

IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS RE)
AMENDMENT TO RULES OF THE SUPREME) Case No. SC96869
COURT RELATING TO ADMISSIONS TO)
THE BAR)
_____)

RESPONSE TO REQUEST

The Florida Board of Bar Examiners, by and through its undersigned attorney, responds to the request of the Court dated October 25, 2000 and state:

Pursuant to authorization from the Court, the Board began collecting demographic data on bar examinees in Florida beginning with the February 2000 administration of the bar examination. The Board has no objection to the Court's consideration, utilization and reliance upon such data in making a decision on the Board's pending proposal pertaining to the pass/fail line.

If the Court decides to rely upon the recent demographic data, then the Board recommends that all of the data be utilized including data concerning each bar examinee's LSAT score and grade point average during law school. If the Court decides to rely upon the recent demographic data, then the Board submits that fairness requires that such data be made available to all of the interested persons.

To assist the Court in weighing the options of using and publicizing the recently collected demographic data versus not using and maintaining the confidentiality of such data, the Board offers the following observations:

1. As set forth in the Board's original petition filed with the Court, the collection of demographic data beginning with the February 2000 bar examination "will be used initially to identify a baseline passing rate for each of the different groups." (Appendix to Petition at 42) If the Court approves the Board's recommended increase to the pass/fail line, then "the information will be used to

analyze the impact, if any, on the different groups." Id.

Collection of demographic information will serve as a check should the Court adopt the recommended increase to the pass/fail line:

In recommending an increase to the pass/fail line, the Board has full confidence in the opinion of its expert that such increase will have no measurable effect on existing differences among the passing rates on Florida's bar examination for the minority and non-minority groups. The Board concluded, however, that it would be reasonable to confirm such opinion by collecting and analyzing the requested information after each bar examination. The Board will provide the Court with the results of such analysis following each administration of the bar examination. Such results and the underlying data will be confidential pursuant to Rule 1-61 of the Rules of the Supreme Court Relating to Admissions to the Bar and will not be released by the Board except as directed by the Court.

(Id. at 43)

2. The use of demographic data from past bar examinations cannot confidently foretell how bar examinees will perform on a future bar examination with a higher pass/fail line.

[A]s stated by Dr. Klein, "[i]t is difficult to predict the effect of a change in passing scores." The true impact cannot be accurately measured until the standard is actually adopted. As observed by Dr. Klein, law schools and their students can and do rise to the challenge of a higher standard.

For example, Dr. Klein commented on how Thurgood Marshall School of Law in Texas was able to improve its bar passing rate by an average of 30 percent since 1993. Such improvement is even more dramatic in that it occurred during the same time period as when Texas was raising its pass/fail standard.

(Board's Reply to Comments at 45) (Citations omitted)

3. The demographic data from the February 2000 bar examination may not be completely reliable. The Board used fingerprints cards to identify the racial/ethnic group of bar examinees from that bar examination. The Board concluded that the accuracy of this means of identification is questionable. At its June 2000 policy session, the Board approved the addition of a question (requesting identification of an applicant's racial/ethnic group) to the bar examination application to increase the reliability of the demographic data being collected.

4. The size of certain racial/ethnic groups at some Florida law schools in

the demographic data from the February and July 2000 administrations of the bar examination is very small. Some racial/ethnic groups have only several members. Thus, the percentage of those members passing or failing for such group is impacted greatly by the performance of a single bar examinee.

5. Release of the demographic data to the public could result in the identification of a particular bar examinee in that some racial/ethnic groups at particular Florida law schools consisted of only one individual.

WHEREFORE, the Board submits the above-stated comments in response to the Court's request.

DATED this 8th day of November, 2000.

EXAMINERS

Respectfully submitted,

FLORIDA BOARD OF BAR

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been served by U.S. Mail this 8th day of November, 2000 to the following individuals:

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