

The Supreme Court of Ohio

MEMORANDUM

TO: Chief Justice Sharon L. Kennedy and Justices

CC: Robert W. Horner, III, Administrative Director

FROM: Justice R. Patrick DeWine, NextGen Advisory Committee Chair
Michel Jendretzky, Director, Attorney Services Division
Tiffany Kline, Deputy Director, Office of Bar Admissions

DATE: February 13, 2025

RE: Report & Recommendations of the NextGen Advisory Committee

I. Summary

The NextGen Advisory Committee recommends the adoption of the NextGen bar exam, beginning July 2028. At the same time, the Committee recommends that Ohio implement a new substantive component of the bar examination that will test concepts of Ohio law and skills that will not be tested on the NextGen bar examination. This new substantive Ohio Law Component will replace the existing open book test of Ohio law that is currently administered.

The Committee acknowledges some hesitation in making the recommendation to adopt the NextGen bar examination due to the NextGen's test not being fully developed, resulting in a lack of certain vital information and data. Additionally, with the information that *is* available about NextGen, the Committee is concerned with what it perceives as a lack of rigor and exclusion of Trusts and Estates from the foundational legal concepts tested throughout the exam.

However, Ohio's current bar exam, the Uniform Bar Exam (UBE), will be discontinued after February 2028. The law school deans who participated in the Committee emphasized the importance of having sufficient time to prepare their students for the new bar examination. With over half of the testing jurisdictions already committed to adopting NextGen by July 2028 and only a few states considering alternative testing models, the NextGen exam is likely to become the predominant testing mechanism for admission to the practice of law across the country. It is therefore the most practical tool available to assess the competency of Ohio attorneys. It also appears to be the only tool presently in development that will allow for the portability of scores between multiple states.

II. Committee Overview

The National Conference of Bar Examiners (NCBE) began developing the NextGen bar exam in 2018. In August 2023, NCBE announced plans to start using the NextGen exam with the July 2026 administration and fully phase out the current Uniform Bar Exam (UBE) by the July 2028 bar exam. Consequently, the last administration of the current bar exam will be in February 2028. This means that the current bar examination will not be available for students who begin law school in September 2025.

NCBE presented this issue to the Supreme Court of Ohio at the Court's Administrative Conference on September 28, 2023. As a result, Chief Justice Kennedy formed an advisory committee to consider the matter.

The NextGen Committee consists of the following 12 members:

- Justice R. Patrick DeWine, Chair
- Robert Alt, President & CEO, The Buckeye Institute
- Hon. Alice Batchelder, Judge, United States Court of Appeals for the Sixth Circuit
- Hon. Rhonda Burggraf, Judge, Marion County Family Court
- Lauren Diaz, Staff Attorney, Shumaker
- Emily Janoski-Haehlen, Dean, University of Akron School of Law
- Charles Rose, Dean, Ohio Northern University Claude W. Pettit College of Law
- Robert Sanker, Partner, Keating Muething & Klekamp; member, Ohio Board of Bar Examiners
- Caesar Schanzenbach, J.D. Candidate, Capital University Law School
- Yvonne Twiss, Professor, Capital University Law School
- Hon. Timothy VanSickle, Judge, Wayne County Court of Common Pleas, General Division
- C. Michael Walsh, Court Administrator, Ninth District Court of Appeals; Chair, Ohio Board of Bar Examiners

The Committee met several times throughout 2024. From the outset, the Committee was concerned about the status of the NextGen bar exam's development, noting that it is not yet fully developed and not yet in use by any jurisdiction. The Committee was also aware that the current Ohio bar exam will not be available after the February 2028 administration. This situation is markedly different from 2018, when the Task Force on the Ohio Bar Examination considered the full transition to the UBE. At that time, 31 jurisdictions were already using the UBE, Ohio was already using two of the three parts of the UBE, and the change was not forced through NCBE's phasing out components of the test.

To address the discontinuation of Ohio's current exam, the Committee identified three viable options for consideration: (1) develop an Ohio bar exam; (2) adopt NextGen; or (3) adopt NextGen plus a more substantive state law component. Relevant to the unique Ohio bar exam option, Professors Joshua Blackman and Deborah Merritt spoke to the Committee about alternative testing models. For the latter two options, NCBE presented to the Committee regarding the

NextGen exam, and two Board of Bar Examiner Committee members provided insight into the current Ohio Law Component and possibilities for expansion.

The Committee now submits this report and recommendations.

III. Considerations

The Committee considered what testing mechanism to adopt and when to adopt it.

What Testing Mechanism to Adopt?

The Committee identified three viable options for consideration: (1) develop an Ohio bar exam; (2) adopt NextGen; or (3) adopt NextGen plus a more substantive state law component.

A. Develop an Ohio Bar Exam

The Ohio Board of Bar Examiners has some experience drafting parts of the Ohio bar exam, but it has not been tasked with developing the entire bar exam. Specifically, until 2020, the Board drafted the essay questions for the exam. These essay questions were paired with NCBE's multiple choice questions (MBE) and, starting in 2000, NCBE's performance test questions (MPT). When drafting its own essay questions, the Board enlisted the services of a consultant to ensure the questions were clear and not discriminatory or otherwise inflammatory. The Board also enlisted the services of a psychometrician to assist with grading issues. In theory, the Board could resume this work.

That option would still leave Ohio in want of other exam components equivalent to the current multiple-choice and performance tests. Having never developed these exam parts, it is difficult to determine whether it is feasible for the Board to take on the work of developing these additional parts. Certainly, though, for any exam parts that Ohio may wish to use for its prospective attorneys, a commercial vendor could be sought.

Kaplan has emerged as a potential supplier of any or all bar exam components Ohio might select for its own exam. In California, Kaplan has agreed to leave the bar prep industry to create all components of California's bar exam. Nevada has also expressed interest in using a commercial vendor other than NCBE to develop the multiple-choice and performance test portions of its bar exam. So far, the Committee only knows of Kaplan as a potential vendor, but it has not undertaken efforts to locate others.

Advantages:

- Ohio would have full control over its bar exam, including the content, duration, form, format, and times administered. This level of control would completely satisfy the Committee's concern with apparent lack of rigor and failure to test Trusts and Estates as a foundational concept.

Disadvantages:

- Portability of scores—into or out of Ohio—will depend entirely on reciprocity agreements with other states. Based on the information currently available, it would be difficult to establish equivalency standards between a unique Ohio exam and NextGen, meaning reciprocity with a NextGen testing state likely will be unattainable. If Ohio’s exam did not enjoy reciprocity with current NextGen adopting states, this change would negatively impact some of Ohio’s most frequent transfer states, including Indiana and Kentucky. With the number of NextGen states continuing to grow, Ohio will have fewer and fewer states with which it can have reciprocity.
- The unknown of a new, untested vendor remains a concern.
- Potentially higher costs for the Supreme Court and applicants. Creating and grading the exam could be expensive, and bar review course materials for a unique exam may prove costly. Without further study, it is not possible to predict the costs of adopting such a bar exam.

B. Adopt NextGen and maintain the current Ohio Law Component

Adopting NextGen and maintaining the current Ohio Law Component would be most consistent with our current bar exam process, notwithstanding the changes NCBE has made to the exam’s content and format. NCBE has been in the bar exam business for over 50 years, and Ohio has worked with NCBE since adopting the MBE in 1972. NCBE currently develops all parts of the Ohio bar exam (except for the Ohio Law Component); it provides grading workshops and other resources and support to Court staff and the Board of Bar Examiners; and Court staff works closely with NCBE through all parts of testing administration and grading. While there are some changes to the testing format, exam duration, and subjects substantively tested, there is not otherwise much departure from Ohio’s current examination procedure. Additionally, given the number of states that have already committed to adopting NextGen, this option would result in the most portability for Ohio law school students considering practice elsewhere and for examinees from outside of the state seeking licensure in Ohio.

In addition to the current UBE, Ohio requires examinees to take and pass an Ohio-specific exam. The Ohio Law Component is designed to ensure that prospective attorneys are knowledgeable about the unique aspects of Ohio’s judicial system and state-specific legal principles. The test consists of 25 multiple-choice questions developed by the Board of Bar Examiners and is administered online through the ExamSoft testing platform.¹ The Ohio Law Component is “open note,” with a Court-produced outline available to applicants, and applicants may take the test at any time and as many times as needed to pass with a 24-hour waiting period between a failed test and re-attempt. The purpose of the current Ohio Law Component is not to require prospective attorneys to prepare for and take another memorization-based exam, but to simply make them aware of certain unique aspects of Ohio law. Further, the previous Task Force wanted to make this component affordable, and thereby did not require an in-person, proctored exam.

¹ The Court has a \$0 contract with the vendor, setting the cost that each applicant must pay directly to the vendor for each test taken.

Advantages:

- Portability of scores into and out of Ohio. Twenty-nine jurisdictions have already committed to adopting NextGen, including the top jurisdictions where Ohio lawyers currently transfer their scores and the top jurisdictions from which Ohio receives score transfers (Kentucky has adopted NextGen effective July 2027, and Indiana and Illinois have adopted NextGen effective 2028; Washington D.C., New York, Pennsylvania, and Michigan are other top transfer states with Ohio and have *not* yet adopted NextGen).
- NCBE is a known and tested vendor with whom we have had a long and productive working relationship.
- No increased costs for developing and administering the bar exam and for applicants to pay for a unique bar review course.

Disadvantages:

- No control over the content, duration, form, format, and timing of the bar examination, including the level of legal writing required throughout the exam and the overall rigor of the exam.
- Elimination of core subjects—including Trusts and Estates—on the NextGen exam, which are fundamental to practicing lawyers, and particularly to new lawyers in solo and small practices, and in underserved communities.
- Currently, the Board of Bar Examiners will be responsible for grading the exam. However, there may be the potential to lose future control over grading.
- The current Ohio component of the bar examination provides no real testing of an applicant’s substantive knowledge of Ohio law. The test simply requires applicants to consult an outline of Ohio legal concepts and to answer questions based on that outline.

Comparison Between the Current UBE and the Proposed NextGen Exam

	Current	NextGen
Description	Uniform Bar Exam (NCBE) <ul style="list-style-type: none"> - Multistate Essay Examination - Six 30-minute questions (25% of exam time) - Multistate Performance Test <ul style="list-style-type: none"> - Two 90-minute items (25% of exam time) - Multistate Bar Examination <ul style="list-style-type: none"> - 200 multiple choice questions; 6 hours (50% of exam time) 	New Uniform Bar Exam (NCBE) <ul style="list-style-type: none"> - Three 3-hour test sessions, using a combination of multiple choice (approximately 40% of exam time), short answer question sets (approximately 25% of exam time), and longer performance tasks (approximately 33% of exam time)
Format	In-person, written and computer options	In-person, computer only

	Current	NextGen
Duration	2 days (12 hours)	1.5 days (9 hours)
Legal Writing Exercises	Six essays (3 hours) Two performance items (3 hours)	No essays Performance items (3 hours)
Areas of Law Tested	Business Associations (Agency and Partnership, Corporations and Limited Liability Companies) Civil Procedure Conflict of Laws Constitutional Law Contracts (including Article 2 [Sales] of the Uniform Commercial Code) Criminal Law and Procedure Evidence Family Law Real Property Torts Trusts and Estates (Decedents' Estates, Trusts and Future Interests) Uniform Commercial Code Article 9 (Secured Transactions)	Business Associations Civil Procedure Constitutional Law Contract Law Criminal Law Evidence Family Law ² Real Property Torts *Others may appear as part of performance tasks and in integrated question sets ³

² Starting July 2028.

³ From July 2026 through at least February 2028, Trusts and Estates concepts will appear on every NextGen exam in a performance task and may also be included in integrated question sets. The Committee is concerned with the lack of testing on Trusts and Estates as a foundational concept, given its importance to the practice of law generally and rural practice specifically.

	Current	NextGen
Portability	Scores can be transferred among 41 jurisdictions ⁴	Scores can be transferred among 29 jurisdictions ⁵

C. Adopt NextGen Plus a More Substantive State Law Component

A more substantive Ohio Law Component would restore control over content and format that will be lost with the NextGen exam. Specifically, where the Committee is concerned with the perceived lack of IRAC-style writing (i.e., issue, rule, analysis, and conclusion format), and the lack of knowledge-based foundational concept testing of Trusts and Estates within the NextGen exam, the Board of Bar Examiners could revise the Ohio Law Component to include essay questions that cover Trusts and Estates and other unique aspects of Ohio law, including Ohio Constitutional law. The Board can exercise flexibility as to when and how a more substantive Ohio Law Component is administered, either to address perceived inadequacies with NextGen or to better meet market demands and trends. For instance, the test could continue to be administered online, using ExamSoft or a similar online testing platform. Alternatively, it could be administered at a testing center or at the biannual exam site, with a paper or computer option in either.

Advantages:

- Allows greater control over the minimum competency standards required of prospective Ohio attorneys, in terms of the content regarding which they are tested.

Disadvantages:

- Any change to make the Ohio Law Component more challenging will increase the cost of the exam.
 - Moving Ohio Law Component administration to testing centers would also cost more money than the current structure.
- More bar prep would be required for applicants, meaning more missed work, more time spent, and greater bar preparation costs.
- With steadily increasing numbers of testing accommodations being required for bar examinees,⁶ the more controlled exam setting required for a substantive Ohio Law Component necessitates consideration of the impact on adequate accommodations.
- More grading for Board of Bar Examiners and Readers, meaning a greater time commitment required of these Court-appointedees and a greater cost to the Court (given that Examiners and Readers are paid per exam and per answer, respectively).

⁴ All except for: California, Delaware, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, Nevada, Northern Mariana Islands, Palau, Puerto Rico, South Dakota, Virginia, and Wisconsin.

⁵ All except for: **Alabama, Arkansas, California, Delaware, Hawaii, Idaho, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, Palau, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Virgin Islands, and Wisconsin.** (Bold print indicates jurisdictions with which Ohio currently has portability.)

⁶ The Americans with Disabilities Act (ADA), 42 USCS §§ 12189, requires the bar exam be offered “in a place and manner accessible to persons with disabilities or [to] offer alternative accessible arrangements for such individuals.”

- Depending on the changes ultimately selected, a vendor (or vendors) may be needed to develop the test questions. Even when the Board of Bar Examiners wrote its own essay questions prior to Ohio’s adoption of the UBE, psychometricians and consultants were required.
- More Bar Admissions staff may be required, depending on the selected changes.

When to Adopt the New Testing Mechanism?

Ohio can adopt a different bar admission mechanism before July 2028. July 2028 is the ultimate deadline by which a new bar admission mechanism needs to be in place.

IV. Recommended Action – Adopt NextGen, Revise Ohio Law Component

The Committee recommends adoption of NextGen beginning with the July 2028 exam administration and the implementation of a substantive Ohio Law Component to replace the existing open book test of Ohio law that is currently administered.

The new substantive Ohio Law Component will test areas of Ohio law that are not tested on the NextGen bar examination. Among the items that should be tested are Wills and Trusts, Ohio Constitutional Law, and the structure of the Ohio Court system.

The Committee recommends that the Court task the Board of Bar Examiner’s with developing the new Ohio Law Component for implementation in July 2028. The Committee has chosen not to make a recommendation on the specific format of the Ohio Law Component, but instead to allow the Board of Bar Examiner’s to explore the feasibility of various options as it continues to monitor the development of the NextGen bar examination. Some members of the Committee expressed a preference that the Ohio Law Component include at least some traditional essay questions, but others were of the view that multiple-choice or other similar structures would allow for more efficient measurement of applicant knowledge. The Committee ultimately decided that a recommendation to the Supreme Court as to the specific structure of the Ohio Law Component should be made by the Board of Bar Examiners after further study.

Similarly, the Committee determined that the Board of Bar Examiners after further study should make a recommendation to the Court about the timing and manner in which the testing will be administered. Because the NextGen bar examination will only be a day and a half, there is the possibility of administering the Ohio Law Component at the end of the second day.

Given the proposed July 2028 adoption date, the Court will need to consider what to do about NextGen test-takers seeking transfer to Ohio’s bar before then. The NCBE is conducting a standard-setting workshop in May 2025 to determine score equivalencies between NextGen and UBE. The Court can use that data, which is expected later in 2025, to make the necessary, initial determinations. The Court can continue to allow UBE transfers for so long as it chooses, considering no “new” UBE scores will be available for transfer after February 2028.⁷ The

⁷ Currently, Gov. Bar R. I, Sec. 11(A)(2) allows qualifying persons who earned an Ohio-passing UBE score in another jurisdiction to become licensed in Ohio within five years of the exam on which they earned the passing score. If unchanged, Ohio could accept UBE transfers until February 2033.

Committee recommends the Board of Bar Examiners be charged with reporting to the Court the NCBE's standard-setting work and crafting the necessary rule revisions regarding transfer of exam scores for the Court's consideration.

V. Ongoing Concerns

Despite the recommendation to adopt NextGen, the Committee identified several ongoing concerns, including the following:

1. The NextGen bar exam is not yet fully developed, let alone in use. With that comes a significant lack of information, leading to questions about the format, grading, and difficulty of the NextGen exam. NCBE has committed to providing more information throughout 2025, such as examinee and grader feedback and score-setting metrics. In the meantime, however, we are asked to commit to an unknown, with which the Committee is generally uncomfortable.
2. One known aspect of the NextGen exam is that it eliminates the essay questions that currently exist in the UBE. This concerns the Committee in two ways. First, the lack of extensive writing components could indicate a lack of rigor in testing. Second, without the written component and in view of the need for law schools to teach to the test, there is concern that the IRAC-style of legal analysis will either not be taught or will be taught with less emphasis.
3. In addition to the perceived effect on rigor, the lack of subjectively graded written components brings into question the potential for all test-takers to pass (if scoring is entirely objective, there is no relative-scoring, thus no guaranteed failing scores).
4. The lack of competence-based subject-area testing on Trusts and Estates.
5. Lack of Ohio control in the NCBE process.

While the state law component should be designed to account for these concerns, the Committee also considered the value of some sort of externship or experiential requirement, similar to what Nevada plans to implement post-UBE. Some Committee members expressed interest in this kind of practice component supplementing some part of the bar exam, such as the Ohio Law Component. Ultimately, however, the Committee determined that this was outside the scope of the current question and tabled the matter for another group to consider at another time.

VI. Conclusion

In conclusion, the NextGen Advisory Committee recommends adopting the NextGen bar exam with a revised Ohio Law Component to be further considered and developed by the Board of Bar Examiners. This approach aligns with our current system and ensures the greatest portability for Ohio law school graduates and out-of-state applicants. While the Committee acknowledges concerns regarding the lack of information, a potential lack of rigor in the test, and the absence of certain subject matter areas, it believes these can be mitigated through a robust state law component. The proposed adoption date of July 2028 allows adequate preparation time for Ohio law schools and addresses the impending discontinuation of the current bar exam. The Committee emphasizes the need for ongoing evaluation and adjustment as more information becomes available throughout 2025 and beyond, and as the NextGen bar exam evolves.