

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: March 2016 – O-100

DATE: March 14, 2016

TO: Committee of Bar Examiners

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: **Report on March 1, 2016 Law School Assembly and Council Meetings**

BACKGROUND

On February 3, 2016, an invitation to attend the March 1, 2016 meeting of the Law School Assembly (all California law school Deans) was emailed to the Deans. A copy of the invitation is attached. Over fifty people attended the meeting, which included approximately 30 law school representatives, Board of Trustees Members, Committee members and staff. The meeting with the Deans was followed by a meeting of the Law School Council (a subset of the Assembly composed of members elected by their peers by categories of law schools and appointed by the Board of Trustees, three members of the Committee of Bar Examiners and one member of the Board of Trustees), which did not have a quorum present; however, several of the law school representatives attending the Assembly Meeting who are not Council members stayed for the Council meeting.

DISCUSSION

The meeting began with a presentation from Presiding Judge Catherine Purcell of the State Bar Court and State Bar Executive Director Elizabeth Rindskopf Parker on the many resources available to lawyers, the public and law students on the State Bar's website. These include links to documents and information regarding career opportunities, educational materials, information resources and participation opportunities, including invitations to provide public comment on pending State Bar proposals and Formal Opinions from the State Bar's Standing Committee on Professional Responsibility and Conduct.

Ms. Parker and Leah Wilson, the State Bar's Chief Operating Officer, next provided a report on the status of the Task Force on Admissions Regulation Reform's (TFARR) proposals regarding possible new admission requirements. There was a lengthy dialogue between those present, which included several law school representatives who had participated on the TFARR. Ms. Parker indicated her appreciation for the input that was received during the meeting, that she would be making a report to the State Bar's Board of Trustees at its meeting on March 10 and 11, and that she expected to have

final recommendations, which may include modest modifications to the proposals that originally had been proposed and approved, ready for review by the Board of Trustees in the Fall.

The Committee of Bar Examiners (Committee) Chair, Lee Wallach, and I provided information regarding the status of pending projects and issues before the Committee, including: the status of implementation of the modified bar examination format effective with the July 2017 administration; proposed amendments to law school rules that impact schools for which the Committee has oversight, about which a public forum to receive comment has been scheduled for the morning of April 29, 2016; the Uniform Bar Examination and that there was no current consideration scheduled for adopting it in California; new Open/Closed meeting rules affecting the State Bar and the Committee's meetings; and the impact on law schools of new laws protecting applicant confidentiality, in particular with respect to the release of information by the Committee to schools about their students' examination pass/fail status. Several of the law school representatives present expressed their concern that they no longer would receive pass/fail lists following the release of results from the various examinations and indicated their willingness to work with the State Bar to facilitate receipt of the information in the future.

The meeting concluded with presentations from Jayne Kim, Chief Trial Counsel of The State Bar of California, on Lessons Learned from the Discipline System and the availability of representatives from her office to make presentations to law schools on the discipline system, and from Kellie Evans, Senior Director, Administration of Justice, Office of Legal Services of The State Bar of California, on the success of the several Incubator Projects at law schools, which are being funded by grants and established in coordination with the State Bar's Office of Legal Services.

The Law School Council, and several other interested participants, met following the Assembly Meeting and discussed in more depth several of the topics that had been discussed during the morning session. One Council member, Dean Barbieri, Dean, John F. Kennedy School of Law, asked that the Committee consider conducting a "Cut Score Analysis," as there is a perception by some that the minimum passing score required by California, which is the second highest in the United States, is higher than it needs to be to determine minimum competence.

Although not specifically discussed at either the Law School Assembly Meeting or the Law School Council Meeting, the Committee may be interested to know the last time the Committee considered the appropriate minimum passing score for California was in 1987 when it set the minimum passing scaled score of 1440. This was done at the time the Committee determined that the written portion of the bar examination should be scaled to the Multistate Bar Examination. Dr. Stephen P. Klein, the Committee's psychometrician at the time, provided advice during the Committee's deliberations on the subject and ultimate adoption of the minimum passing score required on the examination, which has remained unchanged since that time. Dr. Klein also provided expert testimony as the scaling issue wound its way up to the Legislature. Following a hearing, Business & Professions Code section 6046.6 (c) was enacted, stating that:

“Scaling may be used on the bar examination for the purpose of maintaining an examination of uniform difficulty from year to year.”

Dr. Klein proposed the minimum passing score of 1440, which was a number he arrived at by using the average of the pass/fail standards that had been used on all bar examinations administered in California between 1977 and 1986. The average was computed by using scaling to calculate total scaled scores on each of the 20 previous administrations of the bar examination, finding the total score on each examination that would have produced the same passing rate as actually occurred on that examination, and then determining the average of these standards. Dr. Klein’s report, the “History of General Bar Examination Structure and Pass/Fail Rules,” dated July 9, 2011, which he prepared at the Committee’s request and which was authorized for publication by the Committee, discusses the process in more detail.

While the Committee has a duty to continue to study the validity, reliability, and fairness of the examinations it administers on an ongoing basis, to undertake a study of the appropriate score on the bar examination to determine minimum competence is not lightly entered into. There are only five states that I know of that have conducted pass line studies: New York, Florida, Minnesota, Ohio and Virginia. I believe the study results from most of the states found that the states’ minimum passing scores were too low and efforts were made to raise the required score, with mixed results. For a detailed look at what is involved in doing the kind of study that would be most appropriate, please read the article that Thomas Pobjecky wrote on Florida’s experience: “The Long and Winding Road: Determining the Pass/Fail Line for Florida’s Bar Examination,” which appears in The Bar Examiner and can be found online at: http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2003%2F720203_pobjecky.pdf

Another article in The Bar Examiner describing the process is entitled “Clearing the Bar: How to Set the Standard,” which was written by Michael Kane, Ph.D., former psychometrician for the National Conference of Bar Examiners, and can be found online at: http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2001%2F700401_KaneMerrittKleinBahlsCorneille.pdf

While there are no budget and resources available to coordinate a study of the pass/fail standard for the California Bar Examination in 2016, if the Committee wishes to consider this matter, it is something that should be placed on the Subcommittee on Examinations’ goals for further consideration this year.

RECOMMENDATION

It is recommended that the report on the Law School Assembly and Law School Council Meetings be received and filed. What recommended action should be taken, if any, regarding conducting a pass line standard study is pending further discussion by the Committee.

PROPOSED MOTION

If the Committee agrees with the recommendation, the following motion should be made:

Move, that the report on the March 1, 2016 Law School Assembly Meeting and Law School Council Meeting be received and filed.

MEMORANDUM

DATE: February 3, 2016
TO: Deans, California Law Schools
FROM: Gayle Murphy, Senior Director, Admissions
SUBJECT: **LAW SCHOOL ASSEMBLY MEETING – MARCH 1, 2016**

This year's Law School Assembly Meeting, which includes the Deans of all California law schools (ABA-approved, California-accredited and California-unaccredited), will be held on Tuesday, March 1, 2016; the Law School Council, which is comprised of a subset of Deans elected by the various categories of Law School Deans and appointed by the State Bar of California's Board of Trustees, will meet immediately following. Meeting details are provided on the following page.

The agendas for both meetings are designed to solicit feedback from the Deans regarding two critical issues that will be considered by the Board of Trustees in the near term:

1) Implementation of the California Public Records Act

Business and Professions code section 6026.11 made the State Bar subject to the California Public Records Act effective January 1, 2016. Business and Professions Code section 6060.25, the "admissions" statute, now prohibits the release of any information regarding bar admission applicants. Under the new statutory scheme, it appears as though the State Bar will no longer be able to post a bar examination pass list, or share examination result information with law schools regarding their students, which includes pass/fail status and the number of times the students have taken the examination. In addition, the new law will, most likely, require the State Bar to modify the format of the statistics that are published on its website.

2) Modified Implementation Recommendations: Task Force on Admissions Regulation Reform (TFARR)

TFARR's recommendations as currently worded would require: (a) admission applicants to have taken at least 15 units of practice-based, experiential courses designed to develop law practice competency, or in lieu of some or all of the 15 units of practice-based, experiential coursework, participation in a State Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school; (b) prior to admission or by the end of one year following admission, applicants/new

ATTACHMENT

attorneys to devote at least 50 hours of legal services to pro bono or modest means clients; and (c) new admittees to take ten additional hours of mandatory continuing legal education (“MCLE”) courses specifically focused on law practice competency training, over and above the required MCLE hours for all active members of the State Bar.

Possible variations of these recommendations being studied include: 1) initial implementation of a 6-unit experiential coursework requirement (with the intention of increasing the number over time), which would conform with the new requirement for ABA law schools; 2) modification of the 50-hour pro bono service requirement to reflect that those hours must be completed pre-admission, would apply to both JD and LLM students seeking admission, and would be limited to pro bono services; and 3) modification of the new attorney 10-hour training requirement to indicate that those hours would count towards an attorney’s 25 hour/three-year requirement, not be an addition to the hours now required.

In addition to the above subjects, meeting agendas will include discussions regarding the status of Law School Incubator Programs, the modified California Bar Examination scheduled for implementation with the July 2017 administration and other topics of mutual interest to the law schools and the State Bar.

Meeting Logistics:

Law School Assembly Meeting

March 1, 2016
10:30 a.m. – 2:00 p.m.
(Lunch will be provided)
The State Bar of California
180 Howard Street
San Francisco, California

Law School Council Meeting

March 1, 2016
2:00 p.m.* – 4:00 p.m.
The State Bar of California
180 Howard Street
San Francisco, California

We look forward to seeing you on March 1, 2016 in San Francisco.

** Meeting to convene immediately following conclusion of the Law School Assembly Meeting*