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# LETTER FROM THE CHAIR

**F**rankly, I was clueless about the responsibilities of a bar examiner when I joined the three-member North Dakota Board of Law Examiners in 1991. Sure, I knew about the bar exam from having taken it in 1980 and from later writing and grading essay questions. However, my knowledge of character and fitness was limited to the application I had filled out myself. My only impression of the National Conference of Bar Examiners was that it had something to do with the MBE and the MPRE.

During the 18 years I served as a member of the North Dakota Board (13 years as its chair), I gained a keen appreciation for the weighty duties undertaken by bar examiners and came to understand some of the key principles of responsible bar examining. For those newcomers to the world of bar examining, I hope the following observations are helpful.

## **1. Bar examiners improve the justice system.**

As part of the North Dakota bar admissions ceremony, newly licensed lawyers recite the lawyer's pledge, which includes a promise to "make the legal system more accessible, responsive, and just." The bar examiner's role in protecting the public from lawyers who do not meet minimum standards of competency, character, and fitness is a critical part of making the legal system more "responsive and just."

Likewise, bar examiners have a role in improving access to the justice system—both for those who wish to join it as practicing lawyers and for the public who uses it. A qualified, competent law graduate, particularly in this difficult economic climate, deserves access to a state's legal system without having to overcome unnecessary, repetitive, and costly barriers. And a client should have the right to access a state's legal system through an attorney of the client's choice, regardless of the attorney's residence, so long as the attorney meets the minimum standards of competency, character, and fitness.

Early in my bar examining career, a member of the bar questioned North Dakota's cut score (the score required to pass the exam) because he thought we were "letting too many lawyers in." Our philosophy as bar examiners was that, while we had a duty to admit only qualified and competent candidates, it was not our role to limit access to the bar. That is one reason the North Dakota Board looked favorably on the Uniform Bar Examination and the access to other UBE jurisdictions it provides to our newly minted lawyers.

## **2. Bar examiners have important roles as board members.**

Particularly with a small board of bar examiners and an even smaller staff, it is often easy for a bar examiner to slip into an improper role. I view the board's role as providing strategic leadership, encouraging and respecting diverse viewpoints, and making collective policy decisions—not micromanaging staff, providing legal advice, or exercising individual authority.

Leading requires proactive education about the complex issues in bar examining, which I received by attending NCBE conferences. It also requires a commitment to improving the bar admissions process by interacting with the jurisdiction's Court, bar, and law schools on strategic policy matters.

As a board member, a bar examiner also needs to adhere to a code of conduct and ethics. This includes keeping information appropriately confidential and never using the position for personal advantage or the advantage of colleagues and friends.

## **3. Bar examiners have important roles as judges, too.**

When I recently became a member of our state's Disciplinary Board, I knew I had assumed a judicial role, and I requested special training. The judicial aspect of the bar examining and hearing process was less apparent to me, although I came to realize that it was a very significant component of the job. In hindsight, I would have asked for more training for bar examination board members on their judicial responsibilities.

The judicial aspect of bar examining also creates additional ethical issues. As any application can ultimately lead to a decision-making and hearing process, ex parte communications between applicants and board members should be extremely limited. For that reason, our board adopted a policy that any communications received from an applicant should be immediately referred to and handled by staff. Likewise, actual and



potential conflicts of interest need to be evaluated under the judicial code of conduct.

## **4. Bar examiners must be both responsible and fair.**

A responsible bar examiner needs to care both about the legal system and about the lives being affected by the admissions process. A bar examiner is often faced with the frailties and tragedies of the human condition, for which there are no easy answers. While we are not social workers and must remain focused on our duty to protect the public, it is nevertheless important to empathize with that hardworking but failing applicant, or the single parent with mountains of debt, or the applicant recovering from an addiction. These applicants have struggled to reach this stage of the profession and deserve both fairness and empathy. Of course, for representatives of an entity that performs a licensing function, the maintenance of consistent standards for bar admission must remain paramount, and protection of the public must always be the goal.

The role of the bar examiner encompasses many responsibilities—to the justice system, to the public, and to the applicants. It is a rewarding position that is critical to the profession. I welcome the newest bar examiners to the world of bar admissions and look forward to meeting some of them at NCBE's upcoming Annual Conference in Savannah, Georgia, on April 19–22, 2012. 📧

Best regards to all.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca S. Thiem".

Rebecca S. Thiem