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California Law School Deans Want Bar Exam Pass Score Lowered

Deans of 20 law schools make their pitch to the state Supreme Court.

Cheryl Miller, The Recorder

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SACRAMENTO—The deans of 20 California law schools [on Wednesday asked](#) the state Supreme Court to temporarily lower the bar exam's minimum passing score to let the State Bar study whether the number is unjustifiably high.

The request comes after the pass rate for the summer 2016 test plummeted to 43 percent, [the lowest figure for a July sitting](#) in 32 years. First-time test-takers among American Bar Association-accredited schools in California did better—62 percent passed—but still lagged significantly behind their counterparts in other states, including New York, Texas and Ohio.

The deans blame California's "atypically high" passing score, or cut score, of 144 for the multistate bar exam portion of the test. Only Delaware requires a higher score on its exam. And yet those who took the California exam scored almost three points higher on the multistate bar exam than the national average.

"California graduates of ABA-accredited schools are performing better than average, and yet many of them—graduates of our law schools who would have passed the bar with similar performance in virtually any other state—are failing it in our great state, simply because of where California has decided to draw the line between passing and failing," the deans wrote in their letter.

The letter recommends that the high court, exercising its jurisdiction over the State Bar, reduce the cut score to between 133 and 136 "to bring our exam in line with the approach taken by other economically significant states."

"We believe this standard should be maintained until the state can complete a full study of the bar exam," the letter said.

The letter was delivered to the Supreme Court's San Francisco office on Wednesday. Bar examiners have said previously that they are reviewing the July test.

“The Bar is still studying this year’s results and the trends in recent years, so the Supreme Court of California cannot comment on the letter at this time,” a spokesperson for the court said.

UC Hastings College of the Law Dean David Faigman said in an interview with The Recorder that he and other deans met with bar leaders to discuss their concerns about the exam. [The pass rate for first-time test-takers](#) from Hastings fell to 51 percent on the most recent exam.

“When they were asked about the validity of the [cut score], they didn’t have an answer,” said Faigman, who signed the deans’ letter. “In the absence of information ... that’s no reason to perpetuate the substantial consequences they are imposing on candidates for the bar.”

Graduates who did not pass the test are faced with paying for additional bar-prep courses and delaying—or perhaps losing—job offers, while they prepare to take the exam for a second time, he said.

“They’re not learning how to be better lawyers,” Faigman said. “They’re learning how to beat the test.”

Asked about the low bar exam pass rates in December, Chief Justice Tani Cantil-Sakauye said she was concerned but wanted to see what happens to scores when the test is administered over two days instead of three, starting in July, before considering other options.

Exam pass rates are taking on new significance as the [ABA considers adopting a new rule](#) that would require 75 percent of a school’s graduates to pass the test within two years to retain accreditation. The ABA’s House of Delegates is scheduled to consider the proposal at its midyear meeting on Monday.

The letter to the California Supreme Court was signed by deans from 20 of 21 ABA-approved schools, including those whose graduates have maintained high pass rates amid the current decline.

At UCLA School of Law, 80 percent of all exam-takers met or beat the cut score in July. “My students did well on the bar. They do well on the bar. But they would be passing at a higher rate in any other state in the country,” UCLA Law Dean Jennifer Mnookin said. “If California wants to have rules in place to try to make its lawyers better, I’m open to that. But I’m not convinced a higher cut score does that.”

UC Davis School of Law Dean Kevin Johnson was the only leader of a California-based ABA-accredited school who did not sign the letter. He did not immediately respond to a request for comment.

The state Assembly has scheduled an informational hearing on the declining bar exam pass rates on Feb. 14.

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