Bar group recommends changes in exam topics

Administrative law and procedure might be a future topic, while professional responsibility, trusts, wills, community property, business associations and remedies could be dropped, the group suggested.

The State of California has never done a job analysis study to determine what it is that a new attorney needs to know and be able to do at the time they enter the profession," said Jackie Gardina, The Santa Barbara & Ventura Colleges of Law dean and member of the bar's California Attorney Practice Analysis Working Group.

The group's report, presented Monday, is a response to the state Supreme Court's direction in 2017 that the bar conduct several studies on how the exam can be improved.
After analyzing surveys sent out to thousands of attorneys, the group recommended the bar drops the number of exam topics from 13 to eight.

Dean Stephen C. Ferruolo of the University of San Diego and ABA law school representative for the working group, said in an interview the group wanted to focus on fundamental topics instead of covering everything in one exam.

"It's not narrowing for the sake of narrowing, although there are a bunch of studies that say one reason to account for the lowering number of people passing the bar exam is the expansion of the number of subjects," Ferruolo said. "So, there's a pedagogical argument to that. But that wasn't the way this committee operated. It was really saying, if you look at the wide variety of practices and the wide variety of areas of practice in California, you can't have a single comprehensive bar exam. So, it should be foundationar

Richard H. Sander, professor at UCLA School of Law, disagrees with the idea of reducing the number of exam topics. It could have an unintentional side effect on law students in their second and third year since many of the subjects covered in those years are being suggested for removal from the test.

"That could have a significant impact on the proportion of students getting rigorous educations;' Sander said. "And if you think about that in conjunction with the idea of lowering the cut score, those two things could reinforce each other and produce students with significant gaps and weaknesses in legal education."

The suggestions call into the question of whether the bar believes California should have three years of legal education, Sander continued.

On the topic of professional responsibility, the group concluded it would be better taught outside of the exam through the New Attorney Training Program, which requires four hours of legal ethics training for new attorneys in their first year of practice.
Although agreeing with large parts of the report, Los Angeles County Bar Association President Ronald F. Brot said in an interview attorneys should continue to be tested on professional responsibility throughout their career.

As a practitioner for four decades, I am constantly dismayed at the disregard shown by the legal profession toward their responsibility as professionals," Brot said, noting he doesn't support removing the topic from the bar exam. "Actually, I wouldn't mind having professional responsibility tested and be supplemented by mandatory legal education as well.

The draft report is subject to change, and the discussion that began Monday will continue as the report gets updated. According to Ferruolo, the finalized report will likely take a while and several steps have to be fulfilled before the recommendations are actually implemented. Its a process that could take several years, Ferruolo said.

"You've got to set up a group, and that group has to look at the recommendations and see if it accepts those recommendations. Then if it does, or some of them or all of them, it's going to have to redesign the bar exam," Ferruolo said. "And it has to think about how to change the test to be consistent with the recommendations and how to test the competencies that have been discussed:'

Ferruolo also explained there must be beta testing, and law schools have to be notified a couple of years in advance before the changes take place. In the meantime, he hopes for action on the cut score as a way to modernize the exam.

But I think redesigning the bar exam to reflect practice in the 21st century, is a good thing in and of itself," Ferruolo said.