



COMMENT IN SUPPORT OF THE ALTERNATIVES TO THE EXAM TASK FORCE'S RECOMMENDATIONS

We write on behalf of IAALS, the Institute for the Advancement of the American Legal System at the University of Denver¹, in response to the Oregon Supreme Court's request for public comment on the recent report Recommendation of the Alternatives to the Exam Task Force to the Oregon Supreme Court ("Recommendations Report").

The legal profession as a whole is converging on a consensus that the current bar exam is failing to meet its goal of serving as a valid measure of the minimum competence to practice law and, furthermore, actually serves as a barrier for many who wish to enter the legal profession. Proponents of the bar exam often point to its role as a consumer protection mechanism: they claim that consumers will be at risk of harm from incompetent legal representation if lawyers are not required to demonstrate that they have attained the minimum competency needed to practice law. However, IAALS' research in the *Building a Better Bar* project—as the Recommendations Report acknowledges—demonstrates that there are vast discrepancies between what the data tells us minimum competence consists of and what the bar exam tests.

Moreover, the legal profession remains one of the least diverse professions in the country: according to the ABA, in 2021, only 5% of the national lawyer population are Black and only 5% are Hispanic.² We also know that Black, Hispanic, and other minoritized examinees consistently obtain lower mean scores on the bar exam than do their white counterparts.³ While the bar exam's disparate outcomes are not the only reason for the profession's lack of diversity, we can be certain it is a contributing factor.

In addition to the bar exam's disparate outcomes for minoritized groups, the exam presents barriers for any low-income would-be lawyers. While the exam itself may or may not be cost-prohibitive, there is an entire industry built upon high-cost test prep for the bar exam—for example, Barbri courses range from \$2,000 to more than \$6,000. Additionally, a great many candidates for bar admission take months off of work to focus on studying for the exam. In other words, those with the means to spend thousands on bar prep courses and study for months without an income have a distinct and undeniable advantage.

¹ IAALS is a national, independent research center at the University of Denver dedicated to continuous improvement of the of the civil justice system. IAALS identifies and researches issues in the legal system; convenes experts, stakeholders, and users of the system to develop and propose concrete solutions; and then goes one step further to empower and facilitate the implementation of those solutions so as to achieve impact.

² *ABA National Lawyer Population Survey*, A. B. A., https://www.americanbar.org/content/dam/aba/administrative/market_research/2021-national-lawyer-population-survey.pdf (last visited July 5, 2021).

³ See, e.g., Joan Howarth, *The Professional Responsibility Case for Valid and Nondiscriminatory Bar Exams*, THE GEORGETOWN J. OF L. ETHICS 33, 931-67, at 952-55 (2020). <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2020/08/GT-GJLE200047.pdf>

Despite the clear shortcomings of the bar exam as the sole path to licensure, it remains the only way to be admitted to the bar in most jurisdictions. The efforts in Oregon to explore alternatives to the bar exam represent a turning point in how we license lawyers.

The Alternatives to the Exam Task Force has taken these two key considerations—consumer protection and equity—as their guiding principles in considering alternative pathways to licensure. Having done so, their Recommendations Report outlines two new alternative pathways to bar admission in Oregon: the Oregon Experiential Pathway (OEP) and the Supervised Practice Pathway (SPP). Both the OEP and the SPP would, through their real-world experience and Exam Alternative Portfolio requirements, provide paths to bar admission that accurately and adequately assess a bar candidate’s mastery of the building blocks of minimum competence, thus assuring consumer protection. In addition, the OEP and the SPP present opportunities to improve the diversity of the legal profession by offering avenues to bar admission that are free of the disparate outcomes we know to exist with the bar exam.

For these reasons, we support the recommendations outlined in the report, Recommendation of the Alternatives to the Exam Task Force to the Oregon Supreme Court, in their entirety.

Sincerely,

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