

**COMMITTEE OF BAR EXAMINERS
ADVISORY COMMITTEE ON
CALIFORNIA ACCREDITED LAW SCHOOL RULES
MINUTES**

Thursday, February 1, 2018
3:00 PM – 5:00 PM

The State Bar of California
845 S. Figueroa Street
Los Angeles, CA 90017

Questions regarding these minutes should be directed to the Senior Administrative Assistant, David Knight, at (415) 538-2310 or the Manager for Educational Standards, George Leal, at (415) 538-2378.

Meeting convened with all Members present: Erika Hiramatsu, Chair of the Committee of Bar Examiners, Karen M. Goodman, Esther P. Lin, Dean Dean Barbieri, Dean Jackie Gardina, Dean Greg Brandes (Chair).

Staff Present: Amy Nunez, Interim Director of Admissions, George Leal, Program Manager for Educational Standards, Lisa Cummins, Program Manager for Examinations, Donna Hershkowitz, Chair of Programs

Also Present: Dean Robert Strouse, Taft Law School, Lee Wallach (member of the Committee of Bar Examiners), Dean Ira Spero, Peoples College of Law, Dean Laura Palazzolo, Lincoln Law School San Jose, Dean Andrea Lua and Dean of Students / Registrar Maren Carmona, Pacific Coast University College of Law.

1. Call for Public Comment [The Chair reserves the right to limit the duration of the public comment period] (Greg Brandes)

The Chair offered members of the public and law school guests the opportunity to offer comment on any matter on or off the agenda to which the Committee's attention should be directed. There being none, the Chair indicated that an opportunity for public comment on individual agenda items, at the time they are considered, may be provided, subject to time availability, and some such comments were received.

2. Draft Minutes of the Meeting of November 30, 2017 (Attachment A) (Greg Brandes and George Leal)

Motion was made, duly seconded, and approved unanimously to approve the draft minutes of the November 30, 2017 meeting without modifications.

3. Examination Statistics and Reports, Specifically Definition of "Taker" and "Completer" in Relation to Required Reporting (Attachment B) (Lisa Cummins and Amy Nunez)

Ms. Nunez presented some of the history of the definition matter. She described how the Committee of Bar Examiners changed the definition of the test takers included in the denominator of the pass rate fraction, effective with the release of results from the February 2017 bar exam, to a definition that included only those who “completed” the bar exam, which included requiring at least a score of 40 on each essay. She noted this became a subject of debate late in 2017, resulting in the Committee revisiting the earlier decision in its last several meetings. Ms. Cummins then presented the staff proposal to resolve the definitional issue, which was incorporated in the memo and attachments made a part of the Committee’s agenda for the meeting on February 2 – 3. In it, the “completer” terminology is abolished, and the word “taker” is defined to include anyone who submits answers for all sections of the exams, whatever the score on those sections – or individual essays – may be. She reviewed the proposed Committee policy language incorporating this concept and explained that the staff intended that the word “taker” have this meaning across all of its uses, including in the Rules and Guidelines.

The RAC raised several concerns about the implications of this definition for the data that was provided in November, as it was not clear whether the data provided to schools used this new definition of “taker”, the one applied in 2017, or the older one (which included all those who started the exam as “takers”. Staff stated, upon review, that the data supplied used the oldest definition, in which the student was included if she or he appeared at any portion of the exam. The RAC members requested that the Bar update the data provided to match the definition that was finally adopted, and this was taken under advisement by staff. Without that information, CALS could be reporting people who did not “take” the exam, as now defined by the Committee, and so introduce additional confusion.

No action was called for by the RAC, in that the definition is contained in a Committee policy, not the Rules or Guidelines. But the general consensus of the RAC was to support the proposed definition, to clarify matters and allow reporting to proceed, but to continue to seek information that exactly matches the Committee’s definition.

4. Discussion re Current and Future Minimum Bar Passage Rate Reporting (George Leal)

Mr. Leal refreshed everyone’s recollection regarding the original guideline, the suspension of the guideline owing to the unavailability of data during 2016 and 2017, the data which was reported to schools once the statute was changed, and the discussion at the Committee of Bar Examiners regarding the definition to be used when reporting the denominator of the pass rate calculation (“taker” v. “completer”). He indicated that a staff proposal to address the definitional questions and settle the matter is coming before the Committee via the Subcommittee on Educational Standards during the upcoming meeting. He expects this definition to resolve the remaining issues, and therefore, since the Committee already voted to lift the suspension of the guidelines 12.1 and 12.2, it is now time to determine when the CALS should report. Originally, it was felt by staff that the CALS should furnish interim reports immediately, covering the years ending in 2016 and 2017, once the data was made available. Since the definitional question arose, and has taken some time to resolve, staff is no longer certain this provides significant public benefit, especially since schools have an independent statutory reporting obligation under B&P Code section 6061.7 to report on their pass rates via that form. He asked the RAC to discuss and provide a recommendation on the timing issue.

Dean Gardina moved that RAC recommend to the CBE that the reporting now be done at the time of the regular reporting period, since the benefit to be gained from an additional sequence of reporting would be very limited. Her motion was seconded by Dean Barbieri, and the RAC discussed how the MPR and 6061.7 reporting obligations overlap to provide significant timely information to the public. The RAC approved the recommendation unanimously.

5. Discussion re Minimum Competence Research Materials (Attachment C) (Greg Brandes)

Dean Brandes presented a list of resources on minimum competence for the first year practice of law as that concept has been explored by numerous studies, research reports, surveys, and other social science work, and governing bodies that have addressed the definition in the past. He noted that the definition of minimum competence is a workplan item for the Committee of Bar Examiners through its Operations and Management Committee, and so the RAC can expect to be involved in those discussions soon, and this research is intended as a resource for RAC members to be briefed on what has already been done in the area. Several members expressed their appreciation for the work and information. Item is for information only. No RAC action was required.

6. Status of the Proposed Rule, Statute and Guideline Revisions Respecting Unaccredited Law Schools and Distance Learning (George Leal and Amy Nunez)

Ms. Herschkowitz presented on the status of the proposal in respect to the Supreme Court. The court recently asked for an opinion on whether the Court has jurisdiction over accreditation rules, and the preliminary opinion of the OGC was that it did not. That opinion needs to be finalized and sent to the Court, and could change, she noted.

Ms. Herschkowitz asked deans for their opinion of the requirement of mandatory accreditation, in the event that requirement proceeds separately from the implementation of rules permitting accreditation of distance learning law schools. She noted there was some State Bar “fatigue” in the office of the legislature, and moving forward with matters that did not require legislation might be in the State Bar’s interests at this time.

The RAC did not object to the split of the mandatory accreditation function from the approval of rules permitting accreditation of online and distance learning. The State Bar will solicit input from schools more generally on the issue in the next few weeks.

7. Status of State Bar Studies (Amy Nunez)

Ms. Nunez reported on the status of the studies. The Chair offered the opportunity for public comment and discussion by the RAC. There was no public comment, but Dean Barbieri asked if there were judges involved in the job analysis working group and suggested that they be included.

8. 2018 RAC Goals Check-in (Attachment D) (Greg Brandes)

The Chair briefly reiterated that these were the goals approved by the RAC for its work during 2018 and asked if members had any amendments or suggestions. Dean Gardina suggested that goal four be the subject of further conversation at the next meeting.

9. Future Meeting Dates – approval of tentative 2018 RAC Meeting Dates (Attachment E) (Greg Brandes)

The Chair presented the proposed 2018 meeting dates, noting that while Committee members are asked to reserve all of these dates, it may well be that some dates will not be used. Motion was made, duly seconded, and approved unanimously to approve the list of 2018 meeting dates without modifications.

10. Adjourn

Meeting adjourned approximately 4:50 PM.

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The notice and agenda is available at: <http://www.calbar.ca.gov/Admissions/Law-School-Regulation/Committee-of-Bar-Examiners-Meetings>