



**THE STATE BAR  
OF CALIFORNIA**

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**SUPREME COURT  
FILED**

**SEP 14 2017**

**Jorge Navarrete Clerk**

**Deputy**

**Re: Amended Cover Letter to the *Final Report on the 2017 California Bar Exam*<sup>1</sup>**

Dear Chief Justice Cantil-Sakauye:

Both case law and new rule 9.3 of the California Rules of Court (effective January 1, 2018), make clear that the California Supreme Court (Court) has the inherent power to admit persons to practice law in California, including the sole authority to set the passing score of the bar examination; the State Bar, acting as the administrative agent of the Court, may make recommendations regarding the passing score.

In light of this authority, and in response to concerns regarding declining California Bar Exam (CBX) pass rates over the last 8 years, including concerns that were raised in a February 14, 2017, hearing before the Assembly Committee on the Judiciary, in February 2017, the Court called for the State Bar to undertake a "thorough and expedited study" to include:

- (1) identification and exploration of all issues affecting California bar pass rates;
- (2) a meaningful analysis of the current pass rate and information sufficient to determine whether protection of potential clients and the public is served by maintaining the current cut score; and (3) participation of experts and stakeholders in the process, including psychometricians, law student representatives and law school faculty or deans.

Pursuant to that direction, the State Bar submits to the Court the attached *Final Report on the 2017 California Bar Exam Standard Setting Study* (report). The report, which identifies options for a statistically reliable CBX cut score, includes findings from the Standard Setting Study, the second of four studies that the State Bar has undertaken to comprehensively explore the issues outlined by the Court<sup>2</sup>.

<sup>1</sup> This cover letter has been amended to correct an error in the statistically valid range contained in the second paragraph of page 2. The correct range is 1388 to 1504.

<sup>2</sup> The first study, *Recent Performance Changes on the California Bar Exam (CBE): Insights from CBE Electronic Databases*, is included as Appendix G of the report. The scope and status of the two remaining planned studies, the *Content Validity and Law School Bar Exam Performance Studies*, are discussed in the report.

According to the psychometric literature, the purpose of any licensure examination like the CBX is to distinguish minimally competent candidates from those that could do harm to the public; the purpose is not to evaluate mastery of content, ensure employability, or evaluate training programs. Licensure exams are also not intended to be predictive of career success or possible future misconduct. With this doctrinal understanding of the purpose of a licensing exam, the attached report provides the Court with an analysis of the continued validity of the current CBX cut score of 1440, as well as the potential impact of the implementation of two alternate lower cut scores, 1414 and 1390.

These cut score options derive from the Standard Setting Study, which was designed and implemented by an independent psychometrician, Chad Buckendahl, PhD, using the Analytic Judgment Method, a methodology well-accepted in the field of licensure. The study results determined that a median cut score of 1439 – effectively the same as the current pass line of 1440 – is most likely the “true” value of the recommended cut score. Following a routine statistical procedure, standard errors of mean and median were calculated to estimate a range of cut scores within which the true cut score most likely falls. That range is from 1388 to 1504. Given the specific impetus for the series of 2017 CBX studies, the State Bar has focused its analysis on the current cut score as well as options falling below 1440 that are within the range of standard error determined by the Standard Setting Study.

Within these parameters of a psychometrically determined range of possible cut scores, and recognizing that a Standard Setting Study is only one data element relevant to the ultimate policy decision to establish a pass line, the attached report outlines the key issues relevant to a decision by the Court. These inter-related issues include public protection, access to justice, and diversity.

It is important to reflect on the significance of the undertaking that the Court has compelled. In California, it has been 30 years since the pass line has been studied. And even then, the cut score was set not as a result of a psychometric study, but rather to ensure a consistent pass rate with previous administrations of the exam, set at a 70 percent passing score to reflect academic standards at the time. California is not alone in this failure to employ modern psychometric practices to validate its passing score. A survey of other states conducted by State Bar staff during the pendency of the Standard Setting Study revealed that few, if any, have conducted the type of analysis that California has just undertaken to set or modify their pass lines.

The magnitude and importance of California’s recent effort, and the accelerated timeframe in which it has been completed, are noteworthy. While the study provides the Court with a quantitative framework within which to make an informed policy decision, it also revealed a number of areas warranting additional research and analysis. First, and most importantly, the principal concern in setting any cut score must be public protection. However, no clear measure or definition for public protection in the context of a licensing exam has been established. Through the course of this study we have learned that the only currently available proxy for public protection is discipline data, problematic on many fronts, most especially because an exam governing entry into the practice is not intended to be predictive of future misconduct.

Hon. Tani Cantil-Sakauye  
September 14, 2017  
Page 3

In addition to public protection, the study process highlighted the relevance of the recurring themes of access to justice and diversity. While the empirical data do exist to model the impact of various cut scores on the diversity of California's attorney population, very little information is available to establish the connection between access and diversity. In addition, further articulation of California's justice gap is needed. A variety of issues in this regard require further study or assessment including: specific geographic and practice type legal services needs; an assessment of whether those needs exist due to a lack of available attorneys or a lack of available jobs, or both; and an exploration of whether or not licensing more attorneys overall; or ethnic and racial minority and female attorneys specifically, will actually result in increased access to legal services for those most in need. Lastly, and significantly, an exploration of the dependent relationship between access, diversity, and public protection, would be timely and important.

Within the context of these important limitations and clear need for further research, the State Bar presents three cut score options to the Court for consideration. The impact of these options on public protection, access, and diversity – the triumvirate of cut score policy concerns – is addressed to the greatest extent possible, making the best possible use of various sources of "hard" data where it is available, and making assumptions based on informed inferences where it is not.

The State Bar is committed to continuing the exploration of these complex and interrelated issues as, in compliance with rule 9.6(b) of the California Rules of Court, it begins to implement a practice of cyclical review of the CBX every seven years.

Sincerely,



Leah T. Wilson

Enclosures

cc: *Sent via email*

Members, Senate Committee on the Judiciary  
Members, Assembly Committee on the Judiciary  
California Law School Deans