of the areas seeking additional change. These offers came from scholars from around the country to current and former members of the Washington Character and Fitness Board.

Next Steps

Should the Court approve any recommendation, the Task Force urges the Court to appoint an implementation committee to flesh out the details of the recommendation and propose relevant rules changes.

Executive Summary

The best available data indicates that the bar exam disproportionately and unnecessarily blocks historically marginalized groups from entering the practice of law.[1] In addition to the racism and classism written into the test itself[2] the time and financial costs of the test reinforce

[1] While most states do not report demographic data on bar passage, the ABA recently conducted a study of first time test takers which showed that in 2021 white graduates were almost 40% more likely to pass the bar exam than Black graduates. https://www.americanbar.org/news/abanews/aba-news-archives/2022/05/new-aba-data-breaks-down-bar-pass-rates/?login Even worse, a similar study from LSAC in 1998 shows that the racial disparity in bar exam pass rates has remained virtually unchanged in the last 25 years despite numerous efforts from NCBE and state bar regulators to remove racial bias from the bar exam. https://archive.lawschooltransparency.com/reform/projects/investigations/2015/documents/NLBPS.pdf Those statistics are consistent with reports from states that do publish demographic data. https://www.calbar.ca.gov/Admissions/Law-School-Regulation/Exam-Statistics

[2] The creation of the bar exam coincided with the first Civil Rights Act in 1875. After three Black lawyers were unintentionally granted membership in the ABA in 1914, their membership was revoked and a meeting was convened to discuss keeping the profession "pure." A mandatory bar exam was part of the proposed solution.

historical inequities in our profession.[3] Despite these issues, data indicates that the bar exam is at best minimally effective for ensuring competent lawyers.[4] Among the deficiencies and common complaints about the bar exam is that it bears little resemblance to actual practice and tends to simply restate the same results already provided by law school grades.[5]

For these reasons and others the WBLTF proposes creating additional, experiential pathways to bar licensure that protect the public by improving lawyer skills while reducing the unproductive barriers for historically marginalized groups to enter the profession. This proposal would have a substantial positive impact[6] on the profession using the existing infrastructure in law schools and WSBA.[7]

The following seven pieces of this recommendation are outlined in detail below: 1) maintain the bar exam in its current form for those who choose to take it while advancing the cause of improvement to the bar exam; 2) create an experiential pathway to practice for law school graduates; 3) create an experiential pathway to practice for law school students; 4) create an experiential pathway to practice for APR 6 clerks; 5) recommend that WSBA research, with the goal of implementation, assessments that identify strengths and growth areas for lawyers and specific training programs that can be implemented throughout the course of a lawyer's

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George B. Shepherd, "No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools," 53 J. of Legal Education 103 (2003)

South Carolina maintained diploma privilege until 1950 when the first class of students were set to graduate from a Black law school at which time the bar exam was made mandatory to prevent "negroes and some undesirable whites" from entering the profession. Michael Boylan, The Ethics of Teaching (2006).

Carl Brigham, creator of the SAT and leader of the American Eugenics Society, designed and used intelligence tests to argue that "[t]he decline of American intelligence will be more rapid than the decline of the intelligence of European national groups, owing to the presence here of the negro ... The deterioration of American intelligence is not inevitable, however, if public action can be aroused to prevent it." As Wayne Au of the University of Washington put it, "the assumptive objectivity of standardized testing was thus used to 'scientifically' declare the poor, immigrants, women, and nonwhites in the U.S. as mentally inferior, and to justify educational systems that mainly reproduced extant socioeconomic inequalities." https://www.teenvogue.com/story/ the-history-of-the-sat-is-mired-in-racism-and-elitism.

[3] "Factors Affecting Bar Passage Among Law Students: The REAL Connection Between Race And Bar Passage," May 15, 2018, https:// aaattorneynetwork.com/factors-affectingbar-passage-among-law-students-the-realconnection-between-race-and-bar-passage/.

[4] Marjorie M. Shultz & Sheldon Zedeck, "Identification, Development, and Validation of Predictors for Successful Lawyering" https://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf; Kyle Rozema "Does the Bar Exam Protect the Public" 2021.

[5] Lorenzo A. Trujillo, "The Relationship between Law School and the Bar Exam: A Look at Assessment and Student Success," 78 University of Colorado Law Review 69 (2007); Nicholas L. Georgakopoulos, "Bar Passage: GPA and LSAT, not Bar Reviews," draft 2013; Katherine A. Austin, Catherine Martin Christopher & Darby Dickerson, "Will I Pass the Bar Exam?: Predicting Student Success Using LSAT Scores and Law School Performance," 45 Hofstra Law Review 753 (2017).

[6] In an LSAC commissioned study it was shown that assessments of practical skills were highly effective at predicting effective lawyering. *Supra* fn.4 Schultz.

[7] See rules and requirements in WA APR6, APR9, and ABA Standards and Rules of Procedure for Approval of Law Schools

career;[8] 6) reduce the time requirement for admission by motion to one year; and 7) lower the cut score for bar exam passage back to 266. These proposed reforms relate only to the bar exam. Participants in each proposal would still be expected to complete all WA licensure requirements other than the bar exam.

Background

Picture our current licensing system as a dam, rather hastily built, with a purpose of controlling the amount of water flowing downstream. The water represents a supply of individuals with the capacity to practice law and the earnest desire to do so. The downstream land represents communities in need of legal services. The dam was constructed in such a way that it holds back more water than it should. The downstream land grows parched, especially in historically marginalized communities that already had trouble accessing legal services. Upstream pressure builds with individuals with a sincere ability and desire to serve their communities.

In July of 2020, the Court pierced the dam with diploma privilege, enabling a larger than normal cohort of law graduates to become licensed. Later, in recognition of the challenges graduates faced in preparing for and sitting for the Bar Exam during the pandemic and in the midst of the Racial Reckoning movement, the Court lowered the exam cut score from 270 to 266, permitting more individuals to provide legal services. As a result of these changes, much needed water in the form of legal services, begins to flow downstream.[9]

In November 2020, concerned about the purpose, function, and impact of the bar exam—this dam—then-Chief Justice Stephens chartered this Task Force, which was continued under Chief Justice Gonzalez. The first meeting brought hope, excitement, anger, and fear, but those emotions inspired energy. After that first meeting, the WBLTF established committees to explore data, history, character and fitness, ethics, alternatives to the bar, reciprocity, equity, and lawyer competencies. Those committees have met, worked, and reported back.

Through our study of the history of licensing attorneys in Washington, we now know that the bar exam has been, to some extent, part of the licensure process since the earliest days of the legal profession in the United States and Washington. Early examiners were interested in verifying (1) legal education and (2) moral qualifications. Written examinations were historically offered alongside other paths to licensure—including diploma privilege, oral examination, and apprenticeships—to ensure diverse routes to practice.

The ABA originally opposed diploma privilege for added uniformity in the opportunity for bar licensure, which has less significance in the current legal education and accreditation landscape. Other groups, such as NBA, took the opposite position. Multiple-Choice examination was

[8] This is especially important because most disciplinary issues arise after more than ten years in practice. *See* Washington Discipline System Annual Reports.

[9] In the five exams that have taken place since the lowered score an additional sixty-six attorneys have become licensed in Washington as a result of that change.

thought to be a pedagogical improvement at the time. However, criticism of its incongruence with legal practice has been present from the beginning.

In the 1920s less elite law schools sprouted up, typically night schools, which made legal education accessible to immigrants and other traditional outsiders. State bar examiners' responses was to lengthen period of study for evening/part-time programs and require bar exam passage. In the 1960s, while the Civil Rights movement phased out formal racism, a "veiled or nonformal racism came in—racism under the guise of excellence, fairness, equal opportunity, all the things that make up the constellation of attitudes and standards we call 'merit.'"[10] For example, the presence of Black law graduates led a number of states to rethink diploma privilege.

We have seen data that described in alarming terms (see Executive Summary) just how disparate the impact of the bar exam has been on people of color who continue to be underrepresented in the practice of law, and as a result, communities of color are underserved.

We have heard about the complex, opaque, and arguably unfair process that is our current Character and Fitness review. We have considered a set of proposals to reform the review.

We have learned that until recently, no one has paid much attention to defining the levels of knowledge and skills that newly licensed lawyers ought to have to be able to practice. We have deepened our understanding of lawyer competencies through examining the work of Debby Merritt and her Building a Better Bar project, the NCBE's and California's practice analyses, and Joan Howarth's work on Shaping the Bar Exam.

We have reviewed the NCBE's newest product—the NextGen exam.

We have considered an array of licensure reform efforts, and all of that has brought us here.

Around the Country

In 2005, New Hampshire began the attorney licensure reform effort with its Daniel Webster Scholars Honors Program at UNH's Franklin Pierce Law School. Law students accepted into the program participate in a structured curriculum, which includes experiential educational courses, and assemble a portfolio demonstrating minimum competence to practice law. The Institute for the Advancement of the American Legal System (IAALS) evaluated the program several years after it was founded and concluded that graduates of the program performed more capably in practice than their peers who had passed the written bar exam.

Since 2005, nine states, including Washington, have appointed committees that are exploring whether to reform their attorney licensing programs, and if so, whether to include a pathway in addition to a bar exam for licensure.[11] Committees in all nine states have proposed or

[10] Joan Howarth "Shaping the Bar"

[11] The states that have appointed committees are California, Georgia, Massachusetts, Minnesota, Nevada, Oregon, South Dakota, Utah, and Washington. https://lawyerlicensingresources.org/jurisdictions

recommended at least one pathway to licensure in addition to the bar exam. Several other states, Colorado, Delaware, and New York are in the early stages of exploring licensure reform.

Oregon is furthest along. In 2022, the Oregon Supreme Court approved "in concept" two examination models in addition to the Uniform Bar Exam, a supervised practice model and an experiential model. A committee has published proposed rules for the supervised practice pathway and sought and received public comment on them. In light of the public comment, the committee adjusted the rules and sent a final set to the Oregon Board of Bar Examiners in August 2023. The Board unanimously approved the rules and forwarded them to the Oregon Supreme Court. Following a hearing on the rules in September 2023, the Court unanimously approved them in November 2023Oregon's Board of Bar Examiners will implement the supervised practice pathway by May 2024. Oregon's committee continues to work on the curricular pathway and will publish rules when they are ready.

In 2022, Minnesota's Board of Law Examiners published a set of tentative recommendations, which included pathways to licensure in addition to the bar exam and sought public comment on them. Following revisions, the Board published a final set of recommendations in March 2023 and again sought public comment. In June 2023, the Board delivered a final report to the Minnesota Supreme Court. The final recommendations include creating an implementation committee to explore and develop a curricular-oriented pathway to licensure that candidates could complete during law school. The Board expressed interest in a post-law school pathway to licensure but declined further consideration of the pathway while the committee develops the curricular pathway. The Minnesota Supreme Court has invited public comment on the Board's recommendations and held a public hearing on October 25, 2023. The Court is currently considering whether to create implementation committees to build curricular and post-graduation pathways to licensure.

In April 2023, Nevada's Supreme Court appointed two task forces to advance the work a court-appointed commission recently completed. The Foundational Subject Requirement and Performance Test Implementation Task Force will develop approaches to assessing candidates' foundational knowledge and skills. The Supervised Practice Task Force will study whether Nevada's licensure process should include a supervised practice requirement. The Task Forces were ordered to make recommendations by April 1, 2024.

Appointed in 2022, South Dakota's bar admissions committee, is exploring whether to create curricular and post-graduation licensure pathways. A report from the committee is forthcoming.

During summer 2023, Utah's committee proposed an alternative pathway to licensure, one that includes the following requirements: candidates must complete a set of classes during law school, including doctrinal, legal writing, and experiential courses; candidates must pass a performance test; and candidates must complete 240 hours of post-graduation supervised practice. The Utah Supreme Court is currently considering the proposal.

In May 2023, California's Blue Ribbon Commission on the Future of the Bar Exam submitted a report to the California Bar's Board of Trustees recommending that California modify its state-specific bar exam. The Commission's report did not advance any recommendation regarding alternative pathways. The Commission was evenly split on whether to recommend formation of a new committee to explore other pathways; several motions for and against that recommendation failed. In accepting the Commission's report in May 2023, the Board of Trustees suggested that it would like to review a detailed proposal for an additional pathway to licensure. In September 2023, a working group comprised of former members of the Commission proposed a Portfolio Bar Exam as an alternative to licensure. The Portfolio Bar Exam would require candidates to complete a prescribed set of courses during law school and participate in a post-graduation period of supervised law practice. During their supervised practice, the candidates would assemble a portfolio demonstrating minimum competence to practice law. Following a public comment period, the Board recommended that the California Supreme Court create a pilot Portfolio Bar Examination. The Court is expected to act on the recommendation soon.

New York's status is unclear. A task force established by the New York State Bar Association recommended that New York move from the Uniform Bar Exam to a state-specific bar exam and that the bar association "should consider providing" alternative licensure pathways that are similar to those emerging from Oregon, Minnesota, and Washington. A working group established by New York's highest court, however, has not yet issued any report.

Our Recommendations

1) The Bar Exam

While race-equity and effectiveness concerns regarding the Uniform Bar Exam (UBE) abound, Washington should continue to offer the UBE as a pathway to licensure. The National Conference of Bar Examiners (NCBE) will begin offering a revised version of the UBE, the Next Gen Exam[12], in July 2026. The Task Force suggests that the Court delay adopting the NextGen Exam until 2027 to allow the NCBE to refine the exam and its administration and to give law schools time to help students prepare for the exam.

Providing the UBE as a licensure pathway preserves opportunities for reciprocity and could provide a control sample for later study into the effectiveness of both the bar exam and the proposed alternatives. Information the Task Force has received from the NCBE so far suggests that the Next Gen Exam will address some, though not all, of the race-equity concerns with the current version of the UBE.

The NextGen Exam is better positioned to assess the competencies practitioners are looking for in newly licensed lawyers. The NextGen Exam will cut back on the number of topics tested, and within the topics, it will cut back on the amount of highly detailed information that graduates

[12] https://www.ncbex.org/about/nextgen-bar-exam/

will need to memorize. In a departure from the current emphasis on multiple-choice questions, the NextGen Exam will utilize an integrated question format that includes a range of question styles, including essay, short answer, and multiple-choice questions, on related areas of law. On some topics, the NextGen Exam will provide legal material to the candidate and ask the candidate to synthesize the information and apply it to a novel fact situation. The NextGen Exam will assess some of the skills newly licensed lawyers should possess, such as client counseling and advising and the ability to engage in legal research. And the NCBE has stated that the NextGen Exam will not be a "speeded" exam, which requires candidates to rapidly move through questions.

These changes not only will make the NextGen Exam a better tool for assessing candidates' competency to practice, but the changes are also intended to make the NextGen Exam a fairer exam than the current UBE.[13] Limiting the number of topics tested, reducing the amount of legal information candidates must memorize, shifting the focus of the exam to an integrated and skills oriented format, and deemphasizing speed of performance, will change the way that candidates prepare for the exam, potentially reducing the post-graduation prep time, allowing candidates who have work or family obligations to meet them and enabling the students to move through the exam in a more thoughtful and less "speeded" manner.

2) Graduate Apprenticeship

The WBLTF recommends the adoption of an apprenticeship program by which law school graduates may become licensed. The program would draw on the tutoring and licensing requirements already codified in APR 6 and APR 9 to allow those who satisfactorily complete a six-month program to waive out of the bar exam.

APR 6[14] creates Washington's law clerk program, by which an individual may gain qualification to sit for the bar exam without attending law school. Applicants must (among other requirements) "be of good moral character and fitness,"[15] be a full-time employee of an approved tutor in a "(i) law office, (ii) legal department, or (iii) court of general, limited, or appellate jurisdiction in Washington State," and complete four years of coursework at a rate of six courses per year. Tutors must be approved by WSBA and must be a member in good standing with no disciplinary sanctions in the last five years and must have practiced for at least ten of the last twelve years with at least two of those years taking place in Washington.

APR 9[16] creates Washington's licensed legal intern program, by which an individual can be authorized to practice law in a limited and supervised capacity prior to obtaining a full license. Applicants must (among other requirements) be a student or graduate in good standing who

[13] It is important to caveat this statement by pointing out that a number of initiatives the NCBE has adopted over the past twenty-five years were expected to reduce inequity in the exam but there has been no measurable impact on the bar exam's disparate racial impact. *Supra* fn. 1.

[14] https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_06_00_00.pdf

[15] https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_20_00_00.pdf

[16] https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_09_00_00.pdf

has completed at least two-thirds of their coursework and who has permission from the Dean of their law school. Supervising attorneys must be active members in good standing who have practiced for at least three years and who have no disciplinary sanctions at all in the last three years and no suspensions or disbarments in the last ten years.

Under this proposal law school graduates who wish to become licensed through an apprenticeship would need to meet the requirements of APR 9 and their supervising tutors would be required to meet the requirements of APR 6. This would allow graduates to gain practical skills and demonstrate knowledge through the experience of practicing for six months under the guidance and supervision of a qualified attorney. Graduates would also be required to complete six months of the standardized APR 6 coursework or three courses.

This proposal would give Washington more control over the admission of its lawyers while reducing the costs to admission and creating a less-biased[17] path to entry. The proposal would simultaneously ensure that licensed lawyers have the practical skills and training needed to practice. Though historically the APR 6 law clerk program has struggled to find tutors, this proposal would likely not face the same barriers because it is a shorter program, and it would enable law firms to hire recent graduates without the fear of bar study and passage being a barrier to those graduates being productive employees.

3) Law School Experiential Pathway

In addition to the apprenticeship program, the WBLTF recommends an experiential pathway to licensure that would allow students to graduate law school ready to practice. This experiential pathway would draw upon existing law school courses and ABA standards as well as APR 9 and similar rules to ensure that students have both training and experience in practical lawyering skills at graduation.

Under the ABA's law school graduation requirements[18] law schools are required to offer practical skills courses and students are required to complete at least six skills credits to graduate. Law schools offer a variety of coursework under the skills category such as mediation, pre-trial advocacy, negotiations, criminal motions practice, and contract drafting. These courses have been developed and made mandatory as part of an increasing push in the legal industry to ensure that law schools are teaching not just how to think like a lawyer, but how to practice like a lawyer.

APR 9[19] allows law students to practice law under the guidance and supervision of a qualified attorney (*see supra* Section 2). Many other states have similar programs. In Indiana, Admission and Discipline Rule 2.1 creates the "Legal Interns" program which lets students who have

[17] Work will need to be done to support diversity, equity, and inclusion in this program especially in the recruitment of tutors, but by enabling people to demonstrate competence without the cost and time burdens of law school and a bar exam, this avenue will expand opportunities for historically marginalized groups.
[18] ABA Standards and Rules of Procedure for Approval of Law Schools
[19] https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_09_00_00.pdf

completed half of their law school coursework (including some specific classes like ethics) engage in supervised practice. Oregon's Rule for Admission 13 creates a "Law Student Appearance Program" for students who have completed four semesters of coursework. As APR 9 says, these programs play "an important role in the development of competent lawyers and expands the capacity of the Bar to provide quality legal services while protecting the interests of clients and the justice system." For that reason, the WBLTF feels that further encouraging the engagement in this program serves our mission.

Under this proposal students who wish to graduate practice ready and waive out of the bar exam would be required to complete twelve qualifying skills credits and five hundred hours of work as a licensed legal intern or equivalent providing legal services to actual clients. The credit requirement would provide a substantial boost to their practical lawyering skills while the five hundred hours of work would provide the experience necessary to be practice ready.

Law students would be required, as part of their bar application, to submit a portfolio representing work done during their five hundred hours. Law schools offer a wide variety of clinical programs through which students could obtain that experience including federal tax law, immigration law, tech law and policy, regulatory environmental law, and appellate advocacy.[20] As part of this proposal, APR 9 would be amended to change the law coursework completion requirement from completing two-thirds of their legal education to completing one-half of their legal education.

4) APR 6 Apprenticeship

The APR 6 program already accomplishes the goal of training individuals in the experiential side of the practice of law. In addition, APR 6 clerks are required to complete coursework and be assessed on that coursework throughout the program. Historically, this path to licensure has operated since the beginning of the legal profession without any identifiable harm to the public. That said, a standardized exam like the bar exam puts perceptions of APR 6 clerks on a level playing field with law school graduates and the current APR 6 program participating law clerks and tutors create their own curriculum and exams for all of the required coursework.

To mitigate these risks and create an alternative to the bar exam for APR 6 clerks, the WBLTF proposes the creation of additional standardized educational materials and benchmarks that APR 6 clerks must complete under the guidance and supervision of their tutors to be eligible to waive the bar exam. This Law Clerk Admission Coursework should be developed by WSBA in conjunction with the WA Law Schools and the Law Clerk Board and should dovetail with the requirements of the law school graduate apprenticeship. Additionally. Additionally, APR 6 clerks would be required to get the same five hundred hours as an APR 9 intern required for the law school experiential pathway, which can be done while they are participating in the law clerk program.

[20] https://www.law.uw.edu/academics/experiential-learning/clinics

5) Alternative Assessments and Interventions

Because lawyer competence spans careers and is not a moment in time, the WBLTF recommends the investigation and adoption of assessments and data collection that can help ensure lawyers remain competent throughout their careers. While competence to practice law is decided once and only once at the moment of licensure, data shows that the majority of public harms brought about by lawyers occur after more than ten years in practice.[21] More importantly, the data indicates that the majority of lawyer disciplinary issues stem from burnout and carelessness, not lack of legal knowledge.[22] In our current system, the only program in place to protect the public proactively are CLE requirements which, though valuable, are judged based solely on attendance and have no way of ensuring comprehension and retention of information.

The WBLTF recommends that WSBA with the support of the Supreme Court begins the task of investigating and implementing alternative assessments to help identify the strengths and growth areas of new lawyers. LSAC previously studied what traits, qualities, and skills make an effective lawyer. It identified a number of assessments that were highly effective at predicting who would be a good lawyer, and which had no disparate impacts on historically marginalized groups.[23] WBSA could begin by working with the LSAC researchers to offer CLE credit for lawyers to take these assessments. The data from these assessments could be analyzed in conjunction with existing data on lawyer discipline to measure their effectiveness and identify targeted measures that could reduce the risk of lawyers causing harm during their career. This effort should be undertaken in conjunction with a study of recidivism in lawyer discipline in Washington to identify what current programs are most effective at ensuring lawyer competence throughout careers. The information from these two studies will guide the next steps toward strengthening the legal profession and broadening the path to licensure from a moment in time to an ongoing commitment.

6) Reciprocity

Based on the above alternative paths to admission, the WBLTF additionally recommends that the timeline for out-of-state licensed attorneys to be eligible for admission by motion be reduced to one year. For the same reason the WBLTF believes that a six-month post-law-school apprenticeship program is sufficient to qualify a lawyer to practice in WA, the WBLTF believes that actively practicing in another state for one year or more qualifies an attorney to waive out of taking a second bar exam to practice in Washington. Washington law and procedure is not identical to other states, but our current reciprocity requirements are not based on similarity to Washington practice. As the data discussed in detail above demonstrates, readiness to practice

[21] See Washington Discipline System Annual Reports.

[22] Only around 2% of bar complaints relate to RPC 1.1 Competence. 1.4 Communication, 1.3 Diligence, 1.16 Declining or Terminating Representation, and 3.2 Failure to Expedite Litigation account for almost 30%.

[23] Marjorie M. Shultz & Sheldon Zedeck, "Identification, Development, and Validation of Predictors for Successful Lawyering" https://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf; Kyle Rozema "Does the Bar Exam Protect the Public" 2021.

is not about memorization of a jurisdiction's law, but practical knowledge of how to practice law. Actively practicing in good standing for a year in any state demonstrates the experience necessary to practice in Washington.

7) Bar Pass Score

In addition to the above, the WBLTF recommends that action be taken quickly to reduce the bar passage cut score from 270 back to 266. During the pandemic the bar cut score was temporarily reduced to 266. Currently, jurisdictions use cut scores ranging from 260 to 272 with a median of 268 and an average of 267.[24] A recent study examining the California bar exam demonstrated that lowering the cut score for passing the bar exam had a valuable impact on reducing the equity gap in lawyer licensing without risk of harm to the public.[25] While these results are promising, even after substantially decreasing the cut score, a significant gap remains between the pass rates of white applicants and applicants of color. Perhaps the most significant finding of this study was that reducing the cut score has no measurable impact on complaints, charges, or disciplinary action taken against lawyers. There even appeared to be an inverse correlation in which higher cut scores were correlated with an increase in complaints against lawyers. This evidence, while limited, further indicates the flaws in our current bar licensure system. This research should also be considered when assigning a cut score for the Next Gen Bar Exam as Washington State begins that transition.

Frequently asked questions

Q: Why five hundred hours for law school apprenticeship?

A: Five hundred hours ensures that qualifying students have had practical experience above and beyond the basic activities that most law students will accomplish. Most law students will have a 2L summer job spending 10 weeks working in a legal capacity. For students who chose to register under APR 9 for that summer, that results in 400 hours. That would require students to get an additional 100 hours of experiential work during their 3L year to complete the program (about 3 hours of work per week).

Q: Do law schools have to provide opportunities for students to achieve the required 500 apprenticeship hours within the curriculum?

A: No. Given that most law students engage in legal work during their 2L summer, it is assumed that the majority of students who chose to pursue an experiential path will obtain most or all of

[24] The full list of cut scores by jurisdiction can be viewed here https://www.ncbex.org/exams/ube/ube-minimum-scores

[25] Examining the California Cut Score: An Empirical Analysis of Minimum Competency, Public Protection, Disparate Impact, and National Standards
https://deliverypdf.ssrn.com/delivery.php?ID=382022091086004007100077107116106027029011095077058037071001069109067127104092070024048096036099043030006119127008107078067087040066043048077001065085071083102080092008007076008021064017101004121014085094072121003098092087102094000031006068112111127120&EXT=pdf&INDEX=TRUE

the required 500 hours in externships, which can include paid summer work and work during the school year. While some law schools will likely choose to distinguish themselves by offering additional opportunities, this proposal does not impose any requirements on law schools and it is expected that different law schools will make different choices consistent with their individual academic considerations.

Q: Are law schools obligated to offer the experiential track to students?

A: No. This proposal does not in itself mandate any action from law schools. It is assumed that law schools, especially those in Washington, will want to offer an experiential pathway to licensure to their students. However, law schools may place caps on the number of students who can participate each year based on whatever needs and criteria the individual school chooses. Students who are unable to graduate and immediately waive out of the bar will still have the opportunity to participate in a graduate apprenticeship and obtain a license through that program. For students who are not able to participate in the experiential track, law schools that wish to help will still have an opportunity to aid those students in obtaining apprenticeships in much the same way the schools aid in obtaining first jobs out of school.

Q: What is the experience requirement for tutors in the graduate apprenticeship program?

A: APR 6 requires that a tutor have practiced for at least ten years of the last twelve years and have no disciplinary sanctions in the last five years. As part of this proposal the WBLTF recommends reducing the practice requirement to seven of the last ten years. This will increase involvement in the struggling marketplace of tutors and create more opportunities for law clerks and graduate apprentices without having a negative impact on the quality of tutors.

Q: How many applicants can a tutor oversee in the graduate apprenticeship and law school programs?

A: Under APR 6, tutoring is always one-to-one. To ensure quality of tutoring, this rule should be maintained for the graduate apprenticeship program. Under APR 9 the number of interns that can be supervised by a single attorney varies based on practice. Law School faculty are authorized to supervise ten students. Public sector attorneys are authorized to supervise four students, and private practice attorneys are authorized to supervise one law student. To increase, involvement the WBLTF recommends increasing the number of students a private practice attorney is authorized to supervise from one to four.

Q: Do the graduate apprenticeship and law school programs apply only to ABA accredited law schools?

A: No. The history of the accreditation system is steeped in the same racism and lack of pedagogical justification that mires the bar exam. Accreditation was another way for the ABA and states to preclude people of color and the poor from having access to the legal profession. Many of the early non-accredited schools were looked down upon for their focus on practical skills and even at times their focus on training students to pass the bar exam. Under this

program, WSBA will have more control of entry to our profession and in that will have the right to look at the programs of other schools (accredited and not) to determine if the coursework qualifies a graduate for licensure.

Q: Who will determine whether a law school skills course curriculum is qualified?

A: Under our current system, to be eligible for the bar exam law students must graduate from "a law school approved by the Board of Governors." Under this proposal the Board of Governors would continue in that same role determining which state's legal intern programs are approved and which law schools have a sufficient skills course curriculum.

Q: Are LL.M. students included in the law school apprenticeship and graduate apprenticeship programs?

A: Yes. While accomplishing the requirements of the apprenticeship programs will be more difficult for LL.M. students due to time in school and visa requirements, there is no rational basis to exclude LL.M. students from this program. Rather, LL.M. students would greatly benefit from the practical experience requirements of the apprenticeship programs. See attachment for additional information.

Q: Who would decide if another state's program is "equivalent" to APR 9?

A: Under this proposal, the current licensing review programs would be expanded in purpose to review apprenticeship applications and make determinations about whether out of state applicants had met the requirements. For example, an applicant from Indiana would have only been required to complete half of the law school curriculum instead of two-thirds as required by APR9. The Board would be charged with reviewing the program and determining whether that timing change had a meaningful impact on the practice-readiness of the applicant.