



LOS ANGELES COUNTY BAR ASSOCIATION

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July 15, 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 July 19, 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.²

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.

² As a result of time constraints, the full Board of the Bar Association of San Francisco and other bar organizations were not able to approve this letter prior to the July 19 BRC meeting. As bar organizations sign on to this letter, we will inform the BRC.

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.³

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

³ 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,

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July 15, 2022

Page 4

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

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