

LOCAL LAW DISTINCTIONS IN THE ERA OF THE UNIFORM BAR EXAMINATION: THE MISSOURI EXPERIENCE (YOU CAN HAVE YOUR CAKE AND EAT IT, TOO)

by Cindy L. Martin

MISSOURI'S LOCAL LAW COMPONENT TO THE UNIFORM BAR EXAMINATION: THE UNEXPECTED BENEFITS

In April 2010, Missouri became the first jurisdiction to adopt the Uniform Bar Examination (UBE). In preparation for administration of the UBE, the Missouri Board of Law Examiners (“the Board”) developed a local law component to test knowledge of Missouri-specific law as an ingredient of its bar admission requirements. That process, as discussed in this article, required the Board to evaluate the utility of a local law component and to come to terms with the objective best served by such a component. The end result was the creation of a local law component composed of written materials that highlight key distinctions of Missouri law in several substantive areas that Missouri practitioners should be expected to know.

Quite unexpectedly, the Board has since come to the realization that the local law component it created would have been worthy of incorporation into its bar admission requirements independent of adoption of the UBE, as it incorporates several desirable characteristics, as further explained in this article. The written materials

- are housed online and are as such a freely accessible resource for the entire bar community;
- are more expansive in scope than they could ever have been had they been tested on the bar exam;
- permit the Board to educate applicants about subject matters important to Missouri practitioners but not otherwise eligible for testing on the bar exam;
- remain an accessible resource for attorneys following their admission to the bar in Missouri; and
- remain relevant, as they can easily be updated and modified.

In short, although this article describes Missouri's experience in developing a local law component in connection with its adoption of the UBE, Missouri's experience bears potential equal application to all jurisdictions, even those not considering adoption of the UBE.

THE ROAD TO THE UNIFORM BAR EXAMINATION

The decision to propose adoption of the UBE was not difficult for the Board. Missouri was already

administering the three components that compose the UBE—the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT)—in conjunction with four essay questions drafted by the Board. Movement to an exam structure that eliminated the essay questions drafted by the Board while reducing the total number of essay questions from 10 to 6 and increasing the number of MPT questions from 1 to 2 (the predetermined number of MEE and MPT questions for the UBE) would not require a radical change in the exam’s format.

After due consideration of the advantages and disadvantages of administering the UBE, the Board sought the approval of the Missouri Supreme Court (“the Court”) for adoption of the UBE.¹ The Court expressed interest in the UBE and authorized the Board to continue exploration of its adoption.

In September 2009, the Board met with the Court and with the deans of the Missouri and Kansas law schools and one Illinois law school to discuss the UBE.² The reaction to the UBE was generally favorable, with the law school deans predictably supporting an examination format that produces a portable score. However, one central concern emerged from this meeting: how can you license lawyers to practice in Missouri without testing their knowledge of Missouri law?

HOW TO TEST KNOWLEDGE OF MISSOURI LAW?

From the Board’s perspective, the concern about how to license lawyers to practice in Missouri without testing their knowledge of Missouri law

was grounded in perception, not reality. For those essay questions the Board authored,³ it had become the Board’s practice to craft questions that tested knowledge of general principles of law rather than details of Missouri law. As for the MEE questions, although examinees were instructed to answer the questions according to Missouri law, it was the Board’s experience that Missouri law often was the same as the general rules of law with respect to the subjects tested on the MEE. Nevertheless, the Board acknowledged that its exam instructions counseled examinees to answer questions in accordance with Missouri law, whereas UBE questions are answered according to generally applicable principles of law. Moreover, substantive topics eligible for testing on the Missouri Bar Examination included topics that were not covered by the MEE or the MBE.⁴

Determining a Format for the Local Component

During the joint meeting of the Court and the deans, the option of adding local law essay questions to the UBE was discussed and rejected for reasons discussed later in this article. Immediately following the meeting, the Court conditionally approved adoption of the UBE effective with the February 2011 examination, subject to the Board’s formulation of a local law component acceptable to the Court. The Court expressed support for an educational course but otherwise provided little guidance with respect to the details, such as the format or content of such a course.

Both the Board and the Court were excited about leading the way toward use of a single licensing examination and becoming one of the first jurisdic-

tions, if not *the* first jurisdiction, to formally adopt and administer the UBE in February 2011. Thus, the Board was faced with the daunting task of developing the educational course in a time frame that would permit the Court to approve adoption of the UBE and related amendments to Rule 8 as to fairly notify applicants of administration of the UBE in February 2011.

PREPARING TO SUBMIT THE BOARD'S RECOMMENDATION TO THE COURT

Upon securing the Court's approval to adopt the UBE, subject to development of an educational course on Missouri law, the Board began considering the potential content for such a course.

Determining Substantive Areas of Law and Preparing Skeletal Outlines

As a preliminary step, the Board identified those substantive areas of law that warranted coverage because of significant distinctions or features of Missouri law. It was the Board's opinion that the course should not afford comprehensive coverage of any substantive area of the law. Rather, it should expose applicants to the unique aspects of Missouri statutory, common, and decisional law that any Missouri practitioner should be expected to know.

In identifying potential content for the educational course, the Board first considered the subject matters that are eligible for testing on the UBE and next considered whether any subjects not tested on the UBE should be covered in the course. Ultimately,

the Board identified the following subject matters as appropriate for coverage—some of which are tested on the UBE but in which Missouri law is distinct or differs significantly from generally applicable principles of law, and some of which are not tested on the UBE but about which attorneys engaging in general practice in Missouri should know: Business Associations, Missouri Civil Procedure, Estates, Evidence, Family Law, Administrative Law, Real Property, Torts, and Trusts.

The Board then divided these topics among its six members. With a self-imposed deadline of January 31, 2010, the Board members reviewed legal research materials related to each of the subject matters and developed skeletal outlines that delineated topic headings and subheadings only of the significant local law distinctions and features in each of these subject matters. The draft outlines

were circulated, discussed, and revised by the Board to remove or add material as necessary in keeping with the objective to highlight local law distinctions and not to serve as comprehensive treatises.

Drafting Rule Amendments

Meanwhile, the Board's then Executive Director, Kellie Early,⁵ drafted the stopgap amendments to Rule 8 necessary to implement adoption of the UBE.⁶ If the UBE was going to be administered in February 2011, it was essential that revisions to Rule 8 be adopted by the Court with an effective date of no later than July 1, 2010, to put prospective applicants on notice before they applied to take the examination.⁷

The Board submitted the skeletal outlines with the proposed amendments to Rule 8 to the Court in February 2010, together with a memorandum setting forth issues related to delivery of the educational course (these issues are discussed later in this article). The local law component was addressed in the proposed rule by adding a provision that applicants must “complete an educational course on Missouri law prescribed by the Board and approved by the Court” as an additional condition for licensure.

Approval by the Court

In April 2010, the Court approved the amendments to Rule 8 and formally adopted the UBE, making Missouri the first UBE jurisdiction. The Court agreed with the content identified by the Board for inclusion in the educational course on Missouri law, but details regarding delivery of the course were still to be determined.

EVALUATING THREE LOCAL LAW COMPONENT OPTIONS

Local Law Essay Questions Added to the UBE

Early in the process, the Board and the Court ruled out the option of using essay questions on Missouri law as the local law component. If the local law essay questions were to result in a reliable score, they would need to be administered contemporaneously with the UBE and scaled to the MBE. Adding essay questions would require either a longer testing day on one of the days of the exam or the addition of a third testing day immediately before or after the exam. Neither option was attractive, as each option would increase the burden on applicants and on the Board and its staff. Moreover, adding testing time would increase the costs of renting testing space and proctoring the exam. These costs would have to be passed on to applicants in the form of higher applica-

tion fees. Additionally, applicants who had taken the UBE in another jurisdiction would have to wait until the next exam administration to take the local essay component, delaying their potential admission to the bar in Missouri.

Furthermore, local law essay questions inherently could test only a limited number of legal principles in but a few substantive areas. From the Board’s perspective, local law essay questions constituted a “form over substance” response, the effectiveness of which was only to counter the misperception that some existing emphasis on Missouri law was being abandoned with adoption of the UBE.

The Board also recognized that adding local law essay questions to the UBE would result in an applicant receiving two scores: a UBE score and a combined UBE/local law essay examination score. It would be the combined UBE/local law essay examination score that would determine whether applicants gained admission in Missouri, even those applicants who earned UBE scores that met or exceeded Missouri’s cut score. Given that Missouri’s current bar examination was not, in reality, testing knowledge of local law, it seemed that coupling local law essay questions with the UBE facially defeated the objective underlying the UBE without adding any meaningful measure of competency to practice in Missouri.

Attendance-Required Educational Course

The Court had expressed a preference for the Board developing an attendance-required educational course, similar to a continuing legal education (CLE) program, focusing on unique aspects of Missouri law.⁸ But this option posed its own concerns.

The administration of a CLE program is expensive, involving, among other things, the rental of

meeting room space, the cost of publicizing the program, the provision of refreshments, the need to reimburse speakers for travel expenses, and administrative overhead to track registration and attendance. A recurring educational course would be burdensome to produce. The course would have to be offered no less than twice a year in connection with each UBE administration if applicants were required to complete it before gaining admission to the bar. The course also would need to be offered at two or three locations throughout the state to afford applicants a reasonable opportunity to attend. The costs of delivering a recurring course would require the Board to increase application fees or to separately charge applicants for the course. The efforts required to repeatedly plan, organize, and present an educational course would impose a substantial burden on already overtaxed Board resources and staff.

The Lightbulb Moment: Coming to Terms with the Objective Best Served by a Local Law Component

The Board recognized that some of the obstacles inherent in presenting a recurring course could be overcome by videotaping the course for rebroadcast at live locations or in an Internet seminar (“webinar”) format. Once it began considering this solution, the Board quickly realized that it was moving away from a local law component that emphasized determining an applicant’s absorption of local law and toward a local law component that emphasized an applicant’s access to critical information about Missouri law

distinctions. The Board thoroughly discussed this philosophical difference and concluded that as the UBE already determines minimum competence to practice law, a local law component need not duplicate this objective.

Written Materials Highlighting Local Law Distinctions and Features

This philosophical revelation redirected and crystallized the Board’s efforts with respect to developing the outlines for the educational course. Having gained an inspired understanding of the relevant point and purpose of a local law component, the Board focused on developing local law materials that would enhance the licensure process. With this perspective in mind, the Board arrived at a recommended local law component that would provide applicants with written outlines of significant issues of distinction in

Missouri law, including appropriate reference to Missouri statutory, decisional, and common law. The Board believed that the outlines should be available to applicants online. The Board envisioned that it would require an applicant to provide the Board with written certification attesting that the applicant had reviewed the outlines as an additional condition of licensure.

In June 2010, the Board met with the Court to propose that delivery of the educational course on Missouri law be accomplished through distribution of the written outlines rather than through an attendance-required course.

. . . [T]HE BOARD QUICKLY REALIZED THAT IT WAS MOVING AWAY FROM A LOCAL LAW COMPONENT THAT EMPHASIZED DETERMINING AN APPLICANT’S ABSORPTION OF LOCAL LAW AND TOWARD A LOCAL LAW COMPONENT THAT EMPHASIZED AN APPLICANT’S ACCESS TO CRITICAL INFORMATION ABOUT MISSOURI LAW DISTINCTIONS.

THE COURT'S ENHANCEMENTS TO THE BOARD'S LOCAL LAW COMPONENT PROPOSAL

Although the Court generally approved the Board's proposal, it did request two modifications. First, the Court requested the addition of an outline addressing the Missouri court structure and judicial selection process. With this suggestion, the Court highlighted one of the advantages of a local law component that emphasizes the provision of written information—the ability to give applicants access to materials that would never have been otherwise tested on the bar examination.

Second, the Court told the Board that it wanted applicants to do more than simply certify review of the outlines as a condition of licensure. The Court asked the Board to develop a simple online test applicants would be required to pass as a condition of satisfactory completion of the local law component. The Court made it clear that it was not envisioning a test whose score would be part of an applicant's bar examination score, or a test that would create an unreasonable impediment to licensure. Rather, the Court believed that a test would enhance applicants' appreciation of the materiality and relevance of the local law component. In the words of Supreme Court Judge Zel Fischer, the Court believed that the local law materials were intended to prevent applicants from "backing into a buzz saw" once they began practice in Missouri because they were not aware of significant distinctions in Missouri law. The Court thus believed that a simple test would cause applicants to treat the local law component with a level of seriousness, and not simply as an item to check off as a condition to licensure.

FINAL STEPS FOR THE BOARD

The Court's additional requests presented the Board with another daunting deadline. The adopted revisions to Rule 8 implemented the UBE as of the February 2011 exam administration. The Board's online application for the February 2011 exam was slated to open on September 1, 2010. The Board thus had to complete the following tasks by no later than September 1, 2010: (1) finalization of the outlines⁹, (2) preparation of an outline covering the additional topic of the Missouri court system as suggested by the Court, (3) development of an online testing instrument acceptable to the Court, (4) coordination of the logistics with respect to where the substantive outlines and the testing instrument should be housed online, and (5) determination of an appropriate means by which the Board could verify that an applicant had passed the local law test in satisfaction of the local law component.

THE MISSOURI EDUCATIONAL COMPONENT TEST

In keeping with the Court's articulated objective, the Board formulated a 30-question multiple-choice test covering matters addressed in the written outlines. The Board decided to require an applicant to answer 75 percent of the questions correctly in order to satisfactorily complete the local law component. The Missouri Educational Component Test (MECT) was thus born. The Court quickly approved this testing concept.

Housing the Materials and Test

In the meantime, the Board's new Executive Director, Colette Neuner,¹⁰ focused on the logistics of housing the outlines (eventually to be called the "Missouri

Materials”) and MECT online. Although initial consideration was given to modifying the proprietary website used by the Board for hosting the electronic application forms and the secure applicant accounts, it quickly became apparent that the cost and time required to do so would be prohibitive. Neuner thus worked with the Office of State Courts Administrator (OSCA), the agency that oversees the state’s judicial website. This cooperative enterprise resulted in the Board being permitted to place the local law outlines and the MECT on OSCA’s website. Applicants are seamlessly directed by a series of links from the Board’s home page to the local law materials and test housed on the OSCA site.¹¹

Importantly, housing the local law materials and the MECT on OSCA’s website was accomplished at virtually no cost to the Board. As a result, the Board has not been required to increase its application fees or to assess a separate charge for administering the MECT.

Taking the Test

Although the local law component materials and the MECT are publicly available and can be accessed by any member of the public, including applicants, an applicant must have submitted an application to sit for the exam in Missouri before the applicant can attest to satisfactory completion of the local law component as a condition of licensure. Applicants are afforded up to one year following notification that a passing UBE score has been achieved in Missouri, or that a passing UBE score achieved in another jurisdiction has been accepted by Missouri, to complete all requirements of licensure. Thus, applicants have the flexibility of completing the MECT component at any time between these parameters.

Scoring the Test

OSCA’s programming permits the MECT to be automatically scored and is designed to deny an applicant access to the written certification of satisfactory completion of the MECT until a passing score on the MECT has been achieved. Once a passing score on the MECT is achieved, an applicant is required to print the Certificate of Completion shown on page 14 to attest that the applicant personally reviewed the local law materials and completed the MECT, and to mail the original Certificate of Completion to the Board.¹²

Retaking the Test

Applicants are permitted to retake the MECT as many times as is necessary to achieve a passing score. This is not inconsistent with the objective of affording applicants access to important local law distinctions and features, as opposed to testing competence or proficiency in a psychometrically sound fashion.

FUTURE EVOLUTIONS OF THE MECT

The Board has committed to annually reviewing and updating the local law outlines by June of each year. The Board welcomes input from the bar about the subjects covered in the outlines and the specific content of the outlines.

The MECT is not a difficult test to pass—nor was it intended to be. Applicants can review the substantive outlines to find the correct answers to questions while taking the MECT, rendering the MECT an open-book test. However, the Board is sensitive to maintaining an appropriate level of respect for the MECT and the role it is intended to serve. Thus, the

Certificate of Completion
Missouri Educational Component

MECT SCORE:

Date:

Certificate Number:

This test score is valid in accordance with Rule 8.08(c).

1. Fill in the blanks.

Enter your full name as it appears on your ILG application:

Enter your e-mail address:

Enter the area code and phone number of your primary contact number:

2. [Print this page](#)

3. Sign this page and mail it to the Board of Law Examiners, 1700 Jefferson St., Jefferson City, Missouri 65109.

I hereby certify that I completed the Missouri Educational Component open book test myself.

Your Signature _____

MECT Certificate of Completion. The score, date, and certificate number are automatically filled out upon applicant receipt of a passing score.

Board will modify the MECT questions on a regular basis, and no less than annually.

The Board is also considering restricting the frequency with which an applicant can retake the MECT

within a set period of time in an effort to prevent an applicant from cheating the process by merely guessing at answers without having studied the local law materials. In addition, the Board may develop

several versions of the MECT so that an applicant who fails to achieve a passing score will be directed to a different version of the MECT on retake.

Though firm decisions about these and other potential enhancements to the MECT have not yet been made or implemented by the Board, the beauty of the MECT is its flexibility. The outlines and the testing instrument can be easily modified at virtually no cost to the Board.

CONCLUSION

The MECT exposes applicants to an extensive array of critical distinctions and features of Missouri law in several substantive areas. The MECT materials are more expansive in scope than they could ever have been had they been tested on the bar examination, and they permit the Board to educate applicants about subject matters not otherwise eligible for testing on the bar examination. Because the MECT materials are housed on a website that is in the public domain, the materials remain an available resource to applicants after licensure. In fact, the availability of the materials is promoted to all lawyers in Missouri. The Board's partnership with OSCA for housing the MECT materials and for scoring the MECT was essentially cost free and remains an extraordinarily flexible tool permitting maintenance and upgrading of the MECT.

The real or perceived conflict between the promotion of a portable UBE score and the desire to focus on local law need not stand in the way of a jurisdiction's desire to adopt the UBE. Missouri humbly suggests that the MECT strikes just the right balance between conditioning licensure on exposure

to unique distinctions and features of local law and promoting the portability of UBE scores.

The Missouri Board and its staff stand ready to serve as a resource for any jurisdiction exploring adoption of the UBE in the face of resistance to the perceived necessity of forgoing a local law component. As the Show-Me State has demonstrated, it is indeed possible to have your cake and eat it, too. Uniformity is not mutually exclusive with the ability

to emphasize a state's uniquely valuable identity. ■

NOTES

1. In Missouri, admission to the practice of law is authorized by Missouri Supreme Court Rule 8, Admission to the Bar. Rule 8 also addresses the creation and composition of the Board. The members of the Board thus serve upon appointment by, and at the will of, the Court. Any change in the format of the bar examination in Missouri requires Court approval and attendant modification of Rule 8.
2. Applicants from Kansas and Illinois frequently seek dual licensure employing a transferred MBE score. It has therefore been the Board's practice to communicate with the deans of both Kansas law schools and one Illinois law school because of the regularity with which their students seek admission in Missouri.
3. When NCBE began offering 9 MEE questions in July 2007, the Board would often select more than 6 MEE questions and would then write the number of essay questions necessary to administer a total of 10 essay questions.
4. These subjects included Missouri Civil Procedure, Administrative Law, and Equity.
5. Kellie Early served as the Board's Executive Director for 10 years. She accepted the position of Director of Administration for the National Conference of Bar Examiners beginning in mid-June 2010.
6. Given the exigencies of time, the Board elected, initially, to incorporate necessary revisions into its current Rule 8.08, which addresses application for the bar examination generally. The Board is now in the process, however, of adopting a stand-alone rule, Rule 8.09, addressing the requirements for admission on the basis of a UBE score earned in another jurisdiction.
7. The proposed changes to Rule 8 addressed (1) the adoption of the UBE and the intent to administer the UBE commencing with the February 2011 examination, (2) the addition of a local law component as a condition of licensure, (3) the required UBE cut score to pass the exam in Missouri, (4)

the weighting to be afforded each component of the UBE (the specific weighting of the MBE, MEE, and MPT is predetermined as a condition of UBE use), and (5) the requirements for admission on the basis of UBE scores transferred from other UBE jurisdictions into Missouri.

8. In the limited discussions about adding a local law component, the Court had indicated that any educational program would be offered only to applicants for admission and would not compete with CLE programs offered by the Missouri Bar and other providers to licensed attorneys.
9. Although the Board invested considerable time and energy in developing the outlines, to avoid responsibility for reliance on the accuracy or completeness of the substantive outlines, the Board prepared an appropriate disclaimer, which is posted online along with the substantive outlines.
10. Colette Neuner was hired to replace Kellie Early as the Executive Director of the Board in late May 2010 and was thus thrust headlong into the adoption of, and transition to, the UBE.
11. The Board's home page is www.mble.org. On this page, an applicant (or any member of the public) can click the highlighted "Read More" link under the section titled "Missouri Educational Component Test (MECT)." Highlighted links thereafter direct an applicant to the substantive outlines, to the MECT, and, upon achieving a passing score, to the Certification of Completion.
12. Some have inquired about security issues in terms of how the Board can verify that the test was actually taken by the applicant and not by a surrogate test-taker. The primary goal of Missouri's local law component, however, is to simply ensure that applicants are exposed to and know where to find the Missouri-specific materials that the online test covers. The Board believes that as applicants become familiar with the Missouri-specific materials, they will come to quickly appreciate that the MECT is a resource and not a serious impediment to admission that should tempt an applicant to resort to dishonesty. In addition, the Board's Certificate of Completion presumes the same character for honesty presumed in affidavits of attendance submitted by attendees of CLE courses offered to licensed practitioners in the state. For these reasons, the Board was not overly concerned about applicants falsifying MECT certification.



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