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FEATURE

So You've Failed the Bar Exam - Now What?

Steven C. Bennett
The National Law Journal
03-24-2006



Jones Day's Steven C. Bennett

Image: Elizabeth Lippman

You just got the results of the bar exam. You've failed. Don't panic. Failing the bar examination is the moral equivalent of breaking your leg. It hurts a lot, and it's a great burden to live through. But it will heal itself (in most cases) and after it does, you'll be indistinguishable from your compatriots.

First things first: You must tell your firm that you didn't pass the bar. It's easy for most firms to check this information from public sources, so it's better for you to raise the issue discreetly with an office coordinator on your own. The firm needs to know that you cannot hold yourself out as a lawyer (although you can perform a number of tasks, under the supervision of admitted lawyers).

Your message should be simple: "I am going to do everything possible to make sure I pass on the next attempt." You may also want to discuss with a firm coordinator issues such as taking time off to study for the second attempt, and any training the firm may recommend for people in your situation. Your discussion with the coordinator will almost certainly confirm that other lawyers in the firm have successfully overcome failure on the first attempt at the bar examination.

If you receive a less positive response from the firm coordinator, again do not panic. Not every firm has adept and sympathetic managers for its junior lawyers. Worst case, if this experience suggests that you may be working at a firm that is not right for you, almost certainly you will be better off staying at the firm at least until you pass the bar and become a practicing lawyer. Your confidence during interviews for a lateral position will be higher, and you may avoid the entire subject of the bar examination.

Focus hard on what went wrong with your first attempt, and what you can do to improve your results. There are several classic issues to consider any time you take a bar examination (but especially on the second attempt):

- Study the test. The bar examination form generally does not change greatly from year to year.

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Test preparation services and other sources can give you valuable insights about the standard elements of the test, and some of the "tricks" often built in by the bar examiners. Take advantage of any insights you can get. Also, take as many practice examinations as you can, and look closely at the areas where you are having problems.

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- Do triage. Not every subject is likely to appear on the bar examination, and some subjects are perennial favorites of the examiners. It will do you very little good to bone up on maritime law if the bar examiners have never asked a question on the subject. And if you are not ready to explain basic principles of civil procedure and property law in your state, you could be headed for trouble.
- Get yourself in good physical and mental shape. In most instances, it is preferable to "get back on the horse" and take the next available version of the bar examination. But if you have some physical or emotional issues that may hinder your performance, you should try to deal with them as completely as possible before your second attempt at the bar. Otherwise, such issues may distract you and produce unnecessary anxiety. In a similar vein, make sure you are fully rested for the test. If you need it, take time off from work before the second test (as vacation time, or even as unpaid leave, if the firm is not otherwise accommodating). Set yourself up to be as confident and prepared as possible.
- Consider taking an easier examination. Some state examinations are notoriously harder than others. In some instances, it may be possible to take an easier examination, and then "waive in" to the state where you wish to practice. Passing the bar, somewhere, may give you greater confidence for a second attempt at the more difficult examination.
- Remain positive. Failing the bar examination is not the worst thing that can happen to you as a lawyer (and definitely not the worst thing that can happen to you as a person). Your career isn't over. It has just been slightly delayed.

Steven C. Bennett is a partner in the New York City offices of Jones Day, and a member of the firm's Training Committee. He is the author of "The Path to Partnership: A Guide For Junior Associates" (Praeger 2004).

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