

The University of Arizona,
James E. Rogers College of Law
Arizona State University,
Sandra Day O'Connor College of Law

ARIZONA SUPREME COURT

In the matter of:	)	
	)	
PETITION TO AMEND RULE	)	Supreme Court No. R-12-0002
34, Rules of the Supreme Court	)	
	)	
	)	

Supplemental Information Regarding Early Bar Proposal

On August 31, 2012, the Court asked for additional information regarding the details of the Arizona law schools' plans for the early bar proposal. The Court asked that representatives of the three schools, the State Bar, and the Attorney Regulation Advisory Committee meet to develop a plan to provide this additional information to the Court by November 9, 2012, so that the Court can consider the proposal at a December meeting.

A working group consisting of representatives of the schools, the Bar, and the ARAC met twice in Phoenix to discuss the proposal, the Court's questions, and other issues raised by the proposal, including practical issues of implementation if the Court approves the proposal. The working group discussions were extremely helpful in identifying substantive, technical, and practical issues raised by the proposal. Without endorsing the rule change, the members of the working group attempted to determine the most effective way to resolve concerns or issues raised by the Court and the working group.

This response, submitted by the University of Arizona James E. Rogers College of Law and Sandra Day O'Connor College of Law at Arizona State University, is a result of the discussions of the working group. It consists of five attachments: (1) answers to the questions posed by the Court; (2) a revised proposal that reflects the discussions of the working group; (3) a draft form for submission to apply for early examination; (4) a short description of the curricular changes being considered by the University of Arizona and Arizona State University law schools; and (5) an essay by Erica Moeser, President, National Conference of Bar Examiners, about early examination.

Based upon the working group discussions, we have revised the proposed rule change so that students wishing to take the bar early would have to comply with six specific criteria:

- (1) they are currently enrolled at a law school fully or provisionally approved by the American Bar Association;
- (2) they are in good standing;
- (3) they are expected to graduate with a J.D. within 120 days of the first day of the bar exam administration;
- (4) they will not be enrolled in more than two credit hours (or equivalent) during the month of the early bar exam and the immediately preceding month;
- (5) at the time of the administration of the early exam, they will have met all requirements for graduation other than having eight or fewer units (or equivalent) remaining to graduate; and
- (6) their law school attests that they are academically prepared for early testing. (See Attachment 2.)

Students must submit an affidavit from their school, on a form provided by the Committee on Character and Fitness (see Attachment 3), attesting that they meet the criteria. There was a suggestion that students should also be required to have fully complied with character investigation requirements, including submission of all character report materials, and supplemental documentation by the application filing deadline for the early exam. We have not included this provision in our proposal because it seems like something the Court might want to consider across the board for all bar examination applicants, not just those applying for early testing.

During the working group discussions, it was suggested that the Court might consider approving the rule change on a provisional basis, allowing comments during the period it is in effect, and revisiting the rule after perhaps three years of experience with early testing. If the Court adopted this approach, the three law schools would support it. All three Arizona law schools have invested significant time in this proposal and we believe it will mark a significant step forward in educating lawyers in the 21st century. We hope that the Court will allow us to demonstrate how beneficial this change can be.

Summary and Background

The Petition to Amend Rule 34, submitted by the three Arizona law schools, responds in part to the critiques of modern legal education, and in particular the third year of law school, as not sufficiently focused on preparing students for practice. The proposed rule change also responds to significant increases in the cost of legal education and the highly competitive state and national job market. (See Erica Moeser essay, Attachment 5.)

Summary of proposed changes

- The changes proposed to Rule 34 would allow third year law students meeting certain objective criteria to take the Arizona bar exam in February of their third year.

- This would be an **option** for students. Any student wishing to take more traditional courses and clinics could do so.
- All other requirements for taking the bar exam and being admitted to the bar would remain the same—only the timing of taking the bar exam would change.

Benefits of the proposed changes

- Allowing third year law students to take the February bar exam would allow the applicants to receive the results of the bar exam in May—about five months earlier than they would receive their results if they took the July bar exam.
- This would allow those who pass the exam (assuming they have timely complied with all other requirements and submissions) to be admitted to the bar and begin work earlier, effectively reducing the cost of their legal education.
- It would also allow students to compete at graduation or shortly thereafter for the many jobs in both the private and public sector which now require bar admission, rather than having to wait until October or later for admission to the bar.
- Students who take the Arizona bar exam in February could also opt to take another bar exam in July, giving them more employment options.

Based upon the information in this submission, including the revised proposed rule change, we ask that the Court approve the rule change in December, either outright or on a provisional basis.

Attachment 1

Answers to the Court's August 31, 2012, Questions

1. Do the three Arizona law schools plan to have a uniform set of criteria for certification of students? If not, why not?

Each of the three Arizona law schools plans to tailor its criteria to its own curricular changes and its best assessment of which students are best prepared to succeed in taking the bar examination early.

2. What criteria will be used to determine whether a student qualifies for certification to take the bar examination?

Until a rule is adopted, the schools have not been in a position to develop final criteria. Even at this point, however, we can say that in addition to the criteria identified in the revised proposed amendment, the University of Arizona would require students to enroll in a specially-designed two-unit writing course during January and February, and would place limits on outside activities. Arizona State University might impose a minimum GPA requirement. The schools also will likely impose internal deadlines for seeking school certification.

3. Should students certified by out-of-state ABA-approved law schools be eligible to take the early bar examination in Arizona? If so, should the criteria for both in-state and out-of-state student eligibility be uniform?

Yes, students attending out-of-state ABA-approved law schools should be eligible, so long as their school is willing to work with the students so that they can comply with the criteria. If a similar early bar rule were enacted in another state, the U of A and ASU law schools would work with their students to allow them to comply with the criteria; we assume that non-Arizona schools would do the same.

4. If this program is not available to all those attending ABA accredited schools, would the proposal favor students attending school in Arizona, whether or not they are from Arizona, and disfavor those (including Arizona residents) who do not attend school in Arizona? Is this a problem?

No—see response to number 3, above.

5. If the program is open to all those who attend ABA accredited schools, must they be candidates for a JD degree?

Answer: Yes.

What about students working towards an LL.M. degree?

Answer: No.

What about those who transfer or visit from non-ABA accredited schools?

Answer: No.

6. Who will be responsible for monitoring the program requirements and criteria for out-of-state law schools?

The revised proposed rule would apply to all ABA-approved law schools and would not require monitoring program requirements and criteria for out-of-state law schools.

7. How will the criteria for out-of-state student eligibility be enforced?

The criteria will be enforced by requiring all students to submit a standard form.

8. If, as the comment from the Attorney Regulation Advisory Committee notes, some jurisdictions do not currently recognize bar examinations taken before a degree is conferred, will that affect Arizona's agreements with reciprocal jurisdictions?

This is a difficult question to answer. Court staff contacted their counterparts in other states. While some anecdotal information was offered by admissions professionals in other states, jurisdictions will not speculate regarding how a rule would be interpreted by their rule-making authority until final language is adopted. The effect of early examination (prior to award of J.D.) on scores earned in Arizona, including reciprocal agreements, recognition of score, and portability of score, cannot be determined until final rule language is adopted and shared with each jurisdiction, allowing their rule-making authorities to take action.

Among UBE states (including those that will become UBE states in 2013), two states allow law students to take the bar exam early: Missouri (applicant must have met all requirements although J.D. not yet conferred) and Nebraska (applicant will receive degree within 60 days after the date of the examination). Among states with reciprocity with Arizona, twelve permit law students to take the bar early (Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Nebraska, New York, North Carolina, Texas, West Virginia, and Wisconsin). The requirements vary from West Virginia's rule allowing students who will be on active duty during the July examination to take the February examination, to Indiana (fewer than 5 credit hours remaining and within 100 days of graduation), to Kentucky, Missouri, and New York (must have completed all degree requirements although degree not yet conferred). None of these states' rules are designed to permit law students to take the bar in February of their third year.

9. Many other states that have permitted early testing have much tighter standards (e.g., Texas allows students who are within four credit hours of graduation to take the exam, and six other

jurisdictions allow exams to be taken only 30 to 60 days before graduation). Why does the proposal use 120 days?

We want our students to be able to take the exam in February of their third year, even though they will not graduate until May. 120 days is the minimum amount of time necessary to ensure that all grades are in, the J.D. can be conferred, and graduation can be confirmed. This proposal is for a different purpose than the limited early bar provisions currently on the books in other states. (See, e.g., Erica Moeser essay, Attachment 5.)

10. What information can the heads of bar examinations in those states that have adopted an early examination program provide regarding how the program is working?

Those states report that their early examination provisions are rarely invoked. The Georgia bar got rid of its early examination rule—which allowed law students to take the bar in February of their third year—because the law schools in Georgia asked that the rule be changed. The law schools reported that allowing students to take the exam in February was interfering with their program of study because there was no curriculum designed to support students taking the exam early. That is not the case here: the law schools support allowing students to take the bar early and are making curricular changes to support students who choose to do so. This is a conscious effort to try to help those students who wish to take the bar early to be successful.

Attachment 2

Rule 34(b)2 Early Uniform Bar Examination Testing

The Court may allow an applicant to sit for the uniform bar examination in Arizona prior to the award of a juris doctor degree if the applicant:

- A. is a currently enrolled student in good standing at a law school fully or provisionally approved by the American Bar Association;
- B. is expected to graduate with a juris doctor within one hundred twenty (120) days of the first day of early exam administration;
- C. has satisfied all requirements for graduation with a juris doctor except for not more than eight (8) semester hours or its equivalent quarter hours at the time of early exam administration;
- D. will not be enrolled in more than two (2) semester hours or its equivalent in quarter hours during the month of early bar examination testing and the immediately preceding month;
- E. has been determined by their school to be academically prepared for early testing;
- F. provides by the deadline to the Committee on Character and Fitness an affidavit from their school, on a form provided by the Committee, attesting that they meet the above criteria.
- G. Provided, however, that no applicant shall be recommended to practice law until graduation or satisfaction of all requirements for graduation, and completion of all requirements for admission to the practice of law under these rules. If an applicant under this subsection has not graduated with a juris doctor within one hundred twenty (120) days of the first day of early exam administration, all parts of the uniform bar examination, including the score, are void and the applicant's examination scores shall not be disclosed for any purpose. Scores may not be released until such time as satisfactory proof, as determined by the Court, is provided. Provided, however, that an early examination which is voided shall count as a subsequent attempt under Rule 35(c)1.
- H. At the completion of the juris doctor requirements and within sixty (60) days after graduation, the applicant must cause his law school, dean, or registrar to submit to the Committee on Character and Fitness proof of graduation, showing his juris doctor was conferred within one hundred twenty (120) days of the first day of early exam administration. Failure to complete the course of study within one hundred twenty (120) days of the examination and provide evidence of graduation within an additional sixty (60) days shall render the applicant's score void.

Attachment 3

Rule 34(b)(2) Affidavit for Early Bar Examination Arizona Uniform Bar Examination

Name of Student: _____

Date of Administration of Bar Examination for which affidavit is issued: _____

Name of School: _____

Pursuant to Rule 34(b)(2), Rules of the Supreme Court of Arizona, I hereby certify that the above named student:

1. is a currently enrolled student in good standing at _____, which is fully or provisionally approved by the American Bar Association;
2. is expected to graduate with a juris doctor within one hundred twenty (120) days of the first day of early exam administration;
3. has satisfied all requirements for graduation with a juris doctor except for not more than eight (8) semester hours or its equivalent quarter hours at the time of early exam administration;
4. will not be enrolled in more than two (2) credit hours or its equivalent in quarter hours during the month of early bar examination testing and the immediately preceding month; and
5. is academically prepared for early testing.

Name and Title of official: _____

Signature of official: _____

Date signed: _____

Attachment 4A

Theory-to-Practice Curriculum University of Arizona James E. Rogers College of Law

Last December, our faculty voted unanimously in support of submitting the early examination proposal to the Arizona Supreme Court. The faculty also expressed a preference that, if the rule change were approved, the College of Law respond with an innovative “theory-to-practice” curriculum.

Shortly after we submitted the petition, a small faculty committee was formed. In addition to asking two faculty members to co-chair the committee, all faculty members were invited to serve. In April and May of this year, the committee began reaching out to members of the local bench and bar to form the “Advisory Committee on Revised 3L Curriculum.” We tried to select individuals from a variety of practice backgrounds, but we also tried to keep the initial committee small to facilitate more open, effective communication. We invited additional members as gaps and needs appeared (such as the need for more transactional lawyers) and as lawyers expressed substantial interest in the project. The current committee roster includes faculty members, students, judges of the state and federal courts, a representative of the State Bar, and lawyers who practice in a wide variety of settings (large and small firms, solo, in-house, appellate, prosecution, defense) and substantive areas (e.g., criminal, employment, family law, real estate, IP).

The Committee met several times over the summer to discuss various issues that would inform the new curriculum, including:

- (1) information and skills that practicing attorneys wished they had learned in law school;
- (2) information and skills that current law graduates and new attorneys in general seem to lack; and
- (3) the most common pitfalls for new attorneys.

The Committee also investigated “theory-to-practice” offerings at other law schools, through bar associations, and at legal employers.

Based on these group discussions, three smaller working groups met in August to brainstorm the outlines of a proposed curriculum. The working groups then assigned components of that curricular outline to individual committee members or groups of committee members for further detail and refinement, including suggested teaching methods and identification of individuals who are interested in teaching different topics. At this point, the goal is both to identify in concept what kind of lawyer or judge (or faculty member) might guide students on particular topics, or help to develop effective new materials and methods, and also to identify specific individuals, especially those investing substantial time and effort in envisioning this new space for legal education. Committee members are also tapping the expertise of other members of the bench and bar to add detail to components of the curriculum.

Thus far, the Committee has identified several different topics—e.g., client relations, time management, the business of law practice, transactional skills, business formation, corporate governance, simple wills, jurisdiction in Indian Country, e-discovery, e-commerce, professional resources, appellate practice—that will form the building blocks of the theory-to-practice curriculum. We also plan to include an ethics and professionalism component that is woven throughout the curriculum. We also likely will include field placements to supplement the classroom component of the curriculum, and a structured mentoring program that will pair students with practitioners.

In addition to this theory-to-practice curriculum, we will offer a 2-unit writing class during the January/February bar preparation period. We will also require students to identify early on whether they are interested in the early examination option in order to ensure both that they can meet the eligibility requirements and that they are in the best position to succeed on the early examination.

If the proposal is approved in December, we will have just over one year to the launch of the first February bar and post-February bar curriculum.

Attachment 4B

Petition R-12-0002 Curricular Reform Possibilities Sandra Day O'Connor College of Law at Arizona State University

Curricular reform at the Sandra Day O'Connor College of Law, as it relates to the current Petition to allow law students to sit for the February bar examination prior to graduation, necessarily depends on whether the Petition is adopted and the contours of any final rule. At this stage, we have had two full faculty discussions and a number of other meetings with students, various faculty sub-groups, individual faculty members, alumni, other legal educators, and members of the bench and bar. Those conversations have allowed us to generate ideas and discuss advantages and disadvantages of various curricular changes.

The most likely reforms include:

- 1) Requiring students to identify early if they plan to seek early certification (in order to ensure they take the required classes and complete all other graduation requirements in a timely manner and that they have a plan that likely would be successful).
- 2) Requiring students to complete all graduation requirements other than eight or fewer credits by the end of the fall 3L year.
- 3) Creating several new courses, to be taught in April and May only, that would accomplish a number of objectives. One such course is likely to be a capstone course, building on the students' recent experience studying for and taking the bar examination, where subjects can be discussed in a broader context than is possible in individual, subject-specific courses; for example, this course could explore themes that run through a variety of individual courses, and it could examine how a number of doctrinally-separate subjects (such as civil procedure, professional responsibility, contracts, and evidence) could all be involved in one scenario. Another likely course would be a law practice management course, helping soon-to-be-practitioners understand the daily challenges of running a law office and how to avoid ethical problems. This course appears especially useful in light of the job market as a higher percentage of students are practicing in small and solo offices.
- 4) Expanding experiential learning opportunities, such as specialized clinics that could run in April and May, to provide students with the opportunity to handle live-client matters under the direct supervision of trained, experienced clinical faculty, or specialized field placement options where students would work with a select group of seasoned externship supervisors for that eight-week period.

Other ideas are being discussed, but to date, these appear the most likely. Under any version of curricular reform, the Sandra Day O'Connor College of Law would very likely limit the number of students we would certify. Those limitations would be based on students' likelihood of success on the bar exam as well as our curricular capacity.

PRESIDENT'S PAGE

by Erica Moeser

For some time I have tried to think of a way to modify the lawyer licensing process to accelerate new graduates into practice more quickly and efficiently than we presently do. At the moment there are some convergences that may point the way to a solution that key constituencies—the courts and their bar admission agencies, as well as legal educators—can embrace with some enthusiasm.



My proposal? Let's revisit the matter of allowing students to sit for the bar examination during their final semester of law school. For most law students, this would mean taking the test during the February of their third year. This is not a new idea; in fact, one state abandoned such an arrangement as recently as a decade ago. Times change, though, and now there may be cause for courts and bar examining boards to view earlier administration of licensing examinations more favorably.

Consider the following:

The current timing of the bar examination and the release of exam results delays entry into the profession.

The bar examination as a rite of passage encountered by law school graduates at the end of July had merit when graduations occurred in mid-June. Over time, graduation dates have migrated earlier—in some cases, much earlier—and the delay between graduation and the bar exam stretches beyond what is necessary to prepare for a licensing test. In addition,

rising applicant numbers now lengthen the period between the bar exam and the release of pass/fail results to many months in some jurisdictions.

Student debt and career searches during tough economic times support a change.

A change to the timing of the bar examination would place students in the position of becoming productive as lawyers much more quickly. Presumably most students would be ready for licensure close on the heels of their law school graduations. (The matter of dealing with the student who fails to graduate could be handled in a number of ways in accordance with the jurisdiction's choice. For the candidate who does not earn a J.D. on schedule, the admissions agency could embargo the examination results for a time or could invalidate them.) A student's career path would be smoother if prospective employers could anticipate immediate availability following law school graduation without the delay occasioned by preparing for the bar examination and awaiting results before new hires are qualified to practice. This would be especially helpful in periods of economic uncertainty such as the current malaise.

The student who is unsuccessful on his or her first bar examination would be able to retest in July.

Given the data that suggest that chances of success on subsequent bar examinations are greatest with the first retaking, the opportunity to sit for the examination a second time so soon after graduation would place the test-taker closer in time to his or her academic

experience. Further, for those law students who take the bar examination in a jurisdiction with low enough numbers to release results quickly, the possibility would exist for the law school to be of some assistance in preparing the unsuccessful first-time taker for a second attempt while still enrolled.

Law schools could benefit by refashioning the third year to accommodate a last-semester bar examination.

Given the rising cost of law school tuition, concern about hiring and loan-default rates, and the oft-expressed reservations about the value of the third year of law school, law schools could formulate a terminal year that would be more meaningful to students in terms of preparing them to enter the legal profession. Changes to the curriculum of law schools that reimagine their third year would create an advantage for graduates of those law schools by sending them into the profession better prepared as lawyers and arriving on a better timetable.

A changing law school curriculum could support the idea of administering the bar exam earlier.

The Carnegie Report and other educational influences, such as the various initiatives to prepare law graduates to be more practice-ready, are already affecting law school content in the third year. In addition, the American Bar Association's *Standards for Approval of Law Schools* now permit accredited law schools to offer bar preparation courses as part of the curriculum and to require those courses for graduation.

If the third year of law school actually moves toward more emphasis on providing a law practicum, and if law schools also incorporate synthesizing courses designed to reinforce earlier learning in preparation for the bar examination, it seems reasonable that administering the bar examination during a

student's last semester could be workable. Conceivably students would undertake their bar preparation work during the fall semester of their third year and then use what would amount to an intersession to complete their examination preparation. They would then sit for the February examination and conclude their studies between the bar exam and graduation with skills courses, externships, intensive writing courses, law office management and professionalism instruction, or specialty subject content. This configuration would contribute something valuable to the third—often maligned—year of law school.

The concept of a uniform bar examination (UBE) is compatible with bar exam administration during the final semester of law school.

The UBE, once adopted, will move law graduates more quickly to licensure in jurisdictions that accept UBE scores. A student who achieves an acceptable score on the UBE administered in February will emerge from law school with considerably more options for selecting the jurisdiction in which he or she wishes to find employment than under the current system.

Of course, all decisions about when candidates are eligible to test lie within each jurisdiction, so a lot will depend on the evaluation of the pluses and minuses of accelerating the bar examination by bar examining boards and their courts. It will also be important to gauge the enthusiasm of legal educators for moving their graduates into the profession on a faster track, as the content and scheduling of the current third year at some law schools may not accommodate an earlier bar examination.

At the very least, I hope that this proposal provides grist for a conversation among deans, justices, and boards. Perhaps something beneficial and innovative will emerge from those discussions. ■