

# 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 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. 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.

At this writing there are two vacancies on the Committee: one attorney member and one public member to be appointed by the Senate Rules Committee.

## **HIGHLIGHTS**

### **CBE Tables Vote Regarding Notice of Intent to Terminate Pacific Coast University School of Law's Accreditation**

At its meeting on January 31, 2020, the Committee considered staff's recommendation that CBE issue a notice of intent to terminate the California State Bar's accreditation of Pacific Coast University School of Law (PCUSOL). According to the [staff memo](#), the school has been out of compliance with [Rule 4.160\(N\) of the Rules of the State Bar](#), which requires that California Accredited schools maintain a Bar Passage rate of forty percent to keep their accreditation, since 2015.

At the meeting, PCUSOL Dean Andrea Lua provided a lengthy comment, providing a history and mission of the law school, which exists to provide an affordable, quality legal education for working adults in the diverse Long Beach community. She also stated that since she has taken over as dean in 2015, she has implemented multiple initiatives to increase the school's bar exam passage rate, and asked that CBE staff come to the campus to visit the school and meet with students before terminating the school's accreditation. At the time of the meeting, staff had only investigated PCUSOL via teleconference in the fall of 2019 and had not met with any staff or administrators in person.

Dean Lua's comments were followed by several PCUSOL alumni and professors, speaking in support of maintaining the school's accreditation. Many of them pointed out that many PCUSOL students face challenges in passing the Bar exam that traditional full-time students do not. Many students are married with children, working full-time jobs, and cannot take a few months off to study for the Bar. Many also highlighted the high cut score for California's Bar examination.

After hearing the comments, CBE staff explained, at the request of some Committee members, that if the Committee voted to approve staff's recommendation to issue the notice of intent to terminate accreditation, the school would have the opportunity to request a hearing before a panel of three members of the Committee who would bring the findings to the full Committee before a final decision is made as to accreditation. CBE members also inquired about probation, and staff reported that probation might be an option if the school can show evidence that it is likely to achieve compliance within a reasonable period.

After discussion, the Committee voted to table the decision until CBE's April 24 and 25 meetings so that Committee members have time to review the new information the school provided regarding its initiatives to improve the Bar examination pass rate before the meeting. CBE will consider these supplemental materials and will officially vote on whether or not to issue a notice of intent to terminate the school's accreditation in April.

## **Committee Receives and Files Technical Report on the October 2019 First-Year Law Students' Exam**

At its January 31, 2020 meeting, CBE voted to receive and file its psychometric consultant's [Technical Report](#) on the October 2019 First-Year Law Students' Examination. The report includes detailed data about the test's scoring processes and summarizes a range of statistics with regard to exam performance. The First-Year Law Students' exam, also known as the "baby

bar,” is a one-day test given in June and October to law students completing their first year of law study who do not attend a law school accredited by the American Bar Association (ABA), or the California State Bar. This includes students in a juris doctor degree program at a State Bar-unaccredited registered law school, and those who are participating in a nontraditional Law Office Study Program. The exam is comprised of two parts: four essays and 100 multiple choice questions, and covers Contracts, Criminal Law, and Torts.

According to the technical report, 65 out of the total 294 test takers passed the October 2019 administration of the exam—a 22% pass rate.

## **CBE Holds Emergency Teleconference Meeting to Address Remote Legal Education and Exam Administration in Light of the COVID-19**

On March 30, 2020, CBE held an emergency and special [meeting](#) over teleconference. The meeting began by voting to start an official emergency meeting, according to the Bagley-Keene Open Meeting Act.

During the emergency meeting, the Committee considered a petition from registered/unaccredited People’s College of Law (PCOL) for an emergency waiver to teach classes online in light of the COVID-19 pandemic. [Staff recommended](#) that the Committee grant the waiver for PCOL, but also all registered unaccredited and CALS. After discussion and comment from several unaccredited and CALS deans, the Committee voted to accept staff’s recommendation, noting that the ABA had already granted such waivers to the ABA-accredited law schools. The Committee voted to permit online learning through August 31, 2020, and additionally to follow the same precedent of the ABA law schools and grant discretion to the law school deans to determine whether or not the school would maintain their usual grading system

for the spring semester, or to transition to a pass/fail grading system. The emergency meeting was then adjourned, and the Committee voted to begin the special meeting.

At the special meeting open session, the Committee voted to accept [staff's recommendation](#), in light of the COVID-19 pandemic to extend the deadline for applicants to complete their moral character exam from 60 to 90 days from the date of initiation to allow applicants more time to complete their fingerprints, and to grant the Program Manager for Moral Character Determinations permission to allow submission of additional documents past the 90-day mark if good cause is demonstrated.

On the agenda for the closed session was action regarding preparation and administration of the June 2020 First-Year Law Students' Examination and July 2020 California Bar Exam. The Chair did permit, however, over 55 people to provide a public comment concerning the fate of the July Bar Exam. The majority of the commenters were law students from across the country, most of whom were advocating for diploma privilege—an option that would permit any law school graduate to be licensed as an attorney without having to take and pass the bar exam. Many of these students referenced the [letter](#) signed by hundreds of law students that has been sent to the California State Bar, the Supreme Court of California, and the Governor. Much reference was made during public comment to a [white paper](#), Ohio State Public Law Working Paper No. 537, authored by 11 women academics from across the country, which proffers and analyzes six possible options for the July Bar Exam in light of the pandemic. These options include postponement, online exams, exams administered to small groups, emergency diploma privilege, and supervised practice.

The Committee Chair also mentioned that CBE members had each received a copy of the March 29, 2020 [letter](#) the 21 ABA-accredited California law school deans submitted to the Committee and the California Supreme Court, urging caution as they deliberate whether to offer

the exam in July, or postpone it as New York has already opted to do. In the letter, the deans also offered their willingness to participate in a working group, or any other formal or informal opportunities to collaborate with members of the CBE, the Court, and leaders of the Bar, to evaluate options for the July bar exam and alternative paths to licensure in 2020, with a goal of making recommendations to the CBE and the Court by the end of April.

Before going into closed session, Interim Director of Admissions, Amy Nuñez, advised the Committee and the public that the National Committee of Bar Examiners (NCBE), which administers the Multistate Bar Examination (MBE) multiple-choice portion of the California Bar exam, was also carefully deliberating possible action for the July Exam, and expected to make a decision by May 5, 2020. She indicated CBE would likely decide within the same timeframe. The Chair also discussed the possibility of scheduling another emergency and special meeting in the future as current public health guidelines continue to develop. There was no firm resolution at the end of the open session.

On April 10, 2020, the Committee had another special [meeting](#), the majority of which was held in closed session, to consider options regarding the June 2020 First-Year Law Students Examination and the July 2020, California Bar Exam. The Committee accepted written comments but not oral public comments at the meeting. Following the meeting, the Board of Trustees held its own [meeting](#) on April 14, also in closed session, to consider these options.

On April 15, 2020, the Board of Trustees submitted a [letter](#) to the Supreme Court of California presenting the Court with two potential options: 1) (the Board’s “preferred option”) to proceed with the June 2020 administration of the First Year Law Students’ Examination but delivering it online with remote proctoring, to postpone the July administration of the Bar Exam until September 9–10, 2020 and prepare to administer it “online, in person, or both as needed to

address social distancing standards at that time,” and postpone the October First Year Law Students’ Exam until November; or 2) cancel the June administration of the First Year Law Students’ Examination and the July administration of the Bar Exam completely. Under both options, the Board recommended that the court convene a working group to study the development of a provisional certification program, under which eligible individuals would receive certification to be permitted to work under the supervision of a licensed California attorney—an expansion of the Practical Training of Law School Program authorized by Rule of Court 9.42. The Court is expected to decide on April 22, 2020.

## MAJOR PUBLICATIONS

The following report/studies have been conducted by or about CBE or the California Bar Exam during this reporting period:

- [\*Simulation of the Impact of Different Bar Exam Cut Scores on Bar Passage, by Gender, Race/Ethnicity, and Law School Type\*](#), State Bar of California Office of Research and Institutional Accountability, March 18, 2020 (analyzes bar exam performance across gender, race, and type of law school utilizing variable cut scores, including 1300, 1330, 1350, and 1390; of note, if California’s cut score was the same of New York (1330), there would be a 39% increase for African Americans who would pass the exam, an increase of 22% Latinos, 18% Asians, and 14% whites).
- [\*Final Report of the California Attorney Practice Analysis \(CAPA\) Working Group\*](#), State Bar of California, April 13, 2020 [DRAFT] (Presented to CBE at its April 13, 2020 [meeting](#); presents Executive Report of the CAPA Working Group [*see 24:2 CRLR 275–276*], including a discussion of the recent California-specific practice analysis; a description of the

formation of the CAPA Working Group, its charge, and activities; the findings of the practice analysis; recommendations regarding legal topics and job responsibilities to include on the California Bar Exam; and finally, recommendations for a process to move forward and incorporate the findings of the practice analysis into the future design, development, and administration of the Bar Exam. The Board of Trustees is expected to consider this final report at its May 14, 2020 meeting.)

- [\*Report of the Investigation of the State Bar of California's Pre-Examination Disclosure of July 2019 Bar Exam Topics\*](#), Nielsen Merksamer; November 12, 2019 (Commissioned by California Supreme Court to investigate the circumstances under which the topics of the July 2019 bar exam essay questions were disclosed in advance of the exam; concludes the disclosure was caused by a human accident, and recommends that the State Bar establish emergency procedures to strengthen its communication with the Supreme Court of California when unexpected issues involving the exam arises.) [[25:1 CRLR 150–151](#)]

- [\*An Assessment of the Impact of the Premature Release of Subject-Matter Content on the July 2019 California Bar Examination\*](#), Research Solutions Group, November 13, 2019 (Statistical analysis to address the degree, if any, that the performance on the July 2019 California Bar Exam changed as a result of the premature content release of the exam; the degree to which the pass rate was impacted by the release; and whether the performance of the students from the 16 law schools whose deans were made aware of the content of the written portion of the exam were differentially impacted relative to the performance of all other applicants concludes that the premature release of the content had no statistically significant impact on the results of the July 2019 examination.) [[25:1 CRLR 150–151](#)]

- [\*Evaluation of the State Bar of California’s Analysis of Impact on Early Release of Topics\*](#), ACS Ventures, LLC November 11, 2019 (Commissioned by the State Bar after the administration of the July 2019 Bar Exam as an independent review to evaluate the potential impact of the early release; concludes that there was not an impact on the interpretation and use of the scores, and the early release of topics did not have a material impact on performance on the July 2019 Bar Exam.) [[25:1 CRLR 150–151](#)]

## **LITIGATION**

- *Ani Krihkori v. State Bar of California Committee of Bar Examiners*, Case No. 2 0ST CV 09843 (Super. Ct., Los Angeles County). On March 11, 2020, plaintiff, a third-year law student in a four-year part-time program at the California-accredited Southern California Institute of Law, filed a complaint for declaratory and injunctive relief against CBE, challenging Accredited Law School (ALS) Guideline § 6.5(A). The guideline requires that students seeking a J.D. degree must complete that degree no later than 84 months after the student commenced law school. After CBE denied plaintiff’s request for a waiver of this rule given her family circumstances, she filed this lawsuit seeking to enjoin the Bar from enforcing the guideline, and a declaration that CBE’s regulations pertaining to law school accreditation violate California’s separation of powers doctrine. At this writing CBE has not yet filed a responsive pleading.