

AGENDA ITEM

132 JULY 2015

DATE: June 29, 2015

TO: Members, Admissions and Education Committee
Members, Board of Trustees

FROM: Patricia P. White, Chair, Committee of Bar Examiners
Gayle Murphy, Senior Director, Admissions

SUBJECT: PROPOSED MODIFICATION TO THE FORMAT OF THE CALIFORNIA BAR EXAMINATION

EXECUTIVE SUMMARY

After several years of study discussion and after consideration of comments that were received during a public forum that was held to receive comment concerning the proposal, the Committee of Bar Examiners ("Committee") approved the concept of modifying the format of the California Bar Examination, subject to the approval of the Board of Trustees. The California Bar Examination includes the General Bar Examination, which currently is administered over a three-day period, and the Attorneys' Examination, which is administered over two days. The proposed modification eliminates one day of testing for both examinations. The modified General Bar Examination would 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 from the Multistate Bar Examination (MBE). The Attorneys' Examination would be a one-day examination with morning and afternoon sessions totaling six and one-half hours, during which the five essay questions and one Performance Test from the General Bar Examination would be administered. If the Board of Trustees approves the Committee's proposed modification of the California Bar Examination, the changes would be implemented effective with the July 2017 administration.

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. Attached for your information is a copy of a report prepared by the Committee of Bar Examiners' (Committee) former psychometric consultant, which discusses the history of the bar examination (Attachment A).

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 to 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.

As a result of its last analysis, the Committee determined that it was appropriate at this time to seriously consider modifying the format of the examination so that the General Bar Examination could be administered over two days instead of the three days required by the current format. Attachment B is a bulletin that describes the current bar examination format and grading process.

In preparation for development of a proposal for consideration by the Committee, in October 2011, a meeting was held with three psychometricians to discuss the format of the California Bar Examination and to explore the feasibility of possible changes. In addition to the psychometricians and staff, a working group of the Committee was designated to study the matter. The group discussed the pros and cons of making changes, the psychometric impacts of changing various components of the examination and whether making changes would negatively impact the reliability or validity of the examination. The group's consensus was that the Committee should proceed with a proposal for changing the current examination structure so that the General Bar Examination would be administered over two days instead of three days.

The working group agreed that a California two-day bar examination should consist of the same components as the current examination, i.e., Essay questions, Performance Tests and the Multistate Bar Examination (MBE). The psychometricians believed that a two-day examination (one day devoted to a written test and one day to the multiple-choice MBE), with equal weight assigned to the MBE and the 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.

During its December 2011 meeting, the Committee considered the recommendation of the working group, which included a report from its primary psychometrician on whether the psychometricians' proposition was correct. In conducting the analysis, the psychometrician applied various examination format scenarios to existing score data from twenty examinations that had been administered in the past. The psychometrician's analysis found that administering a two-day examination would yield essentially the same results as those for a three-day examination and that it would be more efficient. According to the psychometrician, testing applicants over two days could be done "...in a way that improves test quality, maintains existing pass/fail standards, and does so without making it more difficult for minority applicants to pass." Attachment C is the report entitled "The Estimated Effect on Examination Quality and Passing Rates of Different Ways of Modifying California's Bar Examination," which was prepared by Dr. Stephen Klein and his colleague, Roger Bolus, Ph.D.

DISCUSSION

In addition to discussion of the proposal during several of its meetings, which were duly noticed, the Committee held a public forum in May 13, 2013 to receive comments about the proposal, in addition to another issue concerning the Committee's responsibilities related to the oversight of accredited and unaccredited law schools in California. The press release announcing the opportunity was posted on the State Bar's website at:

At the public forum, two law school deans supported the concept of the two-day examination, one law school dean was against the proposal and one member of the public was against it. Attachment D is a report prepared at the Committee's request by one of its psychometricians in response to some of the comments that were made during the Public Forum. There were also comments in favor of the proposal made by others, which were contained in an article that appeared in the *Daily Journal*, and two letters voicing opposition that were received.

To assist in its study and discussion of the proposal, the Committee asked staff 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 from staff's perspective:

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 the 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 and that may negatively impact applicants' scores, would be reduced.
- Staff's workload would temporarily increase.

After several years of study and consideration, the Committee took the following action earlier this year approving the proposal to reduce the General Bar Examination from three days to two days:

It was moved, seconded and duly carried that 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 in preparation for submission of the proposal to the Board of Trustees and consideration by the California Supreme Court.

While it is believed that most future bar examination applicants would enthusiastically support a two-day examination in lieu of a three-day examination, it will take some time to make the necessary adjustments. There is also the two-year notice requirement contained in Section 6046.6(a) of the Business and Professions Code, which states: "The examining committee shall not alter the bar examination in a manner that requires the substantial modification of the training or preparation required for passage of the examination, except after giving two years' notice of that change...." Although it is debatable whether the intended changes would **substantially** affect an applicant's training or preparation, in an abundance of goodwill, it is suggested that two years' notice of the intended changes be given. Thus, if the Board of Trustees approves the Committee's intended changes during its July 2015 meeting, notice could be circulated shortly thereafter that the Committee intends to change the format of the examination effective with the July 2017 administration of the examination. If something should happen after the notice is given, such that proceeding with implementation of the changes is no longer viable or the best course of action, the Committee could always withdraw the notice.

With regard to the Attorneys' Examination, the Committee believes that it should be modified to correspond with the proposed changes to the General Bar Examination, and that it consist of one day of testing, comprised of the same essay and Performance Test questions administered on the General Bar Examination.

It is apparent from discussion of the proposal that there seems to be continued 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. Nor is it designed to test endurance. 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 bar examination is one step of the continuum, which begins the first year of law school and continues throughout an attorney's lifetime as he/she obtains the necessary skills and experience to become a "good" attorney.

Contrary to some assertions, the proposed modifications to the California Bar Examination will not make it an easier test to pass, as the minimum passing score (a scaled score of 1440) remains the same. It will continue to test minimum competence in the law. The modified format makes it a more efficient testing tool to do so.

During its June 2015 meeting, the Committee took the following action:

It was moved, seconded and duly carried that the previously approved modifications to the General Bar Examination be implemented beginning with administration of the July 2017 California Bar Examination; that the Attorneys' Examination also be modified to consist of the one-day of essay and Performance Test questions administered during the General Bar Examination, effective with the July 2017 administration; that if during its July 2015 meeting the Board of Trustees approves the proposal to modify the General Bar Examination to consist of: 1) One morning session during which three, one-hour essay

questions would be administered, 2) One afternoon session 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, notice of the intended changes immediately be circulated; and that final implementation continue to be subject to consideration by the California Supreme Court.

The Committee has briefed its Board of Trustees' oversight committee several times on this proposal since its original action was taken to study the issue in 2011. At this meeting, the Committee is asking that the Board Committee recommend to the Board of Trustees that the Committee's proposed modification of the California Bar Examination be approved.

FISCAL/PERSONNEL IMPACT

During its June 2015 meeting, the Committee considered the following updated information regarding the estimated savings that could be achieved if the two-day examination is ultimately administered:

| Examination Development | Estimated Saving |
|-------------------------|---------------------|
| Travel | \$ 4,319.00 |
| Catering | \$ 614.00 |
| Question Development | \$ 3,300.00 |
| Question Purchase | \$ 2,380.00 |
| Pre-Testing | \$ 3,180.00 |
| Consultants | \$ 50,325.00 |
| Printing | <u>\$104,079.00</u> |
| Total Estimated Savings | \$168,197.00 |

| Examination Administration | Estimated Saving |
|----------------------------|---------------------|
| Facilities | \$128,144.00 |
| Tables and Chairs | \$ 33,650.00 |
| Parking | \$ 12,763.00 |
| Water | \$ 4,122.00 |
| Phones | \$ 8,566.00 |
| AV | \$ 18,268.00 |
| Guards | \$ 45,184.00 |
| Staff Overtime | \$ 10,800.00 |
| Staff Travel | \$ 17,700.00 |
| Proctors | <u>\$448,289.00</u> |
| Total Estimated Savings | \$727,486.00 |

| Examination Grading | Estimated Saving |
|--------------------------|------------------|
| Grader Prep Fees | \$ 41,870.00 |
| Grader Book Fees | \$104,198.00 |
| Grader Travel | \$ 6,300.00 |
| Temporary Outside Help | \$ 50,641.00 |
| Calibration Meeting Room | \$ 4,275.00 |
| Calibration Catering | \$ 6,719.00 |
| Delivery | \$ 4,039.00 |
| Supplies | \$ 3,682.00 |
| Copier | \$ 4,354.00 |
| Total Estimated Savings | \$226,078.00 |

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| Total Estimated Savings: \$1,121,761.00 |
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There will be some costs associated with changing the format of the examination, including such things as software programming and the editing that would be required to convert the currently banked 3-hour Performance Tests into 90-minute Performance Tests. This could be accomplished using qualified contractors (members from the current Performance Test Drafting Team and Examination Development and Grading Team) and would, most likely, result in costs in the neighborhood of \$50,000 - \$75,000. The anticipated software changes are expected to cost between \$100,000 and \$150,000.

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

BOARD COMMITTEE RECOMMENDATIONS

If the Admissions and Education Committee agrees with the Committee's recommendation to modify the format of the California Bar Examination, it should recommend that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the Committee of Bar Examiners' proposed modifications to the California Bar Examination, which would result in a General Bar Examination consisting of: 1) one morning session during which three one-hour essay questions would be administered, 2) one afternoon session 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 Multistate Bar Examination), and in an Attorneys' Examination consisting of one-day of the essay and Performance Test questions administered during the General Bar Examination, effective with the July 2017 administration; that during the grading process of the modified examination the written and MBE portions of the examination be weighted equally; that notice of the intended changes immediately be circulated; and that final implementation continue to be subject to consideration by the California Supreme Court.

ATTACHMENT(S) LIST

- A.** Report on History of the Bar Examination
- B.** Bulletin on Bar Examination Format and Grading Process
- C.** Report on The Estimated Effect on Examination Quality and Passing Rates
- D.** Report on Key Factors to Consider When Engaging in A Development or Redevelopment Process