

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, oversees 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, they are 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.

On September 6, 2019, the California Supreme Court [reappointed](#) David Torres to CBE as an attorney member with a four-year term that started September 16, 2019. Torres has had a criminal law practice in Bakersfield for the last 30 years. On the same day, the court also appointed Judge Robert Brody, a former Committee member, to serve as Committee chair for a one-year term that began September 16, 2019, and reappointed Esther Lin, an attorney at Best, Best & Krieger, as Committee vice chair for a one-year term effective September 16, 2019.

MAJOR PROJECTS

CAPA Releases Preliminary Findings

At CBE's August 23, 2019 [meeting](#), Ron Pi, Principal Program Analyst, and Eli Wallach, Program Analyst, presented the Committee with preliminary findings from the California Attorney Practice Analysis. Specifically, the study found that new attorneys spend most of their time on research and analysis; use 130 subtopics of knowledge to perform tasks—the highest ranked topics being civil procedure, contracts, torts, and criminal law; research and investigation are the first things expected of first-year attorneys; and communicating with others is the most necessary skill performed by first-year attorneys.

The purpose of the [California Attorney Practice Analysis \(CAPA\)](#) is to ensure that future Bar exam content is relevant to the knowledge, skills and abilities entry level practicing attorneys need in order to competently practice. The final report of the study is expected to be finished by December 2019, after the [CAPA Working Group](#) collects and analyzes survey data during phase II. The Board of Trustees voted to commence the job analysis study at its September 13, 2018 meeting. [[24:2 CRLR 275](#)]

Bar Releases February Results

On May 17, 2019, the Bar released its [February 2019 Bar Exam results](#). Overall, 31.4% of test takers passed—an increase of 4.1 percentage points from February 2018. In total, 1,458 people passed the bar exam out of the 4,639 applicants who completed the exam. First-time test takers fared better with a 41% pass rate, and test takers from California law schools accredited by the ABA had a 45% pass rate for first timers and 38% for repeaters. 21% of first-time takers from CALS passed, while 13% of repeaters from CALS passed.

At its June 21, 2019 [meeting](#), CBE voted to finalize the [Supreme Court Report on the February 2019 California Bar Examination](#), which provides the above-mentioned breakdown with respect to the pass rate, and submit it to the Court.

State Bar Discloses Bar Exam Topics in Advance of Exam

On July 27, 2019—the Saturday before the July administration of the Bar exam—State Bar Chief of Programs Donna Hershkowitz sent an email to all applicants who were registered to take the July Bar exam. In the email, Ms. Hershkowitz informed the applicants the following information:

It has come to our attention that the State Bar inadvertently provided a number of deans of law schools in California a list of the subject matter topics contained in the July 2019 California Bar Examination essay questions and performance test. Out of an abundance of caution and fairness, we are sending the same information, verbatim, to all those preparing to take the examination.

The email went on to provide the general subject matter of each essay question and the performance test. The questions themselves were not disclosed.

In a statement the following day, the Bar provided further information that Bar management had learned on Saturday, July 27 that on Thursday, July 25, one of the members of the State Bar staff inadvertently emailed a memorandum to sixteen law school deans that was supposed to be sent after the Bar exam had been administered. The memo invited law school deans to observe part of the grading process, and it also included all of the topics of the essay questions that would appear on the exam. The Bar later announced that it would be hiring an external firm to conduct an independent investigation.

In a [statement](#) on July 29, 2019, the California Supreme Court announced that it would be conducting its own independent investigation into the matter, stating

The court understands and shares the concerns that this disclosure has generated. Exercising its oversight responsibilities over matters relating to bar admissions, the court will ensure that there is a thorough and independent investigation into the circumstances surrounding the disclosure, and that appropriate steps are taken to protect the integrity of the bar examination and identify and address any consequences.

At this writing neither the Bar nor the Supreme Court has released the results of these investigations.

State Bar Finalizes Major Structural Changes to CBE Operations

At the May 17, 2019 [meeting](#) of the State Bar Board of Trustees [Agenda item 701], Committee staff presented a [memo](#) to the Board about the Board's proposed amendments to the State Bar Rules in Title 4, Division 1, Chapters 1, 2, 4, 5, 6, and 7, which would implement a series of reforms to the structure and scope of CBE. The Board originally [noticed](#) its proposed amendments on January 25, 2019, in order to implement the Bar's broader reforms to its various sub entities in line with the 2017 Governance in the Public Interest Task Force recommendations,

and the Board’s direction that staff 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. [[24:1 CRLR 296-98](#);[24:2 CRLR 296](#)] The 45-day comment period ended on March 15, 2019. Staff reported that the Bar had only received one comment on the proposed amendments and opined that further amendments to the proposed rules were not required in response to the comments.

The Board voted to approve and adopt the amended rules at its May 17, 2019 [meeting](#). Among other things, these amendments clarify that CBE will assume responsibility for evaluating the examination grading process; direct CBE to develop an empirically sound sampling plan to determine the appropriate distribution of subjects across multiple bar exams; shift the responsibility to State Bar staff for conducting informal conferences to determine if an applicant for the bar examination possesses the requisite moral character, with CBE hearing “appeals” on moral character determinations; shift the responsibility to staff for determining violations of exam rules and the appropriate sanctions with the CBE hearing “appeals”; and memorialize that Bar staff and the Board, not CBE, are responsible for budget development and management for the Office of Admissions. The new rules became effective on July 1, 2019.

CBE's 2018 Annual Report Approved

At its April 17, 2019 [meeting](#), CBE received and filed its [annual report](#) setting forth numbers of Bar admittance. This report is usually presented earlier in the year, but the new information system delayed the ability to gather the data. In 2018, 4,975 applicants were admitted to the Bar, compared to 5,873 in 2017. In 2018, 15,754 applications for the examination were filed, which was slightly higher than the 15,706 in 2017. In 2018, there were 7,262 moral character determination and extension applications, which is more than the 6,947 received in 2017.

California Bar Exam Strategies and Stories Program Offered a Second Year

During this reporting period, the Bar [announced](#) that it would offer the 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 Bar exam applicants prepare for the challenges they face when studying for the exam. The State Bar 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 address the declining bar exam pass rate. [[24:2 CRLR 276](#)] The State Bar is set to update these results with a larger sample size after the pass rates for the July 2019 Bar have been reported.

Bar Delays Artificial Intelligence Proctor Pilot Program

At CBE's June 21, 2019 [meeting](#), staff reported to the Committee that they would be delaying the pilot of the Artificial Intelligence Proctor Pilot program until the fall. According to

staff, the Bar intends to pilot AI proctors for the first-year exam and the Bar exam and hopes that this switch to remote proctoring will create greater exam security and reduce the number of proctors required. The plan was supposed to be tested at the first-year exam held in June 2019, but staff reported that vendors needed more time to test the system. Piloting is now set to start during the October 2019 first-year exam and the February 2020 bar exam.

Unaccredited Law School Changes Coming

At CBE’s April 16, 2019 [meeting](#), the Committee discussed the 2018–2019 [Educational Standards](#) for law schools. The State Bar is planning to create a modified “deemed accredited” status for law schools that earn accreditation from a regional accreditor and also meet specified State Bar responsibilities and disclosures.

At the October 19, 2018 [meeting](#), CBE announced that Thomas Jefferson School of Law is accredited as a CALS, and if the school loses its ABA accreditation, then the Committee will allow current students to sit for the Bar exam so long as the school undergoes a full inspection within twelve months of the waiver. [[24:2 CRLR 281](#)] The ABA officially [withdrew](#) Thomas Jefferson School of Law’s accreditation on June 10, 2019. The school can appeal this decision.

LEGISLATION

[SB 544 \(Umberg\)](#), as amended June 5, 2019, amends section 6060 of the Business and Professions Code relating to CBE’s ability to consider mental health records while evaluating an applicant’s moral character. This bill prohibits the staff of the State Bar or the members of CBE from considering or reviewing an applicant’s medical records relating to mental health when reviewing whether an applicant is of good moral character, or from requesting or seeking to review any medical records relating to mental health, unless the applicant seeks to use the record to

demonstrate that the applicant is of good moral character, or as a mitigating factor to explain a specific act of misconduct.

According to the author, this bill is consistent with U.S. Department of Justice guidance, as well as a [report](#) from the ABA's National Task Force on Lawyer Well-Being, recommending that state bars re-evaluate bar application inquiries about applicants' mental health histories, after finding that students who need mental health counseling are not getting it due to fear that they will be denied admission to the state bar.

Governor Newsom signed SB 544 on July 30, 2019 (Chapter 152, Statutes of 2019).

RECENT MEETINGS

At the April 26–27, 2019 [meeting](#), CBE approved three schools for continued California Accreditation: Santa Barbara and Ventura Colleges of Law, which were inspected November 12–15, 2018; Monterey College of Law, which was inspected on September 4–6, 2018; and Cal Northern School of Law, which was inspected on September 25–28, 2018.

At the June 21, 2019 [meeting](#), the State Bar released a [report](#) on the cost of administering the February 2019 bar exam. The cost of the February 2019 exam was \$1,468,006 for 5,181 applicants compared to \$1,406,040 in 2018 for 5,303 test takers. The cost change from 2018 to 2019 is primarily due to moving the Ontario Testing facility back to the Los Angeles area. This change was made because of the lack of accommodations and difficulty finding proctors in the Ontario vicinity. The Committee also discussed the five-year [inspection](#) of Lincoln Law School of San Jose. The Committee continued the school's accreditation conditionally as long as it makes the mandatory compliance changes and reports those changes annually.

At the August 23, 2019 [meeting](#), CBE [reported](#) on the schools that did not reach the guideline for CALS. These schools must have a five-year cumulative bar pass rate of 40% or higher. In 2019, two schools reported pass rates below 40%: Pacific Coast University School of Law and Southern California Institute of Law. These two schools will have to begin the process of noncompliance, and CBE will soon have to determine whether to give the schools probation or termination. The Committee also approved San Francisco Law School's request to move its campus. The Committee will also [allow](#) the Santa Barbara and Ventura Colleges of Law to teach courses off campus.