

# 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 § 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” (CALSS)); 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 ten days in advance, are required to comply with the Bagley-Keene Open Meetings Act, and are webcast when feasible. In addition, 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 groups, 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. In addition, 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 its recommendations. Seven members 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.

# HIGHLIGHTS

## California Held February 2022 Bar Examination In-Person

On February 22–23, 2022, applicants for the California State Bar took the California Bar Examination in person. Amidst the COVID-19 pandemic, the State Bar began administering exams remotely on October 5–6, 2020. [see [26:1 CRLR 123](#)] The February 2022 exam was the first held in person in California in two years. On October 20, 2021, the Supreme Court of California [ordered](#) that the February 2022 exam be conducted in person as Covid-19 cases had been dropping nationwide. To change the format of the exam to remote, both a public health order prohibiting in-person administration of the exam and a California Supreme Court order would have been necessary.

As cases rose again during the winter months with the spread of the Omicron variant, states debated whether or not to hold the exam remotely again. Many states, including California, incorporate the National Committee of Bar Examiners (NCBE) Multistate Bar Exam (MBE) into their states' bar exams. However, on January 10, 2022, the NCBE [informed](#) jurisdictions that it would not provide them with remote versions of the MBE due to deadlines set by remote examination software ExamSoft. The NCBE also stated that makeup dates would be available in March 2022 if public health orders would prevent in-person examination. [Nevada](#) was the only state that elected to administer its February 2022 exam remotely. Because of the NCBE's restriction on using a remote MBE, Nevada did not administer the MBE to applicants in February 2022.

While a remote exam would have helped prevent the transmission of COVID-19 during testing, there were several problems with the remote examinations in July of 2021. [see [27:1 CRLR 165–167](#)] Applicants reported frozen screens, software crashes, and other issues causing lost time or content while taking the exam. Nevertheless, California proceeded with an in-person examination in February 2022 as a public health order did not require otherwise and indicated exam results would be released on May 6, 2022.

## **State Bar Seeks Public Comment on Proposed Changes to Adjudication Procedures for Provisionally Licensed Lawyers**

At its February 25, 2022 [meeting](#), the Board of Trustees of the State Bar of California voted to make available for a 45-day [public comment](#) period proposed new Rules 5.480–5.486 of the Rules of Procedure of the State Bar of California. These rules would establish adjudication procedures in the State Bar Court for provisionally licensed attorneys who are accused of misconduct. The Provisional Licensure Program, established pursuant to Rule 9.49 of California Rules of Court, allows eligible 2020 law school graduates to practice law under the supervision of licensed attorneys before passing the bar exam. [see [26:1 CRLR 124–27](#)]

According to the [staff memo](#), although provisionally licensed lawyers (PLLs) are subject to discipline pursuant to Rule 9.49 of the California Rules of Court, the specific adjudication procedures involving PLLs have not been codified. Under the proposed rules, PLLs would be subject to the same disciplinary procedures as licensed attorneys, with a few exceptions. First, if a provisionally licensed lawyer is criminally convicted, and the conviction would provide any ground for interim suspension or involuntary inactive enrollment under existing Rule 5.342, the Office of Admissions, rather than the State Bar Court, would decide the eligibility to continue with

the program and eligibility for admission to the State Bar. Second, proposed Rule 5.484 would permit the State Bar Court to limit a decision involving a PLL to state whether the court would order a reproof or recommend greater discipline without specifying what that discipline would be since a PLL license terminates upon the imposition of any sanctions. Third, proposed Rule 5.483 would terminate any pending allegations against PLLs on the date the Provisional Licensure Program terminates, but any pending allegations may still be considered under the Moral Character Determination required for admission to the State Bar. Finally, proposed Rule 5.486 would not require PLLs to pay costs related to discipline or monetary sanctions as licensed attorneys do. The public comment period on the proposed Rules closed on April 11, 2022.

## 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 July 2021 Bar Examination\*](#), Committee of Bar Examiners, January 28, 2022 (Pursuant to Rule 4.60(B) of the Rules of the State Bar of California, provides a report on the July 2021 administration of the California Bar Exam. The report indicated receipt of 9,575 applications, of which 7,930 completed the exam and received results. It further indicates that 3,990 passed (52.9 percent) and summarizes the exam grading process. The exam was the third in California to be administered online and remotely proctored using exam software).

## RULEMAKING

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

- **Amendments to New Rules for Accredited Law Schools:** At its November 18, 2021, meeting ([Item 50-7](#)), the State Bar Board of Trustees [adopted](#) the amendments to New Accredited Law School Rule 4.160(D)(6). The amendments, recommended by CBE, changed technical requirements of the Five-Year Minimum, Cumulative Bar Pass Rate in response to creating the Provisional Licensure Program's Expanded Program and rescheduling the July 2020 California Bar Exam to October 2020. [[27:1 CRLR 169](#)]

- **Revised Requirements Regarding Proof of Covid-19 Vaccination or Negative Covid-19 Test for the Bar Examination:** At its January 20, 2022, meeting ([Item 50-4](#)), the Board of Trustees [adopted](#) revised Covid-19 requirements for the February 2022 bar examination. At its December 10, 2021, meeting, the State Bar Board Executive Committee first [introduced](#) requirements of either Covid-19 vaccination or proof of negative test within 72 hours of the bar examination in order for examinees to sit. The revised requirements mandate that examinees provide proof of Covid-19 vaccination, or negative PCR test within 48 hours of the exam, or a negative antigen test within 24 hours of the exam. The revisions also allow the State Bar to update this policy based on evolving public health orders or information.