

COMMITTEE OF BAR EXAMINERS

*Executive Director: Leah Wilson ♦ (415) 538–2000 ♦ (213) 765–1000 ♦ Toll-Free
Complaint Hotline: 1–800–843–9053 ♦ Ethics Hotline: 1–800–2ETHICS ♦ Internet:
www.calbar.ca.gov*

Protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interest sought to be promoted, the protection of the public shall be paramount.

— Business and Professions Code section 6001.1

The Committee of Bar Examiners (Committee or CBE) was established in 1939 by the State Bar of California, pursuant to Business and Professions Code section 6046, to examine all applicants for admission to practice law; administer the requirements for admission to practice law; and certify to the Supreme Court for admission those applicants who fulfill the statutory requirements to practice. Specifically, the Committee develops, administers, and grades the California bar examination, reviews the moral character of State Bar applicants; accredits law schools in California that are not accredited by the American Bar Association (ABA) (collectively, “California Accredited Law Schools (CALs)”); and oversees additional registered unaccredited law schools.

The Committee is comprised of 19 members: 10 attorneys or judges, and nine public members. At least one of the attorney members must have been admitted to practice law within three years from the date of appointment to CBE. Pursuant to section 6046.5 of the Business and Professions Code, three of the public members are appointed by the Speaker of the Assembly; three are appointed by the Senate Rules Committee; and three are appointed by the Governor. All members of the Committee serve four year terms.

Specific rules pertaining to admission to practice law in California are set forth in Title Nine of the [California Rules of Court](#), and Title 4 of the [Rules of the State Bar](#). Pursuant to Rule 9.4 of the California Rules of Court, the Supreme Court is responsible for appointing the ten attorney members of the Committee, at least one of which must be a judicial officer in this state, and the balance must be licensees of the State Bar. Rule 9.5 of the California Rules of Court requires that all rules adopted by CBE pertaining to the admission to practice law must be approved by the Board of Trustees and then submitted to the Supreme Court for its review and approval.

At this writing, CBE divides its work into four subcommittees: Operations & Management (exam administration, fee and deadline waivers, reports of alleged cheating, and admissions budget and personnel); Moral Character (conducting moral character evaluations of State Bar applicants); Examinations (administration, development, and grading of the First Year Law Student's Exam and the California Bar Exam); and Educational Standards (administering the CALS accreditation process, and regulating the registration of unaccredited schools).

CBE also maintains three advisory bodies that provide support to the subcommittees. The Law School Assembly (LSA) was created in 1986 by the State Bar Board of Governors (the predecessors to the current Board of Trustees) to function as a forum for disseminating information from CBE to the law schools, and providing feedback from the law schools to CBE. LSA is comprised of one representative from each law school in California (whether ABA, Cal-accredited, or unaccredited), CBE members, and liaisons from the State Bar Board of Trustees. Each school selects its own representative. The LSA

meets annually to discuss relevant topics, and elects the members of the Law School Council.

The Law School Council (LSC) considers matters related to the content and format of the Bar examination, and coordinates curricula related to bar-tested subjects and aspects of law school education relevant to licensure. LSC is comprised of 14 members: ten are law school deans elected by their category of school; three members of CBE, appointed by the CBE Chair, and one member of the Board of Trustees.

The Advisory Committee on California Accredited Law School Rules (RAC) advises the Committee on matters relating to the promulgation of new rules, guidelines and amendments to the Accredited Law School Rules and the Guidelines for Accredited Law School Rules. It is comprised of six members, three selected by CALS deans, and three appointed by the Chair of CBE.

Effective January 1, 2018, pursuant to section 6026.7 of the Business and Professions Code, as amended by [SB 36 \(Jackson\) \(Chapter 422, Statutes of 2017\)](#), CBE is now subject to the Bagley Keene Open Meeting Act, section 11120, et seq. of the Government code, and must conduct its business in public, with notice as specified in the Act.

On August, 15, 2018, the California Supreme Court [appointed](#) three new members to the Committee of Bar Examiners: James Fox, former President of the Board of Trustees of the State Bar of California and former District Attorney of San Mateo County, as an attorney member; Shelly Torrealba, a Superior Court of Los Angeles County judge, as a judicial officer member; and Michael Iseri, an attorney who specializes in disability rights and technology law, as an attorney member. On the same day, the Court also appointed

James Fox to serve as Chair of the Committee of Bar Examiners for a one-year term that began on September 14, 2018, and Esther Lin, an associate attorney at Woodruff, Spradlin & Smart who practices in its eminent domain practice group, to serve as Vice Chair of the Committee of Bar Examiners for a one year term that began on September 14, 2018.

MAJOR PROJECTS

Board of Trustees Votes to Reform Committee of Bar Examiners Over CBE's Objections

At CBE's June 22, 2018 [meeting](#), staff presented the Committee with [recommendations](#) pertaining to CBE's structure and functions as part of the Bar's implementation of the [2017 Governance in the Public Interest Task Force](#) recommendations. [[23:2 CRLR 264](#)] Specifically, the Board of Trustees (BOT) directed staff to assess whether the Committee's relationship with the BOT could be strengthened for more meaningful engagement, communication and exchange of ideas; the function of law school accreditation, its impact on cost and staffing, and the potential of partnering with professional accreditation bodies to perform this function rather than CBE; whether it would be desirable to increase CBE's opportunity for policy formation and oversight activities; and whether changes in staffing or operations would be needed to support any recommended shift in focus.

To conduct this review, the Bar commissioned organizational development consultant Elise Walton and former State Bar Executive Director Elizabeth Parker to conduct research on how other bar jurisdictions carried out their attorney licensing functions; consult with the Western Association of Schools and Colleges (WASC), to

investigate the accreditation process; and meet with individual CBE members, and the full Committee, to gather more information that could address the assigned inquiry.

CBE formed a working group to be part of the dialogue and to serve as a data source for this review, and the Office of General Counsel produced a legal opinion on the relative authority of the Supreme Court, the Board of Trustees, the Executive Director, and the CBE as to the State Bar's admissions functions.

At the June meeting, staff presented the Committee with a draft of the Walton/Parker Report ([attachment II](#)), the legal opinion from the Office of General Counsel, and its own recommendations based on all of this information for the Committee's consideration, most of which align with the Parker/Walton report. Specifically, staff recommended the following reforms to CBE: 1) the Committee should evaluate the grading of the bar exam, and staff will work with a psychometrician to sample exams as part of a seven-year bar exam study; 2) responsibility for conducting moral character informal conferences should shift from Committee members to State Bar staff so as to make decisions more consistent and transparent; 3) responsibility for initial enforcement decisions of the exam rules should shift from Committee members to staff; 4) CBE's budgetary role should be limited to making recommendations to modify bar exam fees; 5) staff and the Committee should collaborate to review trends in licensing and certification and their application to the bar exam. During the discussion, Committee members generally expressed their strong opposition to all the proposed recommendations, and voted to voice these concerns at the BOT's July meeting.

Accordingly, CBE Chair Erika Hiramatsu gave public comment to the BOT at its July 19, 2018 [meeting](#), and conveyed the Committee's (and past chairs') concerns that the

Walton/Parker Report was biased and inaccurate. Specifically, Ms. Hiramatsu advised the BOT that the Committee took issue with the recommendations regarding moral character determinations and testing accommodations, stating that there has been no proof of the necessity for any of the recommendations from their report. The BOT did not take any action on Ms. Hiramatsu's comments as they were not on the agenda for discussion at that meeting.

At its September 13, 2018 [meeting](#) the BOT considered [staff recommendations](#) for greater efficiency of the CBE, based on the Walton/Parker Report. CBE's newly-appointed Vice Chair, Esther Lin, gave public comment, expressing the Committee's concern about the recommended changes, especially regarding staff's recommendation to shift responsibility for moral character to staff as opposed to CBE. Lin disagreed with staff's assessment that the Committee is being inconsistent with moral character determinations. Despite CBE's objections, the BOT voted to accept staff recommendations in the five areas noted above.

February Bar Exam Results Lowest in History

On May 18, 2018, the Bar released its [February 2018 Bar Exam results](#). Overall, only 27.3% of test takers passed—the lowest pass rate of any bar examination in the [State Bar's records](#). In total, 1,282 people passed the bar exam out of the 4,701 applicants who completed the exam. First time test takers fared better with a 39.3% pass rate, and test takers from California law schools accredited by the ABA also fared better with a 45.3% pass rate for first timers and 31.3% for repeaters. 23% of first time takers from CALS passed, while 9.1% of repeaters from these school passed.

At its June 22, 2018 [meeting](#), CBE voted to finalize the [Supreme Court Report on the February 2018 California Bar Examination](#), which provides the above-mentioned breakdown with respect to the pass rate, and submit it to the Court.

Two-Day Administration of Bar Exam

At its May 4, 2018 [meeting](#), CBE approved the [Analysis of the First Two-Day Administration of the California Bar Examination](#), prepared by Roger Bolus, Ph.D., and ordered that it be filed and authorized for publication. The report analyzed the results from the implementation of the first two-day bar exam and concluded that the modifications from the three-day exam to the two-day exam made no differential impacts on the scores or passage rates of women compared to men, or white applicants compared to minority applicants. Test reliability improved, but 0.7% fewer applicants passed the bar exam who would have passed under the previous three day exam format. Although the July 2017 bar passage rate increased by 6% over the July 2016 passage rate, the report found nothing that suggested the change in the exam format was the primary cause of the increase.

Public Concerned Over Accreditation and Antitrust Violations While CBE Continues to Reject Staff Proposals

At its August 24, 2018 [meeting](#), CBE discussed staff's proposal to eliminate the RAC and LSC, and create working groups, an e-newsletter, and an annual meeting of deans to replace them. The Committee rejected staff's proposal, and instead passed a motion declaring that both RAC and LSC are important to the Committee, observing that there should be increased communication between the State Bar and law schools.

Greg Brandes, the Chair of RAC, reported that RAC considered staff's recommendations at its meeting the previous day, and voted to reject them, citing RAC's role in improving law schools throughout California. CBE member and former chair, Karen Goodman, who also served as a member on RAC, expressed concern as to the public protection implications of eliminating RAC, and commented that the purpose of the staff's proposal, which was to improve communication and engagement with law schools, would not be achieved by RAC's elimination. Other members echoed her statements, and numerous members expressed their concerns about the transparency, accountability, and organization of staff's proposed working groups in lieu of RAC.

On August 6, 2018, Assemblyman Mark Stone, the Chair of the Assembly Judiciary Committee, sent a [letter](#) to the State Bar Executive Director Leah T. Wilson expressing his concerns about the antitrust implications of the CALS deans having too much influence on the regulation and accreditation of their own schools. Stone criticized the structure of RAC in which half of the six panel members are selected by CALS deans, who almost always select fellow deans. Stone further wrote that the legislature has received multiple complaints about the State Bar's oversight and accreditation of law schools.

On March 8, 2018, the State Bar Office of General Counsel concluded in its [Antitrust Determination 2018-0002](#) that CBE committed no antitrust violation in adopting the Guidelines for Accredited Law Schools, and the Supreme Court of California [affirmed](#) that determination. A [memorandum](#) sent to CBE on February 2, 2018 from Laura Palazzolo, Dean of the Lincoln Law School of San Jose, prompted the antitrust determination. Palazzolo asserted that CBE had given the CALS deans the power to decide how they "participate in the marketplace pursuant to the Guidelines *they've advanced*" at

Committee meetings, which she further asserts is an antitrust violation. The State Bar Office of General Counsel, however, pointed out that the deans do not sit on the Committee of Bar Examiners or the Board of Trustees and only those entities regulate CALS, pursuant to Business and Professions Code section 6060.7(b)(1).

Committee of Bar Examiners Reject Staff Accreditation Proposals

At its August 24, 2018 meeting, the Committee of Bar Examiners [rejected staff's recommendation](#) to either outsource law school accreditation to the WASC or for the State Bar to accredit laws schools with staff conducting site inspections. The Committee instead unanimously passed a motion directing the staff to provide detailed, informational reports as to the two options.

Staff explained the difference between WASC accreditation and State Bar accreditation, and they reported that WASC has its own accreditation model that uses a holistic analysis applicable to institutions as a whole without any evaluation on an individual degree program. Six CALS are already WASC accredited, three CALS are in the process of becoming WASC accredited, and six CALS have not yet pursued WASC accreditation. Staff further explained that WASC accreditation can be very cost prohibitive for smaller law schools.

Deans of various non-ABA accredited, California law schools gave public comment expressing their concern about WASC accreditation. They discussed the high accreditation cost of WASC as well as its lack of specific legal education standards. The high cost, they argued, would severely limit minority students' ability to afford tuition. Committee members echoed the public comments, and they expressed concern that WASC

does not regulate law schools per se and that it could adversely impact access to justice and the diversity of students.

At its August 17, 2018 meeting, the Programs Committee of the Board of Trustees reviewed a [staff report](#) that recommends either outsourcing law school accreditation to WASC, or continue State Bar accreditation of law schools with staff conducting site inspections and responding to change requests, with the participation of the Committee. At this writing, neither BOT nor CBE have any further actions regarding the recommendations.

State Bar Awarded Grant for Job Analysis Study

At its September 13, 2018 meeting, the BOT [approved](#) the execution of a contract with Castle Worldwide, Inc. for an attorney job analysis study pursuant to Business and Professions Code section 6008.6. The purpose of the study is to gain empirical data regarding the expected knowledge, skills, and abilities requisite of competent, entry-level attorneys. Executive Director Leah Wilson gave a [report](#) at the September meeting regarding the study and explained that a working group of 18 members, who represent various areas of expertise, will oversee the job analysis study. The groups that members will represent are as follows: AccessLex Institute, Senate and Assembly Judiciary Committees, the CBE, an economic specialized in labor or industrial organization economics, the National Conference of Bar Examiners, the ABA, the California Supreme Court, the BOT, law schools, public sector and nonprofit attorneys, attorneys from small, medium, and large firms, and judicial officers. BOT will solicit applications to the working group, and the Supreme Court will review and appoint nominees.

On September 12, 2018, nonprofit AccessLex Institute [announced](#) that it will give the State Bar a \$515,000 grant to conduct the attorney job analysis study. The data from the study will address the recommendation from Chad Buckendahl, Ph.D. in his [Standard Setting Study](#) in order to better assess whether the bar exam should be adjusted to better reflect the expectation of minimally competent, entry level attorneys. The final report with the findings on the attorney job analysis study is expected in the summer of 2019.

Two Schools Did Not Meet the Minimum Cumulative Bar Pass Rate for California Accredited Law Schools

At its August 13, 2018 meeting, the Committee of Bar Examiners received and filed the [Report on Submission of California Accredited Law Schools 2018 Annual Cumulative Bar Examination Pass Rates](#). Under Rule 4.160(N) and Guideline 12.1 of the Rules and Guidelines for Accredited Law Schools, all CALS must maintain a minimum five-year cumulative bar passage rate of 40% or more. The Committee set the rate at 40% based on feedback from the Committee's Advisory Committee on California Accredited Law School Rules and its pilot reporting program. The 2018 Report evaluates the passage rate percentage from students who graduated within the five year period between August 1, 2012 and July 31, 2017 and took the bar exam during that time or during February 2018.

Thirteen of the CALS had pass rates of above 40%, but two schools, Pacific Coast University School of Law and Southern California Institute of Law, had passage rates below 40%. As such, the Committee of Bar Examiners approved the issuance of notices of noncompliance to those two schools pursuant to Guideline 12.2. The two schools will then be allowed to respond with their plans to raise their passage rates to at least 40%. The

average passage rate of all the CALS decreased from 58.5% in 2015 to 53% in 2018, with eight schools who reported passage rates of at least 50%. San Joaquin College of Law had the highest passage rate: 77.4%.

Board of Trustees Proposes Amendments to Special Admissions Rules

At its September 13, 2018 meeting, the Board of Trustees' Programs Committee voted to release for public comment a series of [proposed amendments](#) to the Rules of the State Bar and the Rules of Court pertaining to the Bar's special admissions rules. The proposed revisions are a result of the Board's January 2018 revisions to objective "q." (previously "i") in Goal 2 of its 2017–2022 Strategic Plan, directing staff to review the Bar's special admissions rules to determine whether changes are needed to support the goal of increased access to legal services or for other reasons, and implement needed changes by December 31, 2018. Staff presented a [detailed analysis](#) to the Programs Committee at the September meeting, and proposed a series of recommended revisions to the rules governing Registered In-House Counsel, Registered Legal Aid Attorneys, and Registered Foreign Legal Consultants, as well as new proposed rules to govern special admissions for military spouses, which BOT approved as set forth below. Staff reported that the proposed revisions were intended to remedy existing rules that "may present unnecessary road blocks to gain special admission status which negatively impacted the provision of legal services to indigent California residents," and that they "developed [the amended] rule proposals to support greater access to legal services, while maintaining public protection."

◆ **Registered In-House Counsel:** Registered In-House Counsel (RIHC) are non-California attorneys from other U.S. jurisdictions who meet certain qualifications.

Pursuant to Rule of Court 9.46, they may register with the State Bar, and are then allowed to practice as in-house counsel in California only for the “qualifying institution” that employs them. RIHC are not permitted to make court appearances in California state courts or to provide personal or individual representation. The Bar proposes to amend Rule 9.46 to 1) lessen the requirements for a “qualifying institution,” reducing the number of employees the institution must have from ten to five, and requiring that that the institution maintain an office in California, but not requiring all five employees to work in California in order to qualify; 2) clarify that RIHC applicants who have been administratively suspended in their home state for non-disciplinary actions are eligible; 3) permit RIHC to provide pro bono legal services; and 4) require all RIHC applicants to comply with the fingerprinting requirement of Rule 9.9.5. The Bar also proposes to amend rules 3.370–3.377 of the Rules of the State Bar to coincide with amended Rule 9.46, and to clarify that an RIHC whose registration has been terminated is not permitted to practice law in California and needs to submit a new application and comply with Rules of Court, Rule 9.9.5 to register as In-House Counsel.

◆ ***Registered Legal Services Attorneys:*** Registered Legal Services Attorneys, are non-California attorneys from other U.S. jurisdictions who meet certain qualifications. Pursuant to Rule of Court Rule 9.45, they may register with the State Bar, and are then permitted to practice law in California for a qualifying legal services provider without passing the California Bar Examination, under specified conditions. The Bar proposes to amend Rule 9.45 to 1) change the term to Registered Legal Aid Attorney (RLAA); 2) broaden the definition of a “qualifying legal aid entity” to encompass a wider group of nonprofit entities providing legal services, including law schools; 3) clarify that applicants

who have been administratively suspended for non-disciplinary actions are eligible; 4) extend the limit from three to five years to practice as a RLAA; 5) allow RLAA to work with multiple legal aid entities; 6) allow multiple attempts on the bar exam; 6) clarify that a supervising attorney must approve in writing certain proceedings a RLAA attends; and 7) require all RLAA applicants to comply with the fingerprinting requirement of Rule 9.9.5, among other amendments. The Bar also proposes to amend rules 3.360–3.677 of the Rules of the State Bar to coincide with amended Rule 9.45.

◆ ***Registered Foreign Legal Consultants:*** Registered Foreign Legal Consultants (RFLC) are non-California attorneys from foreign jurisdictions who meet specified qualifications. Pursuant to Rule of Court Rule 9.44, RFLC may register with the State Bar and practice in California without passing the California Bar Examination under specified conditions. The Bar proposes to amend Rule 9.44 to 1) require all RFLC applicants to comply with the fingerprinting requirement of Rule 9.9.5; and 2) update terms consistent with the other amendments.

◆ ***Registered Military Spouse Attorneys:*** The Bar proposes to add Rule 9.41.1 to add a special admissions category for spouses of active duty members of the United States Uniformed Services ordered to be stationed in California. The rule conforms to the RIHC and RLAA rules in allowing pro bono work and requiring supervision of an active licensee in good standing of the State Bar of California., as well as requiring fingerprinting required by Rule 9.9.5. A registered military spouse attorney may practice for one year after the termination of the marriage, civil union, or registered domestic partnership.

The proposed language incorporates extensive feedback from stakeholders, including comments from the California Commission on Access to Justice, the JD Military

Spouse Network, and the Association of Corporate Counsel, which the Programs Committee considered on August 17, 2018. Additionally, on August 24, 2018, CBE reviewed the proposed amendments and rules, and gave its feedback. A committee member suggested that the number of employees a qualifying intuition must have to register an RIHC be lowered. Another committee member expressed approval of amendments to Rule 9.45 as they expand the opportunities for attorneys to provide pro bono legal services. Also, another committee member suggested that military spouse attorneys should be able to remain registered under Rule 9.41.1 for one year after they have a dissolution with their military spouse after other members expressed concern that military spouse attorneys may feel coerced to remain married because of the rule.

The 45-day public comment period will end on November 5, 2018.

The Board of Trustees Adopts Amendment to Rules of Procedure of the State Bar

At its September 13, 2018 meeting, BOT adopted an [amendment](#) to Rule 2302 of the Rules of Procedure of the State Bar that will be effective on January 1, 2019. The amendment clarifies that the Office of Chief Trial Council (OCTC) is expressly authorized to give subpoena declarations to parties whose confidential records are being subpoenaed. OCTC proposed the amendment to eliminate claims that State Bar subpoenas have violated a subpoenaed party's privacy rights or a moral character applicant's confidentiality rights. The issue came about when the Court granted an applicant's April 2017 motion to quash two investigative subpoenas that CBE issued. The motion alleged that the declaration occupying the subpoenas violated the confidentiality of the proceeding.

The State Bar Court raised no objection to the proposal of the amendments. At its May 17, 2018 meeting, the Regulation and Discipline Committee resolved to send the proposed amendments out for a 60 day public comment period. The public comment period ended on July 31, 2018 and no comments were received.

LEGISLATION

[AB 3249 \(Assembly Committee on Judiciary\)](#), as amended on August 22, 2018 is the annual legislation authorizing the Bar to assess licensing fees on California attorneys. As it applies to the Committee of Bar Examiners, and matters affecting the licensing of attorneys, the AB 3249 amends section 6060.3 of the Business and Professions Code to require an application to take the California bar examination to be filed before January 1 or June 1 depending on the examination date. The bill further amends section 6049 to clarify that only the State Bar Court may take certain evidentiary actions pursuant to the trial and hearing of all matters. Generally speaking, the bill changes the term “members” to “licensees,” and said change impacts sections 6061, 6062, and 6046 regarding the Committee of Bar Examiners and admission to the State Bar.

Governor Brown signed AB 3429 on September 21, 2018 (Chapter 659, Statutes of 2018).

LITIGATION

◆ *Sander v. State Bar of California.* In *Sander v. State Bar of California*, Case No. A150061, A150625 (Aug. 23, 2018), the Court of Appeals upheld the San Francisco Superior Court’s ruling that [denied](#) Richard Sander’s Petition for Writ of Mandate in [*Sander v. State Bar of California*](#), CPF08 508880 S.F. Super. Ct. (Nov. 7,

2016). Sander, a UCLA law professor, sought a Writ of Mandate to force the State Bar to release individually unidentifiable records for all applicants to the bar exam from 1972 to 2008 regarding their test scores and race or ethnicity, among other information.

The First District Court of Appeal only addressed one of the five independent grounds from which the superior court upheld the State Bar's denial of Sander's record request, finding Sander's request is beyond the scope of the California Public Records Act (CPRA) as it would compel the State Bar to create new records. For example, Sander sought data that grouped law schools into classes, and the Bar's database did not sort schools in this manner. The CPRA does not require public agencies to create new public records in response to a record request as articulated in *Fredericks v. Superior Court*, 233 Cal. App. 4th 209, 227 (2015). On October 2, 2018 Sander appealed this decision to the Supreme Court. At this writing the Court has not yet ruled on the petition for cert.

RECENT MEETINGS

At its August 13, 2018 meeting, CBE approved the [2017-2018 Goals for the Subcommittee on Examinations](#), the [2017-2018 Goals for the Subcommittee on Operations and Management](#), the [2017-2018 Goals for the Subcommittee on Educational Standards](#), and the [2017-2018 Goals for the Subcommittee on Moral Character](#).