



# THE STATE BAR OF CALIFORNIA

THE COMMITTEE OF BAR EXAMINERS

OFFICE OF ADMISSIONS

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## MEMORANDUM

**DATE:** October 26, 2010

**TO:** Members of the Board Committee on Regulation, Admissions and Discipline Oversight

**FROM:** Gayle Murphy

**SUBJECT: OVERVIEW AND KEY INDICATORS**

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### **COMMITTEE OF BAR EXAMINERS**

The Committee of Bar Examiners (Committee) is a standing committee of The State Bar of California and is composed of 19 members: 10 lawyers appointed by the Board of Governors of The State Bar, three public members appointed by the Governor of California, three public members appointed by the Speaker of the Assembly and three public members appointed by the Senate Rules Committee. All members are appointed for four-year terms, and all are eligible for appointment by the Board of Governors to one-year terms as Chair and Vice-Chair of the Committee.

The Committee is responsible for:

1. Determining the moral character of more than 8,000 applicants for admission to practice law in California per year;
2. The development, administration and grading of the California Bar Examination for over 14,000 applicants per year;
3. The development, administration and grading of the First-Year Law Students' Examination for more than 1,700 applicants per year; and,
4. The accreditation of 17 law schools in California that are not approved by the American Bar Association and oversight of an additional 25 registered unaccredited law schools: which includes 7 correspondence law schools, 5 distance-learning law schools and 13 fixed-facility law schools.

Attached as Appendix A is a summary of the Key Indicators associated with many of the Committee's activities. An updated summary will be forwarded to the Board Committee as part of each meeting's agenda. The Committee operates through four subcommittees: Examinations, Moral Character, Operations and Management and Educational Standards and generally meets six to eight times a year to conduct its business. Committee members contribute additional volunteer hours through participation in examination editing and grading calibration meetings, conducting

informal conferences with moral character determination applicants, visiting bar examination test centers during administration of the examination, representing the Committee at Admissions Ceremonies for new admittees and participating in law school visitations.

## **Examinations**

The Committee's Subcommittee on Examinations oversees the structure, content, examination questions development, grading and result announcements of the bar examination and the First-Year Law Students' Examination. It also considers examination incidents and petitions related to the examination, such as requests for reconsideration of examination grades. The Subcommittee also has primary responsibility for reviewing the reports prepared by the Committee's psychometric consultant.

The Subcommittee also considers appeals filed by applicants with disabilities requesting testing accommodations for taking examinations, which petitions were initially denied by staff. For this last July examination, 345 applicants with disabilities took the examination at testing accommodations test centers, compared to 177 from July 1993. For February, the number of applicants taking the examination at testing accommodations test centers increased from 176 in 1995 to 265 in 2010. Under current policy and the rules in Chapter 7 of the *Admissions Rules*, the Subcommittee is the appellate body for review of petitions that were denied or modified by the staff, and with which decision the applicant does not agree.

## **The California Bar Examination**

The California Bar Examination encompasses both the General Bar Examination and the Attorneys' Examination. The General Bar Examination is a three-day test consisting of six one-hour essay questions, two three-hour performance tests and the Multistate Bar Examination, a 200 item multiple-choice test administered during two three-hour sessions. Attorneys who have been admitted in good standing for the past four or more years in another jurisdiction may qualify to take the Attorneys' Examination, which consists of the essay and performance test questions of the General Bar Examination. Passage of the California Bar Examination is required of all applicants for admission to practice law in California.

## **Examination Creation**

The Examinations department solicits questions annually, or more often depending on the depth of questions in the various question banks, from various law professors from all areas of the United States.

Questions are selected and edited by the Examination Development and Grading Team (Team), eight experts in the substantive subjects tested and in the grading of test

answers in those areas.<sup>1</sup> The Team and the Committee meet twice each year to finalize the questions that will appear on the February and July administrations of the California Bar Examination.

Performance Test Questions are prepared and edited by a team of five permanent editors, which include both law professors and practitioners. Committee members and members of the Team are also involved in the editing process. The Multistate Bar Examination is purchased from the National Conference of Bar Examiners. The members of both the Team and the Performance Test Team are retained through contracts that are reviewed and renewed on an annual basis. The Committee also has a policy relative to the terms of the Team. The Committee also has a Senior Grader program, which is intended to be a vehicle for training potential members of the Team in the responsibilities assigned to the Team.

### Examination Grading

Essay and performance test questions are graded by eight separate groups of up to 15 Graders. Each group is headed by a member of the Examination Development and Grading Team. During the grading process, each Grader does the following:

- Attends at least three meetings during the grading cycle and meets with all team members to "calibrate." Calibration sessions are designed to ensure uniformity of grading between Graders and conformity with statistical norms.
- Grades approximately 550 examination answers at a rate of roughly 20 answers per day over an 8-10 week period.

An applicant can earn up to 100 raw points on each of the six essays and up to 200 raw points on each of the two performance tests. Scaled MBE scores are reported on a 2000-point scale, and scores on the written portion of the examination are scaled to the MBE and reported on a 2000-point scale. The written examination is 65% of the total. The MBE is 35% of the total.

Shortly after administration of the examination, three calibration sessions are conducted, which includes the Examination Development and Grading Team, Graders and Committee members.

Grading is divided into three phases. All written answers submitted by applicants are read at least once before pass/fail decisions are made, including the answers of

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<sup>1</sup> The question creation/selection process is continuous, both for essay and performance test questions. This assures a constant "bank" of questions to draw from for each administration of the examination.

applicants who do not complete the examination in its entirety. Based on the results of empirical studies relative to reliability, scores have been established for passing and failing after one reading of the examination. For those applicants whose scores after the first read (Phase I) are near the required passing score, all answer books are read a second time, and the scores of the first and second readings are averaged. The total averaged score after two readings is then used to make a second set of pass/fail decisions, providing there are no grading discrepancies of more than 10 raw points between first and second read grades on any question (Phase II). Any answers with grading discrepancies more than 10 raw points between first and second read grades are read a third time before making the third set of pass/fail decisions.

To pass the examination in the first phase of grading an applicant must have a total scale score (after one reading) of at least 1440 out of 2000 possible points. Those with total scale scores after one reading below 1390 fail the examination. If the applicant's total scale score is at least 1390 but less than 1440 after one reading, all of the applicant's answers are read a second time by a different set of Graders. If the applicant's averaged total scale score after two readings is 1440 or higher, the applicant passes the examination. Applicants with no grading discrepancies of more than 10 raw points between first and second read grades on any question with averaged total scale scores of less than 1440 fail the examination. Applicants with grading discrepancies more than 10 raw points between first and second read grades on any question whose averaged total scale score is less than 1440 will have those answers referred to the Examination Development and Grading Team member supervising the grading of that particular question for resolution of the discrepancy (Phase III). The Examination Development and Grading Team member will assign a resolution grade to the answer and the resolution grade will replace the averaged grade for that question. If the applicant's total scale score after resolution grading is 1440 or higher, that applicant passes the examination. If the applicant's total scale score after resolution grading is less than 1440, the applicant fails the examination.

Results from the February Bar Examination are usually mailed to applicants the second or third Friday in May and from the July Bar Examination the Friday before the Thanksgiving Holiday. Results are also available to applicants beginning at 6:00 p.m. on the day they are mailed by accessing the State Bar's home page through the Internet. Applicants must enter certain unique identification numbers to determine whether their names appear on the pass list. The entire pass list is available to the general public on Sunday, beginning at 6:00 a.m.

Unsuccessful applicants may seek reconsideration of their grades based on arithmetic or transposition errors in the compiling of their scores or a departure from established procedures. They may not challenge the evaluation of their answers, although many attempt to do so.

### **The First-Year Law Students' Examination**

The one-day First-Year Law Students' Examination (FYLSX), consists of one session of four essay questions, which are developed, pre-tested and graded by Admissions staff, Examination Development and Grading Team members and Graders, and one session of one hundred multiple-choice questions. The total testing time is 7 hours and the subjects tested are in the areas of contracts, criminal law and torts. The FYLSX is required of all students enrolled in unaccredited law schools, students studying in law offices or judges' chambers and of all students who do not have two years of college work prior to attending law school. This examination should be taken by those required to do so following the completion of one year of law study. Students required to pass the examination must pass it within three administrations of becoming eligible to take it in order to receive credit for law study accumulated up to the point of passage. Those who pass it thereafter will receive credit for only one year of law study.

The passing score for the FYLSX is a total scaled score of 560 or higher. The examination is graded in accordance with the standard policies used for the California Bar Examination except that there is only one member of the Examination Development and Grading Team who leads the grading process, calibrates the four teams (1 for each question) of Graders and reappraisers answers close to the pass/fail line to determine whether an applicant's answers as a whole merits a pass on the examination. Results from the June examination are generally mailed in mid-August and from the October administration in mid-December.

### **Moral Character Determinations**

After a moral character determination application is filed, investigation begins with the process of administrative screening. This includes such activities as the processing of fingerprint cards, contacting law schools, references, licensing agencies, employers and many other different record centers. Most of the applications are cleared, or given a positive determination, at the staff level under guidelines established by the Committee. Generally, this process takes no more than six months to complete and in those cases where an applicant does not have issues that require additional review or investigation, the time is shorter. Applicants are advised through many different ways to file the moral character determination application no later than the final year of law study to ensure their admission is not delayed because their moral character determination application has not yet been cleared. The applications of those applicants with serious problems in their backgrounds, most likely, will take more than six months to process and such applicants are encouraged to file their applications even earlier than the beginning of their last year of law school to avoid delays in their admission if they are ultimately found to possess the good moral character required for admission.

Where a particular applicant's character and fitness to practice law is problematic, the file is referred to the Committee's Subcommittee on Moral Character for consideration and it recommends a decision to the full Committee. The Subcommittee may

recommend that the applicant receive a positive determination, receive a negative moral character determination, the application be re-referred for further investigation, the applicant be offered abeyance or it may invite the applicant to confer informally with the Subcommittee to discuss issues related to moral character considerations. Thereafter, the Subcommittee will: 1) make a positive moral character determination; 2) re-refer the application to staff for further investigation, usually for substance abuse or psychiatric evaluation; 3) offer abeyance to the applicant, which would place his or her application in abeyance for a specified period of time with agreed to conditions that when satisfied will ordinarily result in positive determination of moral character; or 4) may determine the applicant has not met his or her burden of establishing the good moral character required for admission to practice law in California, which actions are subject to affirmation by the Committee.

If an applicant receives a negative moral character determination, he or she may elect to have a hearing before the State Bar Court. Upon conclusion of a State Bar Court hearing, a State Bar Court Judge issues a decision as to whether the applicant possesses the requisite good moral character. If the Judge recommends the applicant be denied, the applicant may appeal that determination to the State Bar Court's Review Department or if the State Bar Court Judge recommends a positive determination and the Committee disagrees, it can appeal to the Review Department. If the Review Department agrees with the original Judge's decision, but the applicant or the Committee does not, either party may file an appeal to the California Supreme Court. Those applicants who are denied have the right to reapply for a moral character determination after the expiration of two years from the date of the Committee's denial.

An applicant may apply for a moral character determination at any time following registration as a law student. The applicant also has the option of waiting until after passing the bar examination to file a moral character application.

### **Operations and Management**

The Committee's Subcommittee on Operations and Management reviews operations issues related to the administration of examinations, fiscal policies and the internal management of the Committee, and considers applicants' petitions for waivers of Committee policies and the rules contained in Title 4, Division 1 of the *Rules of the State Bar of California (Admissions Rules)* that relate to such things as refunds, late fees and deadlines. Proposed new projects from other Subcommittees that increase cost or required expenditures not included in the Committee's approved budget must also be reviewed by this Subcommittee. The Subcommittee reviews the annual budget for the Office of Admissions, which is prepared in conformance with the procedures and protocols set by the State Bar's Finance department.

Twice a year a report is forwarded to the Subcommittee on Operations and Management and Subcommittee on Examinations describing the events that transpired at the Bar Examination. The report includes a summary of the administration of the

examination, which contains an examination overview and a brief description of the various test centers, any facility problems that may have occurred and any individual incident of note and suspected cheating incidents. Similar, but shorter, reports are filed following administration of the First-Year Law Students' Examination.

Depending on the nature of the various incidents that may have occurred during an examination, the matters will be referred to the appropriate Subcommittee for action. For instance, if there was an incident involving a disruption during the bar examination, the matter would be referred to the Examinations Subcommittee to determine what, if any, adjustments in the grading should be recommended to the full Committee. Or if there is alleged Chapter 6 Violation issued to an applicant suspected of cheating during the examination, this matter would only be considered by the Subcommittee on Operations and Management. The Committee has a protocol for decision making and executive guidelines for making decisions in the event of an emergency during the administration of an examination. In incidents affecting a large group of examinees, the Committee may decide to compare the examinee performance on the questioned examination session to their performance on other sessions as well as to the performance of examinees at other locations in an effort to determine if there exists statistical evidence indicating that examinees have been harmed by facility problems. If so, the Committee has reevaluated the scores in light of the problem. To assist the Committee with evaluating cheating incidents on the Multistate Bar Examination, reports are prepared by American College Testing Service (ACT), which is the company retained by the National Conference of Bar Examiners to prepare and grade the test. Through statistical methods, ACT is able to measure the probability that one examinee copied from another.

### **Law School Regulation and Educational Standards**

The Committee's Subcommittee on Educational Standards considers and reports to the full Committee on matters affecting legal education, the accreditation of law schools and the registration and regulation of unaccredited law schools. It also reviews applicants' petitions seeking waivers of Committee rules, policies and procedures regarding such things as eligibility determinations and excess credit.

Before commencing the study of law, an applicant must satisfy the Committee that he or she has two years of college or the intellectual equivalent of two years of college. The Committee has a policy that specifies certain College Level Equivalency Program (CLEP) examinations be passed to fulfill the "intellectual equivalent" requirement.

Law study qualifying an applicant to take the final bar examination may be in one, or a combination, of the following ways:

- a. Graduation from a law school accredited by the Committee, which includes schools approved by the American Bar Association, that requires three years of full time study or four years of part-time study;

- b. Four years of study, with a minimum of 270 hours each year, in an unaccredited fixed-facility law school registered with the Committee;
- c. Four years of study, with a minimum of 864 hours of preparation and study each year, through a correspondence or distance learning law school registered with the Committee;
- d. Four years of study through the law office or judge's chambers program;  
or
- e. Four years of study through a combination of the above.

While six other states permit law office study, California is one of only three jurisdictions recognizing law study by correspondence.

California is one of the few states that does not require graduation from a law school approved by the American Bar Association or approved or accredited by the admitting authority in the state.

#### Accreditation and Accredited Schools in California

The authority to accredit law schools is derived from Education Code 94310 and Business and Professions Code Section 6060. In accordance with Education Code Section 94900, the Committee has been delegated the responsibility for the approval, regulation and oversight of accredited degree-granting law schools.

The accreditation rules are contained in the *Accredited Law School Rules*, the newest version of which became effective January 1, 2009. *Guidelines* to interpret the *Accredited Law School Rules* were approved by the Committee and implemented January 1, 2010, effective with the students enrolled in the fall of 2010. All ABA-approved law schools are deemed accredited by virtue of that approval; the Committee does not exercise any oversight of these schools. Schools seeking accreditation by the Committee must file an Application for Provisional Accreditation. If there appears to be a reasonable probability that the school will meet the requirements, the school is visited. Following the visit and the filing of a report, provisional accreditation may be conferred. If a school does not appear that it is eligible, it will be so advised and asked to withdraw its application. Following a two-year period as a provisionally accredited law school, the school may seek full accreditation. If a school is granted accreditation, the school's students are no longer required to take the First-Year Law Students' Examination.

All California accredited schools are subject to reinspection every five years, or more often if the Committee so determines, at the school's expense. In addition to other reports that may be requested, the schools must file an annual report in November of every year.

### Unaccredited Law Schools

Requirements pertaining to unaccredited law schools are contained in the *Unaccredited Law School Rules* and Rule 9.30 of the California Rules of Court. In addition to numerous other requirements, these schools must file an annual report every November and provide disclosure statements to their students. Under the *Unaccredited Law School Rules*, which became effective January 1, 2008, the oversight and regulation of unaccredited law schools, which include correspondence, distance-learning (online) and fixed-facility law schools, rests solely with the Committee.

### **LAW SCHOOL COUNCIL AND ASSEMBLY**

The Law School Assembly is composed of the deans from all California law schools. Representatives from four categories of law schools (ABA public, ABA private, California accredited and California unaccredited) are elected to serve on the Law School Council. The Council meets one to two times a year and the Assembly generally meets once each year if there are matters of mutual interest to discuss. Three representatives from the Committee and a member from the Board of Governors (the Chair of the oversight Committee) also serve as Council members. In the past, topics on the agendas include such things as changes in the rules, bar examination scope and format, examination statistics, moral character evaluations and other admission requirements that may directly affect the law school community.

### **OFFICE OF ADMISSIONS**

There are 60 permanent employees located in two offices: San Francisco and Los Angeles in the Office of Admissions whose work is dedicated to performing the functions assigned to the Committee. The Office is divided into a headquarters unit (Senior Executive's Office) and five departments: Administration, Educational Standards, Examination Development, Operations and Management and Moral Character Determinations. It has an annual budget of more than 17 million dollars, which is funded primarily from applicant fees set by the State Bar's Board of Governors, upon recommendation of the Committee. The Senior Executive, Admissions, has the primary responsibility for oversight of the Office of Admissions, which includes supervision of the Admissions Directors. In addition, the Senior Executive, Admissions is a member of the senior management team for the State Bar, oversees the State Bar's special admissions functions, MCLE Provider Certification and the Legal Specialization department, and regularly reports to the Board of Governors and its committees on Committee and Admissions issues.

As mentioned above, the Senior Executive, Admissions also has oversight of the staff carrying out the work of the State Bar's departments devoted to the special admissions programs (Pro Hac Vice, Out-of-State Arbitration Counsel, Multijurisdictional Practice, Foreign Legal Consultants, and Practical Training of Law Students' Program), MCLE Provider Certification and Legal Specialization. Three staff members are assigned to

the special admissions functions, two process MCLE Provider Certification applications and nine assist in the development and grading of legal specialization examinations, processing Legal Specialist applications and providing support to the Board of Legal Specialization and its Advisory Commissions.

### MCLE Provider Certifications

The MCLE Provider Certification function is assigned to the Office of Admissions' Educational Standards department. The staff assigned to this task process applications filed by those seeking certification as Minimum Continuing Legal Education (MCLE) providers. An MCLE education program must be directly relevant to active members of the State Bar. The content of the program must enhance the member's professional ability to practice law and be directly relevant to the member's current knowledge of the law, including the obligations and professional standards as a member of the State Bar of California. A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an educational activity.

### Special Admissions

There are many other vehicles for practicing law in California aside from admission to the "regular" practice of law, although such practice is with several limitations. **MJP:** Attorneys admitted in other jurisdictions may apply to practice in California as In-House or Legal Services attorneys, subject to practice and employer limitations and other requirements set by the Multijurisdictional Practice (MJP) California Rules of Court and State Bar rules, which include the requirement that such applicants receive positive moral character determinations. Once admitted, MJP attorneys must pay a fee annually and comply with MCLE requirements. They are also subject to the State Bar's discipline system. **OSAAC:** In accordance with eligibility requirements established by Code of Civil Procedure §1282.4 and Rule 9.43 of the California Rules of Court, non-California licensed attorneys who intend to seek permission to represent a party in an arbitration proceeding in California must file certifications with the State Bar. **PRO HAC VICE:** California Rules of Court and State Bar rules permit out-of-state attorneys not admitted to practice law in California to appear in California courts in particular cases under the Pro Hac Vice provisions. The attorneys seeking such admission must file a copy of their application pleading and pay a fee in order to do so. The State Bar maintains state-wide records of those applications. **FLC:** Attorneys admitted in foreign jurisdictions who wish to practice the law of that jurisdiction in California must meet certain requirements, which again are established by California Rules of Court and State Bar rules, and file the necessary applications and fees in order to do so. Among the requirements for registration as a Foreign Legal Consultant are that the attorney must have practiced a minimum number of years and file a security for claims for malpractice and dishonest conduct.

### Legal Specialization

The Board of Legal Specialization, whose members are appointed by the Board of Governors, sets the policies for administration of the legal specialization program in California. The Board: 1) Provides policies and guidelines for certification and recertification of specialists; 2) Recommends new specialty areas and modifications to existing specialty areas to the State Bar's Board of Governors; 3) Acts upon the recommendations of the advisory commissions for approval or denial of certifications and recertifications; 4) Recommends accreditation of private certifying organizations; and 5) Promotes the program to attorneys and consumers.

There is an Advisory Commission, whose members are also appointed by the Board of Governors, for each of the 11 areas of specialization. The Commissions' primary responsibilities are to: 1) Review and make recommendations on certification and recertification applications to the Board of Legal Specialization; 2) Develop and grade the legal specialist examination; 3) Review and approve applications for approved education provider status and for individual education programs; and 4) Recommend revisions to the standards for certification and recertification to reflect current practice in the area of law. Nine staff members in the Office of Admissions assist the Board and the Commissions in carrying out the Legal Specialization program's requirements.

An attorney must pass a written examination (which is administered every other year), possess special education and experience and undergo reviews made by their peers and judges in order to be certified as a specialist in California. Certified specialists must pay an annual fee and they must recertify every five years.

Matters relating to the legal specialization program generally are reviewed by the Board Committee on Member Oversight.