



**THE STATE BAR OF CALIFORNIA
COMMITTEE OF BAR EXAMINERS/OFFICE OF ADMISSIONS**

180 Howard Street • San Francisco, CA 94105-1639 • (415) 538-2300
845 S. Figueroa Street • Los Angeles, CA 90017-2515 • (213) 765-1500

Committee of Bar Examiners

MEMORANDUM

PATRICIA P. WHITE
*Chair
San Jose*

Date: October 31, 2014

LEE H. WALLACH
*Vice-Chair
Los Angeles*

To: Officers and Members of the Board of Trustees

JAMES H. AGUIRRE
Los Angeles

From: Patricia P. White, Chair, Committee of Bar Examiners

TRACI C. BELMORE
Suisun City

Re: COMMENT IN RESPONSE TO TFARR PROPOSALS

JAMES A. BOLTON, Ph.D.
Altadena

MICHELLE DOMINGO
Richmond

KAREN M. GOODMAN
Sacramento

ERIKA HIRAMATSU
San Diego

KV KUMAR
Yorba Linda

JOEL S. MILIBAND
Irvine

ALEXANDER C. LAWRENCE
Los Angeles

MARTHA PRUDEN-HAMITER
Los Angeles

SANDRA L. SALAZAR, M.D.
Pico Rivera

LARRY SHEINGOLD
Sacramento

JEANNE C. VANDERHOFF
San Diego

PATRICIA M. VILLALOBOS
Montebello

ALAN S. YOCHELSON
Los Angeles

Staff

GAYLE E. MURPHY
Senior Director, Admissions

DEBRA MURPHY LAWSON
*Director,
Moral Character Determinations*

GINA M. CRAWFORD
Director, Administration

GEORGE C. LEAL
Director, Educational Standards

LISA JEONG CUMMINS
Director, Examinations

GREG S. SHIN
Director, Operations & Management

The Committee of Bar Examiners (Committee) considered the Task Force on Admissions Regulation Reform (TFARR) proposals for new pre- and post-admission requirements during its October 17 and 18, 2014 meeting.

As you may know, one former and three current Committee members were selected by the former State Bar president to serve on related Board of Trustees' task forces. However, the full Committee did not have an opportunity to formally consider TFARR's initial recommendations and accompanying implementation plans until TFARR's proposals were released for a 35-day public comment period on September 29, 2014.

The Committee unanimously endorsed the concept of requiring practical lawyering skills for new attorneys entering the profession. This is consistent with our longstanding position on the issue, which dates back to proposing that all applicants after January 1, 1992, as a condition for admission to practice law in California, have formal training in lawyering skills. This included pre-trial, trial and other litigation skills, in one or more courses of a content and quality approved by the Committee. The Committee proposed that all applicants for admission be required to complete at least three semester units of practical skills training and outlined what it believed the lawyering skills should encompass. But for various reasons, the new lawyering skills requirement never made its way into implementation.

The Committee is grateful TFARR spent so many volunteer hours considering these very important matters and appreciates that TFARR members periodically briefed the Committee regarding the task force's progress and recommendations.

The Committee, however, did express some concerns during its October meeting, which are summarized below.

Additional Burdens

Current burdens on law school students are already immense. Taking additional courses not provided by their law schools to meet the 15 units of practice-based experiential training, working in non- or low-paying positions to meet the Pro-Bono requirement and completing additional MCLE courses could all add to the cost beyond what they may now already pay both for their education and for their preparation for the bar examination.

These additional costs would impact not only new attorneys but also in-state law students and out-of-state attorneys who many never be admitted to practice law in California because they are unable to pass the bar examination.

While the majority of students taking the bar examination come from California ABA law schools, and all in-state law schools may quickly convert to a curriculum that includes the experiential training called for, there is no guarantee that law schools out-of-state will follow. (Using the July 2013 California Bar Examination numbers as a guide as to how many out-of-state ABA graduates might be affected, 1,411 first-time takers graduated from out-of-state ABA law schools compared to 4,172 graduates of California ABA law schools.)

In addition to added financial burdens, the California students likely to be least able to add new time commitments to their required workloads are the students who fall within the Committee's oversight – those attending California Accredited Law Schools (CALs) and registered unaccredited law schools. These students are predominantly older, less affluent and minorities. They are typically night students who hold jobs during the daytime. Many are pursuing JD's as part of career changes. And most of them are doing so without access to scholarship support afforded to ABA law school students. The Committee takes great pride in California's unique system of accrediting non-ABA law schools because it gives older, less affluent and minority students a pathway to the profession not offered in other states. California's accreditation standards place the highest priority on providing them with a quality education.

The Committee is pleased that the second task force included a representative from the CALs and a representative from the registered, unaccredited law schools; however, the Committee is concerned that the new TFARR requirements, when coupled with any new out-of-pocket costs, may make a difficult route just enough harder that they create insurmountable graduation hurdles for CALs and registered law school students or discourage others like them from attending law school at all.

Pro Bono

The proposal concerning required Pro-Bono (or low-Bono) service, while certainly of potential benefit, appears to create a sort of "conditional admission" – a concept the Committee has considered in some depth in the past and rejected as it relates to applicants with moral character issues.

In this case, the “conditional admission” involves the TFARR recommendation that applicants be given until the end of their first year after admission to complete the required 50 hours of Pro-Bono service. It is unclear if there are sufficient infrastructures in place to monitor the un-admitted and conditionally admitted and to provide the supervision that would be needed over law students and newly-admitted attorneys. In addition, there are many public positions, such as in a District Attorney’s office or a Public Defender’s office, where having any sort of outside legal employment, including Pro-Bono service, is prohibited. As a result, many new admittees may not have the option of applying for positions within public agencies, where they most likely would receive on-the-job training, because they have to complete the Pro-Bono requirement. To the extent that the practical skills admission contemplates that a new lawyer will gain additional practical experience through participation in Pro-Bono programs, the Committee is concerned that this requirement will have the unintended requirement of a conditional admission primarily available to employees of large law firms.

Attorneys Admitted for Less than One Year and Foreign Applicants

The recommendations create a new category of legal education monitoring where none previously has been required. Attorneys admitted for less than one year in other states would be required to complete practice-based experiential training. In contrast, under current procedures, lawyers admitted in other jurisdictions can take the California Bar Examination based on their admission in another state without any evaluation of their legal education.

In addition, the Committee questions the propriety of the apparent unequal treatment of foreign LLM students as compared to law school graduates from this country. The LLM foreign students appear to be considered exempt from certain additional admission requirements. The Committee in the past has used the presumption that it shouldn’t be “easier” to become an attorney in California if you graduate from a law school in a foreign country than it is to graduate from a United States law school.

Role of The Committee

The Committee also felt it had insufficient information regarding how the Board of Trustees would make its final decisions on both the TFARR proposals and the Committee’s role in administering the new requirements.

For instance, the language proposed to amend California Business and Professions Code Section 6060 refers to the Board as having the approval authority for the practice-based experiential competency-training requirement. This appears inconsistent with every existing admission requirement in the Business and Professions code section, which leaves those decisions to the Committee. Section 6046 of the California Business and Professions Code says:

The board may establish an examining committee having the power:

- (a) To examine all applicants for admission to practice law.
- (b) To administer the requirements for admission to practice law.
- (c) To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter.

Additionally, the Committee was concerned that it will be expected to implement and enforce the reforms in such a way that they actually help improve lawyering skills, but how it should be done and what resources for doing so remain vague. For example, without referring to it directly in the TFARR recommendation, it did appear implicit that the Admissions Department would probably have to hire additional staff to fulfill the record-keeping and monitoring responsibilities encompassed in the Task Force recommendations.

Further, it is unclear whether the pre-admission proposals will be delivered to the Committee as a complete package that includes ideas about the nuts and bolts of the new obligations placed on the Committee or whether it would be up to the Committee to make those determinations without further Board of Trustees' input.

Summary

During our October meeting, the Committee voiced unanimous appreciation for all the work and foresight that went into the Task Forces' deliberations and recommendations. The Committee, however, still had questions, as outlined above, and as to the specifics of its role as accreditor and its responsibility to ensure consumer protection.

If the Board of Trustees determines that it should go forward with the TFARR proposals and should recommend them to the Supreme Court and the Legislature, the Committee would appreciate the opportunity to meet with members of the Board to discuss further the concerns that have been raised, and in particular, to discuss in more detail the mechanics of how these proposals will be implemented and the Committee's role in doing so.

cc: Committee of Bar Examiners
Admissions Executive Staff