

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: March 2016 – O-200

DATE: March 8, 2016

TO: Committee of Bar Examiners

FROM: Gayle Murphy, Senior Director, Admissions
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SUBJECT: PROCEDURES FOR GRADING OF THE FIRST-YEAR LAW
STUDENTS' EXAMINATION

BACKGROUND:

California *Business & Professions Code section 6060* sets forth the requirements for a person to be certified to the Supreme Court for admission and a license to practice law. Among those requirements is to take and pass the California Bar Examination (CBX). *Section 6060(h)* provides that students who attend unaccredited law schools must pass the First-Year Law Students' Examination (FYLSX), also known as the "Baby Bar," after completion of their first year of law study in order to be eligible to take the CBX.

"The FYLSX is the end result of a 1933 Report of President's Advisory Committee submitted to the Board of Governors of the State Bar. The report recited pressures in some law schools to secure and maintain enrollment of students not qualified to become members of the bar. It was further reported that because unqualified students were not eliminated in many unaccredited law schools, it was not until such students had failed the bar examination after years of study that they realized they would never qualify for admission to the bar. Beginning in 1935 the committee required all first year students to take an examination in first year courses, except for those students receiving first year course instruction in schools approved by the committee." *Bible v. Committee of Bar Examiners of the State Bar of California* (1980) 26 Cal.3d 548, 554, fn. 6.

"There is a strong public policy in the requirement of the FYLSX. It serves a dual purpose of protecting persons who are ill-suited for a legal career from continuing to spend time, money and effort following completion of a one-year study in an effort that has little chance of success, and it affords persons who are better qualified for a legal career an opportunity to measure the quality of their training and education after the first year study to better prepare themselves for the general bar examination." *Bible*, 26 Cal.3d at 554. "[T]he FYLSX, therefore, is the only means by which students at unaccredited law schools can be assured of a reasonably accurate appraisal of their

progress or lack of progress in the study of law.” *Lupert v. California State Bar* (1985) 761 F.2d 1325, fn. 3.

In addition, students who are academically disqualified from ABA Approved and California Accredited law schools may have their readmission wholly or partially contingent on passing the FYLSX or they may seek obtaining an additional year of law study credit for purposes of transferring to other schools. Students also are required to take and pass the FYLSX if they have not completed at least two years of college prior to matriculating at ABA Approved or California Accredited law schools.

The FYLSX is administered two times each year, in June and in October. It is a one-day examination with two parts, a 4-hour written portion administered in the morning and a 3-hour multiple choice portion given in the afternoon. The examination tests on three first-year subject areas: Contracts, Criminal Law, and Torts.

The essay questions for the written portion are solicited primarily from law school professors all around the country. When questions are received, they are assigned a unique code number and then banked for future use. For each administration of the FYLSX, a member of the Examination Development and Grading Team (EDG Team), on a rotating basis, selects and edits four essay questions (one from each of the three subjects, with one of the subjects being repeated). Essay questions are not reused.

Unlike the Multistate Bar Examination (MBE) component of the CBX, which is developed and graded by the National Conference of Bar Examiners, the FYLSX multiple-choice test is developed and graded in-house. It covers the same three subjects as the essay questions.

The multiple-choice section consists of 100 questions. There are several forms of the multiple choice test. The various forms are cycled from administration to administration. Multiple choice “raw scores” (i.e., the number of items answered correctly) are converted to a multiple-choice converted score on a 400-point scale. This process adjusts for the possible differences in the difficulty of the multiple-choice items on different administrations of the examination. As a result, an applicant’s converted multiple-choice score is not affected by the difficulty of the particular version of the examination that the applicant takes. Applicant answers are recorded on Scantron answer sheets.

The essay section consists of four questions. An applicant’s essay answer is assigned a grade from 40 to 100, in 5-point intervals. Total raw written scores can therefore run between 160 and 400 points. Total raw written scores are converted to the same 400-point scale of measurement as that used for the multiple-choice portion. This is done to adjust for possible differences in the difficulty of the essay questions and for variations in grader standards.

An applicant’s total scaled score on the FYLSX is the sum of that applicant’s converted scores on the multiple-choice and written sections. This step gives these sections equal weight in determining the total score. All applicants who receive a total scaled score of 560 or above are passed. Those who receive a total scaled score of less than 540 are

failed. If the total scaled score is at least 540 but less than 560, that applicant's examination is automatically sent to reappraisal, where a member of the EDG Team reviews the entire examination and determines whether, taken as a whole, it merits a pass or fail.

The anonymity of the applicant is preserved throughout the grading process. Each applicant is assigned a code number that is not known to them until results of the examination are released.

Applicants' answers to the essay questions are graded by attorneys who are licensed to practice law in California, with proven ability at legal analysis. The FYLSX graders are chosen from the larger pool of CBX graders. Three graders are assigned to each FYLSX essay question panel. The grading calibration sessions are led by an EDG Team member, whose assignment is generally rotated among the EDG Team on a last name alphabetical and availability basis.

Of note, data from a past study conducted by the Committee's psychometrician suggested that the FYLSX screens into the CBX test-taking population candidates who have about a 50% likelihood of eventually passing the CBX, and screens out almost all of those who are very unlikely to eventually pass the CBX. (Klein, S. and Bolus, R. (2011), *How Well Does the First-Year Law Students' Examination Predict Success on the California General Bar Examination?* Report PR-11-01 prepared for the Committee of Bar Examiners of the State Bar of California.)

Credit for law study completed after passing the FYLSX is governed by the *Business & Professions Code* and by *Rule 4.31* of the *Admissions Rules*, which provides as follows:

An applicant who is required to pass the First-Year Law Students' Examination will not receive credit for any law study until the applicant passes the examination. An applicant who passes the examination within three consecutive administrations of first becoming eligible to take the examination will receive credit for all law study completed to the date of the administration of the examination passed, subject to any restrictions otherwise covered by these rules. An applicant who does not pass the examination within three consecutive administrations of first becoming eligible to take the examination but who subsequently passes the examination will receive credit for his or her first year of law study only.

DISCUSSION:

With regard to the FYLSX, *Rule 4.56* of the *Admissions Rules* states that “. . . The Committee determines the examination's format, scope, topics, content, questions, grading process, and passing score.” Over the years, the Committee has studied the examination several times. In particular, the Committee considered whether the examination should be all multiple-choice, which would essentially provide the same results earlier in the cycle, but has not changed the examination as a result of those considerations. Primarily, it was believed that requiring essay questions is necessary to ensure that applicants continue to work on their writing skills.

This item was put on the Committee's agenda for its March 2016 meeting pursuant to the Examinations Subcommittee's 2015-2016 Goals. Consideration of the item is also consistent with the Subcommittee's ongoing goal to review examination process, including scope, format, and grading to determine whether changes to the current process should be explored. After discussion during the March meeting, the Committee may wish to direct staff to bring back a specific agenda item that proposes that the Committee: 1) take no action with respect to the procedures for grading of the FYLSX; 2) direct Staff to develop a proposal to change the procedures for grading of the FYLSX; or 3) go in any other direction it deems appropriate in consideration of this matter.

RECOMMENDATION

Pending.

PROPOSED MOTION

Pending.