



IN RE UNIFORM BAR EXAMINATION MINIMUM PASSING SCORE

2024 OK 38

Decided: 05/28/2024

THE SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2024 OK 38, __ P.3d __

In re: Uniform Bar Examination Minimum Passing Score

ORDER

¶1 The Oklahoma Supreme Court, pursuant to its general administrative authority, Okla. Const. art. VII, § 6, and pursuant to its sole authority to regulate the admission to the practice of law in Oklahoma, hereby orders that the minimum passing score in Oklahoma for the Uniform Bar Examination shall be 260, effective July 1, 2024.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 28th day of May 2024.

/S/CHIEF JUSTICE

Kane, C.J., Kauger, Edmondson, Combs, Gurich (**by separate writing**), JJ., concur;

Rowe, V.C.J. (**by separate writing**), Winchester, Darby and Kuehn, JJ., dissent.

GURICH, J. SPECIALLY CONCURRING:

¶1 I concur in the decision to set the Oklahoma Uniform Bar Exam (UBE) passing score to 260.

¶2 The Supreme Court authorized the creation of the Oklahoma Bar Examination Advisory Committee on September 16, 2019. The purpose of the Advisory Committee was to make recommendations regarding the content and administration of the Oklahoma Bar Exam. At that time, the Oklahoma Bar Exam consisted of 16 essay questions developed by the Oklahoma Board of Bar Examiners and 200 multiple choice questions (MBE) developed by the National Conference of Bar Examiners (NCBE). This format had been administered in Oklahoma since 1976. The proposed UBE consisted of 200 MBE questions, 6 essay questions, and 2 Multistate Performance Tests, all promulgated by the NCBE. The Advisory Committee unanimously recommended the adoption of the UBE. Some of the Advisory Committee members volunteered their opinions regarding a proposed passing score (cut score), but there was not unanimity among the members.

¶3 This Court unanimously adopted the Uniform Bar Exam to replace the current Oklahoma Bar Exam effective July 1, 2021. However, the cut score of 264 was adopted by a vote of 6 to 3.

¶4 The dissent suggests that this Court is somehow dumbing down the bar exam by lowering the cut score. The dissent is misguided in thinking the passing score is indicative of the quality of law students in Oklahoma. Nothing is further from the truth. One of the advantages of the UBE is its portability. Oklahoma is bordered by states with a cut score of 270--Texas, Colorado, and Arkansas. Oklahoma is bordered by states with cut scores of 260---New Mexico and Missouri. Oklahoma also shares a border with Kansas, which has a cut score of 266. If a student who takes the UBE expects to practice in Oklahoma

and surrounding states, the most important score is 266 or 270. A law student in Oklahoma who achieves a 270 or higher can practice in 38 states and the Virgin Islands. An employer in any state with a higher cut score knows that a student educated in Oklahoma has met the same standards as someone educated in their state.

¶5 The dissent also suggests that something nefarious is going on. We met as a Court with all three deans of the Oklahoma law schools last month, where it was openly expressed that there are differing opinions as to the cut score, just as there were differing opinions in 2020. As I recall, the cut score has been a topic of discussion since June of 2020. The difficult decision we are making is not made in a vacuum, but made after observations, research, and thoughtful consideration over a period of years.

¶6 At a recent meeting of the NCBE in Chicago, I was impressed by appellate judges in other states expressing their concerns about cut scores. Iowa, for example, is currently considering dropping their cut score from 266 to 260. Other state appellate judges also indicated that lowering their cut scores is being discussed. In June of 2020, the cut scores for successfully passing the UBE ranged from 280 to 260. Since 2022, several states have reduced their cut scores. The range is now 260 to 270. This is a significant change. The primary reason given is because states with higher scores are losing lawyers to states with lower scores and are facing a shortage of new lawyers. Oklahoma currently has 14 counties with no lawyers and several more with only one. In fact, a graduate of a law school in Oklahoma can even practice in two neighboring states with a score lower than 264. This only encourages lawyers to leave the state.

¶7 I do not believe that any action we are taking is a disservice to others who have already passed the bar. This is not a competition with other students or other states. This high-stake exam is intended to test minimum competency to practice law. The cut score number we adopt represents opportunities for Oklahoma law students, and I, for one, want to expand the opportunities.

ROWE, V.C.J., with whom WINCHESTER, J., joins, DISSENTING:

¶1 I disagree with the Court's decision to lower the passing Uniform Bar Exam ("UBE") score in Oklahoma from 264 to 260.

¶2 At the outset, it is worth noting that prior to today's action, Oklahoma had the second lowest minimum passing score of any jurisdiction.¹ Thus, it cannot be said that our minimum passing score of 264 was an overly-exacting or unreasonable hurdle for those seeking admission. Accordingly, I do not see a compelling reason to lower the minimum passing score even further.

¶3 The real motivation behind this change is quite clear, though. It is a poorly thought-out and reactionary attempt to grapple with the disappointing passage rate for the February bar exams. Out of 172 individuals who took the February 2024 exam, only 69 managed to pass, a passage rate of 40 percent. Notably, had the minimum passing score been 260 for the February 2024 exam, the passage rate would only have been 48.8 percent--still a disappointing number. The February 2023 exam results were even more unsatisfactory, with only a 37 percent passage rate. On the contrary, last July's passage rate was 68 percent. Had the minimum passing score been 260 for the July 2023 exam, the passage rate would only have increased to 72.1 percent. While the issue of bar passage rates in Oklahoma is troubling, the solution does not lie in lowering our standards.

¶4 Prior to adopting the UBE and setting the passing score at 264 on June 9, 2020, we held a hearing where Oklahoma's three law schools were represented by their deans. We also received comment from the Board of Bar Examiners. Today's action by the Court is taken *sua sponte*. Have members of the Board of Bar Examiners or members of the bar been consulted? As a Court, we have not received public comment, and we are prohibited from receiving *ex parte* comment. Should we not set this matter for oral presentation to hear from those who oppose today's action or from the students who studied for many weeks and passed the bar?

¶5 In summary, lowering the minimum passing score in response to less than optimal results on previous exams sets a terrible precedent--a precedent that when our standards are not met, we will lower them rather than work hard to achieve them. It also diminishes the accomplishments of those who have worked so hard to achieve admission. This Court should set

a standard that I know Oklahoma students can and will achieve--a standard to reach for the top, not race to the bottom. I respectfully dissent.

FOOTNOTES

ROWE, V.C.J., with whom WINCHESTER, J., joins, DISSENTING:

¹ According to the National Conference of Bar Examiners, five jurisdictions including Alabama, Minnesota, Missouri, New Mexico, North Dakota, and Utah, have a minimum passing score of 260. Indiana and Oklahoma are currently the second lowest, with a minimum passing score of 264. *Minimum Passing UBE Score by Jurisdiction*, National Conference of Bar Examiners, <https://www.ncbex.org/exams/ube/ube-minimum-scores> (last visited May 21, 2024).

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