

INSIGHT: Would Eliminating the Bar Exam Impact Malpractice Claims?, *Bloomberg, ft. Courtney Curtis-Ives*

Courtney Curtis-Ives, Partner and Co-Chair of the Professional Liability Practice Group was quoted in this Q&A, published by *Bloomberg* on September 9th, 2020.

The Covid-19 pandemic and the complicated scheduling and rescheduling of in-person and online state bar exams has prompted a resurgence of advocates who seek to waive the exam altogether, perhaps indefinitely. But how would this impact the legal profession and potential for malpractice claims?

Q: Arguably, the bar exams administered in all states are designed to ensure that only the most “critical-thinking minds” are admitted to what has always been considered an exclusive profession. Why wouldn’t we want to continue requiring this entrance exam?

Courtney Curtis-Ives: The bar exams are imperfect, there’s no doubt about that. I’ve read that proponents for eradicating the bar exam point to the low percentage of malpractice-related claims against first or second-year lawyers, to support their position that, test or not, new lawyers are less likely to get sued and will eventually learn the ropes along the way.

In my view, that is an inappropriate lens for considering this issue. Most new lawyers, especially those who practice in firms, are not tasked with the responsibility of handling a file or regularly communicating with clients, and that is why they have less of a liability target on their backs.

Put another way, they don’t have the “opportunity” to commit malpractice. Thus, the more significant question is what the malpractice statistics will or would look like as to “non-bar-takers” if the exam is eliminated, at the more critical, later points in their careers.

We have very little, if any, empirical evidence of this right now. Legal malpractice claims could, in my view, be at an all-time high across the nation once we clear through this pandemic. Imperfect as the exam may be, don’t we want to continue to apply every “filter” at our disposal?

Q: Is there anything specific about the bar exam that you think adds value to attorneys in practice or to the profession in general?

Curtis-Ives: Like many standardized tests, bar exams are only in small part about the substance of what is being tested. More importantly, the exam endeavors to be a test of aptitude and endurance. In that vein, it is indeed a barrier to entry, deliberately and perhaps rightly so.

The summer I took the bar exam in Pasadena, Calif., the state was experiencing rolling blackouts. The examiners started the first day of the test by announcing that if the power went out, and the room went pitch black, “you must keep writing!”

I’ll never forget the mix of adrenaline and fear I felt in that moment—the gut-twisting sensation we all get when we’re not sure exactly what will happen in any given situation. And guess what? That feeling is not all that different from when you start a jury trial, take a heated deposition, or argue an issue of first impression