California Supreme Court to Consider Lowering the Bar Exam Passing Score

The State Bar Board of Trustees and 56 California law school deans have aligned around a position supporting lowering the minimum passing score on the California bar exam to 1390 from 1440.

San Francisco, CA (PRWEB) September 14, 2017 -- The California Accredited Law Schools (CALS) have filed a letter brief with the California Supreme Court supporting lowering the minimum passing score for the California bar exam from 1440 to 1390. Mitchel Winick, President and Dean of Monterey College of Law, who filed the brief on behalf of the CALS, reported that, "The brief encourages the California Supreme Court to consider that 56 California law school deans and the State Bar Board of Trustees have aligned around a position supporting lowering the minimum passing score to 1390 from 1440." Although each group has presented other alternatives as well, 1390 is the only score shared by a broad consensus of interested parties that falls within the range of valid scores that the State Bar has determined will provide 95% confidence in measuring the minimum competency for the first year of law practice. Winick also pointed out that the ten largest U.S. jurisdictions, other than California, all have minimum passing scores in the range of 1330 to 1390. "At 1440, California is an extreme outlier from the national norm of 1350," said Winick.

The CALS have argued that public protection of the people of the State of California is best served by a bar exam passing standard that effectively measures the legal standard of "minimum qualifications for the first year of legal practice" without having a disparate impact on minority or CALS examinees. Winick said that, "the CALS brief to the Court details why a minimum passing score of 1390 accomplishes this objective without compromising public protection."

During the recent Supreme Court-ordered investigation into lower bar exam passing rates and bar exam scoring, it was discovered that over a period of more than 70 years the State Bar of California has never validated the current 1440 minimum passing score. The Bar reported that it had no record of how the original score was set other than it was "an approximate 70% passing score established back in the 1950's." It was also reported that, until recently, no scientific validity study had ever been conducted to assess whether the 1440 passing score actually reflected the required licensing standard of "measuring the minimum qualifications for the first year of law practice."

As described in the CALS brief to the Court, the recently completed investigation and research ordered by the Court included three important findings:

1) There is no empirical evidence that indicates that setting a high cut score for the bar exam is related to public protection or attorney competence;

2) A disproportionately high cut score has a disparate impact on minorities and graduates of California Accredited Law Schools; and

3) To the extent that higher cut scores reduce the number of licensed attorneys in a given jurisdiction, a high cut score may, in fact, undermine access to legal services – an important form of public protection.

Many California counties are now “minority-majority” jurisdictions. California law schools, both ABA and CALS, have made significant efforts to reflect this change. California ABA law schools minority enrollment in
2016 was 44%. The CALS minority enrollment in 2016 was over 47%. Both of these reflect a significantly higher minority enrollment than the ABA law school national average of 32%.

Unfortunately, State Bar demographics do not reflect a similar success. The total 2017 State Bar minority membership is approximately 16%. This reflects very little change over the past 15 years from the 14% of minority membership reported in 2001. Over that same period, Asian membership in the Bar remained unchanged, African American membership dropped from 2.4% to 1.9%, and Hispanic membership increased marginally from 3.7% to 4.6%.

The CALS have asked the Court to consider -- when comparing the number of minority students who are successfully graduating from accredited law schools in California to the number of minority attorneys passing the bar exam -- is California's disproportionately high minimum passing score of 1440 having a disparate impact on minority examinees? The question is presented by the Bar’s own recent report to the State Bar Board of Trustees that stated, “While the root causes of disproportionate rates of passage are beyond the scope of this report, it is clear that applicants of color pass the bar exam at rates that are disproportionate to those of their white counterparts.” Winick pointed out that, "This is particularly important in lieu of the Bar also finding that there is no empirical evidence indicating that a high cut score is related to public protection or attorney competence.”

The disparate impact of the arbitrarily high passing score is evident when comparing the results from the July 2016 bar exam. If a passing score of 1390 had been applied, Hispanic examinees would have experienced a 26.1% pass-rate increase, African-American examinees would have experienced a 40.4% pass-rate increase, and CALS examinees would have experienced a 69% pass-rate increase. The overall bar passing rate would have improved by 20.3%. As a general principle, pre-employment testing that has a disparate impact on the basis of race is only valid if there is proven job-based justification. However, in the case of the bar exam, the Bar has determined that there is no empirical evidence indicating that a high cut score is related to public protection or attorney competence.

Therefore, the CALS conclude in their brief that passing the California bar exam with a minimum passing score of 1390 means that licensees will meet all four of the critical standards of public protection that have been established by the Court and the State Bar – a rigorous pre-licensure education, a comprehensive moral character and fitness investigation, passing the Multistate Professional Responsibility Exam based on the highest minimum standard of all U.S. jurisdictions . . . and passing the California bar exam with the highest minimum passing score of the ten largest U.S. jurisdictions.

The CALS Deans have requested that the Court adjust the minimum passing score of 1440 to an interim score of 1390 that reflects a valid standard of minimum competency for the first year practice of law. They argue that this decision serves the best interests of the citizens of California by ensuring a high standard of public protection while providing fair access to licensing for a competent and diverse legal profession. The CALS join with a broad coalition who identify or support 1390 as a valid interim cut score: the State Bar Board of Trustees, the State Bar Office of Research & Institutional Accountability, the Law School Council, the Assembly Judiciary Committee staff and Committee Chair Mark Stone, 56 California law school deans, and the Center for Public Interest Law at the University of San Diego.

It is anticipated that in addition to the CALS brief, the Court will be receiving a separate report from the State Bar and that the ABA law school deans, the Registered law school deans, and the Center for Public Interest Law will be filing letters in support of lowering the minimum passing score. If the Court decides to apply a new
score to the recently completed July 2017 bar exam, it will need to notify the State Bar within the next four weeks. Otherwise, there is not a specified deadline for the Court to decide the issue.

Link to the CALS Letter Brief to the Court:
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