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Attorneys concerned adoption of new bar exam would lower standards while law deans support a change

The bar announced May 15 it would consider adopting the Uniform Bar Exam, which is administered by the National Conference of Bar Examiners and has been adopted in 36 jurisdictions, but has been criticized for not sufficiently testing knowledge of state laws.

While California attorneys are worried that adopting the Uniform Bar Exam would lower the quality of lawyers in the state, several law school deans are enthusiastic about the proposal the State Bar is considering.

"California is overrun by attorneys who are degrading the practice of law," and adopting a less stringent bar exam will not help, Arash Shirdel, founder of Pacific Premier Law Group in Santa Ana, said Wednesday. "The bar exam results have been inching lower over the past few years because the quality of the students has diminished, not because the bar exam has gotten more difficult."

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The exam consists of three parts: a multistate performance test, a multistate essay test and the multistate bar examination. California already uses the multistate bar examination in its current bar exam.

According to Jason Solomon, executive director of the Center on the Legal Profession at Stanford Law School, lawyers today operate in a global economy and new graduates can simply pick up specific knowledge about California law in their law practice.

"It is also clear from recent studies and surveys that the Multistate Performance Test -- an idea which originated in California -- is the strongest part of the UBE," Solomon said. If the bar examiners "were to weigh that more heavily, it would be another factor in favor of adoption."

Jenifer Levini at Levini Law in Santa Cruz said a difficult bar exam is the price of admission to practice in California. It ensures that attorneys in the state have a high standard, and said those complaining are the ones who aren't passing or are law schools with a low passage rate.

"The California bar tests California law in addition to testing federal laws," Levini said. "It's hard to study for and learn all these laws. But we know that those who pass our bar know our laws. If we only test on the laws that are shared by all states, then we don't know if the attorneys who transfer here from other states or pass the UBE know our laws. It just lowers the quality standard. It potentially harms consumers who assume that an attorney knows what she/he is talking about."

Arash Beral, partner at Freeman Freeman & Smiley LLP in Los Angeles, agreed, saying the current exam tests analytical capability.

"An ability to navigate an intricate web of fact and law and succinctly present a client's position in a limited amount of time is part and parcel with what we do as litigators," Beral said. "And that same ability, when present on both sides of the 'v.,' will oftentimes inure itself towards an early resolution of client disputes, thus saving costs and judicial resources. I fear that in eliminating or reducing this particular emphasis, clients and the courts will ultimately bear the burden."

According to the National Conference of Bar Examiners, the exam allows those who pass greater job opportunities since attorneys would be able to work in different states. Spokeswoman, Valerie Hickman, said it's up to each jurisdiction to decide how much of local law should be tested.

"The UBE is designed to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law," Hickman said. "Jurisdictions that want to test local knowledge in addition to the material tested on the UBE may choose to include a jurisdiction-specific component in their licensure requirements, as New York does. The content and format of such components are determined by the individual jurisdiction."

Selina Farrell, assistant dean for academic excellence at Pepperdine Caruso School of Law, favors California adopting the Uniform Bar Exam. She said that most ABA-accredited law schools in California already teach national legal principles.

"While some bar subject courses taught at California ABA schools are naturally California-focused, like community property and wills and trusts, I would not anticipate the need for significant programmatic shifts in law school curriculums if the UBE is adopted here," Farrell said.

She suggested the addition of an online multiple-choice test on California-specific laws could make up any deficiency.

Devin J. Kinyon, director of the Office of Academic & Bar Success at Santa Clara University School of Law, said the essay portion of the Uniform exam is similar to the current California bar exam. He favors the change, saying lawyers often confront issues that are not limited by state lines.

But the bar and the California Supreme Court must re-think how the state admits attorneys regardless if a new exam is adopted, he said.

"Even as someone who thinks about the bar exam just about every day, it's hard to see its clear connection to the practice of law," Kinyon said. "I don't know a lot of lawyers who spend their days answering multiple-choice questions or writing documents from memory without looking at any materials. I'd love for us to choose a better way of determining if someone is ready to be a new lawyer."

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