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**MAJOR CHANGES
COMING TO THE
TENNESSEE
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The Tennessee bar exam is getting a major overhaul in a few years—and it won't resemble anything like the current format of the exam that hundreds of hopeful Tennessee lawyers take each February and July.

Earlier this year in January, the National Conference of Bar Examiners, the organization that develops licensing tests for bar admissions, adopted the recommendations of a testing task force that the NCBE had put together to re-examine the bar exam.¹

The task force's recommendations were based on an empirical study that was conducted in three different phases over a three-year period. The study looked at how to ensure that the bar exam continues to assess the minimum competencies required of newly licensed lawyers in an evolving legal profession and to determine how those competencies should be assessed. In all, the task force's work included soliciting and examining statements from more than 400 stakeholders about their views on the bar exam (Phase 1), administering a survey of nearly 15,000 practicing attorneys (Phase 2), and holding focus groups made up of bar admissions representatives, legal educators, and practitioners to analyze the survey data (Phase 3).²

What Will Change

The revised bar exam, which could debut in four to five years, will place greater emphasis on assessing lawyering skills that reflect real-world practice and the types of activities newly licensed lawyers perform rather than memorization of a broad universe of legal subjects.³

"I think revising the bar exam to focus on testing 'real world' lawyering skills is long overdue," said Vikky Kirichenko, an attorney for Kenneth Miller & Associates, who passed the October 2020 remote admissions assessment when the July 2020 in-person bar exam was canceled because of the pandemic. "While studying for the exam, I couldn't make sense of why we were being tested on memorization of law that is easily accessible in the 'real world.' A majority of what I memorized has already been forgotten, but I will always know how to find it. Minimal competency should be based on actual skills rather than regurgitation."⁴

The updated exam will eliminate the three distinct components of the current bar exam—the 200 multiple-choice questions that make up the Multistate Bar Exam; the two closed-universe lawyering skills tests known as the Multistate Performance Tests; and the six essays that are part of the Multistate Essay Exam. In its place, the NCBE approved the development of a more integrated format that will incorporate a mix of question types and formats (including multiple-choice, short-answer, and essay-type questions) to test examinees' content knowledge and lawyering skills together. The questions to which examinees will respond could be text-based or video-based.⁵

In terms of content, the new exam will eliminate conflict of laws, family law, secured transactions, and wills and trusts, all of which are currently tested in Tennessee. Subjects that are being retained are all the subjects currently tested on the multiple-choice portion of the bar exam (contracts and sales; civil procedure; constitutional law; criminal law and procedure; evidence; torts; and real property) as well as business associations.⁶

In addition, foundational lawyering skills like investigation and evaluation, client counseling and advising, negotiation and dispute resolution, and client relationship and management will be assessed as part of the new bar exam.⁷

Finally, the NCBE recommends that the new bar exam be entirely computer-based.⁸ Currently, in Tennessee, examinees complete the multiple-choice portion of the bar exam on paper, and they are given the opportunity to use computers or handwrite their responses to the written portion of the bar exam.

What Won't Change

Many aspects of Tennessee's current bar exam will remain the same. What won't change is the frequency of the exam. The new bar exam will still be offered twice a year—each February and July.⁹ The new bar exam will also continue to be a closed-book examination.¹⁰

The NCBE has also indicated that the new bar exam will be no longer than the current 12-hour, two-day exam. But it hinted that the length of the new exam could be reduced if the validity of the exam and the reliability of the scores could be maintained.¹¹

And despite the need for remote administrations of the bar exam in Tennessee and many other jurisdictions on the last two administrations as well as the upcoming July 2021 exam, the NCBE recommends in-person administration of the bar exam either at test-centers managed by vendors or on examinees' laptops at jurisdiction-managed sites.¹²

While many of the anticipated changes may represent a shift in what is being tested, Lisa Perlen, executive director of the Tennessee Board of Law Examiners, who participated in two of the three phases that the task force conducted before it made its recommendations to the NCBE, said that the changes do not represent a shift in what newly licensed attorneys need to know.

"[Examinees] will need to know the same basic lawyering skills that they needed to know previously," Perlen said. "We have to keep in mind that we're not changing the requirement for lawyering skills. Rather, it's how those lawyering skills are tested that will change" with the administration of the new bar exam.¹³

While a specific date has not yet been announced as to when aspiring lawyers will see the new bar exam, the NCBE anticipates that the new version of the bar exam will debut in about "four to five years," which means that students beginning their legal studies in the Fall of 2022 could be the first group to take the new bar exam.

Law school administrators and bar review course providers are paying close attention to what the new bar exam means to what they offer to students.

"At LMU Law, we are closely monitoring the upcoming changes in the structure and content of the bar exam so that we can adapt our curriculum and exam practices accordingly," said William Gill, Associate Dean for Academic Affairs and Associate Professor of Law at Lincoln Memorial University Duncan School of Law. "We view the evolution of the bar exam as an opportunity to emphasize the fundamental skills that law students need to pass the bar and to succeed in practice."¹⁴

Helix Bar Review by AccessLex, which is currently developing a bar review course to compete with the likes of BARBRI, Kaplan, and other commercial bar review companies, still plans to launch its new Uniform Bar Exam review course in the Fall of 2021.

"[The new bar exam] does create a limited shelf life for the UBE course," said Christopher Chapman, president and chief executive officer of AccessLex Institute. "But I would feel differently if the NCBE announced that they would be completely reworking the bar exam in two years instead of five. Five years is a long time."¹⁵

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Much Still to be Determined

Although the NCBE has approved the task force's recommendations for the new bar exam, many of the specifics and details of the new bar exam is still unclear. While the NCBE anticipates being able to release prototypes of integrated exam questions by the end of the year, it has outlined several steps it will have to complete over the next four to five years before the new bar exam can be a reality.

Some of the major steps of implementation will include: developing and field-testing new types of questions; establishing scoring processes and psychometric methods for equating/scaling scores, and assisting jurisdictions to prepare and supporting them in activities such as setting passing score requirements and amending rules to align with changes to the exam.¹⁶

Change Is Not New in Tennessee

The upcoming changes to the Tennessee bar exam will be the third time the exam in Tennessee has been modified since 2011.

Prior to 2011, the Tennessee bar exam consisted of the 200-question Multistate Bar Examination, drafted by the NCBE, along with a dozen 30-minute locally drafted essays. The essays, at that time, were graded on a pass-fail basis. The greater the number of essays that examinees passed, the lower the score examinees had to earn on the multiple-choice portion of the exam.

Beginning in 2011, however, Tennessee modified the exam by adopting the NCBE's Multistate Performance Test and reducing the number of locally drafted essays appearing on the bar exam to nine. Tennessee also did away with the pass-fail grading of the essays and, instead, assigned scores to each essay and the MPT, setting the passing score at 270 scaled points out of 400 possible scaled points, and weighting the written and multiple-choice portions of the exam equally.

More recently, beginning with the February 2019 bar exam, Tennessee administered its first Uniform Bar Exam—which is still the format of the bar exam that exists today in Tennessee and which is used in more than 40 jurisdictions. The UBE consists of 200 multiple-choice questions; six 30-minute essay questions drafted by the NCBE; and two Multistate Performance Tests. The UBE provides examinees with a portable score that permits them to transfer that score to other UBE jurisdictions where the examinees meet the minimum scoring requirements. This allows examinees to be licensed in another jurisdiction without having to take the bar exam again, assuming all other admission requirements of the jurisdiction are met.

Perlen, who serves as a member on the NCBE Uniform Bar Examination Policy Committee, said the new bar exam will retain the score portability aspect of the current Uniform Bar Exam and likely won't have an impact on the Tennessee Law Course, which was adopted along with the Uniform Bar Exam. The TLC is a mandatory online course on Tennessee-specific law and is one of several requirements that must be completed prior to approval for licensing and admission in Tennessee.



"The purpose of the TLC is to provide insight and notice of distinctions in Tennessee law that you wouldn't get when studying for a Uniform Bar Exam," Perlen said. "That need won't change with a new bar exam."¹⁷

¹ NAT'L CONF. OF BAR EXAMINERS, NCBE Board of Trustees Votes to Approve Testing Task Force Recommendations, <https://www.ncbe.org/news/ncbe-bot-vote-approves-ttf-recommendations/> (last visited March 9, 2021).

² NAT'L CONF. OF BAR EXAMINERS, Overview of Preliminary Recommendations for the Next Generation of the Bar Examination, <https://testingtaskforce.org/research/preliminary-recommendations-for-next-generation-bar-examination/> (last visited March 9, 2021).

³ *Id.*

⁴ E-mail from Vikky Kirichenko, Attorney, Kenneth Miller & Associates, to author (March 9, 2021, 22:23 EST) (on file with author).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Telephone interview with Lisa Perlen, Executive Director, Tennessee Board of Law Examiners (March 8, 2021) (notes on file with author).

¹⁴ E-mail from William Gill, Associate Dean for Academic Affairs and Associate Professor of Law, Lincoln Memorial University Duncan School of Law, to author (March 8, 2021, 14:02 EST) (on file with author).

¹⁵ Telephone interview with Christopher Chapman, President and Chief Executive Officer, AccessLex Institute (March 5, 2021) (notes on file with author).

¹⁶ NAT'L CONF. OF BAR EXAMINERS, Overview of Preliminary Recommendations for the Next Generation of the Bar Examination, <https://testingtaskforce.org/research/preliminary-recommendations-for-next-generation-bar-examination/> (last visited March 9, 2021).

¹⁷ Telephone interview with Lisa Perlen, Executive Director, Tennessee Board of Law Examiners (March 8, 2021) (notes on file with author).