



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 reforms 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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LOS ANGELES COUNTY BAR ASSOCIATION

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August 12, 2022

Blue Ribbon Commission on the Future of the Bar Exam
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposal to Establish a Non-Exam Pathway for Licensure in
California

Dear Members of the Blue Ribbon Commission:

We understand that on August 16, 2022, the Blue Ribbon Commission on the Future of the Bar Exam ("BRC") is voting on a proposal to establish a "non-exam pathway" which would involve an experiential or internship based approach as an alternative to the bar examination in allowing new admittees to practice law in California.¹ On behalf of the Los Angeles County Bar Association and the undersigned bar associations, we write to express our concerns regarding this proposal.

The undersigned bar associations are strongly committed to increase diversity in the legal profession and have implemented numerous programs to increase the diversity pipeline and provide support to minority law students and attorneys. However, we respectfully submit that establishing a "non-exam pathway" for licensure may not be the right way to increase diversity. Instead, the bar examination could be reformed to help eliminate any disparate bar passage rates and 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.

Materials available on the State Bar's website do not make clear what the precise contours of the "non-exam pathway" would be, and we

¹ The undersigned bar organizations do not express an opinion as to whether the bar examination should be waived for experienced lawyers from other states. Many states allow reciprocal admission, and this may be appropriate for California as well.

would request that the BRC provide more information about the “non-exam pathway” proposal and seek input from the undersigned bar organizations and the public before taking any vote to approve any such program. We are concerned that a “non-exam pathway” to bar admission could be contrary to the State Bar’s mission to protect the public. Such a pathway could eliminate the ability of the State Bar to ensure that all licensed attorneys possess the minimum competence to practice law. The “non-exam pathway” appears unlikely to ensure substantive knowledge of the law, legal writing, or analytical skills under an objective and uniform standard, and instead would allow licensure based on a varying and subjective standard that can be easily manipulated. The availability of a “non-exam pathway” also would disincentivize law schools to teach classes in foundational state and federal legal subjects that are currently tested on the bar exam.

The proposed “non-exam pathway” would also likely allow students in internships supervised by unscrupulous law firms and lawyers to enter the practice of law without the knowledge, skills, or abilities to competently practice law. This result would be particularly alarming in California, which permits students of non-ABA accredited, non-California accredited, and correspondence law schools to apply for licensure.²

As the State Bar is well aware through the many cases of attorney discipline it is required to investigate and prosecute every year, many unqualified lawyers and non-lawyers are currently operating in California. The establishment of a “non-exam pathway” could open the floodgates to unqualified and unscrupulous legal practitioners to the detriment of needy clients, particularly in immigrant and underserved communities.

In addition to the important questions of how the “non-exam pathway” program would work, and how the integrity of the program could be maintained, we are concerned about the significant cost of the program. In California, on average over 10,000 persons take the bar each year — a far larger number than the number of persons seeking to enter the bar each year in New Hampshire or Oregon, where a “non-exam pathway” is being implemented. The proposed “portfolio review” process for the “non-exam pathway” is time-consuming and labor intensive and will require a significant investment of funds for the hiring and training of numerous “regulators” needed to perform the reviews in a timely fashion. We do not know how extensive that “portfolio review” would be. We are concerned that the State Bar does not have the resources to effectively monitor the integrity of thousands of experiential internship programs and perform the detailed “portfolio review” by regulators to ensure that persons choosing the “non-exam pathway” are competent to practice law.

For these reasons, we cannot support a proposal that could damage the public and legal profession by hastily and unnecessarily establishing a “non-exam pathway” for licensure without the concerns we articulate above being addressed. To that end, the State Bar should provide a long-enough comment period for bar associations to provide input regarding any concrete proposal for substantive revisions to licensure, including

² An internship or apprenticeship program may be desirable for all new admittees, but as an adjunct to, and not as a substitute for, the bar examination.

changes to the bar exam or a potential non-exam pathway, prior to the BRC or State Bar making a recommendation to the Supreme Court.

Sincerely,

Ann I. Park
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Los Angeles County Bar Association

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Nina L. Hong
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October 11, 2022

Blue Ribbon Commission on the Future of the Bar Exam
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposal to Establish a Non-Exam Pathway for Licensure in California

Dear Members of the Blue Ribbon Commission:

The California Lawyers Association (CLA) submits these comments expressing our concerns with the proposal under consideration by the Blue Ribbon Commission (BRC) to establish a “non-exam pathway” for licensure to practice law in California as an alternative to the California Bar Exam. For the reasons discussed below, CLA urges the BRC not to recommend a non-exam pathway. At the same time, we encourage the BRC’s continued exploration of other issues under consideration, including potential revisions to the California Bar Exam.

1. A Non-Exam Pathway Would Eliminate Any Form of Objective Testing

We recognize that the current California Bar Exam is not a perfect method of measuring the qualities, training, and capabilities necessary to ensure that an individual is competent to practice law in this state. The bar exam is, however, an objective and controlled test. The proposed non-exam pathway would eliminate testing entirely as a method of determining minimum competence. Instead, it would rely upon a combination of experiential education units and post-graduation, supervised practice.

A non-exam pathway would not ensure substantive knowledge of foundational legal concepts, legal writing skills, or analytical skills under an objective and uniform standard. Experiential education and supervised practice would vary widely and allow licensure based on vague and subjective standards. Given these wide variations, the State Bar would not be able to implement a single standard of competence. In addition, experiential programs are generally designed to achieve completion of the program, or some set number of hours, which is fundamentally different than testing minimal competence. We believe consumers of legal services will not be adequately protected if there is no requirement that a person seeking to be licensed to practice law in California demonstrate a basic working knowledge of key legal principles and concepts under some objectively measurable standard.

2. A Non-Exam Pathway Raises Significant Implementation and Integrity Concerns

CLA is concerned about the ability to implement and maintain the integrity of a non-exam pathway.

The proposed non-exam pathway could open the door to supervision by unqualified and potentially unscrupulous law firms and lawyers. Experience with Ontario's Articling Program, an experiential training component of their lawyer licensing process, illustrates the nature of these concerns. *Options for Licensing*, the May 24, 2018 consultation paper from the Law Society of Ontario, Professional Development & Competence Committee, noted that the "power imbalance inherent in articling can lead to abuses." (*Options for Licensing* at p.11.) A survey conducted about the program revealed the extent to which candidates were subject to sexual harassment, as well as racial, gender, and other forms of discrimination, and felt they had received differential or unequal treatment due to personal characteristics.

Even without actual misconduct by supervising lawyers, there are considerable questions and concerns relating to approval, oversight, and consistency of supervising lawyers. As noted in the Ontario report:

The nature of the articling experience depends on the individual circumstances of the candidate and the Articling principal, and therefore consistent exposure to competencies can be an issue.

(*Options for Licensing* at p.11.)

Finally, we note that effective monitoring and quality control of experiential programs will be time-consuming, labor intensive, and costly. We question whether sufficient resources would be available to adequately ensure that individuals licensed to practice through such programs are competent to practice law in this state.

3. A Non-Exam Pathway May Have an Adverse Impact on Efforts to Increase Diversity in the Legal Profession

CLA's mission is promoting excellence, diversity, and inclusion in the legal profession and fairness in the administration of justice and the rule of law. We are deeply committed to increasing diversity in the legal profession and understand that one goal of establishing a non-exam pathway would be to increase diversity within the profession. We believe that establishing a non-exam pathway is not the right way to increase diversity and that it could – at least indirectly – exacerbate the problem.

Given the sheer number of California licensure applicants every year, we anticipate a gap between the demand for supervisors and the available opportunities to secure a supervisor. It is likely that the demographics of the pool of available supervisors would skew toward those who are currently the most represented in the legal profession and against those who are the least represented. Some may easily secure a colleague or have ready access to a supervisor while others may be far removed from any such possibilities. Equity issues related to securing a supervisor could therefore create a two-tiered system, undermining any effort to increase diversity in the profession.

4. The Blue Ribbon Commission Should Pursue Other Potential Reforms

Instead of recommending elimination of the bar exam entirely, we urge the BRC to focus on potential reforms to the bar exam itself, including continued exploration of ways to ensure that the exam is an effective tool for testing the knowledge, skills, and abilities required of entry-level California attorneys and to help eliminate disparate bar exam passage rates.

The impact of bar exam reformation efforts should be studied before California introduces an entirely new process that would eliminate the bar exam. Ultimately, experiential education or post-graduation, supervised practice may be a desirable component as an adjunct to, but not a substitute for, the California Bar Exam.

We appreciate your consideration of our comments.

Sincerely,



Oyango A. Snell
CEO and Executive Director



Jeremy M. Evans
President



THE BAR ASSOCIATION OF SAN FRANCISCO

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July 29, 2022

Blue Ribbon Commission on the Future of the Bar Exam
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Concerns Regarding a “Non-Exam Pathway” for Licensure

To the Members of the Blue Ribbon Commission:

The Bar Association of San Francisco appreciates the work that the Blue Ribbon Commission (BRC) has undertaken to develop recommendations concerning the future of the Bar Exam and to explore alternative means to admission to the Bar. We recognize, as we believe the BRC and CBA does, that the Bar Exam is an imperfect yardstick for measuring the qualities, training, and capabilities necessary to ensure that the public interest in competency in the profession is adequately protected. However, we have significant concerns regarding the process that the BRC is undertaking to establish a “non-exam pathway” as an alternative to the bar examination in qualifying new admittees to practice law in California.¹ We urge the BRC to modify its procedures to ensure that input from a broader cross-section of stakeholders can be considered.²

We understand that one of the State Bar’s primary purposes for establishing a non-exam pathway is to increase diversity within the profession. However, we respectfully submit that the establishment of a non-exam pathway may not, by itself, increase diversity in the profession in California. Throwing a door open wider does not by itself ensure that more diverse individuals will walk through that door (especially as a percentage of the total number of new admittees seeking licensure through the non-exam pathway) just because the door is open wider.

Because of the lack of transparency into the process, we are concerned that the proposed non-exam pathway may not adequately allow the State Bar to ensure that all licensed attorneys possess the minimum competence to practice law. Any acceptable proposed non-exam pathway must ensure substantive knowledge of the law, legal writing, and analytical skills under an objective and uniform standard; we are concerned that the BRC’s proposal could allow

¹ The undersigned bar organizations do not express an opinion as to whether the bar examination should be waived for experienced lawyers from other states. Many states allow reciprocal admission, and this may be appropriate for California as well.

² For example, the State Bar’s paraprofessional proposal was presented to BASF in November 2021. BASF raised significant concerns that could have been considered if a process for input had been created prior to the final proposal being presented.



THE BAR ASSOCIATION OF
SAN FRANCISCO

licensure based on a vague and subjective standard. The impact of any proposed non-exam pathway must also be scrutinized to ensure that it does not disincentivize either law schools from teaching or law students from learning foundational state and federal legal subjects.

Finally, we express concern regarding the State Bar's capacity to implement and maintain the integrity of a non-exam pathway program consistent with the BRC's guiding principles. In California, the sheer volume of new admittees seeking to be licensed each year far surpasses the few states that have adopted or implemented a non-exam pathway. Any effective monitoring of experiential internship programs will be time-consuming and labor intensive. It is not clear that the State Bar has or will be able to muster sufficient resources to adequately ensure that the new admittees seeking licensure are competent to practice law. Nor should the State Bar rely solely on law schools to ensure unqualified individuals do not enter the practice of law, especially given that California presently allows students of non-ABA accredited, non-California accredited, and correspondence law schools to apply for licensure.

The Bar Association of San Francisco urges the BRC to review any proposal with these concerns in mind. However, until there is a specific non-exam pathway proposal to review and discuss, it is very difficult for any stakeholder to provide more specific input. We urge the BRC to allow bar associations and other stakeholders a meaningful opportunity to review any specific non-exam pathway and provide their input prior to adopting such a proposal or making a recommendation to the Supreme Court.

Sincerely,

Yolanda Jackson
Executive Director and General Counsel
The Bar Association of San Francisco