

Los Angeles Times

LOCAL U.S. WORLD BUSINESS SPORTS ENTERTAINMENT HEALTH LIVING TRAVEL OPINION SHOP

L.A. NOW POLITICS CRIME EDUCATION O.C. WESTSIDE NEIGHBORHOODS ENVIRONMENT OBITUARIES DATA & MAPS

A High Bar for Lawyers

Today, 5,260 people begin taking the state licensing exam. More than half will fail. And keep failing. Just ask the mayor of Los Angeles.

February 21, 2006 | Maura Dolan | Times Staff Writer

Former San Francisco Board of Supervisors President Angela Alioto won't even say how many times she failed the California bar examination before she finally was licensed to practice law.

"Consider it to be several," said the antidiscrimination lawyer and daughter of the late San Francisco mayor and famed antitrust lawyer, Joseph Alioto.

"And understand," she quickly added, "that for the last two years in a row I have been nominated as a national trial lawyer of the year."

Add two former governors, an eminent legal scholar and a former state Supreme Court justice to the ranks of those, like Alioto, who learned the hard way that obtaining a license to practice law in California is hard. In fact, it's harder than in almost every other state.

Of the 5,260 people expected to take the state's bar examination beginning today, more than half are likely to fail, rates from previous years indicate. Some law school graduates, like Alioto, flunk the bar multiple times before finally passing and becoming lawyers.

Others give up.

Los Angeles Mayor Antonio Villaraigosa, who graduated from an unaccredited law school, finally called it quits after taking the bar exam four times. His office failed to respond to questions, and Villaraigosa, reached as he entered a downtown restaurant, was at a loss to explain why he had been unable to muster a passing score.

"All I can tell you is that I failed four times," the mayor said.

Failing the bar can be a crushing and humiliating experience, particularly when the applicant has spent months studying or is unaccustomed to failure.

Kathleen Sullivan, former dean of Stanford Law School and a former Harvard Law School professor, is considered such a legal superstar that news of her flunking the California bar last year made the front page of the Wall Street Journal. Sullivan remains a full law professor at Stanford and is associated with a private law firm.

Although Sullivan is licensed to practice law in New York and Massachusetts, the California Supreme Court last month removed her from litigation over a \$500-million licensing dispute because she was not a member of the state bar.

The constitutional scholar, who has argued several times before the U.S. Supreme Court, wasn't eager to talk about the setback, declining to say how much she studied for the bar or how close she came to passing. "That is all past," Sullivan said.

She took a special bar exam for lawyers licensed elsewhere that is shorter than the regular test. Only 28% achieved passing scores.

This time, Sullivan is not taking any chances. She said she has immersed herself in study for the test today.

"I am eating, drinking and sleeping the bar," said the scholar, who is frequently cited as a potential U.S. Supreme Court nominee.

Sullivan's failure, while a surprise to the legal community, attests to the exam's challenge. California's bar "is one of the most difficult," said Erica Moeser, president of the National Conference of Bar Examiners.

The three-day test is longer than other states' exams. The score needed to pass also is one of the highest, a factor Moeser believes may explain why applicants are significantly more successful in New York than in California, the states with the largest numbers of people taking the bar.

In 2004, only 44% of the 12,448 who took the California bar exam passed. In New York, where the passing score is lower, 62% of the 12,806 passed, according to Moeser and statistics published by the national bar examiners.

Bar officials say the toughness of California's exam ensures that consumers are protected. Moeser surmised that the state also might set the passing score higher because California permits testers who have

not graduated from accredited law schools. Most states require testers to graduate from schools accredited by the American Bar Assn.

But even when applicants from only ABA-approved schools are compared, New York still passed a substantially greater percentage than California in 2004, as did most other states.

Oceanside lawyer Donnie R. Cox, who took the bar in 1988 and passed on his first try, recalled a female applicant who wept constantly during the exam while staring into her blue book and wrote not a word. On the second day, Cox said, he brought in earplugs.

Dennis B. Atchley, Cox's law partner, passed on his first try too, in 1976, but the pressure of the experience still haunts him. He said he has a recurring nightmare: Bar examiners inform him they have recalculated his score and he failed. They quickly assure him he can retake the test -- in 10 minutes.

"I have pummeled my wife during that dream," Atchley said.

California's bar requires six essays that can be drawn from among 13 subjects, including contracts, trusts, community property and corporate and constitutional law, in addition to a 200-question multiple-choice test, said Dean Barbieri, director of examinations for the state bar.

Stephen Barnett, professor emeritus at UC Berkeley's law school, said the test "is easy to flunk because it is a difficult exam and requires even the best students of the best teachers to do some serious studying."

For those who fail, there is always another chance. Unlike some other states, California lets applicants retake the bar as often as they wish, one of the reasons cited for the state's relatively high failure rate. Someone who fails once is more likely to fail again.

The record for most attempts may be held by Maxcy Filer, 75, who took the exam 48 times. He estimates that he spent about \$150,000 on bar preparation classes, motels and test fees from 1966 to 1991, when he finally passed. Filer now practices law in Compton and takes "anything that walks in the door except bankruptcy and probate."

The lawyer's hurdles are not over, however. Last year, Filer got into trouble with the bar for failing to file a required document in a legal case.

The bar placed him on probation and ordered him to take and pass a two-hour test on legal ethics and rules of professional conduct.

Filer is scheduled to take the exam next month.

"I am not worried," said Filer, who parked cars and worked as a law clerk while pursuing his dream of the law. "I will do my best."

Oakland Mayor Jerry Brown, a former California governor who is running for the Democratic nomination for state attorney general, flunked the bar after "studying a little bit, not too much," following his graduation from Yale Law School.

The exam had questions about community property and wills and estates, subjects Brown had not studied at Yale, and did not reflect the psychiatry and law course that Brown said he took with the daughter of Sigmund Freud or the class in Roman law taught by a famous Oxford scholar.

"Yale was more of an intellectual exercise," said Brown, who passed the second time in 1965.

The bar is not necessarily a good measure of what it takes to be a great lawyer, he said.

"It is more of a rite of passage, a screen to discourage at least half the people," Brown said.

Former California Supreme Court Justice William P. Clark, who flunked out of law school, also had to repeat the bar test. After leaving the state's highest court, Clark served as secretary of the Interior and national security advisor to President Reagan.

Former Gov. Pete Wilson graduated from UC Berkeley's elite Boalt Hall School of Law but did not pass the bar until his fourth try. He blamed his struggle on slow penmanship. Wilson said he passed when he used a typewriter to complete the essays.

"It was frustrating as hell," Wilson said. "I don't think I would have passed it yet had I not been able to type it."

Some critics accuse the bar of deliberately trying to limit competition, a claim the group strongly denies.

California is more restrictive than most states about out-of-state lawyers practicing without first taking the state's exam. As a result, some states that do admit lawyers from elsewhere deny that privilege to California's lawyers.

The bar "would prefer to raise the fences around California at the price of not being able to practice in other states," said UC Berkeley's Barnett, adding that California has a "richer market" for lawyers than most states.

Harlan Antler, who failed the bar "nine or 10 times," is now a successful criminal-defense lawyer in Sacramento. He said he finally discovered that he had a sleep disorder that was making it difficult for him to stay awake. Once he addressed his medical condition, he passed.

But the many years Antler spent taking and retaking the exam took a toll on his family. He said his wife had begged him to give up. He refused.

"The most important quality of a good lawyer is never taking no for an answer," Antler said. "You just have to keep your eye on the bigger picture. If you want to practice law, you just keep slugging at it."

Times staff writer Hemmy So contributed to this report.

*

(BEGIN TEXT OF INFOBOX)

Tough testing

California had the lowest percentage of people passing the bar exam in 2004. Here are the states that had the greatest and smallest percentage of people passing the bar in 2004:

Top 5

1. Utah: 87%
2. Mississippi: 86%
3. Minnesota: 83%
4. Missouri: 81%
5. Iowa: 80%

Bottom 5

47. Wyoming: 60%

48. Nevada: 56%

48. New Hampshire: 56%

49. District of Columbia: 51%

50. California: 44%

*

Source: National Conference of Bar Examiners