September 18, 2020

Chief Justice Tani Cantil-Sakuye
The Honorable Carol Corrigan
The Honorable Goodwin Liu
The Honorable Mariano-Florentino
The Honorable Leondra Kruger
The Honorable Joshua Groban

Supreme Court of California
350 McAllister Street
San Francisco, California 94107

Re: Support for Retroactive Application of California Bar Exam Passing Score

Dear Chief Justice and Associate Justices of the California Supreme Court:

I write today on behalf of the San Diego County Bar Association (SDCBA), our region’s largest law-related organization serving a membership of nearly 10,000 lawyers, law students, and others in the legal community, to respectfully urge retroactive application of the new California Bar Exam’s passing score to all applicants from July 2015 forward.

As you know, on August 18, 2020, Assemblymember Mark Stone introduced House Resolution 103, which requests that this Court reconsider its decision to not retroactively apply the lowered bar exam passing score of 1390 to test-takers from July 2015 forward. HR-103 passed the full Assembly on September 1, 2020. We urge this Court to re-examine the issue of retroactivity.

Inclusion is among the SDCBA’s core values, and as such, we strongly believe that prior applicants should be included in the application of the 1390 passing score. It is well documented that the bar exam disproportionately impacts Black, Latino, and Asian applicants in a negative way. In February 2020, for example, more than half of white applicants taking the exam for the first time passed, compared to 28% of Asian applicants, 25% of Latino applicants, and 18% of Black applicants. A mere five percent of Black first-time test-takers graduating from California ABA-accredited law schools passed.

2 Id.
And in the ten-year period spanning 2009 to 2019, 52% of white test-takers passed the exam, while 40% of Asian, 36% of Latino, and 24% of Black applicants passed. According to the State Bar’s own simulation, had the passing score been reduced to 1390, 13% more Black, 8% more Latino, and 7% Asian applicants would have passed the exam in that decade.

It stands to reason, then, that retroactive application of the cut score to a five-year period would increase the number of lawyers from diverse backgrounds in the California bar. This is especially vital at a time when communities of color continue to confront the realities of pervasive systemic racism in our country, while also facing the devastating public health and economic impacts of the COVID-19 crisis.

In addition, the five-year lookback period is an appropriate time frame for retroactivity. The Court has contemplated reducing the passing score for several years, and it expressed a willingness to retroactively apply the score for July 2017 applicants when it last considered the issue. The State Bar already recognizes the validity of an applicant’s qualifying exam score for five years. If a passing score is valid for five years, why, then, should a passing score achieved a few months ago (in February 2020, for example, when the impacts of COVID-19 already were being felt throughout the state) or a few years ago be similarly invalidated under these new standards? Should the cut score not be applied to February 2020, for example, the 376 applicants who achieved scores of between 1390 and 1439 have “failed” the exam – despite having met or exceeded the standard applied to July 2020 applicants. This raises fundamental questions of fairness and equity.

On behalf of our membership, we support retroactive application of the 1390 passing score to test-takers from July 2015 forward. We urge this Court to reconsider its decision on this issue.

Respectfully,

Johanna Schiavoni
President, San Diego County Bar Association

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4 Id.