Supreme Court of California

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October 10, 2024

Mitchel L. Winick
President and Dean
Monterey College of Law
100 Colonel Durham Street
Seaside, CA 93955

RE: Request to lower the California Bar Exam's minimum passing score

Dear Dean Winick:

Thank you for your letter. The court has considered this request in conjunction with other proposals pending before the court concerning the recommendations of the Blue Ribbon Commission on the Future of the California Bar Examination and the Portfolio Bar Examination proposal. The court's order regarding these matters is attached. In light of that order, and for the reasons explained below, the court declines to alter the exam's passing score at this time.

As you are aware, the court initiated a standard setting study for the California Bar Examination in 2017, and a panel of subject matter experts recommended a passing score of 1439. The current passing score of 1390, which the court implemented in 2020, is now at the very bottom of the range identified by that study as indicating minimum competence to practice law.

Comparing this passing score to those applied in other jurisdictions is problematic. It assumes that our state's exam is directly comparable to the exams used in other jurisdictions, many of which utilize the Uniform Bar Examination. Moreover, it is not clear whether the compared jurisdictions have had their passing scores determined by standard setting studies.

Insofar as you have provided a study that purports to show that lower passing scores in other jurisdictions are not associated with higher aggregate rates of attorney discipline, that study does not provide compelling grounds to decrease the passing score. Not all instances of substandard performance by attorneys lead to recorded instances of

discipline, and no bar exam purports to measure whether an attorney will behave unethically.

Finally, although the court agrees that increasing the diversity of the bar is a worthwhile — indeed essential — goal, this end is better achieved through targeted interventions such as the *California Bar Exam Strategies and Stories* program, which is designed to negate stress and anxiety for applicants as they study for the exam. The recently released results of this program indicate its potential to have a greater positive and immediate impact on the first-time passing rates for historically underrepresented applicants than the study cited in your letter which had analyzed the potential effects of a lower passing score on the "eventual passing rate" of applicants.

In addition to endorsing the continued use of this intervention program, the court's attached order further suggests that the State Bar conduct a survey of applicants to assess whether certain demographic and situational factors, such as psychological stress and financial hardship, might be addressed by other intervention programs.

Future changes to the bar exam, including those described in the attached order, may require additional standard setting review, at which time the question of the passing score may be revisited. Thank you for your continued engagement with these issues.

Sincerely,

JORGE NAVARRETE
Executive Officer
And Clerk of the Supreme Court