

March 27 2012

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. AF 11-0244

IN RE PETITION TO ADOPT
UNIFORM BAR EXAMINATION

and

IN RE THE PETITION AND
MEMORANDUM IN SUPPORT OF
REVISION OF THE 2005 RULES OF
PROCEDURE OF THE COMMISSION
ON CHARACTER AND FITNESS OF
THE SUPREME COURT OF MONTANA

FILED

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STATE BAR OF MONTANA RESPONSE TO COURT ORDER

The State Bar of Montana submits the following response to the Court's
Order dated November 29, 2011.

- 1. Provide a step-by-step timeline explaining the process an applicant will follow, from applying for the examination and the character investigation through admission to the Bar, under the proposed revisions.**

A Montana Bar Admissions applicant follows the steps in the attached chart entitled Applicant Monthly Calendar & Costs. Applicants currently apply with a paper application and their supporting documents. The Bar Admissions Administrator reviews all applications and documents and determines if further review is required. If an applicant requires further review by the Character & Fitness Commission, the chart entitled Character & Fitness Investigation

(Applicant Process) is followed. If an applicant is conditionally admitted, the chart entitled Stipulation Process after Admission (conditionally Admitted Attorneys) is followed. These steps will not change in either an adoption of the National Conference of Bar Examiners (NCBE) investigation services or the Uniform Bar Exam (UBE).

The major change to the admission process, if the Court approves, would be that the initial investigation will be done by the National Conference of Bar Examiners (NCBE) from an online application that applicants (law student, law graduates or attorneys) complete with all supporting documentation. The NCBE would ensure the application was complete with all supporting documents and the appropriate follow-up and verification. The NCBE would then submit to the Bar Admissions Administrator a summary report of their investigation. The Bar Admissions Administrator will review and determine what additional information is needed. If further review by the Character & Fitness Commission is necessary then the Commission will follow the Character & Fitness Investigation (Applicant Process) and if conditional admission is warranted then the Stipulation Process after Admission (conditionally Admitted Attorneys) would be followed before certifying an applicant to take the Montana Bar Examination.

2. List all costs an applicant will pay for each step of the process and at what point each cost will be assessed.

First, the attached chart entitled Applicant Monthly Calendar & Cost indicates the current costs for students and attorneys for the admission process. Second, a comparison of the current process and costs to applicants (law school graduates and attorneys) both currently and with two options is indicated in the attached chart entitled Process & Costs Under Proposed Revisions using the UBE and NCBE. The chart indicates the current application process and proposed options. Option 1 illustrates if the current fees for admission and bar examination remain the same with the additional costs to students and attorneys for the National Conference of Bar Examiners (NCBE) investigation (students - \$275 and attorneys - \$375). These are fees not currently charged. The applicants would pay these fees directly to NCBE.

Option 2 is a recommendation that would not change many of the fees except that the current Montana Essay Exam fee - \$150, would not be charged, whether a Montana component of the Exam was given or not, either as an online testing component or continued with essays.

Although there is an indication that the Montana Supreme Court would prefer that no costs paid by examinees be raised, especially for students, this simply is not possible. The NCBE investigation fees which are currently not

included in the payment of fees are in addition to the fees applicants pay to Montana for the admission process.

3. Provide an assessment of the impacts, if any, upon Bar staffing and/or the Bar's budget which will result from implementation of the petitions.

An assessment of the impacts is provided in the attached chart entitled Admissions Revenue/Expense and the document entitled Assumptions to UBE and NCBE Analysis. The financial information for FY 09- FY 11 provides the actual revenue and expenses for these periods. The FY 12 revenue and expenses is budgeted for this current year and FY 13 (April 1, 2012 – March 31, 2013) is what would be affected by any changes approved by the Court. The Options 1 and 2 proposed earlier in response to request number 2 are illustrated in the accounting and the net results are on line 44. The Assumptions to UBE and NCBE Analysis provide a review of the effects of these proposed options on revenue and also either savings or continued expenses.

The Pro Hac application process is currently within the admission process as administered by the Bar Admissions Administrator. It should be noted that the State Bar has filed a petition to the Court requesting that the current Pro Hac fee assessment (line 40) be an annual assessment rather than the current one time application fee to the State Bar. If that is approved, an estimate of additional \$7,000 revenue is possible for those cases that are still active beyond just one year. Pro Hac applicants currently pay annually an

assessment for the Office of Disciplinary Counsel (\$125) and Lawyers Fund (\$20), that the State Bar collects for both of these entities. The Pro Hac petition requests that Pro Hac Applicants pay the same amount State Bar members pay annually as dues - \$200.

4. Provide a more definitive proposal for the educational/online testing component for Montana law which the petition proposes.

Although the State Bar was not asked to provide input on the educational/online testing component for Montana law, if an online testing component is implemented, the Admissions Administrator will have some administrative function for both coordinating and gathering the subject matter material for any online outlines. In addition, the testing results would need to be monitored to determine certification or similar notification of exam results.

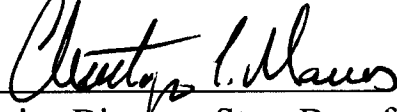
Also any costs associated with hosting the software or testing program on either the Court's website or the State Bar's website would have to be funded.

5. Indicate the effective date for implementation of the revisions, including the date on which applicants will enter the new system.

The State Bar has assumed that implementation is for the February 2013 exam. All application dates and exam fee dates will have to be reviewed and coordinated to be consistent with what the NCBE will require for the application process and the UBE exam fee payment date. The State Bar's fiscal year is April 1-March 31 and therefore, changes in any fees to the State Bar will

be in this fiscal year – mid-year. Also rule change revisions will need to be provided to the Court for approval.

STATE BAR OF MONTANA

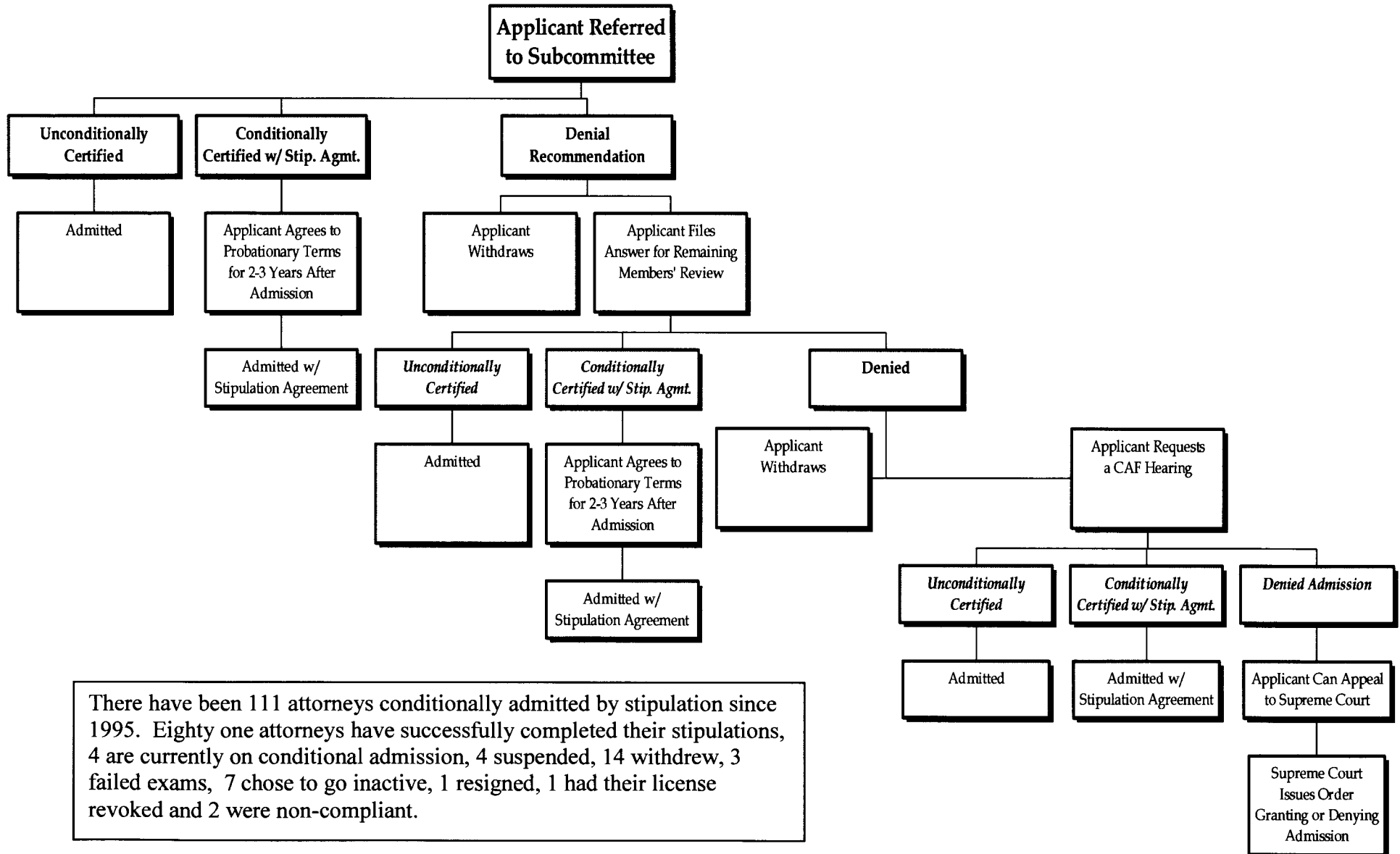
By: 
Executive Director, State Bar of Montana

Date: 3/27/12

Applicant Monthly Calendar & Costs			
Month / Deadline	Event	Student Cost	Attorney Cost
January	Applicant receives certification from the Commission on Character and Fitness to sit for the February bar exam		
February	2/10 - Deadline to pay February exam fees; sit for February bar exam (last week of month)	\$450 (\$350 w/o MBE)	\$450 (\$350 w/o MBE)
March	3/1 - Deadline to submit ALL application materials and pay application fee for the July bar exam	\$150	\$400
April	60 days for Bar Admissions Administrator to send and receive fingerprint records from the Dept. of Justice and to complete character & fitness (C&F) reviews; exam results from February exam mailed at the end of the month		
May	Swearing In Ceremony for February bar examinees		
June	Applicant receives certification from the Commission on Character and Fitness to sit for July bar exam		
July	7/10 - Deadline to pay July exam fees; sit for July Bar exam (last week of month)	\$450 (\$350 w/o MBE)	\$450 (\$350 w/o MBE)
August	Follow-up by Bar Admissions Administrator with problematic C&F files; resolve remaining issues from prior exam and prepare for next exam		
September	Exam results from July exam mailed at the end of the month		
October	10/1 - Deadline to submit ALL application materials and pay application fee for February bar exam; Swearing In Ceremony for July bar examinees	\$150	\$400
November December	60 days for Bar Admissions Administrator to send and receive fingerprint records from the Dept. of Justice and to complete character & fitness reviews		

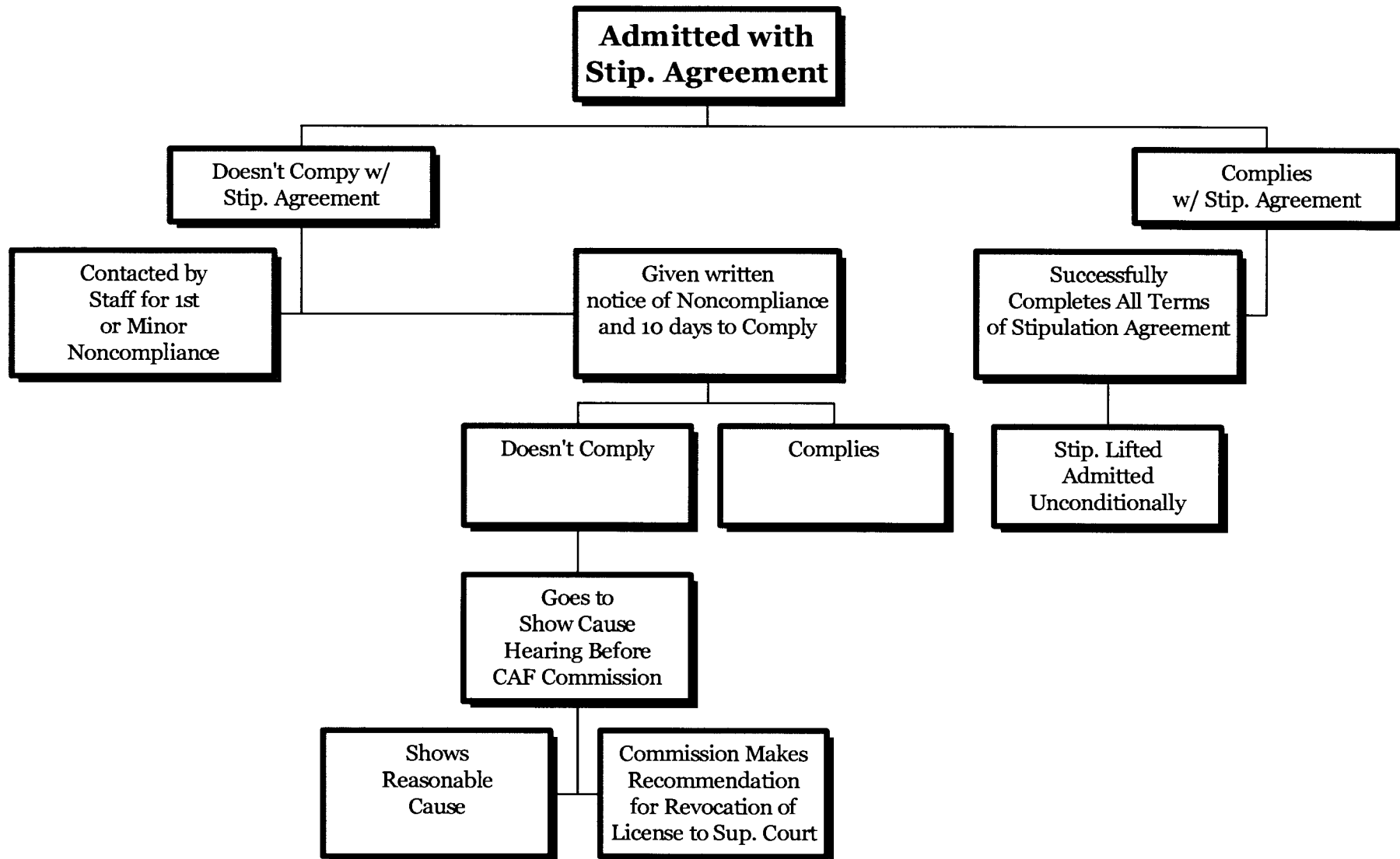
Supplemental Fees: \$15.00 Application packet (free to UofM students)
 \$125 paid to ExamSoft for examinees wishing to use laptop

Character & Fitness Investigation (Applicant Process)



There have been 111 attorneys conditionally admitted by stipulation since 1995. Eighty one attorneys have successfully completed their stipulations, 4 are currently on conditional admission, 4 suspended, 14 withdrew, 3 failed exams, 7 chose to go inactive, 1 resigned, 1 had their license revoked and 2 were non-compliant.

Stipulation Process After Admission (Conditionally Admitted Attorneys)



Process & Costs Under Proposed Revisions using the UBE and NCBE

Current Montana Application Process	NCBE Application
Application to Montana with substantiating documents	Application to NCBE with fee & substantiating documents
Montana reviews Application	NCBE confirms accuracy of Application
Montana confirms or requests information to complete the Application	Montana receives report from NCBE summarizing information gathered
Montana sends certification letter or seeks further information (C&F Flow Chart)	Montana sends certification letter or seeks further information (C&F flow Chart)
Character & Fitness – Conditionally Admitted Attorneys Monitored Stipulation (Varies from 2-3 yrs.) See Character & Fitness Flow Chart	

Current Montana Bar Exam	Uniform Bar Exam
Applicant Applies to Montana & Pays Application Fee	Applicant Applies to NCBE for Montana & Pays Application Fee to NCBE
Applicant Pays Exam Fees	Applicant Pays Exam Fees
Applicant sits for MTEE, MEE, MTE and MBE (2.5 day exam)	Applicant sits for MEE, MTE and MBE or imports scores from another UBE jurisdiction (2 day exam)
	Montana exam may become a separate component
Notification of Exam Results	Notification of Exam Results
Failed Examinee can transfer successful exams to next exam	A UBE score is portable to other states that use the UBE within a limited time frame
Swearing In	Swearing In

COSTS PAID BY EXAMINEES

When Fees are Paid	Current Components	Current Cost to students (SBM)	Current Cost to attorneys (SBM)	OPTION1 *Est. Cost to students (MT App/Exam)	OPTION 1 *Est. Cost to attys (MT App/Exam)	OPTION 2 *Est. Cost to students (No MT Exam)	OPTION 2 *Est. Cost to attys (No MT Exam)
On Request	Application Packet	15.00	15.00	15.00	15.00	15.00	15.00
Paid With Application	MT Application Fee	150.00	400.00	150.00	400.00	150.00	400.00
	*NCBE investigation fee			*275.00	*375.00	*275.00	*375.00
Due 10 th of month prior to exam	**Montana Essay Exam	150.00	150.00	150.00	150.00	0	0
	Multistate Essay Exam	100.00	100.00	100.00	100.00	100.00	100.00
	Multistate Performance Test	100.00	100.00	100.00	100.00	100.00	100.00
	Multistate Bar Exam	100.00	100.00	100.00	100.00	100.00	100.00
	TOTAL:	615.00	865.00	890.00	1240.00	740.00	1090.00
	To SBM	515.00	765.00	515.00	765.00	365.00	615.00
	To NCBE	100.00	100.00	375.00	475.00	375.00	475.00

*NCBE Investigation Fee- Pd 1st application only; supplemental fees to NCBE are \$175 for different jurisdictions and \$75 for the same jurisdiction

**Estimated costs include predictions both with and without a separate Montana exam component (online or essay)

	A	B	C	D	E	F	G	H	I	J	K
1	Admissions Revenue/Expense	FY13 Budget	1/1/2012					UBE	UBE	NCBE	NCBE
2			Projected					Current Applicant Fees	Current Applicant Fees	Current Applicant Fees	Current Applicant Fees
3			FY12	FY11	FY10	FY09		Current Testing Fees	Zero MT Essay Exam Fee		Zero MT Essay Exam Fee
4	Revenue							Option 1	Option 2	Option 1	Option 2
5	C&F Attorney Application	40,000	29,000	32,000	32,800	29,600		32,000	32,000	32,000	32,000
6	C&F Student Application	15,000	13,500	19,350	16,800	16,200		15,000	15,000	15,000	15,000
7	BBE Miscellaneous Income	0	3,000	3,460	2,575	4,601		0	0	0	0
8	Exam Fees	70,000	75,000	75,800	73,270	73,945		81,000	54,000	81,000	54,000
9	Bar Exam Application Copy Charge		100	15	30	120		0	0	0	0
10	Transfer MBE Score		0	0	15	45		0	0	0	0
11	Examsoft Royalty	6,000	7,500	7,300	6,700	6,450		7,500	7,500	7,500	7,500
12	Total Revenue	131,000	128,100	137,925	132,190	130,961		135,500	108,500	135,500	108,500
13											
14											
15											
16	Expenses										
17	BBE Postage	2,000	2,000	1,655	1,893	1,385		1,600	1,600	1,600	1,600
18	BBE Telephone	200	100	79	118	519		100	100	100	100
19	BBE Supplies	500	400	475	415	124		300	300	300	300
20	BBE Room Rental	5,500	5,500	8,171	5,254	6,059		6,706	6,706	6,706	6,706
21	BBE Board Travel	5,000	7,000	10,677	5,975	5,125		10,000	10,000	10,000	10,000
22	BBE NCBE Test Booklets	11,800	14,000	15,354	13,398	12,428		18,000	18,000	18,000	18,000
23	BBE Professional Services	32,000	32,000	31,750	31,650	31,600		14,150	14,150	14,150	14,150
24	BBE Staff Travel	6,000	7,000	4,468	4,041	3,610		4,000	4,000	4,000	4,000
25	BBE Staffing, Benefits & Indirect	44,000	42,000	40,775	38,972	38,712		40,775	40,775	40,775	40,775
26		107,000	110,000	113,404	101,716	99,562		95,631	95,631	95,631	95,631
27											
28											
29	C&F Lexis Use	0	534	2,127	2,053	1,820		0	0	0	0
30	C&F Telephone/Printing	300	200	312	113	0		100	100	100	100
31	C&F Court Reporters	0		0	836	420		500	500	500	500
32	C&F Fingerprint Checks	4,500	3,000	4,585	5,842	3,063		4,500	4,500	4,500	4,500
33	C&F Commission and Staff Travel	5,000	2,500	0	376	3,503		1,500	1,500	1,500	1,500
34	C&F Credit Bureau Reports	200	150	189	134	0		225	225	225	225
35	C&F Miscellaneous Expense			0	30	148		100	100	100	100
36	C&F Staffing, Benefits & Indirect	47,000	45,701	45,701	64,455	53,069		45,701	45,701	45,701	45,701
37		57,000	52,085	52,914	73,839	62,023		52,626	52,626	52,626	52,626
38											
39											
40	Pro Hac Vice Revenue	30,000	30,000	31,200	28,500	10,800		31,200	31,200	31,200	31,200
41	Pro Hac Vice Staffing, Benefits & Indirect	4,000	3,868	3,868	2,603	3,871		3,868	3,868	3,868	3,868
42		26,000	26,132	27,332	25,897	6,929		27,332	27,332	27,332	27,332
43											
44	Net	-7,000	-7,853	-1,151	-17,468	-23,695		14,575	-12,425	14,575	-12,425
45											
46	Column H - Utilizing Uniform Bar Exam (UBE) – Current Application Fees of \$150 for student applicants x 100 and \$400 for attorney applicants x 80 to State Bar and current testing fees of \$450 x 180 for all applicants = \$81,000										
47	Column I – Utilizing Uniform Bar Exam (UBE) – Current Application Fees of \$150 for student applicants x 100 and \$400 for attorney applicants x 80 to State Bar and testing fees of \$300 x 180 for all applicants (no charge for MT Essay)										
48	Column J - NCBE Application – Current Application Fees of \$150 for student applicants x 100 and \$400 for attorney applicants x 80 to State Bar and current testing fees of \$450 x 180 for all applicants = \$81,000										
	Column I – NCBE Application – Current Application Fees of \$150 for student applicants x 100 and \$400 for attorney applicants x 80 to State Bar and testing fees of \$300 x 180 for all applicants (no charge for MT Essay)										
49											
50											
51											

Assumptions to UBE and NCBE Analysis:

Earliest changes to take effect would be in FY13 (April 1, 2012 – March 31, 2013)

Revenue

1. Assume 80 attorney (out of state) application fees x \$400 = \$32,000 (Line 5, Column H - K)
2. Assume 100 student application fees x \$150 = \$15,000 (Line 6, Column H - K). Assume a decrease in the number of student applicants to more accurately reflect the average number.
3. Assume no BBE Miscellaneous Income from fees charged for copies of prior year Montana essay exams (Line 7)
4. Option #1 - Assume 80 attorney (out of state) applicants and 100 student applicants = $180 \times \$450$ testing fees = \$81,000 (Line 8, Column H and J)
5. Option #2 – Assume 80 attorney (out of state) applicants and 100 student applicants = $180 \times \$300$ testing fees = \$54,000 (Line 8, Column I and K)

Expense - Savings

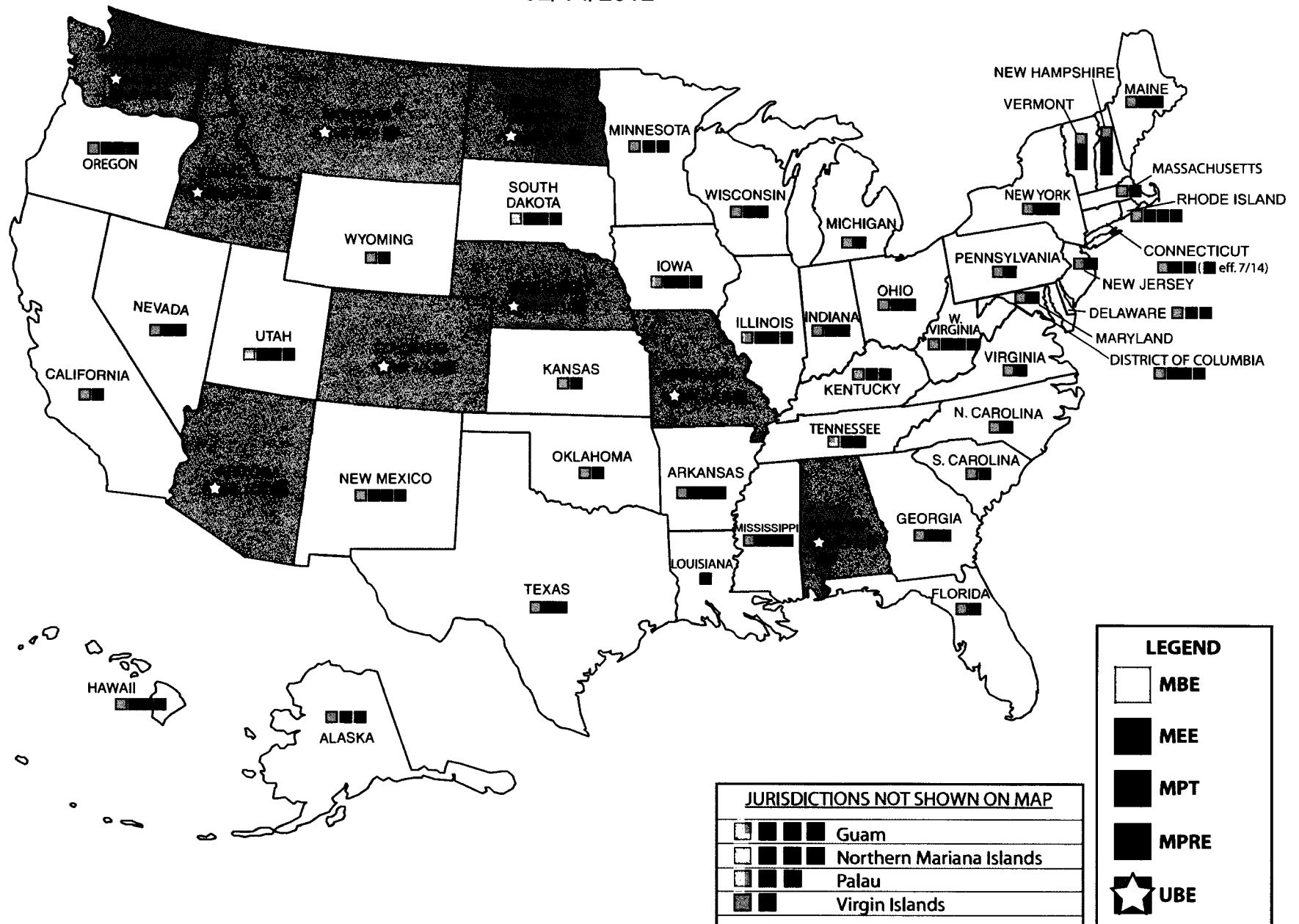
1. Hotel savings for one day less rent of large room \$815 (Doubletree Hotel) in July and \$650 (Great Northern) in February = \$1465 savings
FY11 actual cost was \$8171 less \$1465 = \$6706 (Line 20, Column H - K)
2. BBE NCBE Test Booklets for 180 applicants x 100 = \$18,000 (Line 22, Column H - K)
3. Professional services \$14,150 (Line 23, Column H – K, \$31,750-\$17,600)
\$31,750 actual expenses for FY11 which includes proctors less savings of \$17,600 based on less proctors needed and reduced payments to the Board of Bar Examiners for services
4. Staffing, Benefits and Indirect – same figures used as FY11 actual
5. Added additional funds for C&F commission and staff travel in anticipation of increased work load related to the implementation of NCBE investigative function.

*Portability of UBE scores may increase application to Montana admission but decrease exam testing in Montana. Result would be more application fees collected, less exam fees collected.

Adoption of the Uniform Bar Examination

with Other NCBE Testing Services Depicted

02/14/2012



*UBE conditionally approved