

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: June 2013 – O-100

DATE: June 19, 2013

TO: Committee of Bar Examiners

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: Two-Day Examination Proposal

BACKGROUND:

While there have been more recent changes to the scope of the California Bar Examination and the grading process, there have been no substantive changes to the format of the examination for more than 25 years.

The primary reasons for having a bar examination are for public protection, to assess the knowledge and abilities of those seeking admission to the practice of law and have an objective measure as to whether those seeking admission have acquired through their legal studies the minimum competence expected of those entering the profession. As part of its ongoing responsibilities, the Committee, on a continual basis, reviews the scope, format and grading of the bar examination to ensure that it remains valid, reliable and fair. As part of that review, the Committee also considers whether the examination is being administered in the most effective and efficient way possible.

Over the last couple of years there have been several meetings held, which included Committee members, psychometricians, staff and others who may have been in attendance, to discuss these issues, and in particular, the concept of shortening the examination from three days to two days. As a result of these meetings, the Committee decided that the proposal for changing the current examination structure, so that the General Bar Examination would be administered over two days instead of three days, should be seriously considered. The Attorneys' Examination, which consists of the written portions of the General Bar Examination, is already administered over two days.

According to the psychometricians who have met with the Committee, a two-day examination (one day devoted to a written test and one day to the Multistate Bar Examination (MBE)) with equal weight assigned to the MBE and written portions would be comparable to the current three-day examination and would not negatively impact the reliability of the examination or decision making consistency. The psychometrician's report has been circulated to the Committee several times, but certainly if anyone wants another copy, please let me know.

After consideration of the various pros and cons of shortening the duration of the examination, the Committee took the following action:

It was moved, seconded and duly carried that in furtherance of the Committee's efforts to ensure that the California Bar Examination more efficiently tests applicants for admission to practice law in California to determine minimum competence in the law, that outreach on the proposal to reduce the General Bar Examination to two days from three days proceed with the concept of the two-day examination constructed as follows: 1) Tuesday morning session consisting of three hours during which three, one-hour essay questions would be administered, 2) Tuesday afternoon session consisting of three and one-half hours during which two, one-hour essay questions and one, 90-minute Performance Test would be administered and 3) Wednesday – morning and afternoon sessions consisting of three hours each, during which 100 multiple-choice items for each session would be administered (MBE); that during the grading process, the written and MBE portions of the examination be weighted equally.

The Committee had conversations about this proposal with several constituencies, including the Board of Trustees' Committee on Regulation, Admissions and Discipline Oversight. And, more recently, the Committee conducted a Public Forum to hear comments with regard to the proposal.

There have been a few letters written in opposition to the proposal and a few that were supportive, which were shared with the Committee, but probably the most vocal was the Dean from a California-accredited law school (and former Director for Examinations for the State Bar of California), who believes that there should be no changes to the current format. Most of the Committee members were present to hear the comments that were made during the Public Forum but for those who were not or who wanted to take more time to consider the comments, the transcript from the Public Forum was forwarded to the Committee on May 29, 2013.

DISCUSSION:

The Committee asked that the pros and cons of reducing the examination from three days to two days, which would necessitate certain adjustments to the number of written questions, the weighting and the length of the Performance Test, be provided. Thus far, I can think of the following:

Pros:

- The examination would more efficiently test the knowledge and skills necessary to determine minimum competence in the law.
- The examination would become more gender neutral.
- It would be less expensive to administer and grade, which means that the next request for an increase in fees would be further in future.
- There might be the opportunity to make the grading system more efficient by going to a 7-point grading system vs. the 40-100 point grading system currently in place.
- There exists the possibility that because there are fewer components, the time it takes for grading could be reduced.

Cons:

- There is a perception that the examination would be easier.
- There is a perception that giving more weight to the MBE portion of the examination would make the examination less valid for writing skills and send the wrong message to law schools.
- Reduces opportunity to impute scores when a portion of an examination is lost due to incidents that might occur during an administration of an examination that may negatively impact applicants' scores.
- Staff has enough going on, why "burden" them with another project?

I am sure there are several more bullet points that one could add to either list, but the bottom line is that this is a decision that the Committee needs to make – keeping in mind that once made, there would be several hurdles before it would be able to be implemented.

The examination is not designed to predict success as a lawyer or even that a lawyer is ready for the practice of law. In fact, the best predictor of bar examination scores are the grades an applicant received during law school. So, in a sense, the examination is confirmation that the necessary skills and knowledge were learned during the three or four years of law study, through whatever means, which are needed to show minimum competence as a lawyer.

The issue of what other requirements are necessary to ensure that those admitted to the practice of law in California are competent was recently addressed by the State Bar Board of Trustees' Task Force on Admissions Reform. After a lengthy and involved process, the Task Force has made several recommendations, which will add to the burdens of those wishing to be (or just) admitted – perhaps easing up on the examination that tests minimum competence would be an appropriate direction to take.

RECOMMENDATION:

Pending.

PROPOSED MOTION

Pending.