

California Supreme Court Rejects Alternative to Bar Exam



The Bar Exam Remains the Sole Pathway for New Lawyers in California

In a ruling on Thursday, the California Supreme Court reaffirmed that the traditional bar exam will remain the only avenue for licensing new attorneys in the state. The decision comes after the court rejected a proposed alternative pathway, which would have allowed law school graduates to become licensed by working under the supervision of experienced attorneys and submitting a portfolio of legal work for evaluation.

The Proposed Portfolio Bar Exam

The alternative, known as the Portfolio Bar Exam, would have required applicants to work with real clients under an experienced attorney for four to six months, culminating in the submission of a portfolio of legal work. This method was seen as a hands-on approach to evaluating an applicant's competence. However, the Supreme Court raised concerns about the ethical and practical challenges such a program could present.

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In its order, the court highlighted that the proposed portfolio approach would create issues with fairness, validity, and reliability in assessing an applicant's qualifications. It argued that the quality of supervision would vary, meaning some candidates might benefit from more experienced or committed mentors, leading to unequal opportunities for success.

Concerns Over Fairness and Public Protection

The State Bar of California's board of trustees had backed the Portfolio Bar Exam in November, despite objections from public commenters who believed it would weaken the standards required to become a licensed attorney. Opponents argued that the program could erode public protections by reducing the rigor of the attorney licensure process. Concerns were also raised that supervisors' differing levels of engagement could unfairly impact the quality of portfolios submitted by candidates.

Disappointment from Advocates of the Program

Susan Smith Bakhshian, a Loyola Law School professor who played a key role in developing the Portfolio Bar Exam, expressed her disappointment with the court's decision. She noted that the program could have been an opportunity to improve the attorney licensure process while also enhancing public protection.

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Growing Trend Toward Alternative Licensing Pathways

Advocates of alternative licensure pathways argue that such programs could help address gaps in access to legal services, especially in underserved communities. They also believe that these alternatives can address racial disparities in bar exam pass rates, reduce the financial burden on law school graduates, and more accurately reflect the practical skills required for success in the legal profession.

Had the California Supreme Court approved the Portfolio Bar Exam, California would have become the largest jurisdiction to implement an alternative to the traditional bar exam. This move would have followed similar initiatives in other states, signaling a growing trend toward alternative licensing pathways in the U.S.

Other States Adopting Apprenticeship Pathways

In 2023, Oregon adopted an apprenticeship pathway for law graduates, allowing them to bypass the bar exam altogether. Similarly, Washington followed suit in March, introducing both an apprenticeship option and a skills-based coursework pathway that also avoids the bar exam. Meanwhile, high courts in Minnesota and Utah are considering proposals to introduce bar exam alternatives in their jurisdictions.

The American Bar Association's Evolving Stance

The American Bar Association (ABA) has historically been a strong proponent of the bar exam as the gold standard for attorney licensure. However, in May 2023, the ABA's legal education arm softened its stance, endorsing the exploration of alternative pathways to licensure.

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