

New York State Board of Law Examiners

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Memorandum

TO: ABA Law School Deans

FROM: Diane F. Bosse, Chair

DATE: May 7, 2014

RE: Misconduct at the New York Bar Exam

We are writing to you to request your assistance in addressing a problem our Board of Law Examiners has observed with our foreign-educated candidates sitting for the bar exam in New York. The problem at issue is misconduct at the test site and during the exam.

As you may know, the Court of Appeals has adopted a Rule pursuant to which individuals who received their first degree in law in a foreign country may qualify to sit for our bar exam. We are now testing over 3500 candidates per year who qualify based upon their foreign education and having obtained an LL.M. degree from an ABA-approved law school in the United States. Another 1000+ qualify based upon their foreign education alone.

After each administration of the exam, the Board receives many reports of writing after time is called, copying and other misconduct at the test site. Candidates are frequently charged with violation of our Rule 6000.9 and, if found guilty, penalties are imposed, and those penalties are severe. They include nullification of the test, barring the candidate from sitting for the exam for some period of time, a report to the Character and Fitness Committee, and a report to any other jurisdiction or foreign country in which the candidate may be admitted to practice law.

We have noted a particular problem with foreign-educated candidates writing after time is called. We are frequently told – and we believe – that the protocol for timed-tests may be different in the home countries of these candidates. Specifically, our instructions require candidates to stop writing or typing immediately upon time being called. They are not permitted to make any further marks or erasures on their papers after the instruction to “STOP” is given. We have been told by some candidates that, in their countries, a student continues to work on the exam until the proctor removes the paper from their desk or until they are told for the second time to stop.

Also, some candidates mark their answers to multiple choice questions in the test booklet, assuming they will be permitted after time is called to transfer the answers to the scantron answer sheet.

We also instruct candidates that they may not open the test question booklet until they are told to do so. Candidates have told us that, in their countries, they immediately inspect the test booklet upon its distribution to them, to make sure all pages are included.

We instruct candidates that they may not review any notes in the exam room, even prior to the commencement of the exam, and that they must immediately enter the ExamSoft software once their computers are powered up. Yet some candidates fail to start the software, and are found reviewing notes on their laptops in the exam room.

Instructions and warnings regarding our rules are given to candidates multiple times in advance of the date of the exam and in multiple formats.

While the number of candidates who are found to have violated the rules on any given administration of the exam is comparatively small, it is unfortunately frequently our foreign-educated candidates who fail to comply. We are convinced in many circumstances that the violation is a consequence of unfamiliarity with the protocol for a timed high stakes test in the United States, and not committed with any intent to violate the rule or to gain an advantage. Nonetheless, to maintain the integrity of our test and assure fairness to all, candidates are frequently charged, found guilty, and penalized for their misconduct.

We respectfully suggest that you would provide a valuable service to your LL.M. students intending to take the New York bar exam if you would instruct them regarding the expectation as to their conduct at the test site and during the exam. For your convenience, we enclose a copy of our security policy, the various instructions we provide to candidates, and a copy of our Rule 6000.9.

Thank you for your assistance. Please contact us if you have any questions or comments.