MEMORANDUM

Committee Secretary
Supreme Court Rules Committee
222 N. LaSalle Street
13th Floor
Chicago, IL 60601

RE: Request for Public Comment, Proposals 24-16, 24-17, and 24-18

April 11, 2025

I extend respectful greetings to the Rules Committee.

I am registered before the Attorney Regulation and Disciplinary Commission as Duane Edward Schuster, Attorney Registration Number 6201915. I was a Staff Attorney for the Illinois Board of Admissions to the Bar from 2015 to 2024. Prior to that, I was an Assistant Defender with the Office of the State Appellate Defender from 1994 to 2015.

I am grateful to the Rules Committee for extending an opportunity for public comment concerning proposed amendments to the Illinois Supreme Court Rules which the Committee will consider during a Public Hearing on April 23, 2025. I wish to comment on Proposals 24-16, 24-17, and 24-18, concerning proposed amendments to various Rules relating to admission to the bar. My comments here are based on several years of personal experience studying, interpreting, and implementing the Rules relating to bar admission, as further informed by my prior 20 years of experience studying Illinois Supreme Court and Appellate Court opinions concerning the Supreme Court Rules.

Proposal 24-16 [Amends Illinois Supreme Court Rule 704]

I respectfully suggest an additional clarification to Rule 704(f) that would ensure due consideration for the circumstances of applicants with disabilities and the Illinois Board of Admissions' responsibility to provide appropriate accommodation under the Americans with Disabilities Act (ADA) and other applicable law:

(f) An individual applicant's passing score on the Illinois bar examination is valid for four years from the last date of the examination administered to that applicant**.** An applicant for admission on examination who is not admitted to practice within four years must repeat and pass the examination after filing the requisite character and fitness registration and bar examination applications and paying the fees therefor in accordance with Rule 706.

Although traditionally the standard Illinois bar examination has been administered over the course of two days, for the past several years the Board has provided appropriate "non-standard" testing accommodation for a significant number of applicants with bona fide impairments recognized under the ADA and other federal law. For many of these applicants appropriate accommodation has

included an extended bar examination schedule, most commonly stretching over four days. Since at least 2015 the Board occasionally has approved extended bar examination schedules of six days or even longer for certain applicants who presented significant and persuasive medical evidence establishing that an examination schedule of extended duration reasonably accommodated their impairments.

The clarification I have suggested regarding amendments to Rule 704(f) would account for this history and protect the rights of individuals with disabilities in two ways:

First, it would place an applicant whose bona fide impairments were reasonably accommodated with an extended bar examination schedule beyond two days in duration on an equal footing with standard bar examination applicants.

Second, it would preclude standard bar examination applicants who fail to secure admission within four years since the last date of the standard bar examination ("day two") from attempting to tie the four-year deadline to the last date of examination administered to applicants with bona fide impairments who were reasonably accommodated with extended examination schedules.

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Proposal 24-17 [Amends Illinois Supreme Court Rule 704A]

In the same vein as my comments regarding Proposal 24-16 (Rule 704), I respectfully suggest an additional clarification to Rule 704A that would ensure due consideration for the circumstances of applicants with disabilities and the Illinois Board of Admissions' responsibility to provide appropriate accommodation under the Americans with Disabilities Act (ADA) and other applicable law.

Concerning the conditions under which an applicant who completed a Uniform Bar Examination in another jurisdiction may achieve admission to the practice of law in Illinois, the proposed amendment to Rule 704A(a) currently provides: *** "<u>The date on which a score on the Uniform Bar Examination was attained is the Wednesday of the week during which the Uniform Bar Examination in question was administered.</u>"

The Board of Admissions' intent in seeking to provide clarity regarding the precise date from which the four-year window for transferring a UBE score begins to run is admirable and laudable. However, the unintended consequence of identifying one specific day applicable to all bar examination applicants is discrimination against applicants with disabilities whose bona fide impairments were reasonably accommodated with a bar examination schedule extending for a duration longer than two days. Such extended examination schedules historically have been provided as medically supported reasonable accommodations to a significant proportion of applicants with disabilities who have taken the Illinois bar examination, including the UBE. For these applicants, concluding that they receive the

benefit of a full four-year window starting from "the Wednesday of the week during which the Uniform Bar Examination in question was administered" is simply inaccurate. Under Proposal 24-17 as currently formulated, these applicants get a four-year window *minus* however many days *beyond* "the Wednesday of the week during which the Uniform Bar Examination in question was administered" they continued to take their bar exam.

I respectfully suggest that the following language or closely analogous language, implemented within Rule 704A(a) itself, may serve to remedy this potential problem:

*** Except for the date pertaining to certain applicants with disabilities specifically noted within this Paragraph (a), the date on which a score on the Uniform Bar Examination was attained is the Wednesday of the week during which the Uniform Bar Examination in question was administered. For an applicant with disabilities whose examining jurisdiction conferred an extended examination schedule with a duration greater than two days as a reasonable accommodation for the applicant's medically verified bona fide impairments, the date on which a score on the Uniform Bar Examination was attained is the last date of the examination administered according to the applicant's extended examination schedule.

As an expression of a broader general concern, I respectfully suggest that the proposed amendments to Rule 704A as currently reflected in Proposal 24-17 are susceptible to rendering Rule 704A obsolete within the next five years, which in turn may necessitate considering further amendments to Rule 704A within that time frame. In terms of potential effect on Rule 704A, a brief discussion of certain proposed amendments to Rule 704 included in the prior Proposal 24-16 will provide context. The Board's proposed amendments to Rule 704(d) contain the following provision: "If the Board recommends that the Illinois examination be a national examination developed by the NCBE and the Court so approves, then the examination shall be administered consistent with the terms of use or policies developed by the NCBE." Immediately thereafter, the Board proposes *deleting* the language in the current Rule 704 which specifically identifies the current national examination developed by the NCBE (National Conference of Bar Examiners) as the Uniform Bar Examination.

The most logical explanation for these proposed amendments to Rule 704 is the Board's recognition that any "national examination developed" according to the "NCBE's terms of use or policies" remains in an ongoing state of flux. The NCBE's current iteration of a national examination – the Uniform Bar Examination – may succumb to obsolescence very soon. One need only access the NCBE website and peruse its posts concerning the "NextGen Bar Exam of the Future" to corroborate this conclusion.

However, the Board's laudable forward thinking and open-ended language in anticipation of imminent changes to the standardized national bar examination developed by NCBE – as reflected in Proposal 24-16 concerning amendments to Rule 704 – is absent from Proposal 24-17 concerning amendments to Rule 704A. The Board's proposed amendments retain the original title of Rule 704A ("Admission by Transferred Uniform Bar Examination Score"), retain the numerous specific references to the Uniform Bar Examination dispersed throughout the original Rule 704A, and add two additional specific references to the Uniform Bar Examination within the proposed Amended Rule 704A(a).

A rational person can plausibly speculate that the Board was aware of the seeming incongruity between the proposed amendments to Rules 704 and 704A but nonetheless overtly intended for practical reasons to submit the proposed amendments to both Rules while keeping, for now, the apparent incongruity intact. One can plausibly reason that while the proposed amendments to Rule 704 represent the Board's recognition of the imminent obsolescence of the Uniform Bar Examination in title and form, the proposed amendments to Rule 704A recognize not only that the original Rule 704A was focused concisely on specific procedures for accepting Uniform Bar Examination scores from other jurisdictions which may prove difficult to excise or amend, but also that even if other jurisdictions replace the UBE with the NextGen Exam as early as 2026, the Illinois Board of Admissions must still concern itself with procedures for transferring UBE scores obtained as early as four years prior to the implementation of the NextGen bar examination. Perhaps this is not only a plausible but also an eminently practical reason for retaining exclusive references to the Uniform Bar Examination within Rule 704A, at least over the next five years, more or less.

Nonetheless, I do have two concerns:

First, the apparent incongruity between Rule 704 as represented by the amendments in Proposal 24-16 and Rule 704A as presented in Proposal 24-17 will remain on stark display in side-by-side consecutive Illinois Supreme Court Rules explicitly concerned with admission to the practice of law in Illinois.

Second, the amendments to Rule 704A as currently formulated in Proposal 24-17 make no explicit provision for the transfer of a NextGen bar examination score, even though NCBE indicates on its website that some jurisdictions may replace the UBE with NextGen as soon as 2026. Unless the Illinois Supreme Court does not intend to permit the transfer of NextGen scores to Illinois under any circumstances, the imminent obsolescence of the UBE may necessitate additional and extensive amendments to Rule 704A within the next five years, or perhaps even repeal of Rule 704A and its replacement with a new Supreme Court Rule specifically concerned with the procedures for transfer of NextGen examination scores to Illinois. Is it not plausible and perhaps more efficient to craft language *now* that may resolve such problems *before* an Amended Rule 704A is officially implemented that will succumb to obsolescence within the next decade?

(Schuster Comments, Page 5)

I respectfully suggest that a solution is possible now. I suggest adding clarifying language in the amendments to Rule 704A in the following manner (or at least in language analogous to the manner I suggest). I respectfully propose modifying the title and opening paragraph of Rule 704A as follows:

Illinois Supreme Court Rule 704A. Admission by Transferred ~~Uniform Bar Examination~~ Score from Jurisdictions adopting the National Examination Developed by the NCBE and Administered Consistent with NCBE Standards

Hereinafter, all references to "the Uniform Bar Examination" in this Rule 704A shall also apply to the most recently adopted and effective national examination developed by the NCBE and administered consistent with the terms of use or policies developed by the NCBE, provided such national examination is approved by the Illinois Supreme Court as designating the official Illinois bar examination. An applicant who has taken the Uniform Bar Examination in a jurisdiction other than Illinois and earned or exceeded the scaled total score deemed passing by the Board may be admitted to the practice of law in this state on the following conditions:

This language or analogous language will signal that the main purpose of Rule 704A concerns establishing procedures for the transfer of bar exam scores from other jurisdictions that conducted a bar examination consistent with a "national examination developed by the NCBE" and "administered consistent with the terms of use or policies developed by the NCBE." As long as the same national examination has been approved by the Illinois Supreme Court for administration within Illinois, whether the current national bar examination is entitled the Uniform Bar Exam, the NextGen Exam, or something else is irrelevant.

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Proposal 24-18 [Amends Illinois Supreme Court Rules 706 and 716]

The Board of Admissions' current proposal leaves the language in Rule 706(f) unchanged concerning the fee for transfer of a uniform national bar examination score under Rule 704A. Thus, like the Board's current proposal regarding amendments to Rule 704A itself, the Board's current proposed amendments to Rule 706 do not address the imminent obsolescence of the Uniform Bar Examination and its imminent replacement with the NextGen Exam in at least some state jurisdictions.

I respectfully suggest that a subtle change to Rule 706(f) may resolve the potential problem:

(f) Applications for Admission by Transferred ~~Uniform Bar Examination~~ Score Under Rule 704A.

Each applicant for admission to the bar by transferred ~~UBE~~ score under Rule 704A shall pay a fee of $1500.

I respectfully assert that the phrase "transferred score under Rule 704A" suffices to notify the applicant that Rule 706(f) pertains specifically and exclusively to the fee for admission by transferred score. Applicants and other interested parties may refer directly to Rule 704A, as amended, regarding the substantive provisions and conditions for valid transfer of bar exam scores from other jurisdictions.

I have concerns about the Board's proposal to amend Rule 706(e), concerning the fee for Admission on Motion under Illinois Supreme Court Rule 705. The Board proposes to split the $1500 fee into stages, beginning with submission of "a fee of $150 upon submission of an applicant's Preliminary Questionnaire on the form prescribed by the Board of Admissions to the Bar for preliminary evaluation of whether an applicant is qualified to apply for admission under Rule 705 …."

Speaking solely from the perspective of my own personal experience and reflections and with all due respect to my former employer the Illinois Board of Admissions, I humbly suggest that the Illinois Supreme Court and its Rules Committee consider tabling the proposed amendment to Rule 706(e) until such time as the Board of Admissions may submit a proposal for comprehensive amendment and clarification of the provisions of Illinois Supreme Court Rule 705 concerning Admission on Motion. Under that scenario, the Court and its Rules Committee can consider all proposed amendments touching upon Rule 705 and Admission on Motion together to gauge how well "each of the foregoing requirements" fits together. *See* **Illinois Supreme Court Rule 705(m)**.

I will present here a practical example of why I broach these suggestions. Potential applicants for Admission on Motion searching for language referring to the "Preliminary Questionnaire" within the current Rule 705 itself will not find it; there is no mention in the current Rule 705 of any "Preliminary Questionnaire on the form prescribed by the Board of Admissions to the Bar for preliminary evaluation of whether an applicant is qualified to apply for admission." Yet the Board's proposed amendment to Rule 706(e) obviously places substantial importance on the Preliminary Questionnaire, since it ascribes a $150 segment of the overall $1500 application fee to submission of the Preliminary Questionnaire. The Board's proposal to assess a fee for the initial submission probably reflects the laudable goal of warning potential applicants for Admission on Motion that the endeavor is a serious and potentially arduous one. I suspect, however, that a $150 initial fee will not

deter major national law firms based in the Chicago or Metro-east regions from recruiting experienced out-of-state lawyers without first exercising careful and due diligence regarding whether their recruits may actually meet the rigorous qualifications for Admission on Motion under Rule 705.

Of course, the Illinois Supreme Court has conferred authority on the Board of Admissions to implement internal rules and procedures necessary to implement and enforce the Court's current Rules concerning admission to the bar, **Illinois Supreme Court Rule 709(a)**, so there is no absolute legal requirement of codifying the concept of the Preliminary Questionnaire explicitly within Rule 705. However, I fear that implementing the proposed amendments to Rule 706(e) without implementing corresponding changes to Rule 705 itself will add another layer of mystification to an already complex and difficult Admission on Motion application process. My personal experience reflects that applicants for Admission on Motion as well as the Staff and Administrators entrusted by the Court and the Board to enforce Rule 705 already find Admission on Motion applications difficult and time-consuming. Moreover, not only is there inherent tension between applicants and the Staff and Administrators of the Board concerning precisely what levels of proof, documentation, and verification are required for an applicant to establish compliance with the qualifications for Admission on Motion, but also internal disagreement concerning the precise requirements of Rule 705 among Staff Attorneys, Administrators, the Director, and the Court-appointed Members of the Board has occurred and likely will continue to occur until clearer parameters are set. Perhaps comprehensive amendment to Rule 705 itself is necessary to resolve such conflicts. However, I fear that implementing the current proposed amendments to the fee provisions in Rule 706(f) *now*, before any amendments to Rule 705 Admission on Motion itself are proposed, inevitably will produce additional layers of tension, complication, and disagreement.

Thank You and I hope you will consider my comments.

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