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March 2, 2017

The Honorable Tani Cantil-Sakauye
Chief Justice of California
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Declining passage rates on the California bar exam

Dear Chief Justice Cantil-Sakauye:

The Assembly Committee on Judiciary recently held an informational hearing on declining passage rates for the California bar exam. The hearing focused in large part on California's cut score, the minimum score required by the Committee of Bar Examiners within the California State Bar to pass the bar exam. The hearing explored the question of whether California's high cut score causes more harm than good to the legal community and public in California.

The state's current overall cut score has remained at 1,440 points since 1986 and has not been reviewed since then. Likewise, the state's minimum competency score of 144 on the multiple choice (Multi-state Bar Exam, or MBE) portion of the bar exam is the second highest in the nation, exceeded only by the State of Delaware. While it is not entirely clear how these thresholds were originally set at their current high levels, testimony at the hearing indicated that maintaining them may not be appropriate. For example, it is difficult to understand why graduates of California's ABA-accredited law schools would score significantly higher on the MBE portion of the bar exam than exam takers in other states, but pass the bar exam at a significantly lower rate than their lower-scoring counterparts elsewhere in the nation, and why this anomaly protects the public or the integrity of the legal profession in California.

Whether the cut score is arbitrary or not, the impact of that score is severe. During our hearing, various stakeholders in the legal community—including consumer advocates, law school deans, representatives of legal aid organizations, and a law student—informed the Committee about the harm caused by California's unusually high cut score. Anxiety over the California bar exam discourages applicants from sitting in California for the exam. Law students take more classes on bar exam subjects rather than on classes that prepare them for careers in the practice of law. Law schools have altered their curriculum to focus more on exam preparation than on teaching skills that are far more crucial to the practice of law. When law school graduates do not pass the



bar exam, they are forced to incur debt and remain out of the workforce. Legal aid must turn away indigent clients because there aren't enough attorneys, exacerbating the problem of unrepresented litigants in the legal system. The reputation of California's law schools, including top tier ABA-accredited schools, is damaged, making it difficult to attract the most qualified prospective applicants. These consequences are unquestionably serious, negatively impacting prospective attorneys, law schools, consumers, and indeed the entire California economy.

We agree that high standards for attorneys to practice law in California—in terms of education, legal training, and ethics—are appropriate and necessary in order to protect the public and preserve justice. But we also believe that standards must be based on data and research correlating with public protection. From testimony at the hearing, it was unclear that there is a rational basis, let alone a close evidence-based connection, between California's high cut scores and protecting the public. Indeed, State Bar Executive Director Elizabeth Parker told our Committee that “there's no good answer” why California's cut score is so high. The Committee was therefore pleased to hear that the State Bar and the Committee of Bar Examiners intends to study the cut score *over the next several years* to determine whether the exam and its methods promote the interests of justice.

We greatly appreciate your letter to the deans of ABA-accredited law schools, dated February 28th, 2017, indicating that you have directed the State Bar to study this issue and report back to you with their findings by December 1, 2017. Unfortunately, a study completed (without any action necessarily taken as a result of the study for an indefinite period of time afterward) will not adequately address this crisis. Applicants, law schools, and the general public can't afford to wait a year or more for action as a result of such studies. As our Committee has estimated, the potential loss earnings for applicants re-taking the exam could easily exceed \$43 million annually.

Given that the cut score lacks a policy basis and its continued effect is causing actual harm to Californians across this State, we agree with the opinion of Barry Carrier, Managing Director of Accreditation and Legal Education for the ABA, who testified at our hearing that, “Absent a compelling reason, such as a reason to believe California test takers are less competent or that the standard to be admitted to practice in California must be a lot higher than elsewhere in the country, it seems reasonable to suggest that California should align its passing threshold with other states, particularly other large states.”

As the Court itself indicated in its February 28th letter, the question whether California's atypically high cut score is the cause of the lowest passage rate on the July 2016 California bar exam is a “significant concern” the investigation of which is “critically important.” We agree with the deans of 20 of California's 21 ABA-accredited law schools, as well as the deans of 13 California-accredited law schools, that immediate action is necessary. Therefore, we respectfully request that the California Supreme Court rely on its inherent authority to regulate admission to the practice of law in the state and temporarily reduce the cut score for passing the California bar exam while research by the California State Bar and the Committee on Bar Examiners is pending.

Should you have any questions, please do not hesitate to contact any of us directly, or to contact the Committee staff at 916-319-2334.

Sincerely,



Assemblymember Mark Stone, Chair



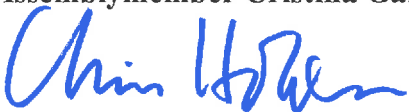
Assemblymember Ed Chau



Assemblymember David Chiu



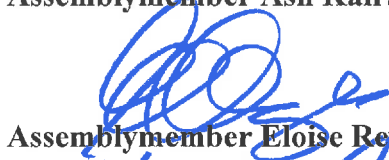
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