

# COMMITTEE OF BAR EXAMINERS

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*Protection of the public, which includes support for greater access to, and inclusion in, the legal system, 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 interests 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, the Speaker of the Assembly, the Senate Rules Committee, and the Governor each appoint three public members.

Specific rules pertaining to admission to practice law in California are set forth in Title 9 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 10 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. All members of the Committee serve four year terms.

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.”

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.

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).

The State Bar Board of Governors (the predecessors to the current Board of Trustees) created the Law School Assembly (LSA) in 1986 as a forum for disseminating

information from CBE to the law schools and providing feedback from the law schools to CBE. 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 comprise the LSA. Each school elects its own representative at LSA's annual meeting. Law schools participate in setting the agenda for the LSA's annual meeting, where discussions involve relevant topics of law schools' shared interests and policy questions concerning law students. Meetings are open to the public, noticed on the State Bar's website at least 10 days in advance, are required to comply with the Bagley-Keene Open Meetings Act, and are webcast when feasible. Law schools are permitted to attend via teleconference.

The Law School Council (LSC) considers matters related to the content and format of the Bar examination; coordinates curricula related to bar-tested subjects and aspects of law school education relevant to licensure; suggests topics for ad hoc working group creation; and identifies representatives from ABA accredited law schools to serve on ad hoc working groups. Seven deans or their representatives from ABA-approved schools comprise the LSC. Members serve three-year terms and the Chair serves for one year.

In 2019, CBE established the Committee of State Bar Accredited and Registered Schools (CSBARS) to replace the Advisory Committee on California Accredited Law Schools Rules (RAC). CSBARS provides advice and feedback to CBE and State Bar 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. CSBARS suggests topics for ad hoc working groups within the State Bar's regulatory scope and identifies law school deans or administrators to serve on ad hoc working groups. These

groups comply with the Bagley-Keene Open Meetings Act, participants can attend via teleconference with proper notice, and the meetings are webcast when feasible. During regularly scheduled CBE meetings, CSBARS presents their recommendations. Seven members: three accredited law school deans; two registered unaccredited law school deans, and two members selected by CBE, one which may include a non-voting consultant with expertise in accreditation issues, comprise CSBARS. Each member serves a three-year term.

## **MAJOR PROJECTS**

### **State Bar Board of Trustees Approve Series of Changes to Committee of Bar Examiners' Operations Despite Committee's Objection**

◆ *Moral Character Review*: At the Committee's December 8, 2018 [meeting](#), CBE discussed the Board of Trustees' September 2018 decision to transfer the responsibility for conducting Moral Character Informal Conferences from members of CBE to Bar staff. [\[24:1 CRLR 296–298\]](#) After discussion, the Committee voted to request that the Board reconsider its decision, with several members commenting that CBE's moral character determinations are important for consumer protection and that the determinations have been a main function of the Committee in its responsibility to oversee the Bar admission process. At its January 25, 2019 [meeting](#), the Board of Trustees did reconsider its decision at CBE's request, but ultimately decided to confirm its earlier decision, and accept staff's recommendation that CBE should establish the guidelines for determining what constitutes requisite moral character, but the staff should be responsible for the administration of that policy. [\[24:2 CRLR 123\]](#)

◆ **Law School Engagement:** At the January 25, 2019 [meeting](#), staff presented a proposal to the Board of Trustees for a new approach to law school engagement. According to the [staff memo](#), the proposal seeks to improve engagement with the law schools and improve the flow of information to and from the law schools. At its August 24, 2018 [meeting](#), CBE had rejected the staff's original proposal to restructure how the State Bar engages with law schools, with several members expressing concerns about the elimination of the RAC after hearing public comment from then RAC members. [\[24:1 CRLR 299–300\]](#)

Rather than present proposed recommendations to the Board of Trustees at the September meeting, staff convened two meetings with law school deans on [October 2](#) and [October 5, 2018](#), and considered input they received from these meetings, as well as a [letter](#) signed by 13 CALS and 10 registered law schools among other responses, before recommending the following reforms to the Bar's law school engagement process: 1) maintain the Law School Assembly as an annual meeting of law school representatives, with topics of discussion to be identified in consultation with law school deans of all law school types, and pertaining to broader policy questions such as how to improve the diversity of law school graduating classes, wellness issues for law students, or the use of testing accommodations; 2) replace RAC with a new committee, the CSBARS to provide feedback on both accredited and unaccredited law school rules and guidelines; 3) Convert the Law School Council to a committee of California ABA law school representatives only; 4) Authorize new ad hoc working groups to develop recommendations on discrete issues as identified by CBE, CSBARS, LSC, the Board, or staff; and 5) Develop and distribute an e-newsletter to provide a more timely and consistent flow of information to the law schools.

The Board of Trustees adopted the proposed reforms at the January meeting.

At CBE’s March 22, 2019 [meeting](#), staff advised the Committee that they are in the process of soliciting applications to the newly-formed CSBARS, which will be composed of three deans from accredited schools, two deans from registered unaccredited schools, and two members selected by the Committee of Bar Examiners.

◆ **Law School Accreditation:** At its January 25, 2019 [meeting](#), the Board of Trustees also considered [staff’s proposal](#) for a new approach to law school accreditation. Pursuant to section 6046.7 of the Business and Professions Code, CBE is responsible for accrediting non-ABA-approved law schools in California under rules adopted by the Board of Trustees. Under this authority, CBE a programmatic accreditor, focusing on the nature, administration, and content of a school’s J.D. program, and oversees CALS as well as registered, unaccredited schools in California. Law schools may become California accredited after completing a successful self-study and inspection, demonstrating to an inspection team, and to CBE, that the school is in compliance with all rules and guidelines for accredited law schools. After two successful years in a provisional status, the school may seek full California accreditation. To maintain accreditation, the school must comply with the Committee’s Rules and Guidelines for Accredited Law Schools including maintain a five-year cumulative minimum bar passage rate of at least 40 percent.

In the summer of 2018, consultants Elise Walton and Elizabeth Parker issued a [report](#) in the initial phase of the CBE review process, recommending that the Board consider outsourcing CBE’s accreditation function to the Western Association of Schools and Colleges (WASC). CBE opposed this recommendation at its June and August 2018 meetings. [[24:1 CRLR 296–298; 301–302](#)]

According to staff's January 2019 [memo](#), after the consultants' initial recommendation, staff, CBE, and law school deans met over a period of several months to consider the possibility of outsourcing accreditation. Ultimately, neither CBE nor the deans were in favor of outsourcing, and staff agreed that "while regional accreditors have a level of expertise and capacity not present at the State Bar, complete outsourcing of the function, with no ability to impose law school specific accreditation standards on CALS would be problematic."

Staff developed a proposal in consultation with the law school deans at the October 2 and 5, 2018 convenings discussed above, and proposed the following [recommendations](#) to the Board of Trustees at the January meeting: CBE will 1) Recognize regional and national accreditation from entities authorized to accredit the first degree in law, similar to the way ABA approved schools are recognized; 2) Require law schools with other regional or national accreditation (as distinct from ABA-approved law schools) to meet additional State Bar requirements, such as the minimum bar passage rate and annual reporting requirements, pursuant to rules and guidelines to be developed by CSBARS, reviewed by CBE, and adopted by the Board of Trustees; 3) Continue to accredit all other CALS, pursuant to improved updated accreditation rules and guidelines; 4) Allow accreditation of online law schools; and 5) Partner with the legislature to pursue mandatory accreditation of law schools, ultimately eliminating the category of registered, unaccredited law schools. The Board of Trustees voted to accept these recommendations at the January meeting.

At CBE's March 22, 2019 [meeting](#), staff advised the Committee that the Board of Trustees had already approved amendments to the Rules of the State Bar that allow CBE to accredit online law schools at its November 3, 2017 [meeting](#). However, the rules had

not gone into effect because staff had not yet sent them to the California Supreme Court for approval. The public comment period for the amendments ended on September 15, 2017 and [staff received no public comments](#) at that time. Staff presented a [draft implementation plan](#) to CBE at the March meeting regarding the amendments to the Rules of the State Bar that reflect the above proposal's allowance of online law school accreditation. Staff brought the plan to the attention to the CSBARS and is awaiting further feedback from CSBARS. At this writing the Bar has not yet formally noticed proposed amendments to the rules pertaining to the new approach to law school accreditation.

## **Board of Trustees Releases Series of Rule Changes Pertaining to CBE for Public Comment**

In light of the Board of Trustee's adoption of staff's recommendations to restructure CBE, including its moral character review responsibilities, law school engagement strategy, and its responsibility for accrediting non-ABA-accredited law schools in California, discussed above, the Board voted to approve staff recommendations, and released [proposed rule changes](#) to effectuate these recommendations for a 45-day public comment period at its January 25, 2019 meeting.

Specifically, the proposed revisions replace reference to the "Committee" with the "State Bar" when referring to functions that will now be handled by the State Bar Staff in several State Bar rules. They also add the phrase "pursuant to the authority delegated to it by the Board of Trustees" to Rules 4.1 (Authority); 4.56 (First-Year Law Students' Examination); and Rule 4.60 (California Bar Examination) to reflect changes made to Rule 9.3 of the California Rules of Court, effective January 1, 2018. The Bar also proposes to amend Rule 4.60 to conform to Rule 9.6(a) of the California Rules of Court which, effective



January 1, 2018, clarifies that the Supreme Court must set the bar examination passing score; and amend Rule 4.56 to clarify that the State Bar develops the questions for the First-Year Law Students' Examination.

The Bar also proposes the following additional amendments: 1) revise Rule 4.5 (Submissions) to clarify the ways in which the State Bar may use information obtained as a result of fingerprinting of an applicant and to state that the information is confidential; 2) revise Rule 4.10 (Fees) to note that applicant fees are fixed by the Board of Trustees; 3) revise Rule 4.17 (Admission certification and time limit) to provide that an applicant may request a review by CBE of any decision the Bar makes regarding extending the five year limit from the date the applicant passes the bar examination to meet all requirements for admission; 4) amend Rules 4.61 and 4.84 to conform the dates for registering to take the bar examination and to request testing accommodations to the dates set forth in section 6060.3 of the Business and Professions Code (effective January 1, 2019); 5) amend rules that require applicants to submit requests to remove reference to "written" submissions and clarify that electronic submittals are permissible; 6) amend rules 4.43, 4.45, 4.46, 4.47.1, and 4.52 to clarify that moral character informal conference will be conducted by the State Bar, and that the State Bar will issue moral character determinations. The amended rules also clarify that an applicant may request a review of an adverse moral character determination by CBE; 7) amend Rules 4.70, 4.71, 4.72, and 4.73 to set forth the procedures for examination conduct violations; and 8) amend Rule 4.90 to clarify procedures for review of denied or modified testing accommodations.

At CBE's March 22, 2019 [meeting](#), State Bar staff advised the Committee that the 45-day public comment period ended on March 15, 2019 and that the Board of Trustees will consider the public feedback at its May 16, 2019 meeting.

## **CBE Submits Report to Supreme Court Regarding the July 2018 Bar Exam**

At its December 8, 2018 [meeting](#), CBE voted to finalize staff's [draft Report](#) to the Supreme Court on the July 2018 Bar examination pursuant to Rule 4.60 of the Rules of the State Bar of California, and submit the report to the Court. According to the report, of the 8,071 applicants who completed the General Bar Examination in July, 40.7% passed, and of the 522 applicants who took the Attorneys' Examination, 32.4% passed. The report also includes details about the administration of the test, including the number of test centers, grading procedures, and accommodations offered.

## **Job Analysis Study Underway**

At CBE's March 22, 2019 [meeting](#), attorney member Robert Brody reported to the Committee about the progress of the [California Attorney Practice Analysis \(CAPA\)](#) working group. Brody, who also serves on the working group, reported that the working group is in the process of developing a survey that it will send to attorneys who have been admitted to the State Bar for five years or less in order to determine what tasks new attorneys complete during the day.

The CAPA working group met on [December 19, 2018](#) and [February 27, 2019](#) to discuss the overall plan for the study. The Group's [timeline](#) includes two phases: Survey Preparation, which ends in May 2019, and Survey Development and Analysis, which ends

in December 2019. The final report of the study should be finished by December 2019 after the Group collects and analyzes survey data during phase II. The Board of Trustees approved the job analysis study at its September 13, 2018 [meeting](#). [[24:1 CRLR 302](#)]

## **State Bar Extends Bar Exam Stress Management Study**

On February 28, 2019, the State Bar [announced](#) that it would offer its California Bar Exam Strategies and Stories Program for a second year. Formerly known as the Productive Mindset Intervention Program, the initiative is designed to help applicants studying for the challenges they face when preparing for the Bar exam. At CBE's March 22, 2019 [meeting](#), staff reported that applicants who utilized the program before taking the July 2018 Bar exam increased their likelihood of passing by at least 7.4 percent. The State Bar is expanding the study this year to acquire a larger sample size of students to register for the program and to address the declining Bar Exam pass rate.

The State Bar, along with researchers from Indiana University, University of Southern California, and Stanford University, developed the program in which applicants can hear stories from prior test takers in an effort to create a positive mindset that reduces stress and psychological factors that impact test takers.

As of March 22, 2019, 600 out of the 5,000 students who registered to take the July 2019 Bar exam had also registered for the program. Staff reported that they hope to register 3,000 applicants in the program in preparation for the July exam.

## **Board of Trustees Proposes Amendments to Special Admissions Rules**

At its November 16, 2018 [meeting](#), the Board of Trustees adopted a series of amendments to the Rules of the State Bar, and authorized staff to submit to the Supreme Court a series of proposed amendments to Title 9, Division 4 of the California Rules of Court, pertaining to the State Bar’s special admission rules. The rules govern Registered In-House Counsel, Registered Legal Aid Attorneys, Registered Foreign Legal Consultants, and special admissions for military spouses. [[24:1 CRLR 304](#)] At the meeting, staff reported that the Bar received 51 comments during the 45-day public comment period that ended on November 5, 2018, and staff made [minor non-substantives revisions](#) to the rule amendments based on those comments. The Court [approved](#) the proposed rules, and they became effective on March 1, 2019.

## **Committee of Bar Examiners Addresses College Admission Scandal**

At its March 22, 2019 [meeting](#), the Committee discussed the recent college admissions scandal in which parents paid for their children to cheat on college admissions tests. Committee members expressed their desires to prevent such an event occurring for Bar exam test-takers. Committee members further discussed how students might be able to cheat through requesting testing accommodations, and expressed concern about the credentials of medical consultants and staff who review accommodation requests. On the other hand, some Committee members expressed their hesitancy about making the accommodation process more strenuous in that it could create an unnecessary barrier to

those who need accommodation, particularly in light of the bar exam's low passage rate, and they would hate for those who need accommodation to not receive it.

Staff responded to the Committee's concerns by agreeing to incorporate the consultant recruitment and testing accommodation processes into the agenda for an upcoming CBE meeting in order for the Committee to discuss these issues further. None of the Committee members or staff could recollect any analogous instance of cheating that has occurred in regards to the Bar exam, and yet members still thought that the State Bar should be more vigilant in creating procedures at Bar exam test sites to ensure that the identity of each applicant is verified to prevent collusion between applicants and State Bar staff or exam proctors. The next meeting is scheduled for April 26–27.

## **Performance Changes on the California Bar Examination Part 2 Report**

At its February 1, 2019 [meeting](#), CBE voted to receive and file the [Performance Changes on the California Bar Examination: Part 2](#) report. This study is the last in a series of studies the Bar has conducted since 2017 to address the 18 percentage point drop of the Bar exam passage rate from 2008 to 2016. [[23:1 CRLR 158–161](#); [23:2 CRLR 254–256](#)] Dr. Roger Bolus from the Research Solutions Group, who authored the report, analyzed the relationship between the Bar exam scores and various factors of 7,563 students from eleven ABA approved law schools in California to test what factors may explain the low bar passage rate.

Overall, the study, found that test-takers' age, ethnicity, gender, undergraduate GPA, LSAT score, first year law school GPA, final law school GPA, part-time versus full-time status and regular day versus night-time attendance were all statistically related to Bar

exam scores. The single best indicator to predict whether an applicant would pass the Bar exam was applicant's final law school GPA, followed by their first-year law school GPA, then LSAT score, and then undergraduate GPA. The study found that from 2013 to 2016 there were significant declines in the pre-law school GPA and LSAT scores of Bar exam applicants. Also, the proportion of female test-takers rose six percentage points, and the proportion of minority test-takers also increased six percentage points. When examinee age, gender and minority status were factored in, there was a much smaller, yet still statistically significant impact that varied by bar exam test section. Critically, however, the study revealed that a significant portion of the decline in bar passage rates cannot be explained by the changes in students' characteristics.

Additionally, the study evaluated the impact of law school coursework on Bar Exam scores. It found no evidence that participation in externships or bar preparation courses had any statistically significant impact on applicants' performance on the Bar Exam, whether or not taking into account applicant subgroups such as those with low GPAs. Therefore, the study concluded that other, unexplained factors most likely contributed to the decrease in passage rates, and it could not definitively support any of the various hypotheses raised regarding the causes of the decline in the Bar Exam passage rates.

## **LEGISLATION**

[SB 544 \(Umberg\)](#), as amended on March 27, 2019, would amend section 6060 of the Business and Professions Code to prohibit the State Bar staff or members of CBE from reviewing medical records pertaining to mental health when they evaluate the good moral character of applicants to CBE. According to the author, applicants to the State Bar have

“expressed distress” about having to disclose their mental health history to the Bar in order to explain incidents on their record “because it opens up the applicant’s medical history to scrutiny [and] can deter future applicants from seeking mental health care.” Additionally, the author notes that the “inquiry also has a negative impact on survivors of sexual assault and veterans with PTSD [as applicants] in these groups may not feel comfortable disclosing this information to the State Bar but are required to provide the State Bar with a waiver to disclose the information if they wish to explain their applicants.” The proposed legislation is also in line with the ABA National Task Force on Lawyer Well-Being’s 2017 recommendation that state bars re-evaluate bar application inquiries about applicants’ mental health histories. *[S. Jud]*

## LITIGATION

*Sander v. State Bar of California, Case No. S251671, A150625 (Cal. Ct. App.).*

On November 14, 2018, the Supreme Court unanimously denied review of the First District Court of Appeal of the State of California’s ruling in *Sander v. State Bar of California* S251671, A150625 (Nov. 14, 2018). Therefore, the Court of Appeals ruling stands, which 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 (Super. Ct. San Francisco, Nov. 7, 2016). Sander had sought records from the State Bar containing the test scores and race or ethnicity, among other information, of all applicants to the Bar exam from 1972 to 2008. [\[24:1 CRLR 308–309\]](#)

## RECENT MEETINGS

At its October 19, 2018 [meeting](#), the Committee of Bar Examiners unanimously agreed on the [Subcommittee assignments](#) for the 2018–2019 Committee year. The Committee denied a

law student's petition to waive the 84-month limitation for the completion of law study to earn a Juris Doctor degree under Guideline 6.5(A) of the [Guidelines for Accredited Law Schools Rules](#). Regarding the application for Thomas Jefferson School of Law for accreditation by CBE, the Committee confirmed that the school is accredited as a CALS; and that if the school loses its ABA accreditation, then the Committee will waive Rules 4.121 through 4.145 of the State Bar Rules so that current students can sit for the Bar exam so long as the school undergoes a full inspection within 12 months of the waiver.

At its December 8, 2018 [meeting](#), CBE filed responses for the Committee's Notice of Noncompliance to both Pacific Coast University and Southern California Institute of Law. The Committee further moved that an inspection of both campuses will be scheduled within 60 days to determine if the schools are in compliance with Rule 4.160(N) of the State Bar Rules and Guideline 12.2 of the Guidelines for Accredited Law Schools Rules regarding the minimum, cumulative bar passage rate that the schools must meet.

At its February 1, 2019 [meeting](#), CBE filed the Interim Inspection Report of Lady Justice Law School and moved that the school remain unaccredited through Spring 2021. The Committee also approved the relocation of Monterey College of Law's satellite campus to 1205 Pacific Street, Suite 206, Santa Cruz. Lastly, the Committee approved staff's pursuit of evaluating the elimination of three Bar exam test sites, utilizing online proctoring to improve the supervision of the Bar exam, and continuing to pursue an exception from the National Conference of Bar Examiners that would allow seating three test-takers per one eight foot table.