

No. AF 11-0244

IN THE SUPREME COURT
OF THE STATE OF MONTANA

IN RE: PETITION FOR THE ADOPTION OF THE NEXTGEN UNIFORM BAR
EXAMINATION

**JOINT PETITION AND BRIEF IN SUPPORT OF ADOPTION
THE NEXTGEN UNIFORM BAR EXAMINATION**

An Original Proceeding

Appearances:

Gary Bjelland, Chair
Montana Board of Bar Examiners
Jardine, Stephenson, Blewett &
Weaver, P.C.
P.O. Box 2269
Great Falls, Montana 59403

Aislinn W. Brown, President
State Bar of Montana
P.O. Box 577
Helena, MT 59624-577

John J. Mudd
Ex. Dir. & General Counsel
State Bar of Montana
P.O. Box 577
Helena, MT 59624-577

PETITION

COMES NOW, the Montana Board of Bar Examiners and the State Bar of Montana and respectfully petition this Court to amend the Rules for Admission to the Bar of Montana to require the National Conference of Bar Examiners' "NextGen" Uniform Bar Examination as the method of direct examination for admission to the bar of Montana, and that the Court utilize the existing Standing Committee of stakeholders on admission matters to assist with implementation of the new exam, including the necessary changes to the admission rules and establishment of a minimum passing score. Petitioners are indebted to Greg Murphy, past chair of the Board, and Chair of the Subcommittee on Legal Education and Bar Admissions of the State Bar's Task Force on the Future of the Legal Profession, for his valuable assistance in carefully examining the NextGen exam and in the preparation of this petition.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Admission to the bar of Montana is a matter long held to be peculiarly within the inherent, constitutional authority of this Court, which has "the power and authority to adopt, promulgate and enforce all necessary, proper and appropriate rules for its own governance and for the admission and regulation of attorneys at

law.” *In re: Montana Bar Association*, 140 Mont, 101, 104, 368 P.2d 158, 160 (1962). That longstanding, inherent authority, which predates the 1972 Constitution, is now specifically recognized in the text of Article VII, Section 2(3), which states that the Court “may make rules governing ... admission to the bar.” Mont. Const. art. VII, § 2(3). *See also Kradofer v. Smith*, 246 Mont. 210, 213, 805 P.2d 1266, 1268 (1990)(“Even before the adoption of Article VII, Section 2, Clause 3, [the Court] had held that the admission and regulation of attorneys in Montana is a matter peculiarly within the inherent power of this Court.”). At bottom, the exclusive authority of the judicial branch to regulate the legal profession rests upon the separation of powers doctrine, which “[t]he framers of the Constitution recognized... and clearly provided [the] Court with such exclusive authority in Article VII, Section 2(3).” *In re McCabe*, 168 Mont. 334, 340, 544 P.2d 825, 829 (1975)(rejecting a legislative attempt to control admission qualifications).

The Court has promulgated the Rules for Admission to the Bar of Montana in exercise of this exclusive constitutional power, including the present requirement that applicants, upon direct examination or exam score transfer, take the Uniform Bar Examination (UBE) developed by the National Conference of Bar Examiners (NCBE). *See* Rules III(C)(2) and IV of the Rules for Admission to the Bar of Montana.

II. BACKGROUND

A. Montana's bar examination requirements have evolved over time.

As the Court is aware, admission to the bar in Montana has evolved from the longstanding “diploma privilege” for graduates of the University of Montana School of Law to an examination based heavily on Montana law for all admittees, and to the UBE adopted in 2013. Montana was an early adopter of the UBE, the 8th jurisdiction out of 41 to adopt the exam.

The UBE provides numerous benefits when compared to pre-UBE practice before 2013, including:

(i) test items drafted by committees of law professors, deans, judges, and practicing attorneys from across the nation in a rigorous multi-year development and vetting process for each item;

(ii) statistical analysis ensuring that the test items “perform” in a valid and reliable¹ way;

(iii) the ability to ensure consistency over time by the statistical practice of “equating”² scores—thereby ensuring that scores on one test form have the same

¹ As used in this brief: “Validity” is the extent to which a test measures what it purports to measure, and the degree to which evidence and theory support the interpretations of test scores for particular uses; “Reliability” is the degree to which scores for a group of examinees would be consistent over multiple (theoretical) testing sessions. *See* Testing Basics: What You Cannot Afford Not to Know, *The Bar Examiner*, September 2017 (Vol. 86, No. 3), pp 32–37.

² “Equating” is the process of adjusting examinees’ scores to help ensure that no examinee is unfairly penalized or unfairly rewarded—to even a very small degree—by taking a form of the test that is easier or more difficult than another year’s form of the test. *See id.*

meaning as scores on another test form so as to measure the same level of performance across forms and,

(iv) portability—meaning the UBE score could be used by the candidate to gain bar admission in other states within the UBE compact.

The UBE is comprised of three components: (i) the Multistate Essay Exam (MEE), consisting of six individual essay questions; (ii) the Multistate Performance Test (MPT), consisting of two longer, practical questions (draft a legal memo, draft a client letter, etc.); and (iii) the Multistate Bar Exam (MBE), consisting of 200 multiple choice questions. Methodologically, the UBE has consistently demonstrated statistical reliability that equals or exceeds the reliability results achieved by other high-stakes licensing exams for professionals, including doctors, certified public accountants, nurses, and pilots.

Although the UBE represented a significant step forward in the examination process, critics of the current UBE argue that the test bears little resemblance to the actual practice of law. Rather than evaluating client counseling skills or analysis of legal issues spanning multiple subject matter areas, critics complain that the UBE instead encourages rote memorization and focuses on esoteric doctrinal questions that lend themselves to the multiple-choice format. Even assuming for the purpose of argument that there is some measure of merit to these criticisms, they nevertheless

fail to answer the central question in bar admissions: how to determine minimum competence in a manner that is fair, consistent, measurable, reliable, and scalable?

B. After significant study, NCBE has developed the NextGen bar exam to better assess the skills necessary for practice.

In 2018, NCBE commissioned a comprehensive three-year study of the bar exam. After conducting listening sessions with hundreds of stakeholders from bar admission agencies, supreme courts, the legal academy, and attorneys from across the country, NCBE's Testing Task Force (TTF) performed a nationwide practice analysis involving nearly 15,000 lawyers³ who provided data on the work performed by newly licensed lawyers⁴ and the knowledge and skills required for early-career competence.

Based on those results, the TTF made three overarching recommendations to evolve the UBE:

First, the breadth of knowledge tested by the exam should be narrowed to include those knowledge areas that cross a wide range of practice areas, from litigation to transactional work, that newly licensed lawyers most commonly encounter;

³ 79% of the lawyers participating in the nationwide practice analysis had supervised newly licensed lawyers, and the remaining 21% were newly licensed lawyers. <https://nextgenbarexam.ncbex.org/reports/final-report-of-the-ttf/>, p. 8.

⁴ A newly licensed lawyer is defined as a lawyer who has been in practice for three years or less. <https://nextgenbarexam.ncbex.org/reports/final-report-of-the-ttf/>, p. 6.

Second, the depth of knowledge assessed should be adjusted to more closely reflect the actual practice of law and the level of familiarity needed for competent practice by a newly licensed lawyer; and,

Third, the TTF endorsed an integrated exam structure to assess legal knowledge and legal skills holistically, in a single practice-related examination.

Based on those conclusions, the TTF recommended assessment of eight foundational concepts and seven foundational skills, utilizing the integrated exam structure:^{5,6} Foundational doctrinal areas include: business associations; civil procedure; constitutional law; contracts; criminal law; evidence; real property; torts; and family law (July 2028). Foundational skills include: issue spotting and analysis; investigation and evaluation; legal research; legal writing; client counseling and advising; negotiation and dispute resolution; and client relationship and management. *See Exhibit A.*

In January 2021, NCBE's Board of Trustees approved the recommendations contained in the TTF's Final Report⁷ and committed the organization to developing NextGen. NCBE has released the final Content and Scope specifications defining what will be covered on the new exam. A document describing the Content Scope Outlines, including the outlines themselves, can be found at

⁵ See <https://nextgenbarexam.ncbex.org/overview-of-recommendations/#ftoc-heading-4>

⁶ The ninth foundational knowledge area, family law, was added to NextGen in 2023, to first appear as a foundational knowledge area on the exam in July 2028, at the urging of Courts given the frequency with which justices encounter newly licensed lawyers appearing in court on these matters.

⁷ <https://nextgenbarexam.ncbex.org/reports/final-report-of-the-ttf/>

<https://www.ncbex.org/exams/nextgen/content-scope>. In line with this content and scope of foundational knowledge and skills areas assessed by NextGen, NCBE has and continues to release sample questions for all three question types used on NextGen.⁸ To demonstrate the validity and quality of the model that NextGen will represent, NCBE is currently finalizing scoring processes and psychometric methods for equating and scaling scores, developing test administration policies and procedures, and has begun releasing study materials with sample test questions to help candidates prepare.

C. Forty-eight jurisdictions have now decided to adopt and implement the NextGen beginning in July 2026.

NCBE will conduct the first administration of NextGen in July 2026, with nine jurisdictions committed to administering the exam at that first administration. NCBE has specified that it will also offer the UBE on an ongoing basis through the end of 2028. With this, the UBE and NextGen will both be administered by jurisdictions simultaneously for four exam administrations: July 2026, February 2027, July 2027, and February 2028. This will allow jurisdictions some time to evaluate whether to adopt NextGen. However, due to the need for potential rule and/or statutory changes to adopt the new exam, and in light of potential curriculum changes that law schools may also choose to make, it is likely that many jurisdictions will make their decision about whether or not to adopt NextGen before the first

⁸ [NextGen Sample Questions | NCBE](#)

administration in 2026. To date, 48 jurisdictions have announced the adoption of the NextGen exam.

III. DISCUSSION

Recognizing the many challenges and changes taking place in legal education, bar admissions, and the practice of law, in 2024, the State Bar created a Task Force on the Future of the Legal Profession. The scope of the Task Force's work included analyzing evolving developments in the bar examination process. After extensive review and discussion over the course of seven months, the Subcommittee on Legal Education and Admissions of the Task Force reported upon and recommended adoption of the NextGen.⁹ Subcommittee Chair Greg Murphy presented the Subcommittee's findings to the State Bar Board of Trustees, including a recommendation that Montana adopt the NextGen bar exam. The Trustees subsequently delegated to the State Bar's Executive Committee the authority to proceed with the necessary steps to petition this Court to adopt NextGen.

Independently, and then in coordination with the Subcommittee and the State Bar, the Montana Board of Bar Examiners also concluded that Montana should adopt NextGen. The dean and faculty of the Alexander Blewett III School of Law at the

⁹ The members of the Subcommittee were, Greg Murphy (chairman), Lt. Governor Kristen Juras, Dean Elaine Gagliardi, Gary Bjelland (chairman of the Montana Board of Bar Examiners), Casey Heitz (chairman of the Continuing Legal Education Commission, Annie Bartos (chairwoman of the Character and Fitness Commission, Professor Steven Bahls, and Elizabeth Brennan.

University of Montana also support the adoption of NexGen, effective with the February 2028 administration.

A. Adopting NextGen will afford continued methodological soundness and rigor in the Montana bar exam.

While some states are experimenting with drafting their own bar exams, as Montana once did, those efforts are not without challenges, such as the highly publicized issues surrounding California’s recent attempt. In contrast, the Montana Board of Bar Examiners’ experience with NCBE has been positive. The State Bar, which assists in administering the bar admission process, has also had a positive experience with NCBE, which, in addition to the bar examination, assists the State Bar with the character and fitness examination process. The organization is highly professional, committed to supporting jurisdictions, and its exam products in the form of the UBE and the Multistate Professional Responsibility Exam (MPRE) are widely used¹⁰ and of high quality. The eight-year process from the initiation of the TTF in 2018 through the first administration of NextGen in 2026 has been comprehensive in nature and rigorous in execution. The Board and the State Bar believe NextGen is a sensible evolution of the current UBE.

The final content and scope specifications are the result of a multi-year vetting process in which, after preliminary outlines were published, NCBE received nearly 400 individual comments from stakeholders, including law school deans, faculty,

¹⁰ A listing of NCBE exam products used by each jurisdiction can be found at: <https://www.ncbex.org/jurisdictions>.

and administrators; practicing attorneys; judges and justices; law students; and bar examiners and admissions staff. These comments were carefully considered during the revision process. In addition to this public input and after more than two years of work, the final specifications have been through multiple rounds of scrutiny by NCBE's Content Scope Committee, NextGen Implementation Steering Committee, members of NCBE's drafting committees, and NCBE's test editors and staff.

Similarly, the sample test items are the result of multi-phase pilot, field, and prototype testing programs in which, to date, a total of more than 8,500 participants from a total of 286 law schools, from 51 US jurisdictions and 32 countries, including the United States, participated in various levels of testing, sampling NextGen drafted items in research testing of two to nine hours. The sample exam content was drafted by trained teams of law professors and deans, practicing attorneys, and judges, and the test items were analyzed both psychometrically and by members of the drafting teams to ensure that they perform well as bar exam questions. As a result of this process of review and revision, jurisdictions can be confident that the exam questions for NextGen will continue to match the rigor of the UBE, while using an integrated format that more closely resembles actual legal practice.

//

//

B. Because NCBE is phasing out the UBE, adoption of NextGen is advisable for Montana.

NCBE will phase out the UBE in 2028 and NextGen will be the only available alternative for statistical equating of exams between administrations and among different jurisdictions beginning in July 2028.¹¹ Although Montana wrote its own essay exam items prior to the adoption of the UBE by this Court in 2013, returning to that practice would raise concerns about due process, fairness, and the defensibility of bar exam results. It simply is not possible to replicate the statistical validity or reliability of NCBE test products, absent NCBE's expert psychometricians and nationwide drafting committees of leading judges, law professors, and practitioners. Further, if the Court does not adopt NextGen, Montana candidates would lose the benefit of portability, meaning that their Montana bar exam score could not be used to gain bar admission in other states within a NextGen UBE compact.

C. The anticipated effect of NextGen on law schools, including the Blewett School of Law at the University of Montana, is minimal.

Because the knowledge areas tested on the NextGen exam generally mimic those tested on the current MBE, with the addition of business associations and family law, most law schools report that their 1L curriculum would require minimal

¹¹ Although some jurisdictions have not adopted the UBE, virtually all jurisdictions use the MBE (the 200-question multiple choice exam) to allow for equating between administrations. See <https://www.ncbex.org/jurisdictions>. NCBE has indicated that the MBE (which is part of the UBE) will be phased out with the sunset of the UBE.

change. That said, many law schools will encourage 1L faculty to incorporate lawyering skills as they teach in doctrinal courses. This might include incorporating more problem-based learning into coursework, as well as in-class discussions of NCBE’s example multiple-choice questions, item-set-type exercises, and essay questions. 1L faculty might also be encouraged to engage with each other to explore how they can introduce students to the interdisciplinary nature of legal practice (e.g., noting when a case raises both contract and tort issues or contract and property issues). It bears noting that the Alexander Blewett III Law School at the University of Montana already enjoys a reputation for integrating practice scenarios in its curricula.

For 2L and 3L courses, law schools are being encouraged to increase the offering of classes that include simulation exercises, as well as externships and clinical courses, to build those practical skills. This is consistent with Standards for Approval of Law Schools promulgated by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, specifically 303(a)(3), 303(b), and 304, requiring that experiential learning be integrated into law school curricula.¹²

¹² See

https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2024-2025/2024-2025-standards-and-rules-for-approval-of-law-schools.pdf

NCBE is continuing its support of law schools by making NextGen practice materials available and sharing ideas on how to incorporate more skills-based learning into doctrinal courses. NCBE also works with doctrinal and clinical faculty, as well as academic support personnel, at law schools to seek input and provide guidance.

For law professors concerned about the removal of their subject from the NextGen Content Scope Outlines (e.g., trusts and estates), the underlying foundational knowledge areas for practice in these areas (e.g., contracts, real property, etc.) are included in the NextGen exam. Doctrinal subjects like contracts and property law are “transcendent” in a way that trusts & estates are not—detailed knowledge of those doctrinal subjects is necessary for practice in many different areas, whereas detailed knowledge of the specifics of trusts and estates does not transcend into other practice areas. Moreover, although trusts & estates is not included in the foundational knowledge areas, and family law will be included only beginning in July 2028, they will both be included as case types in NextGen PT60s - the shorter versions of the current MPT that will be included in every NextGen administration. The fact pattern for a PT60 may be a family law or trusts and estates case, requiring candidates to interpret and apply statutes, case law, etc. in these areas, which will be provided to the candidate as the “library” for the question. Notably, this is how these subjects are currently tested on the UBE; because they are highly

state-specific in nature, with considerable variability among jurisdictions, current UBE questions on these topics almost always include a sample statute, which candidates are asked to interpret or apply. Accordingly, the NextGen items on these topics, like the current UBE items, may not reflect actual state law in the particular jurisdiction. Any jurisdictions that desire to emphasize topical knowledge of state-specific law in areas such as trusts & estates are encouraged to consider implementing their own state-specific testing component or a state-specific educational module on those topics. Montana already requires the Montana Law Seminar as a condition of admission and critical areas of these topics could be included in the seminar. Moreover, Montana uses the Uniform Probate Code as the basis for its own statutes.

D. The proposed Montana NextGen implementation date of February 2028 provides ample time for adjustments.

As noted above, the first administration of NextGen will occur in July 2026 and the UBE is currently scheduled to be phased out beginning in 2028. However, in light of potential curricular changes at law schools, the need for rule and/or statutory changes, and the desire for certainty as law students proceed through law school and begin to prepare for the bar exam, 48 jurisdictions have already announced adoption of NextGen.

The decision about whether, and when, to adopt NextGen is entirely within the discretion of this Court. However, given the 2-year window between first

administration of NextGen and sunset of the UBE, some jurisdictions are expected to conclude against a “wait and see” approach. For those jurisdictions that wait to decide until after the first administration of NextGen, their graduating law students may be at a disadvantage if they must face the new exam based on their old law school curriculum. Although the doctrinal topics will remain largely the same, the integrated format of NextGen questions and focus on practical skills may be different than what was emphasized in their existing law school curriculum. For those jurisdictions that make the adoption decision in advance, their law schools will have the opportunity to adjust the curriculum accordingly.

E. NCBE has conducted extensive analysis to establish a passing score range.

Montana currently employs a scaled passing score of 266 on the UBE. Because NextGen is an assessment that measures some new areas and skills, it will be graded according to a new scale. If this Court adopts NextGen, it will need to determine what score on the new exam is required to pass. NCBE will support jurisdictions in that decision in two different ways:

First, NCBE collected numerous pieces of evidence to provide a recommended passing score range and a mapping to the current exam recommended passing score range.

Second, NCBE has completed a national standard-setting study to establish a competency-based recommendation for the NextGen UBE passing score. In May

2025, NCBE convened 82 panelists from 40 jurisdictions for a two-and-a-half-day workshop to evaluate the performance expected of a minimally competent newly licensed lawyer. Panelists applied established judgment methods, including the modified Angoff method for selected-response items, paper-selection methods for constructed-response items, and the Hofstee method as a validity check. Their recommendations were combined with data from the October 2024 prototype administration, psychometric scaling analyses, and concordance studies linking legacy UBE scores to the new NextGen scale.

Based on this full body of evidence, NCBE has recommended a passing score range of 610–620 on the NextGen UBE. A score of 266 on the current UBE corresponds to approximately 616 on the NextGen scale. Although not binding on any jurisdiction, the recommended range provides a fair, defensible, and nationally consistent basis for jurisdictions to set their own passing standards.

NCBE emphasizes that the decision remains a matter of policy for each jurisdiction. Jurisdictions more concerned about avoiding the risk of admitting candidates who are not competent may adopt a standard at the higher end of the range; those more concerned about avoiding the erroneous exclusion of qualified candidates may adopt a standard at the lower end. Montana may also choose to align its passing score with current policy considerations, such as maintaining consistency with its existing standards. Alternatively, Montana could conduct its own standard-

setting exercise, with NCBE's support, to supplement the national results. However, all scores in the recommended range are defensible based on psychometric information.

F. Transition to NextGen will allow Montana to continue to accept transfer UBE/NextGen scores.

If the Court were to adopt NextGen, Montana will continue accepting UBE scores, and it could also decide to accept the transfer of NextGen with the first administration of NextGen. NCBE recommends that jurisdictions accept such NextGen scores, utilizing NCBE's score mapping table between the UBE and NextGen to determine Montana's passing standard for NextGen scores transferred into Montana.

G. There has been robust stakeholder engagement in this process.

As noted previously, NCBE has engaged stakeholders from across the bar admissions community in the development and implementation of NextGen. Beginning in 2018 with the establishment of the Testing Task Force, NCBE reached out to courts, bar examiners and admissions staff, the legal academy, and the practicing bar. Committees comprised of volunteers from across the country have guided every decision made in the development and implementation of NextGen. Members of NCBE leadership have met, upon request, in-person or virtually, with courts, bar admission authorities, and/or law deans in more than 40 jurisdictions to provide in-depth information on NextGen and to seek input from those stakeholders.

The President of the NCBE, Judy Gundersen, flew to Montana in October 2024 to meet with the Subcommittee and the Montana Board of Bar Examiners for that purpose. The chair of NCBE's Board of Trustees participated by Zoom. The NCBE leadership continues to hold regularly scheduled meetings to provide updates and respond to questions on the development and implementation of NextGen with Courts, bar admissions administrators, bar examiners, and the legal academy, and has been very responsive to the inquiries by the chair of the Subcommittee. The NextGen Justices Advisory Group, comprised of Justices from approximately 18 jurisdictions, meets on a quarterly basis to provide NCBE leadership with guidance and perspective on the development of NextGen moving forward. NCBE recognizes that the engagement and involvement of stakeholders in the bar admissions community is critically important to the success of NextGen.

H. Miscellaneous matters for the Court's information and analysis.

1. Exam and pre-exam procedures.

A key distinction between the UBE and NextGen is that NextGen is a fully computer-based and Wi-Fi-supported exam. The current UBE is a paper-based exam, where candidates receive all exam content on paper, but may select to respond to constructed-response portions of the exam electronically. With NextGen, candidates will receive all exam content via computer and respond to all exam items, both multiple-choice and constructed-response, via computer. To ensure that this

fully computer-based exam runs seamlessly, providing candidates with a smooth exam administration through which their focus is on showing their knowledge and skills rather than on the technology, NCBE has partnered with a technology vendor, Internet Testing Solutions (ITS) to provide the exam delivery software. ITS (<https://testsys.com>) is a leader in exam delivery and supporting solutions with decades of experience in the delivery of high-stakes testing solutions worldwide.

Bar admissions administrators are an important partner with NCBE in the development of policies and procedures regarding the delivery of NextGen. NCBE is working closely with administrators to finalize exam administration procedures, ensuring that all policies and procedures are developed in line with their experience and expertise in administering bar exams.

2. NextGen grading procedures.

NextGen's grading process will create more consistency in grading and will include additional best practices in the grading of high-stakes exams. As with the UBE, NextGen jurisdictions will select the graders who will grade the exam responses of candidates from their jurisdiction, and those graders will participate in grader training provided by NCBE. By the time graders start grading an item, every question will have already been vetted through NCBE's pre-exam process, during which a rubric is developed and honed. From this process, a mean score will be developed for all the components of the question, based on the variety of answers

that could be anticipated. When a jurisdiction's graders start to score their assigned answers, there will be a scoring standard for the answers being graded.

With NextGen, jurisdiction graders will proceed through the grading process and enter scores on an NCBE centralized grading platform. This will allow for enhanced monitoring of the grading process by experts at NCBE who will work with jurisdiction administrators to ensure that the grading process is moving forward as intended. Should an issue with a grader be flagged, such as, for example, where a grader may be showing a variation from the grading rubrics, NCBE will contact the jurisdiction administrator to offer assistance or additional training to that grader. In addition, every NextGen exam answer will be graded by two graders from the same jurisdiction, with each assessment completed independently of the other. So long as the score provided by both graders falls within one standard deviation of that standard score, then both grades will be considered valid. If the scores of both graders are valid, then the official score for that answer will equal the average of the two scores. If one or both scores are outside of one standard deviation, then the answer will be subject to an adjudication process, led by a grader from that jurisdiction. The adjudicator will then independently assess the answer and provide the answer its final and official score. This double-grading process is considered a best practice in high-stakes exams, ensuring the complete accuracy of each exam score.

In October of 2024, NCBE conducted a prototype exam, through which more than 2,000 persons from across the country who had sat for the July 2024 UBE sat for a full-length NextGen exam. The group's performance on NextGen was compared with their performance on the July 2024 MBE to provide the data to be used to support the May 2025 standard-setting study. During the grading of this prototype exam, adjudications were below 25% on average, which speaks highly of the calibration process NCBE has each grader follow. The technical tools that will be made available to graders through the centralized grading platform will increase the likelihood that graders will remain calibrated throughout each jurisdiction's grading session as it includes a pre-scoring calibration system, embedding those calibration answers so that graders will unknowingly grade the answers during the official grading session to see if they have remained calibrated to their original pre-exam calibrated self and their team. It further includes answers that are secretly embedded that may or may not be actual answers from the examinees, but for which the same rubric was used to develop the model score. These embedded answers allow NCBE and the team lead (if any) to verify whether the graders are still calibrated to each other and to the original model rubric.

//

//

//

3. NCBE exam fees will remain stable through 2028.

In 2025, NCBE announced the final NextGen fee schedule, including all fees for the exam and related technology issues. We are informed that NCBE has committed not increase these published fees before the end of 2028.

I. The proposed implementation date: February 2028.

The Montana Board of Bar Examiners recommends implementation of NextGen with the February 2028 administration of the Montana Bar Examination, and the State Bar concurs with that recommendation. The Board prefers the February date in part because the applicant pool in February is approximately four times smaller than in July, and the Board would prefer a smaller initial cohort because of the challenges of the new grading procedures and the like. Dean Gagliardi would prefer as much time as possible for the administration and faculty to make desired faculty and curricular adjustments and reports that she and the faculty believe they can make the necessary adjustments in time for students to be prepared for the February 2028 administration of the bar examination.

IV. CONCLUSION

In summary, for all the reasons herein, the Board of Bar Examiners and the State Bar submit that the NexGen Uniform Bar Exam aligns more closely with the knowledge and skills essential for competent practice in Montana. Adoption of NextGen will ensure Montana remains consistent with the majority of UBE

jurisdictions, thereby preserving the portability of Montana applicants' scores and the new format provides greater transparency, fairness, and reliability. Moreover, the transition to NextGen is well underway, with resources for law schools and applicants to prepare adequately.

This Court's continued regulation of the profession of law in the best interest of the people of Montana strongly supports adoption of NextGen and the Board of Bar Examiners and the State Bar respectfully request that the Court grant this Petition and further request the Court convene its Standing Committee of stakeholders on bar admissions to address any additional implementation matters, including the recommended minimum passing score.

Respectfully submitted this 27th day of February 2026.

MONTANA BOARD OF
BAR EXAMINERS

STATE BAR OF MONTANA

By: /s/ Gary Bjelland
Gary Bjelland, Chair

By: /s/ John J. Mudd
John J. Mudd, Ex. Dir.
& General Counsel

EXHIBIT A



CERTIFICATE OF SERVICE

I, John J. Mudd, hereby certify that I have served true and accurate copies of the foregoing Petition - Bar to the following on 02-27-2026:

State Bar of Montana Publication Department (Interested Observer)
ATTN: REGINA MERCADO
State Bar of Montana
P.O. Box 577
Helena MT 59624-0577
Service Method: E-mail Delivery

Electronically signed by Regina Mercado on behalf of John J. Mudd
Dated: 02-27-2026