



## Supreme Court of California

350 McALLISTER STREET  
SAN FRANCISCO, CA 94102-4797

TANI G. CANTIL-SAKAUYE  
CHIEF JUSTICE OF CALIFORNIA

(415) 865-7060

February 28, 2017

James Fox, President, Board of Trustees  
Elizabeth Parker, Executive Director  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

### Re: California Bar Exam

Dear Mr. Fox and Ms. Parker,

The Supreme Court of California received the attached February 1, 2017, letter from the Deans of 20 ABA-accredited law schools, in which the Deans request the court order the State Bar of California to lower the “cut score” of 144 that the State Bar applies to the Multistate Bar Exam (MBE) portion of the California bar exam. In support of their request, the Deans observe that California’s cut score of 144 is the second highest in the nation. They note California bar takers, on average, score higher on the MBE portion of the exam than the national average, yet fare significantly worse at bar admission — and they contend this is so because California uses an atypically high cut score.

Leaving aside the question of what has caused this situation, the Deans raise a significant concern, particularly given the high cost of attending law school and the reality that non-admission to the bar could mean the loss of employment opportunities while student loan debt continues to compound. It appears prudent to consider and address whether 144 is an appropriate score for evaluating the minimum competence necessary for entering attorneys to practice law in California.

Of course, there may be reasons to question how much the cut score is contributing to the pass rate. For one, the cut score has remained consistent for three decades as overall bar pass rates have fluctuated. It is unclear, therefore, whether the July 2016 pass rate, a 30-year low, constitutes evidence that the cut score needs to be lowered.

James Fox  
Elizabeth Parker  
February 28, 2017  
Page 2 of 3

Yet given the significant impact of the pass rate on law school graduates, the issue calls for a thorough and expedited study. The court is informed that the State Bar has begun investigating the potential causes of the declining California bar pass rates and is reviewing the bar exam and its grading system. The court agrees such an investigation is critically important, and directs the State Bar to ensure the investigation includes: (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.

The court directs that, once the investigation and all studies are concluded, the State Bar make a report to the court. The report must include a detailed summary of the investigation and findings, as well as recommendations for changes, if any, to the bar exam and/or its grading, and a timeline for implementation. The State Bar's report and recommendations should be submitted to the court as soon as practicable, and in no event later than December 1, 2017. The State Bar is further directed to submit bi-monthly letter reports to the court regarding the progress of its investigation, beginning March 1.

Sincerely



Tani G. Cantil-Sakauye

Attach.

cc: *Sent via email*

Erwin Chemerinsky, University of California, Irvine School of Law  
Judith F. Daar, Whittier Law School  
Allen Easley, Western State College of Law  
David L. Faigman, University of California, Hastings College of Law  
Stephen C. Ferruolo, University of San Diego School of Law  
Thomas F. Guernsey, Thomas Jefferson School of Law  
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Gilbert A. Holmes, University of La Verne College of Law  
Lisa A. Kloppenberg, Santa Clara University School of Law  
M. Elizabeth Magill, Stanford Law School  
Jennifer L. Mnookin, UCLA School of Law  
Francis J. Mootz, III, University of the Pacific, McGeorge School of Law  
Melissa Murray, University of California Berkeley School of Law

James Fox  
Elizabeth Parker  
February 28, 2017  
Page 3 of 3

cc: (con't)

Matthew J. Parlow, Dale E. Fowler School of Law at Chapman University  
Susan Westerberg Prager, Southwestern Law School  
Niels B. Schaumann, California Western School of Law  
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