

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM NUMBER: Mach 2015 – O-101

DATE: March 11, 2015

TO: Committee of Bar Examiners

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: Proposed Changes to the Format of the California Bar Examination

BACKGROUND

The Committee of Bar Examiners (Committee) took the following action approving the proposal to reduce the General Bar Examination from three days to two days:

It was moved, seconded and duly carried, Member Steven Renick voting no, that effective at a yet to be determined date, the General Bar Examination be constructed as follows: 1) One morning session consisting of three hours during which three, one-hour essay questions would be administered, 2) One 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, 3) Morning and afternoon sessions consisting of three hours each, during which 100 multiple-choice items for each session would be administered (the MBE); that during the grading process of the reconstructed examination the written and MBE portions of the examination be weighted equally; and that an implementation plan, which should include the date of the first examination during which the reconstructed examination will be administered, be prepared by staff and submitted for review by the Committee during its October 2013 meeting in preparation for submission of the proposal to the Board of Trustees.

This decision was reached after many Committee meeting discussions, comments from individuals who attended a public forum held in May 2013 to receive input on the proposal (four individuals spoke at the public forum, including three law school deans) and in consultation with psychometricians. In addition, the Committee discussed the proposal with the Board of Trustees' Committee on Regulation, Admissions and Discipline Oversight during its May 2012 meeting. The proposal was also discussed with the Law School Council. While there were a few people who indicated they were

not in favor of the proposal, there did not appear to be a large number of people or groups of people opposed.

With regard to the timing of the examination, i.e., Tuesday and Wednesday or Wednesday and Thursday, it was thought that the days for the written portion may be subject to change depending on whether there is a conflict with the day of a significant religious holiday that a number of applicants might observe, such as Tisha B'Av. The Committee's action approving the change in the format of the California Bar Examination is subject to approval by the Board of Trustees, and the California Supreme Court may wish to be consulted as well.

During its October 2013 meeting, the Committee decided for various reasons not to proceed with the proposal and took the following action:

It was moved, seconded and duly carried that further consideration of the proposal to change the format of the California Bar Examination from three days to two days be deferred until such time the Committee considers it appropriate to proceed with forwarding the proposal to the Board of Trustees for its approval.

DISCUSSION

Throughout the process of considering the changes, the Committee conferred with several psychometric consultants and reports were prepared on several issues. One of the reports, "The Estimated Effect on Examination Quality and Passing Rates of Different Ways of Modifying California's Bar Examination" prepared by Stephen P. Klein, Ph.D. and Roger Bolus, Ph.D., was prepared specifically for consideration of the two-day proposal. Another report was prepared by a different psychometric consultant, Chad Buckendahl, Ph.D., at staff's request in response to some of the comments that were received during the public forum. Copies of the reports are available upon request.

As noted above, the Committee held a public forum to discuss the proposal, in addition to another issue relative to the Committee's law school regulation responsibilities. Two law school deans supported the concept, one law school dean was against the proposal and one member of the public was against. Excerpts from the transcript are available upon request.

In preparation for discussion of the matter during one of the Committee's meetings, staff was asked to list the various 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. While not all inclusive, the following represents the primary pros and cons of the proposal:

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 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.
- The 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 would be reduced.
- Staff's workload would temporarily increase.

There continues to be some confusion with regard to what the bar examination is intended to do. 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, one of the best predictors of bar examination scores is the grades an applicant received during law school. So, in one 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 bar examination is an examination to test minimum competence in the law.

When considering implementation issues, of particular importance is the cost associated with making the changes contemplated by the Committee. Currently, examination test centers are contracted for the next two years, so if it is determined to proceed, those contracts should be considered. Reducing the number of days would not be that expensive, however, compared to canceling a contract in its entirety, which would only happen if the dates of the examination were to change. That is unlikely.

When this proposal was approved in principle in 2013, it was determined that there would be significant cost savings if the duration of the examination was shortened. In preparing rough estimates of the savings, which are based on examinations developed, administered and graded in 2012, the following were the projected savings:

<u>Examination Development:</u>	
2012 Actual Cost:	\$2,334,624
Estimated Costs for 2-day:	\$2,103,987
Total Estimated Savings:	\$230,637

Examination Administration:

2012 Actual Cost:	\$3,309,292
Costs for 2-day:	\$2,831,148
Total Estimated Savings:	\$478,144

Examination Grading:

2012 Actual Cost:	\$604,492
Costs for 2-day:	\$430,798
Total Estimated Savings:	\$186,194

Total Estimated Savings: \$894,975

Since 2012, the costs associated with development, administration and grading of the examination have only gotten higher due to increases in such things as facility rental, proctor pay, the number of testing accommodations granted, staff salaries, etc., which translates to even greater savings in the future if the examination was shortened to two days. If savings such as those that are estimated at this time prove to be correct, the next request for an increase in the fees needed to pay for the expenses associated with administering admission requirements, will, most likely, not be before the Board of Trustees for several years.

Changing the examination, however, could not be done without spending some money. The primary expense associated with the changed format would be in the editing that would be required of the Performance Tests to make them into 90-minute Performance Tests rather than 3-hour tests. This could be accomplished using qualified contractors (members from the current Performance Test Team and Examination Development and Grading Team) and would most likely, result in costs in the neighborhood of \$20,000 to \$50,000 range. Additionally, substantive adjustments would need to be made to the grading software and other computer systems, which could cost up to \$100,000.

At its last meeting the Committee asked that this proposal be placed before it once again so it could take action that could result in placing the proposal in the queue for consideration by the Board of Trustees this year.

RECOMMENDATION:

It is recommended that the Committee affirm its prior decision to reduce the California Bar Examination from three days to two days.

PROPOSED MOTION:

Should the Committee agree with this recommendation, the following motion is suggested:

Move, the prior decision of the Committee, effective at a yet to be determined date, to have the General Bar Examination constructed as follows: 1) One morning session consisting of three hours during which three, one-hour essay questions would be administered, 2) One 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, 3) Morning and afternoon sessions consisting of three hours each, during which 100 multiple-choice items for each session would be administered (the MBE) and that during the grading process of the reconstructed examination the written and MBE portions of the examination be weighted equally, be affirmed; that an implementation plan, which should include the date of the first examination during which the reconstructed examination will be administered, be prepared by staff and submitted for review by the Committee during its April 2015 meeting in preparation for submission of the proposal to the Board of Trustees and consideration by the California Supreme Court.