

We should applaud the changes to the California bar

In less than ideal circumstances with a global pandemic in the background, the California Supreme Court and State Bar worked diligently to come up with a compromise that works for the state, consumers, bar applicants, and law schools.



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The global pandemic has changed all our lives. And it made the July 2020 administration of the California bar exam -- in large venues filled to capacity across the state -- a public health impossibility.

After several months of emergency deliberations, uncertainty for recent law graduates, and advocacy by bar applicants, law deans and others, the California Supreme Court announced a reasonable, responsible and creative testing alternative. But the changes went much further than simply rescheduling the bar exam by making an enduring change to bar admissions -- namely announcing a permanent change to California's score for passing the exam, which had been among the highest in the nation.

The Supreme Court, as well as the State Bar, acted under incredible time pressures. But, in a series of online town halls, they solicited and received input from law deans, bar applicants, practicing lawyers and others. The solution goes well beyond what could reasonably be expected. The change to the bar passage score will have long-term impacts on ensuring reasonable access to the California bar and protecting consumers. It represents a step forward toward diversifying the legal profession in the state.

The Announcement

Last week, the Supreme Court of California made a series of important announcements. *See* Letter from the Supreme Court of California.

First, the bar exam was rescheduled for Oct. 5-6. It previously had been scheduled for Sept. 9-10, which had been a replacement for the original July exam date.

Second, for the first time, the California bar exam will be online. This change could be permanent and change the state's future administration of the bar exam.

Third, the Supreme Court announced a temporary provisional licensure program for all 2020 law school graduates. This program shall remain in effect until at least June 1, 2022 "to afford 2020 graduates several opportunities to take the exam of their choosing through February 2022." This novel provisional licensure program addresses the issue that, because of the global pandemic, some applicants may not be able to effectively prepare for a bar examination at this time. "The court recognizes that postponement of the bar examination may impact employment prospects, delay incomes, and otherwise impair the livelihoods of persons who recently have graduated from law school." The provisional licensure program is a creative response to the pressing realities of the global pandemic on recent law graduates. Although that alone was an important and creative step to address modern exigencies, the Supreme Court did not stop there.

Last but not least, the Supreme Court announced the permanent reduction of the passing score on the bar exam. For several years before the pandemic, law deans and others had been advocating a reduction in what is known as the "cut score"; California's had been among the very highest in the nation. Like a court should, the Supreme Court made its decision based on the evidence, explaining that the decision was made "[i]n consideration of the fact that California is one of two states with the highest pass score for its minimum competency exam, and based on findings from recently completed bar examination studies as well as data from ongoing studies."

The Supreme Court acknowledged the possibility of future changes and stated that it "will consider any further changes pending recommendations offered by the forthcoming Blue Ribbon Commission on the Future of the California Bar Examination."

The Diversity Consequences of the Change in the Cut Score

California's artificially high cut score had disparate impacts on minority bar applicants and decreased the diversity among lawyers of the state. Consequently, at a time when the nation is focused on racial justice, the Supreme Court took the opportunity to make the California bar exam standard more consistent with that of other states and to move us forward in increasing the diversity of the state's lawyers.

Of course, there is much work to be done by the bar, law schools, and other institutions to diversify the legal profession. At the same time, we should not ignore the positive diversity consequences of the Supreme Court's reduction of the cut score

Diploma Privilege?

Some no doubt are disappointed that California did not adopt what is known as diploma privilege. As the Supreme Court thoughtfully noted, "[a]lthough a few less populous states have been able to accommodate a diploma privilege that grants entry for all of the graduates of their states' constituent American Bar Association-accredited law schools, the law schools in California, unlike in other states, represent a diverse array of ABA-accredited, California accredited, and California-registered schools. *If California were to adopt diploma-privilege criteria used by other states, graduates of nearly four dozen California law schools would not meet those criteria and would be excluded.*" (Emphasis added.)

The deans of the ABA-accredited law schools in California -- myself included -- advocated a form of emergency diploma privilege for graduates of their schools. Temporary diploma privilege for 2020 graduates has been granted in some form in the states of Oregon, Utah and Washington. Wisconsin has long provided permanent diploma privilege to the graduates of its two law schools. Besides avoiding expensive and time-consuming administration of an exam whose value in measuring qualifications to practice law have been questioned, diploma privilege brings the state bar, judiciary, legislature and law schools together and encourages them to have a close working relationship.

Some kind of diploma privilege -- and its positive diversity impacts -- may deserve future consideration. Half of the California bar exam is comprised of the Multistate Bar Exam (multiple choice), a standardized test created by the National Conference of Bar Examiner. The MBE has been criticized as biased and having disparate impacts on law graduates of color. Although that might be addressed by rejecting the MBE, it also could be addressed through some kind of diploma privilege for law graduates.

While the Supreme Court did not adopt diploma privilege, it adopted a reasonable compromise that recognizes the hardships faced by recent graduates and prevents the exclusion of nearly four dozen California law schools.

Conclusion

In sum, in less than ideal circumstances with a global pandemic in the background, the California Supreme Court and State Bar worked diligently to come up with a compromise that works for the state, consumers, bar applicants, and law schools. We should applaud the changes and pledge to continue to work to improve a system so important to the entire state. 