

Maryland Court of Appeals  
Uniform Bar Examination  
Public Comments

Sara H. Arthur, Esq., Maryland State Bar Association

Virginia W. Barnhart, Esq., Treanor Pope & Hughes, P.A.

Fred B. Brown, Associate Professor of Law, on behalf of the faculty of  
the University of Baltimore

Ronald S. Canter, Esq., The Law Offices of Ronald S. Canter, LLC

Neal Cohen, Esq., Neal Cohen Law, LLC

Irwin R. Kramer, Esq., Kramer & Connolly

Erika C. Surock, J.D.



November 8, 2017

Sara H. Arthur  
President

Hon. Keith R. Truffer  
President-Elect

Dana O. Williams  
Secretary

Hon. Mark F. Scurtl  
Treasurer

Victor L. Velazquez  
Executive Director

**VIA EMAIL Bessie.Decker@mdcourts.gov**

Bessie Decker, Clerk of Court  
Maryland Court of Appeals  
Robert C. Murphy Courts of Appeal Building  
361 Rowe Boulevard  
Annapolis, Maryland 21401-1699

RE: Report & Recommendation of the Advisory  
Committee to Explore the Feasibility of Maryland's  
Adoption of the Uniform Bar Examination

The Maryland Bar Center  
520 West Fayette Street  
Baltimore, MD 21201-1781  
410-685-7878  
800-492-1964  
fax 410-685-1016  
tdd 410-539-3186  
www.msba.org

Dear Ms. Decker:

The Maryland State Bar Association ("MSBA") appreciates the opportunity to provide its comments on the Report and Recommendation of the Advisory Committee to Explore the Feasibility of Maryland's Adoption of the Uniform Bar Examination. Although I served on the Committee, the MSBA did not take an official position on the possible adoption of the Uniform Bar Examination ("UBE"). It did however offer its various Sections the opportunity to provide comments at the Committee's public hearing.

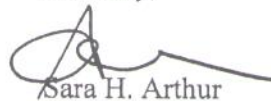
Following the issuance of the Report, Sections of the MSBA were asked to provide comments to the MSBA's Board of Governors. The Report was also provided to MSBA members on the MSBA's website. Comments were received from six (6) of the substantive Sections- Alternative Dispute Resolution Section, Consumer Bankruptcy Section, Criminal Law Section, Delivery of Legal Services Section, Estates & Trusts Section and Legal Education and Admission to the Bar Section. All of the Sections were generally supportive with the exception of the Consumer Bankruptcy Section, which made no final recommendation. Several expressed a desire for a Maryland component to test knowledge of unique aspects of Maryland law. The Consumer Bankruptcy Section expressed a desire for more specifics on the implementation of the UBE in other jurisdictions before it could support.

At its October 27, 2017 Meeting, the MSBA's Board of Governors discussed the Report and the various Sections' comments. Concern was expressed about the possible disparate impact on minorities and women. In the end, the Board of Governors voted to support the implementation of the UBE in Maryland but had the following requests:

- a. A "Maryland component" to ensure the examinee had a sufficient understanding of unique aspects of Maryland law. The MSBA offers no opinion on the form of the Maryland component at this time without more details on the alternatives available.
- b. An admission score consistent with current requirements.
- c. Protections to ensure no disparate impact on minorities and women.

The MSBA appreciates this opportunity to comment on the Report and appreciates the Maryland Court of Appeals consideration of its input. Please contact me if you or the Court have any questions.

Sincerely,



Sara H. Arthur

## Bessie Decker

---

**From:** Virginia W. Barnhart <vwbarnhart@tph-law.com>  
**Sent:** Wednesday, October 11, 2017 11:03 AM  
**To:** Bessie Decker  
**Subject:** Advisory Committee report on UBE

Ms. Decker:

I fully concur with the recommendations of the Advisory Committee on the adoption of the UBE.

Virginia Barnhart

---

VIRGINIA W. BARNHART  
[VWBARNHART@TPH-LAW.COM](mailto:VWBARNHART@TPH-LAW.COM)

TREANOR POPE & HUGHES, P.A.  
500 YORK ROAD  
TOWSON, MARYLAND 21204  
(410) 494-7777, EXT. 215  
(410) 494-1658 (FAX)  
[WWW.TPH-LAW.COM](http://WWW.TPH-LAW.COM)

*Confidentiality Notice:* This e-mail, including any attachment(s), is intended for receipt and use by the intended addressee(s), and may contain confidential and privileged information. If you are not an intended recipient of this e-mail, you are hereby notified that any unauthorized use or distribution of this email is strictly prohibited, and requested to delete this communication and its attachment(s) without making any copies thereof and to contact the sender of this e-mail immediately. Nothing contained in the body and/or header of this e-mail is intended as a signature or intended to bind the addressor or any person represented by the addressor to the terms of any agreement that may be the subject of this e-mail or its attachment(s), except where such intent is expressly indicated.

**Bessie Decker**

---

**From:** Fred Brown <fbrown@ubalt.edu>  
**Sent:** Monday, November 06, 2017 11:53 AM  
**To:** Bessie Decker  
**Cc:** Fred Brown  
**Subject:** Comments on the Report of the Advisory Committee to Explore the Feasibility of Maryland's Adoption of the Uniform Bar Examination  
**Attachments:** UB Law Faculty Comments on Advisory Committee Rpt on UBE.pdf

Dear Ms. Decker,

Attached please find comments submitted by the Faculty of the University of Baltimore School of Law on the Report and Recommendation of the Advisory Committee to Explore the Feasibility of Maryland's Adoption of the Uniform Bar Examination.

I will also be sending a hard copy of these comments to you.

Sincerely,

Fred B. Brown  
Associate Professor of Law  
Director of the Graduate Tax Program  
Co-Chair of the Ad Hoc Committee on Bar Passage  
University of Baltimore School of Law

On behalf of the Faculty of the University of Baltimore School of Law



November 6, 2017

Bessie Decker, Clerk of Court  
Maryland Court of Appeals  
Robert C. Murphy Courts of Appeal Building  
361 Rowe Boulevard  
Annapolis, Maryland 21401-1699

**Filed**

NOV 08 2017

Bessie M. Decker, Clerk  
Court of Appeals  
of Maryland

Re: Comments on the Report and Recommendation of the Advisory Committee to  
Explore the Feasibility of Maryland's Adoption of the Uniform Bar Examination

Dear Ms. Decker,

The Faculty of the University of Baltimore School of Law ("UB Law Faculty") appreciates the opportunity to submit comments on the Report and Recommendation of the Advisory Committee to Explore the Feasibility of Maryland's Adoption of the Uniform Bar Examination. The UB Law Faculty supports the adoption of the Uniform Bar Examination ("UBE"), and is proposing the following comments that are aimed at improving the administration of the examination.

1. Endorsement of Dual Path Proposal

As background, the UBE generally provides equal weighting of the multiple choice (Multistate Bar Exam or "MBE") and essay portions of the exam in determining an examinee's score. In contrast, the Maryland Bar Examination allocates 67 percent weight to the written test portion (essays and Multistate Performance Test ("MPT")) and 33 percent to the MBE portion.

The Advisory Committee's report contains a proposal by a subcommittee of the Advisory Committee to create a temporary "dual path" that would allow scores for examinees who fail under the UBE (with equal weighting) to be recalculated using a 2 to 1 essay-to-MBE weighting. The subcommittee is proposing the dual path to mitigate against any disparate impact that the UBE can have on female examinees and possibly minority examinees. The Advisory

Committee's report states that there is some evidence that female examinees perform better on essay examinations than on multiple-choice examinations; currently, there is not sufficient data to determine the impact on racial minorities of allocating more weight to the multiple-choice portion. According to the subcommittee, a temporary implementation of this measure (for example, for five to seven years) would allow for further study of the impact on examinees.

The UB Law Faculty endorses the dual path. In addition to the reasons stated by the Advisory Committee and its subcommittee, the dual path will allow for a more valid measure of the competencies that are needed to practice law. While both the MBE and the essays (aside from the MPT) test legal knowledge, the essays also test issue identification, legal analysis, and clear and effective writing. The essay exercises are simply much closer to what lawyers do in the real world as compared to the MBE. This may be a reason for the current double weighting of the written test portion under the Maryland Bar Examination. It is also the reason why most law school courses have traditionally used essay exams, rather than multiple-choice exams, to test the performance of students.

Additionally, the UB Law Faculty agrees with the Advisory Committee that "the passage score should be comparable to Maryland's current score." That will simply not be possible if the weight given to the essay portion of the UBE is radically different than that under our current system.

Consequently, for the above reasons, the UB Law Faculty recommends the use of the 2 to 1 essay-to-MBE weighting called for under the dual path proposal. Indeed, because the above reasons for the dual path are independent of any disparate impact on female and minority examinees, the UB Law Faculty recommends that the dual path be a permanent, rather than temporary, feature of Maryland's implementation of the UBE.

## 2. Recommending a Passing Score of 266

As stated in the Advisory Committee's report, a vast majority of jurisdictions that have adopted the UBE have set their passing scores between 266 and 270. Many mid-Atlantic and

Northeastern jurisdictions – D.C., New Jersey, Connecticut, and New York – have selected a score of 266.

The Advisory Committee does not appear to recommend a specific passing score, but does state that the passing score should be comparable to Maryland's current score. The Advisory Committee's report includes a chart that provides a passing score of 270, but this appears to suggest a possible passing score rather than a recommended passing score.

The UB Law Faculty recommends that Maryland set a UBE passing score of 266. Otherwise, there is a serious concern that applicants will take the UBE in neighboring or nearby jurisdictions rather than Maryland.

### 3. Timeline for Adoption

The UB Law Faculty agrees with the Advisory Committee's recommendation that any adoption of the UBE not be implemented before July 2019. In addition, to allow the law schools the necessary time to adjust their curricula for the subjects covered on the UBE as compared to the current Maryland Bar Examination, the UB Law Faculty recommends that any adoption of the UBE not be implemented any sooner than eighteen months after a decision by the Maryland Court of Appeals to adopt the UBE.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred B. Brown".

Fred B. Brown  
Associate Professor of Law  
Director of the Graduate Tax Program  
Co-Chair of the Ad Hoc Committee on Bar Passage

On behalf of the Faculty of the University of Baltimore School of Law



**Filed**

**OCT 18 2017**

The Law Offices of Ronald S. Canter, LLC  
200A Monroe Street, Suite 104  
Rockville, Maryland 20850  
Telephone (301) 424-7490  
Facsimile (301) 424-7470  
[www.roncanterllc.com](http://www.roncanterllc.com)

Bessie M. Decker, Clerk  
Court of Appeals  
of Maryland

October 18, 2017

**VIA E-MAIL**

Bessie Decker, Clerk of the Court  
Maryland Court of Appeals  
361 Rowe Blvd.  
Annapolis, MD 21401-1699  
[Bessie.Decker@mdcourts.gov](mailto:Bessie.Decker@mdcourts.gov)

Dear Ms. Decker:

This letter offers comments to the Report and Recommendations of the Advisory Committee to Explore the Feasibility of Maryland's Adoption of the Uniform Bar Examination to the Court of Appeals of Maryland regarding the contemplated Maryland law supplement to the Uniform Bar Examination.

I was admitted to the Maryland Bar in November, 1979. Since that time, I have been engaged in the private practice of law in Montgomery County. My practice has been almost exclusively in the field of civil litigation with an emphasis on creditor rights. In 2010, I was appointed as a consultant by the Maryland Rules Committee which considered and ultimately amendments to affidavit judgments rules in the District Court. I have also made several presentations to the Maryland Judicial Institute on topics of creditors rights.

Over the course of my practice, I have appeared, in each of the Maryland's twenty-four (24) jurisdictions (23 counties and Baltimore City). I have participated in hundred of cases, including jury trials, and have also observed many other proceedings during times I have been in Court waiting for the case I am involved in to be called for hearing or trial.

Both in my personal experience with opposing counsel and in observing cases in Court, I have encountered a wide variance in the competence and ability of Maryland lawyers. I have often commented to others that, because the Maryland Court of Appeals does not require any continuing education requirements for practicing lawyers, a Maryland lawyer once admitted to practice need not open another law book during the rest of his or her career. Unfortunately, I have come across a few lawyers whose level of competence suggests that the attorney has not opened a law book in many years.

Ronald S. Canter  
Licensed In:  
MD, FL, PA, DC, VA  
[rcanter@roncanterllc.com](mailto:rcanter@roncanterllc.com)

Birgit Dachtera Stuart  
Licensed In:  
MD, CA, DC  
[bstuart@roncanterllc.com](mailto:bstuart@roncanterllc.com)

Bradley T. Canter  
Licensed In:  
MD, VA  
[bcanter@roncanterllc.com](mailto:bcanter@roncanterllc.com)

Matthew W. Fogleman  
Licensed In:  
MD, DC  
[mfogleman@roncanterllc.com](mailto:mfogleman@roncanterllc.com)

John H. Bedard, Jr.  
Of Counsel  
Licensed in GA and TN  
[jbedard@bedardlawgroup.com](mailto:jbedard@bedardlawgroup.com)

I urge the Court of Appeals to require a challenging Maryland state law competent along with the proposed adoption of the Uniform Bar Examination. This state law competent should include vigorous requirements relating to Maryland Rules of Procedure and should focus on differences between the Maryland Rules and the Federal Rules of Civil Procedure, a topic tested on the Uniform Bar Examination. By way of illustration only, Maryland Rules differ, in material aspects, to the Federal Rules as to the filing of motions to dismiss, answers and motions for summary judgment. These few examples are a limited number of many significant variances in Federal and state rules governing civil practice.

I recommend that the Court of Appeals study the format of the examination that was required of applicants to the United States District Court for the Southern District of Florida. Although this examination process was recently eliminated, I, as a member of the Florida Bar, took this examination several years ago to gain admission to Federal Court. The examination required an 80% grade on fifty (50) multiple choice questions. Those fifty (50) questions were comprised of a total of 500 questions provided in advance to the applicant.

I note that the Report recommends that the implementation of the project designing the state law component solicit the involvement of practicing lawyers. I offer my assistance in the areas where I concentrate my practice.

Thank you for considering my views.

Very truly yours,

THE LAW OFFICES OF RONALD S. CANTER, LLC

By: /s/ Ronald S. Canter

Ronald S. Canter

RSC/mdl

V:\RSC-MDL\2017\OCT\16\2017 10 16 LETTER TO BESSIE DECKER.DOC

**Ronald S. Canter**  
Licensed In:  
MD, FL, PA, DC, VA  
[rcanter@roncanterllc.com](mailto:rcanter@roncanterllc.com)

**Birgit Dachtera Stuart**  
Licensed In:  
MD, CA, DC  
[bstuart@roncanterllc.com](mailto:bstuart@roncanterllc.com)

**Bradley T. Canter**  
Licensed In:  
MD, VA  
[bcanter@roncanterllc.com](mailto:bcanter@roncanterllc.com)

**Matthew W. Fogleman**  
Licensed In:  
MD, DC  
[mfogleman@roncanterllc.com](mailto:mfogleman@roncanterllc.com)

**John H. Bedard, Jr.**  
Of Counsel  
Licensed in GA and TN  
[jbedard@bedardlawgroup.com](mailto:jbedard@bedardlawgroup.com)

## Bessie Decker

---

**From:** Neal Cohen <Neal@nealcohenlaw.com>  
**Sent:** Wednesday, October 11, 2017 1:02 PM  
**To:** Bessie Decker  
**Subject:** UBE Public Comment

Ms. Decker.

I appreciate the Maryland Court of Appeal's approach to the proposed adoption of the UBE test.

I support this. I appreciate the potential increase in quality representation and the openness about the potential "protectionism" against out-of-state attorneys, which, if an attorney is otherwise qualified, is inefficient and represents rent-seeking behavior on the part of existing Maryland bar members. (This is not just an issue in Maryland.) The move towards merit-based qualifications is a positive one. If Maryland adopts the UBE, it will increase the momentum nationwide. The Court of Appeals should be commended for the production of this excellent report and recommendation.

Thank you very much,

Neal

Neal Cohen Law LLC | Consumer Product Safety Law  
Phone: 301-658-2424 | [Neal@NealCohenLaw.com](mailto:Neal@NealCohenLaw.com)  
[NealCohenLaw.com](http://NealCohenLaw.com) | Twitter [@NealCohenLaw](https://twitter.com/NealCohenLaw)

This communication is from an attorney and is confidential. It is intended to be privileged pursuant to applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this e-mail in error, please immediately contact the sender.



## Bessie Decker

---

**From:** Irwin R. Kramer <irk@kramerslaw.com>  
**Sent:** Wednesday, October 11, 2017 12:54 PM  
**To:** Bessie Decker  
**Subject:** Uniform Bar Examination (UBE) Advisory Committee Report

Ms. Decker:

As an attorney who regularly represents applicants for admission to the Maryland Bar, I wish to offer my support of the recommendations of a majority of the UBE Advisory Committee.

In short, there is really little significant functional difference between the legal areas tested on Maryland's current examination and the Uniform Bar Examination. While the Maryland Rules of Civil Procedure would not specifically be tested, these rules are based closely upon the Federal Rules, which are tested. The only other subject that would be left off of the essay portion would be professional responsibility, but that is tested independently already.

I do not know the impact on competition among Maryland lawyers. Adoption of the UBE may expand the roster of lawyers in our state. However, bar examinations are designed to measure competence – not to limit competition. In a world where lawyers must increasingly cross state lines on multijurisdictional issues, this step should enhance the mobility of lawyers and, hence, the resources available to their clients. Accordingly, I see this as a positive move in the right direction and would encourage the Court of Appeals to implement these recommendations.

I wish to commend the committee for an excellent report, which has expanded my understanding of the issues raised.

Irwin



**Irwin R. Kramer**  
*KRAMER & CONNOLLY*  
465 Main Street  
Reisterstown, MD 21136  
410.581.0070 x16  
410.581.1524 Fax  
[BarAdmit.com](http://BarAdmit.com)



## Bessie Decker

---

**From:** Erika Surock <erikasurock@gmail.com>  
**Sent:** Wednesday, October 11, 2017 4:24 PM  
**To:** Bessie Decker  
**Subject:** UBE Comments

Ms. Decker,

I am writing to comment on Maryland potentially switching to the UBE. As a recent graduate from the University of Baltimore (and a recent bar exam taker), I think switching to UBE is appropriate for the following reason:

I believe that cutting out some of the essays, and adding an additional MPT is beneficial because it adds more of a hands-on approach to the exam. The hands-on assignments covered by the MPT are what lawyers expect to see and experience in the real world. I think that it's smart to have more of a balance on the bar exam and adding an additional MPT will accomplish that.

Thank you for your time,

Erika C. Surock, J.D.