

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

DATE: June 22, 2018

TO: Committee of Bar Examiners

FROM: Destie Overpeck, Assistant General Counsel
Amy Nuñez, Interim Director of Admissions

SUBJECT: Review of Subcommittee Roles

BACKGROUND

The Committee of Bar Examiners (“Committee” or “CBE”) consists of 19 members (currently there are 18) and four Subcommittees: Educational Standards (8 members), Examinations (7 members), Operations & Management (6 members), and Moral Character (9 members). As of January 1, 2018, pursuant to amendments to Business and Professions Code section 6026.7, the Committee and its Subcommittees became subject to the Bagley-Keene Open Meeting Act (“Bagley-Keene,” Gov. Code sections 11120, et seq.). Under Bagley-Keene, if a quorum of members of a subcommittee is meeting, non-subcommittee Committee members may not participate in the discussions, may not ask questions, should sit in the audience section and may not be present at the closed sessions. If a Committee member is in the audience, it is also not appropriate for that member to make a public comment. A non-subcommittee member can weigh in on open and closed-session matters when the subcommittee’s recommended decision is considered by the full Committee. That results in some matters being discussed twice, once at the subcommittee level, and again by the full Committee.

During the February 2, 2018 meeting of the Subcommittee on Operations and Management, it was recommended, in order to allow all Committee members to participate in the subcommittee discussions and decisions, that the Committee dissolve its Subcommittees. Each former chair of the eliminated subcommittee would act as the Committee liaison and could seek assistance with that role from another Committee member. Those individuals would review the pertinent issues before each meeting and present the matters to the Committee. It was also suggested that the Chair of the Committee could designate two Examinations Subcommittee members from Northern California and two from Southern California to review testing accommodation petitions appeals and make recommendations to the Committee.

At the February 20, 2018 Committee meeting, instead of eliminating the subcommittee meetings, it was moved, seconded and duly carried that the Committee would assign review of Chapter 6 testing violations to the Examinations Subcommittee and delegate the authority to make decisions on testing accommodation appeals, examination petitions, and time-sensitive exam eligibility requests to the Examinations Subcommittee for the periods during months when no Committee meeting are scheduled and/or during the four weeks before the California Bar Examination or First-Year Law Students' Examination, to ensure that applicants receive prompt decisions. Revisitation of the role of subcommittees was anticipated after the Committee gained additional experience with the application of Bagley-Keene.

DISCUSSION AND OPTIONS:

Three options illustrate the range of approaches to the use of subcommittees:

1. **Status quo** – continue with the current subcommittees and hold subcommittee meetings followed by a full CBE meeting:

The advantages of this option include the following:

- Additional leadership opportunities for members.
- Smaller group available to make decisions between full CBE meetings.
- Work and recommended decisions performed by subcommittee members.

The disadvantages of this option include the following:

- Duplicate discussions and debate.
- Non-subcommittee members have to sit idle for intervals of time.

2. **Eliminate the subcommittees:**

The advantages of this option include the following:

- No duplicate discussions and debates.
- Minimizes downtime for members.

The disadvantages of this option include the following:

- Eliminates additional leadership opportunities for members.
- Leaves no smaller group to handle matters that must be decided between full CBE meetings. (For example, the Examinations Subcommittee has delegated authority to make decisions on testing accommodation appeals, examination petitions, and time-sensitive exam eligibility requests during months when no Committee meeting are scheduled and/or during the four weeks before the California Bar Examination or First-Year Law Students' Examination.)
- Eliminates having a small group of members assigned to focus on a particular task or area, and development of expertise in an area.

- Rule 4.71 requires a subcommittee to consider of Chapter 6 Notices that have been issued to applicants during an examination. If the subcommittee affirms the Chapter 6 notification, an applicant may file a written request for an administrative hearing by a panel of three Committee members who did not serve on the subcommittee. In order to keep a pool of members who are able to serve on such a panel, it is necessary to have a subcommittee-like group to make the initial determination.
3. **Hybrid.** Keep the subcommittees but have subcommittee meetings only where necessary to decide issues between full CBE meetings (accommodation appeals, etc.) and for Chapter 6 violations pursuant to State Bar Rule 4.71. Continue to assign members to the subcommittees as a way of indicating areas of focus; those assigned are expected to actively participate in the discussion of their subcommittee's topics during the full CBE meeting. All others are encouraged to participate as they see fit.

The advantages of this option include the following:

- No duplicate discussions and debate.
- Minimizes downtime for members (and stakeholders who now have to appear for both subcommittee and full committee discussions of their matters).
- Leaves subcommittees available when it makes sense to use them, between and during full CBE meetings.

The disadvantages of this option include the following:

- Reduces additional leadership opportunities for members (though "subcommittee chairs" could be allowed to lead the discussions at the full CBE meeting, much as they currently present subcommittee recommendations).

RECOMMENDATION:

Staff recommends the third option, Hybrid.

PROPOSED MOTION

Should the Subcommittee agree with the above recommendation, the following motion would be appropriate:

Move that the subcommittees meet only where necessary to decide issues between full CBE meetings (accommodation appeals, etc.) and for Chapter 6 violations pursuant to State Bar Rule 4.71. Continue to assign members to the subcommittees as a way of indicating areas of focus; those assigned are expected to actively participate in the discussion of their assigned topics during the full CBE meeting.