

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. There are seven members that comprise CSBARS: three accredited law school deans; two registered unaccredited law school deans, and two members selected by CBE, one of

whom may include a non-voting consultant with expertise in accreditation issues. Each member serves a three-year term.

Attorney member Esther P. Lin serves as Chair, and public member Alexander C. Lawrence, Jr. serves as Vice Chair of the Committee. At this writing, there is one public member vacancy on the Committee after the December 1, 2020 resignation of Dr. Angeli Agatep.

HIGHLIGHTS

California Supreme Court Approves Expansion of Provisional Licensure Program

On January 28, 2021, the Supreme Court of California issued an [order](#) approving the State Bar's [proposed amendments](#) to Rules 9.49 and 9.49.1 of the California Rules of Court to expand the Provisional Licensure Program to include applicants who received a score between 1390 and 1439 on any California Bar Examination administered between February 2020 and July 2015. The program, which [officially launched](#) on November 17, 2020, permits qualified applicants to be admitted to practice law in California without having to retake the Bar exam if they complete 300 hours of supervised practice. The Court approved the Bar's initial proposal with respect to the Provisional Licensure Program on October 22, 2020, in [Administrative Order 2020-10-21-01](#), which only granted eligibility to individuals who became eligible to sit for the California Bar Examination between December 1, 2019, and December 31, 2020. Provisionally licensed lawyers can engage in the same activities that a fully licensed lawyer is permitted to engage in, under their supervising lawyer's direct supervision and subject to certain restrictions

According to a January 8, 2021 [memo](#) from Board of Trustees member and Chair of the Provisional Licensure Working Group, Hailyn Chen, to the Members of the Board of Trustees

Executive Committee, the State Bar estimates that more than 2,000 applicants could be eligible for the alternative licensing program under the newly-expanded program—which roughly twice the number who had applied to the program to that point. The Bar’s [website](#) advises that applications for the expanded program will be available in the Applicant Portal no later than March 1, 2021, and must be submitted no later than May 31, 2021. The program will terminate on June 1, 2022, unless extended by the Court.

State Bar of California Releases Proposed New Rules Governing Law School Accreditation for Public Comment

At its November 19, 2020 [meeting](#) (Item 701), the State Bar of California’s Board of Trustees voted to release a series of [proposed rules](#) to replace the existing Rules for Accredited Law Schools (Rules of the State Bar, Title 4) for a 60-day public comment period, ending on February 15, 2021. The proposed rules are the result of the Board’s [directive](#) (p. 3) at its January 25, 2019, [meeting](#) that the CBE, in consultation with the newly-formed CSBARS, prepare revisions to the rules that incorporate best practices in accreditation, and propose additional requirements that a law school should meet in order to operate in California if a regional or national institutional accreditor also accredited that law school. [[24:2 CRLR 271–273](#)]

According to the [staff memo](#), CSBARS met 11 times at public meetings to formulate the updated rules proposal during which they interviewed leadership at the Western Association of Schools and Colleges (WASC), reviewed the principles and practices of institutional and programmatic accreditors, received feedback from current law school leadership, gathered suggestions made during the last three years of CBE meetings, and engaged in a structured drafting process. CSBARS determined that the accredited rules proposal should be built around four key

purposes for accreditation: (1) consumer protection and transparency; (2) student success; (3) diversity, equity, and inclusion; (4) and preparation for licensure and professionalism (proposed rule 4.160).

At its August 21, 2020 [meeting](#), CBE reviewed CSBARS' proposal, as well as an alternative proposal prepared by staff. To ensure consideration of both options, CBE assigned a subcommittee of two CBE members to review the proposals closely. The subcommittee finalized a single proposal, which included elements from the CSBARS proposal, some of the staff alternatives, and several additional amendments. CBE voted to approve the subcommittee's recommended revisions to the rules at its October 16, 2020 meeting, which is the version the Board ultimately released for public comment.

The proposed new rules include a "jointly accredited" status for law schools that have earned an institutional accreditation, most likely through the WASC Senior College and University Commission, as the major accreditor of most west coast universities, or the Distance Education Accrediting Commission, a key institutional accreditor for programs that are offered 51 percent or more through distance education, or one of six other regional accreditors. Law schools that complete the process required to earn this type of institutional accreditation are proposed to be recognized by the State Bar, as long as those schools also demonstrate compliance with the subset of core rules identified in proposed Rule 4.147(C), including maintaining a minimum, cumulative bar exam passage rate, ensuring that students meet prelegal and legal education requirements for taking the California bar exam and complying with the new rules for diversity, equity, and inclusion. In addition, under the accredited rules proposal, when CBE suspects that a school is out of compliance with a rule, a law school is to proffer all evidence of compliance or plans to return

to compliance upfront in order to allow the CBE to make a fully informed decision and take corrective action as soon as reasonably possible.

At CBE’s March 26, 2021 [meeting](#), the Bar’s Interim Executive Officer, Donna Hershkowitz, suggested some additional technical edits to the proposed rules. The Office of General Counsel is reviewing the additional modifications to assess whether they will need to be released for additional public comment. CBE expects to review again at its April meeting and aims to present to the Board of Trustees for final approval at its May meeting.

State Bar of California Releases Diversity, Equity, & Inclusion Plan: 2021–2022 Biennial Report to the Legislature

On March 15, 2021, the State Bar of California published its [biennial report](#) to the state legislature on its Diversity, Equity, and Inclusion (DEI) Plan pursuant to Business and Professions Code section 6001.3(c). This is the Bar’s second such report since the legislature added this requirement in [AB 3249 \(Committee on Judiciary\) \(Chapter 659, Statutes of 2018\)](#) to ensure that the Bar maintains its commitment to and support of access, fairness, and diversity in the legal profession, and the elimination of bias in the practice of law. *[24:1 CRLR 287]* The report addresses Bar’s DEI efforts across five “pillars” of its DEI work: statewide leadership, building a culture of diversity, pipeline to the profession, retention and advancement in the profession, and promoting judicial diversity.

Among its key accomplishments over the past two years, the Bar highlighted and attached to its report its [First Annual Report Card on the Diversity of California’s Legal Profession](#), which notes that despite significant growth in the proportion of attorneys who are women and people of color over the past 30 years, California’s attorney population remains far from reflective of the

state's diversity. Of particular concern to the State Bar was the fact that only 7% of licensed California attorneys were Latino, despite comprising 36% of the state's population. The Report Card concludes with a "Call to Action," highlighting a series of objectives that form the basis of the Bar's ongoing DEI work. [\[26:1 CRLR 113\]](#) The Bar also listed its work convening sector-specific Diversity Summits to follow up on and implement the Report Card's Call to Action; completing a study on racial disparities in the attorney discipline system; and launching the California Bar Exam Strategies and Stories Program, a positive mindset intervention designed to increase California Bar Exam scores for test takers of color.

As it relates to the work of CBE, the report also updates the legislature on its efforts to develop a diverse pipeline of attorneys by implementing enhanced demographic reporting requirements for California accredited and unaccredited law schools to support more meaningful evaluation of matriculation rates for law students of color; disseminating a survey to all California law schools with respect to recruitment and retention efforts, academic support programs, and career development services; implementing new processes with respect to the California Bar Exam including a Differential Item Function (DIF) analysis to ensure that the questions are unbiased, and efforts to better train, diversify, and expand the bar exam grader pool; and amending the moral character determination process with respect to the treatment of criminal convictions in that process.

The State Bar reports that it intends to take the most recent law school data it gathered on retention programs and do a comparative analysis taking new demographic data, which the admissions office is now collecting from Bar applicants, into account. This comparative analysis is meant to provide a better understanding of the law school population and enable the State Bar to identify programs that positively impact the retention of diverse and underrepresented students.

With respect to the reforms aimed at the Bar exam itself, the Bar reported that it has developed an outreach strategy to share information with California affinity bar associations in order to diversify the grader pool for the exam, and developed a hiring matrix to mitigate bias in the hiring of graders. Additionally, although the Bar reported that the overall results of the DIF study reported no major areas of concern for the Bar Exam by gender and racial/ethnic groups, the report did recommend that the Bar continue to proactively monitor for DIF in the future. Accordingly, the Board of Trustees established the DIF analysis working group in 2020, comprised of select members of CBE, as well as members of the Council on Access of Fairness, to continue these efforts. The working group is expected to propose recommendations in the Fall of 2021.

MAJOR PUBLICATIONS

The following reports/studies have been conducted by or about the State Bar of California as it relates to the work of CBE during this reporting period:

- [*Report to the Supreme Court on the October 2020 California Bar Examination*](#), Committee of Bar Examiners, March 26, 2021 (Pursuant to Rule 4.60(B) of the Rules of the State Bar of California, provides report on the October 2020 administration of the California Bar Exam; reports receipt of 12,016 applications of which 9,301 applicants completed the exam and received results; 5,292 applicants passed (60.7 percent); provides summary of exam grading process. This was the first bar exam in the state of California to be administered online and remotely proctored using various exam software. [[26:1 CRLR 122–124](#)])

RULEMAKING

The following is a status update on recent rulemaking proceedings that the State Bar of California as it relates to the work of CBE has initiated:

- **Provisional Licensure Program:** On January 28, 2021, the Supreme Court of California issued an [order](#) approving the State Bar’s proposed amendments to Rules 9.49 and 9.49.1 of the California Rules of Court to expand the Provisional Licensure Program to include applicants who received a score between 1390 and 1439 on any California Bar Examination administered between February 2020 and July 2015. The rule became effective March 1, 2021 (see HIGHLIGHTS).

- **Testing Accommodations:** At its January 22, 2021 [meeting](#) (Item 702), the State Bar Board of Trustees voted to release [proposed amendments](#) to Rule 4.90 of the State Bar Rules for a 45 day [public comment](#) period, which sets forth the procedures for requesting review of a staff decision to deny or partially grant testing accommodations. According to the [staff memo](#), these revisions are meant to “revis[e] the rule to clarify and streamline existing review procedures related to the scope of the Committee of Bar Examiners’ (CBE) review, the number of times committee review can be sought, and the timing of when requests for review must be received.” This proposal would amend the rule to require that all requests for review be received no later than 35 days before the first day of the examination. In addition, this proposed rule change would deny repeated requests for petitions of review of accommodation decisions made by the director of Admissions or by CBE itself. The period for public comment ended on March 12, 2021. At this writing, no further actions have been taken.

- **Revised Rules for Accredited Law Schools:** At its November 19, 2020 [meeting](#) (Item 701), the Board of trustees voted to release [proposed rules](#) for accredited law schools for a 60 day [public comment](#) period. The public comment period expired on February 15, 2021. At this writing, staff is considering whether it needs to release the proposed rules for an additional

comment period in light of additional technical amendments proposed by the Bar’s Interim Executive Director, Donna Hershkowitz, at CBE’s March 26, 2021 [meeting](#) (see HIGHLIGHTS).

LEGISLATION

- [AJR 12 \(Stone\)](#), as introduced on April 15, 2021, would urge the United States Congress to revise the United States Code to remove the requirement that, to be eligible for GI benefits, a law school be accredited by a specialized accreditor and the overly broad restriction that graduates must be eligible to sit for a bar examination in any state. [*A. Desk*]

LITIGATION

- *Kohn v. State Bar of California, et al.*, Case No. 20-cv-4827 (N.D. Cal.); Case No. 20-17316, Ninth Circuit Court of Appeals. On November 27, 2020, plaintiff Benjamin Kohn filed a notice of appeal of the Northern District of California’s [order](#) dismissing his lawsuit against the State Bar and CBE, which alleged that defendants violated the ADA and California’s Unruh Act by failing to provide him all the reasonable accommodations he requested for his physical and psychological conditions and by their deliberate indifference with respect to his previous attempts at taking the California Bar Exam in February 2019 and February 2020, as well as the October 2020 administration of the exam. [[26:1 CRLR 134](#)]. At this writing, the parties have filed their opening briefs and are awaiting an oral argument with the Ninth Circuit.