



LOS ANGELES COUNTY BAR ASSOCIATION

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Public Comment by Los Angeles County Bar Association and Undersigned Bar Associations re Blue Ribbon Commission Report

The Los Angeles County Bar Association (“LACBA”) and the undersigned bar associations write to comment on the Report and Recommendations (the “BRC Report”) of the Blue Ribbon Commission on the California Bar Exam (the “BRC”).

1. LACBA and the Undersigned Bar Associations Reiterate Opposition to the Non-Exam Pathway to Licensure

The BRC Report includes significant discussion of the “non-exam” pathway despite the fact that, on at least three different occasions, the BRC voted against exploring this proposal.¹ In addition to the BRC’s rejection of the exploration of a non-exam pathway, 27 bar associations joined letters opposing the establishment of the pathway. Letters from LACBA (signed by 25 bar associations), the California Lawyers Association, and the Bar Association of San Francisco are attached to this letter. The bar associations that joined the LACBA letter include regional bar associations across our state, and also minority and affinity bar organizations.

The bar association letters make clear that practicing attorneys oppose the establishment of a non-exam pathway or any program that circumvents the California Bar Exam as a requirement for licensure. The undersigned bar associations reiterate their position expressed in the attached letters and urge the California Supreme Court and the State Bar Board of Trustees to reject any further attempts to establish a non-exam pathway to licensure.

2. LACBA and the Undersigned Bar Associations Oppose the Elimination of Important Topics from the Bar Examination

The BRC voted to adopt recommendations from the California Attorney Practice Analysis working group (“CAPA”) that includes, among other things, the elimination of certain foundational legal subjects from the bar exam.² These subjects include Professional Responsibility/Ethics, Business Associations, Wills/Trusts, Community Property, and Remedies. Discussed below, the undersigned bar associations oppose the removal of these foundational subject areas from the bar examination.

¹ BRC Report at 5-6.

² BRC Report at 2.

California Professional Responsibility/Ethics is arguably the *most important* subject tested on the exam. At a time when the State Bar has come under increased scrutiny for ethics enforcement, it should not de-emphasize this crucial topic. Surveys conducted by the National Conference of Bar Examiners ranked Professional Responsibility as the number one subject newly licensed lawyers have to master in their first three years of practice.³

Professional responsibility was suggested for elimination by CAPA under the rationale that “the area of ethics could be better addressed outside of the bar exam format” such as by continuing education or the Multistate Professional Responsibility Examination (“MPRE”).⁴ We disagree. Alternative educational requirements do not ensure proficiency in California professional responsibility in the same manner as the written portion of the bar exam. The multiple choice MPRE does not test California ethics rules and fails to test analytical written skills. We urge the Board of Trustees and California Supreme Court to retain this crucial topic on the exam.

The remaining subjects that CAPA has proposed to eliminate — including Business Associations, Community Property, Wills, Trusts, and Remedies — are foundational legal subjects that should also be retained. CAPA acknowledged the importance of Business Associations and Community Property, but “determined that these areas are also largely a specialized practice and recommends alternatives to testing these topics on the bar exam, including the possibility of specialized licenses, Continuing Legal Education (CLE) courses, or coursework while in law school.”⁵ CAPA recommended the removal of Wills, Trusts and Remedies “[b]ased on the lower composite scores and the fact that concepts within Remedies and Trusts & Wills frequently blend with Contracts, Torts and other legal topics.”⁶ Again, we disagree with CAPA’s conclusions.

These California-focused subjects areas affect every consumer in the State. Family law and estate law affects virtually every California resident. In fact, many Californians’ only experience with a legal process will be in family or probate court. Business Associations and Remedies are foundational for a number of different legal practices. Removing these subjects from the bar exam will result in law students refraining from learning them in law schools and, in turn, will cause law schools to eliminate the courses.⁷ The potential reduction or elimination of these important foundational courses from law school curricula, as a result of their removal from the

³ NCBE March 2020 Testing Task Force Phase 2 Report at 22 (found at https://nextgenbarexam.ncbex.org/wpcontent/uploads/TestingTaskForce_Phase_2_Report_031020.pdf).

⁴ May 11, 2020 Report of California Attorney Practice Analysis Working Group (the “CAPA Report”) at 16 (found at <https://www.calbar.ca.gov/Portals/0/documents/reports/2020/California-Attorney-Practice-Analysis-Working-Group-Report.pdf>).

⁵ CAPA Report at 16-17.

⁶ CAPA Report at 17.

⁷ A New York State Bar Task Force on the bar exam found that law schools will stop teaching important foundational state law subjects if the bar exam ceases to test these subjects, because student demand for the courses will plummet. March 5, 2020 Report of the NYSBA Task Force on the New York Bar Examination (“NYSBA Task Force Report”) at 62 (Finding that, after eliminating New York legal subjects from the bar exam, “New York law has been devalued within its own law schools. With enrollments in New York law specific courses dropping like a rock.”) (found at <https://nysba.org/app/uploads/2020/04/Report-Task-Force-on-the-New-York-Bar-Examination-April-2020.pdf>).

bar exam, will detrimentally affect both the California public and practitioners.⁸ In addition, there will be fewer practitioners in these important areas of legal practice if law students are not exposed to them in law school. Attorneys often move practices, and lack of basic knowledge in these foundational subjects will affect their long-term careers. Californians will be negatively impacted if attorneys cannot demonstrate basic proficiency in these important areas of state law.

Rather than eliminating foundational topics, the undersigned bar associations would instead support common-sense reformations to the exam. These reforms could include an increased emphasis on writing and a reduced emphasis on multiple choice questions. We would also support a comprehensive study into disparate pass rates, in order to assess and address this issue. Such a study has not been conducted to date, and should be a requisite step prior to any changes to the exam. Finally, further efforts should be made to ensure that law schools, accredited and unaccredited, ensure proficiency in legal writing and knowledge of foundational subjects in California law.⁹

3. LACBA and the Undersigned Bar Associations Request That Any Modification of the Rules to Admit Experienced Out of State Attorneys Be Predicated on Reciprocity for California Attorneys

The BRC passed a motion to allow out of state attorneys “to be admitted to California without sitting for the California Bar Exam.”¹⁰ We believe that any change in the admission of out of state attorneys be approached with caution. Educational and licensure requirements vary with each jurisdiction. We do not believe that opening the door to all out of state attorneys, regardless of jurisdiction and without reciprocity, will benefit the public and ensure competence to practice in California. At a minimum, such changes should be made on a state-by-state basis, require five or more years of experienced practice, and include reciprocity for California attorneys.¹¹

Sincerely,

Ann I. Park
President
Los Angeles County Bar Association

⁸ NYSBA Task Force Report at 2 (Finding “[i]f New York law is not a bar exam tested subject, law students are disinclined, in general, to study it and law schools are less inclined, in general, to teach it.”)

⁹ For the July 2022 California Bar Exam, around 73% of test takers from ABA accredited law schools passed on the first try. This is comparable to other large states (New York was 75% and Florida was 64% for this same exam). We would support a comprehensive review of the educational quality of California law schools that persistently have a low bar exam pass rate.

¹⁰ BRC Report at 4.

¹¹ Among the other populous states, Florida does not allow admission without passing the Florida bar exam and New York only allows admission to attorneys with a minimum of 5 years of experienced practice and only to states with reciprocity. See BRC Report at 28.

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