

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: June 2018

DATE: June 10, 2018

TO: Committee of Bar Examiners

FROM: Amy Nuñez, Interim Director

SUBJECT: Discussion on Appendix I Recommendations

SUMMARY

This memorandum includes two sets of recommendations, one developed by staff and the other developed by the two consultants assigned to examine the process by which the Committee of Bar Examiners (CBE) operates. Former Executive Director of the California State Bar, Elizabeth Parker, and Organizational and Governance Consultant, Elise Walton, partnered to conduct a review and analysis of the CBE in accordance with the direction of the 2017 Governance in the Public Interest Task Force. The Task Force recommended that the Board of Trustees (BOT) examine the role and structure of several of the Board's sub-entities:

- to ensure that the Board fully understands what each sub-entity, including the Committee of Bar Examiners, does
- to determine whether the BOT has the information it needs to oversee the sub-entities properly and adequately evaluate the effectiveness of how each sub-entity functions, and,
- lastly, to focus on whether the BOT should segregate out administrative work for delegation to staff from sub-entity functions.

With regard to the CBE specifically, the Task Force recommended that the Board consider whether the CBE's relationship with the BOT could be strengthened for more meaningful engagement, communication and exchange of ideas, and, if so, through what mechanisms. Another consideration specific to the CBE included assessing the function of law school accreditation, specifically the impact on cost and staffing, and of partnering with professional accreditation bodies to perform this function rather than the CBE. There was also interest in assessing if it would be desirable to increase the CBE's opportunity for policy formation and oversight activities, and what changes in staffing or operations would be needed to support this shift in focus.

To appropriately address this inquiry, Ms. Parker and Ms. Walton conducted research on how other bar jurisdictions carried out their attorney licensing functions. They also consulted with WASC, the Western Association of Schools and Colleges, to investigate

the accreditation process. The consultants met with individual CBE members, as well as with the full committee to gather more information that could address the assigned inquiry.

During the initial stages of the data gathering period, the CBE formed a working group to be part of the dialogue and to serve as a data source for this review. The sub-entity review and questions from the CBE prompted a legal opinion on the relative authority of the Supreme Court, the Board of Trustees, the Executive Director and the CBE as to the State Bar's admissions functions. A copy of that legal opinion has been attached to this memorandum. (See Attachment I.)

Based on information from the Parker/Walton report, discussions with Ms. Parker and Ms. Walton, observations on the functioning of the CBE, information gleaned from other licensing entities across the country, the legal opinion, and the overarching question of the proper role of volunteer committees in a regulatory agency, staff also developed a set of recommendations for discussion with the CBE. These recommendations mostly align with the Parker/Walton report. The recommendations are organized by function, and also examine whether statutory or rule changes might be needed before implementation. Consistent with the recommendation of the Parker/Walton report at page 28, staff recommendations have the primary focus of the CBE responsibilities on appeals, some initial adjudicatory functions, and offering opinions on critical matters of policy and capabilities.

BACKGROUND

In 2011, Business and Professions Code section 6001.2 required the creation of a Governance in the Public Interest Task Force, charged with improving the public protection function of the State Bar. The Task Force has produced three reports, one in 2011, one in 2016, and one in 2017. The 2017 Governance in the Task Force noted the Board's limited engagement in the work of several sub-entities, including the CBE. The Governance in the Public Interest Task Force directed the BOT to study all functional areas of the State Bar, including its sub-entities. As a result, many sub-entities are currently undergoing a similar review process to the CBE, including an analysis of what work they carry out, what is statutorily required, what alternative mechanisms exist for achieving the requirements and how to improve relationships between the BOT and each sub-entity.

Appendix I has appeared on three separate CBE agendas. In June, 2017, former Director Gayle Murphy, introduced Appendix I to the CBE, providing information about the Board of Trustees' Governance in the Public Interest Task Force, along with a link to the most recent Task Force report.

At the October, 2017 meeting, the consultants assigned to the analysis of the CBE met with CBE members and presented a workplan and timeline. The consultants then presented at the February, 2018 CBE meeting, where they discussed the various data sources being gathered as part of the review. The CBE learned about how other bar

jurisdictions handle licensing functions and the meeting ended with an understanding that the CBE would have the opportunity to comment and respond to the recommendations prior to their submission to the Board.

DISCUSSION

Ms. Parker and Ms. Walton's report has been completed. (See Attachment II). Their recommendations have been summarized in Table B attached to this agenda item, as Attachment III. Richard Schaufler, State Bar staff charged with authoring the final report to the Board of Trustees regarding all entities reviewed in response to the recommendations from the Governance in the Public Interest Task Force, will be in attendance at the meeting. Mr. Schaufler will incorporate CBE's responses to the recommendations in his final report to the Board. Mr. Schaufler will present an oral report with initial recommendations at the July BOT meeting; the final report will be presented to the BOT in September, 2018.

The discussion will also include staff recommendations, attached as Table A (Attachment III). These recommendations are organized by function, focusing on those functions required of a licensing agency charged with licensing attorneys in the state.

RECOMMENDATION

This is provided as an informational item; no action needs to be taken at this time.

PROPOSED MOTION

None.



THE STATE BAR OF CALIFORNIA

VANESSA L. HOLTON
GENERAL COUNSEL

Office of General Counsel
180 Howard Street, San Francisco, CA 94105-1617

Tel: (415) 538-2356
E-mail: Vanessa.Holton@calbar.ca.gov

MEMORANDUM

DATE: April 4, 2018

TO: Erika Hiramatsu, Chair
David Torres, Vice-Chair
Committee of Bar Examiners

FROM: Vanessa Holton, General Counsel *Vanessa H*
Destie Overpeck, Assistant General Counsel *Destie Overpeck*

SUBJECT: Authority Over State Bar Admissions Functions

INTRODUCTION

The State Bar of California's sub-entity review, housed in Appendix I of the 2017 Governance in the Public Interest Task Force Report, and questions from the State Bar's Committee of Bar Examiners (CBE) in September, 2017, have prompted an analysis of two issues related to the State Bar's admissions functions:

- I. The role and/or authority of the California Supreme Court (Court), the California Legislature, the State Bar Board of Trustees (Board)/Executive Director and the CBE over State Bar admissions functions.
- II. The accountability of the CBE to the Court, the Legislature, and the Board/Executive Director.

This memorandum analyses these issues, and concludes as follows:

- I. The Court has inherent authority over the practice of law in California, including State Bar admissions functions. The State Bar is the administrative arm of the Court for these matters. The California Legislature, in its shared authority with the Court over the State Bar, has set forth statutory obligations of the State Bar with regard to admissions.
- II. The State Bar's authority over the various admissions functions is exercised through its Board, subject to the ultimate authority of the Court. All of the CBE's admissions functions, which derive from statute, Court rule, or Board rule or delegation, are to be

carried out under the authority of the Board, subject to the Court's inherent authority and in compliance with any legislative mandate.

ANALYSIS

I. The Role and/or Authority of the Court, the California Legislature, the State Bar Board of Trustees/Executive Director and the CBE over State Bar Admissions Functions.

The Court

Any analysis of the authority over State Bar admissions functions must begin with the proposition that the Court has inherent authority over the regulation of the legal profession, including the State Bar admissions functions. *In re Attorney Discipline*, 19 Cal.4th 582, 592-93 (Cal. 1998); Rules of the State Bar of California (State Bar Rules), rule 4.1. The State Bar and the CBE serve as the administrative arm of the Court for attorney admission matters and in that capacity act under the authority and at the direction of the Court, which has the sole authority to grant or deny admission to the bar. *Chaney v. State Bar*, 386 F.2d 962, 966 (9th Cir. 1967).

Similarly, California Rules of Court (Court Rule), Rule 9.3 (Inherent Power of Supreme Court), sets forth the proposition that the Court has the inherent power to admit persons to practice law in California, and that the State Bar and its CBE serve as the administrative arm of the Court for admissions matters under the authority and at the direction of the Court. Consistent with California Business & Professions Code § 6046,¹ Court Rule 9.3 authorizes the CBE to administer the requirements for admission to practice law, examine all applicants for admissions, and certify to the Court for admission those applicants who fulfill the requirements.

Court Rule 9.5 provides that rules adopted by the CBE and approved by the Board pertaining to admission to practice law must be submitted to the Court for review and approval.

The Legislature

In its shared authority with the Court over admission to the State Bar, the California Legislature enacted § 6046, which provides that the Board *may* establish an examining committee having the power to examine all applicants for admission to practice law, to administer the requirements for admission to practice law, and to certify to the Court for admission those applicants who fulfill the legal requirements. The examining committee is to have 19 members, 10 of whom are State Bar members or California judges, including one within 3 years of admission to the Bar, and 9 of whom are non-attorney members of the public. § 6046 et seq., sets forth various other duties of the examining committee

¹ All § references are to the Business & Professions Code, unless otherwise indicated.

pertaining to State Bar admissions. Subject to the approval of the Board the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in the Act. § 6047.

The Legislature provided that the State Bar is governed by its Board, with the powers and duties conferred by the State Bar Act (Act). § 6010. The Board is charged with the executive function of the State Bar and the enforcement of the Act. § 6030. The Board may formulate and declare rules necessary or expedient to carry out the Act. § 6025.

The State Bar

State Bar Rules, Division 1 (Board of Trustees), Chapter 2 (General authority of the board), Rule 6.20 (Delegations, supervision and control) provides:

All State Bar . . . committees . . . have only the powers, duties, and authority delegated by the board and are subject to its supervision and control. Notwithstanding any delegation, the board reserves authority over all matters pertaining to the State Bar, including whether actions or positions taken by a State Bar . . . committee . . . are consistent with State Bar policies.

State Bar Rule 6.21 (Public Communications) provides:

Unless expressly authorized by the board or the Rules of the State Bar, a State Bar . . . committee . . . must not

- (A) act, or purport to act, speak or purport to speak for the State Bar;
- (B) make any public communications on behalf of the State Bar;

. . .

Pursuant to § 6046, the Board created the CBE as a committee of the Board and promulgated rules setting forth the CBE's policies and procedures for establishing and enforcing admissions. State Bar Rules, title 4. On November 4, 1981, the Board approved a resolution proposed in Agenda Item No. 113 in response to a report on CBE's relationship with the Board. In pertinent part, the resolution declares that "the Committee of Bar Examiners, as well as staff, must comply with all Board policies, including but not limited to contract, fiscal, grant and personnel control policies."

II. The Accountability of the CBE to the Court, the Legislature and the Board/Executive Director.

In its September 9, 2017, memorandum, the CBE asked the following questions of the Office of General Counsel (OGC):²

1. What can the CBE decide on its own?
2. What is reported to the Board of Trustees?
3. What must be approved by the Board?
4. What requires Legislative approval or must be reported to the Legislature?
5. What requires Supreme Court approval?

As set forth, the Board is authorized by statute to and did establish an examining committee with the duties enumerated therein. The Board created the CBE as a committee of the Board and promulgated rules setting forth the CBE's policies and procedures for establishing and enforcing admissions and educational standards. State Bar Rules, title 4. Thus, consistent with Board Rules 6.20 and 6.21, the duties of the CBE, which may best be characterized as administrative, are overseen by the Board, subject to the Court's ultimate authority over the State Bar. The answer to the CBE's question 1, therefore, is that by legislative enactment, Court Rules and Board Rules, the CBE administers admissions functions only to the extent that the Board so authorizes, subject to the ultimate authority of the Court. The CBE may not act on its own or without Board oversight in admissions matters.

Similarly, in answer to question 2, the scope of CBE's reporting obligations to the Board derives from the Board. For example, Article 1, Section 5 (Reporting Requirement to Board Oversight Committee), Tab 2.6 of the Board Book provides that each advisory committee must periodically report to the Board committee with oversight responsibility of its continuing work, and must provide status reports on activities as requested by the pertinent Board oversight committee. At the August 2017 Board meeting, the Board adopted the new Board Committee structure. As such, the CBE will now report to and provide status reports on its work as requested by the Programs Committee.

Answering question 3, in addition to approval requirements already set forth by statute or rules,³ the authority lies with the Board to approve any acts of the CBE that it determines require approval. Such CBE acts would be only recommendatory to the Board. Recent

² CBE also asked the question: "What action would be required by the CBE and Admissions in the event the Supreme Court orders an interim reduction of the cut score?" This question is moot. In its October 18, 2017, letter to the State Bar, *In re California Bar Examination*, the Court did not order an interim reduction in the cut score.

³ As set forth earlier, these include Board approval of reasonable rules and regulations adopted by the CBE as necessary or advisable to make effective qualifications for the practice of law.

examples would include the Board approval sought by the CBE in 2016 to modify the format of the California Bar examination.⁴

In answer to CBE's fourth question, legislative approval and reporting requirements are generally set forth by statute. For example, § 6046.8, effective January 1, 2018, requires the Board to oversee an evaluation of the California Bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys, and to make a determination whether to adjust the examination or passing score. The Board is required to report the results of the evaluation and any determination regarding adjustment of the passing score to the Court and the Legislature no later than March 15, 2018, and at least every seven years from the date of the previous report. Although the statute and parallel Court Rule 9.6 place the responsibility for this undertaking on the Board, it is anticipated that the CBE will be involved in this analysis.

Finally, in response to question 5, admissions matters requiring Court approval are set forth in Court Rules and State Bar Rules. They include: all rules adopted by the CBE and approved by the Board (Court Rule 9.5); admittance of applicants who fulfill admission requirements as certified by the State Bar (Court Rule 9.3(a)); the appointment of ten examiners to the CBE from a list of candidates nominated by the Board (Court Rule 9.4(a)); and, any State Bar recommendations proposing significant changes to the California Bar examination and passing score (Court Rules 9.6(a) and 9.6(b)).

CONCLUSION

We hope that this memorandum satisfactorily answers your questions. We apologize for the time it has taken to respond. The upcoming sub-entity review of the Board will likely provide more specific detail about the reporting and approval obligations of the CBE. Please contact OGC if you have any further questions.

cc: Leah T. Wilson, Executive Director
Donna Hershkowitz, Chief of Programs
Joanna Mendoza, Program Committee Chair, Board of Trustees

⁴ With regard to all three questions, a goal of the current sub-entity review of the CBE is to clarify and further set forth the CBE's and Board's engagement, which may include the CBE's reporting and approval obligations to the Board.

Committee of Bar Examiners Report

Work Draft June 1, 2018

Elise Walton and Elizabeth Parker

Work Draft

Committee of Bar Examiners Report

Work Draft June 1, 2018

Elise Walton and Elizabeth Parker

Table of Contents

Executive Summary	1
Context: Appendix I and Programs Committee Assignments	3
General Background.....	5
Committee of Bar Examiners in Brief.....	5
Institutional Context	7
Law School Council in Brief	7
Governance Design Comparisons	8
Discussion and Context.....	9
CBE Governance Design Recommendations.....	12
Moral Character Approach	15
Discussion and Context.....	15
Moral Character Recommendations	18
Accreditation Approach.....	19
Discussion and Context.....	19
Accreditation Recommendations.....	24
Opportunities for the CBE and the State Bar.....	26
Summary of Additional Report Recommendations	28
REFERENCES	31
Reference 1: CBE Interview List.....	32
Reference 2: CBE Working Group 24 Recommendations and Discussion Summary	33
Reference 3: Table of Inter jurisdiction comparisons.....	41
Reference 4: Moral Character in Other Jurisdictions	47
Reference 5: Bar and Admissions Activities	48
Reference 6: State Bar Strategic Goals Relevant to CBE.....	50
Reference 7: National Practices for Lawyer Licensing.....	52
Reference 8: Summary of NCBE/ABE 2017 Comprehensive Guide to Bar Admission Requirements.....	57

This page intentionally left blank.

Executive Summary

The Committee of Bar Examiners (CBE) is an entity charged by statute for managing the licensing of California lawyers on behalf of the California Supreme Court under the supervision of the Board of Trustees of the State Bar of California. In response to the 2017 California State Bar Governance in the Public Interest Task Force, Appendix I, guidance from State Bar leadership, the State Bar Board of Trustees, and the Office of the General Counsel, the consultants engaged in a specific design project to clarify, align and improve the Committee of Bar Examiners (CBE) and their activities and accountabilities. The project made explicit the probable benefits and costs of specific decisions and puts forward opportunities for improving the function and effectiveness of the CBE and the State Bar and the logic of final recommendations.

In all, the report makes recommendations in three specific areas: Governance Design, Moral Character, and Accreditation. This report reviews 24 specific recommendations developed in conjunction with the CBE Working Group, and five general recommendations put forward independently by the consultants. In general, the recommendations speak to improved governance and oversight practice, including regular benchmarking and audits of existing practice, as well as updates to past practice to align with current governance and management standards. These recommendations and their logic are discussed in the report and summarized in the reference documents.

It is the hope that this report provides useful guidance for the State Bar and the CBE toward implementing improved practices and continued contribution toward providing a strong system for lawyer licensing, both economical and efficient, that both protects the public and enables good lawyers to serve the public.

This report is respectfully submitted by Elise Walton, PhD and Elizabeth Parker, May 2018

Elizabeth Rindskopf Parker is nationally recognized for her scholarly and legal work in national security and terrorism, international relations, technology development and transfer, and civil rights litigation. She has served as Dean of the McGeorge School of Law at the University of the Pacific and most recently, as the Executive Director of the California State Bar.

Elise Walton, Ph.D., is a principal in Organizational and Governance Consulting, which works with large, organizations on the critical strategic and organizational challenges they face. Trained in Organizational Behavior at Harvard University, Dr. Walton's work combines current science on human and organizational behavior with decades of practical experience helping organizations perform better. Dr. Walton researches, writes and teaches on key concepts of organization and governance.

This page intentionally left blank.

Context: Appendix I and Programs Committee Assignments

Periodic review of important responsibilities and functions is the hallmark of all well-managed organizations. Accordingly, the Board of Trustees directed that all functional areas of the State Bar be reviewed in 2018-2019. More specifically, Appendix I of the 2017 Report of the Task Force on Governance in the Public Interest provides questions on which to build a more comprehensive review of current CBE functions and practice, with specific areas and ideas suggested for improvement. In addition, the CBE assessment went beyond the specific parameters assigned in Appendix I, in the belief that a holistic approach would be more beneficial to making fundamental and lasting improvements.

The 2017 Governance in the Public Interest Task Force (Task Force) noted the Board's limited engagement in CBE's work. Equally, the Task Force noted that CBE appears to act independently in matters that should come to the Board's attention, such as public statements made on behalf of the State Bar and important policy considerations with significant implications for the State Bar's exercise of its licensing responsibilities. The Task Force recommended strengthening the Board's relationship with CBE.

The Task Force also noted CBE's large volume of work and range of functions and observed that some arguably might be more suited for staff or outside entities. For example, a professional accreditation agency might better handle CBE's law school accreditation function; similarly, staff may be better positioned to review various administrative processes (e.g., examination of refund requests). Reducing CBE's administrative workload would make time and resources available for broader policy issues, particularly important given the transformational changes occurring in legal education and law practice.

The Task Force also discussed the importance of the Law School Council and its relationships with the CBE and the Bar. While the report recognized the importance to the State Bar of maintaining a formal relationship with law schools, the current mechanism is of limited benefit. No mention of the Law School Council appears in the Board Book, and there is no explicit Board oversight mechanism to ensure that the Board knows what the Council does or whether it is performing its function effectively. Consequently, there are gaps in communication and role clarity.

In addition to the specific assignments set forth by the 2017 Governance Task Force, this may be an opportune time to review the bar exam and admissions process overall, as many jurisdictions are reviewing the nature, scope and validity of the bar exam and overall regulatory process with an eye to understanding their value in protecting the public, as well as providing good educational preparation for future lawyers. The move to adopt the Uniform Bar Exam (UBE) by many jurisdictions reflects a growing awareness of the need to professionalize the exam process, but other changes are being considered as well. As one example, Arizona is looking at its entire regulatory framework; Arizona Law Schools have begun allowing tests other than the Law

Students Admission Test, such as the GRE, to satisfy entrance requirements.¹ Recently Arizona has also allowed its bar exam to be taken before a student graduates from law school, thereby shortening the time before a student can begin to enter the labor market and repay the increasingly significant education loans which result from a traditional three year education in an ABA approved law school. Much of the impetus for change in Arizona is due to external factors, including an historically litigious context, and the relative power of legislative actors, who have been actively considering separating the Bar's subject matter sections.

In October 2017, Executive Director Leah Wilson, on behalf of the Board of Trustees of the State Bar of California (Programs Committee), requested a study on the role and design of California's Committee of Bar Examiners (CBE). The specific request was to prepare and submit a well-researched, well-reviewed with relevant parties, and well-documented proposal for improving CBE design, development and function. More specifically, the study was tasked to examine issues raised in the Governance in the 2017 Public Interest Task Force Report, Appendix I, and specifically to better define CBE's relationship with the Board and develop a plan for meaningful engagement between CBE and the Board.

The project spent several months in discovery, conducting interviews with current and past CBE members, Bar Examiners in other jurisdictions, other California licensing agencies, Admissions staff, relevant Subject Matter Experts (SMEs) and noted experts, as well as Bar admissions practices in other countries.² In all, 45 interviews were conducted. As well, background documentation was reviewed, including the CBE Orientation materials, prior reports and studies, court correspondence and additional academic commentary.

Based on this discovery, the project identified specific design areas for consideration and evaluated redesign and improvement options around each area. The project made explicit the probable benefits and costs of specific decisions and put forward the logic of the final decision.³ In all, this report supports 24 specific recommendations developed in conjunction with the CBE and staff, discussed below, and adds additional recommendations based on our research and experience.

An early meeting was set up with CBE members to discuss issues and opportunities. Trustees Joanna Mendoza and Todd Stevens, members of the board Programs Committee were also in attendance. Consultants Elise Walton and Elizabeth Parker shared some preliminary perspectives; however, the session was principally designed to identify issues the CBE felt important to address in any study.

After initial interviews with some CBE members and Admissions Staff, the CBE Chair and Executive Director appointed a working group (including Erika Hiramatsu, Larry Kaplan and David Torres) to facilitate the investigation and further explore focus priorities. The group met several times to review key design elements, including primarily governance (structure, size,

¹ <https://www.wsj.com/articles/arizona-law-faces-fight-over-lsat-policy-1462008600>

² See *Reference Table 1: Interviewee List* for names of those interviewed

³ See *Reference Table 2: Governance Recommendations from CBE*, for a review of the debates and discussion.

terms, roles, subcommittees), accreditation, accommodation, moral character, policy and finance related topics, and relationships with key constituents. During these meetings, major proposals were discussed and reviewed for potential benefits and risks. The working group summarized their thinking and the logic for their preliminary recommendations to facilitate a dialogue with the full CBE at its February 2, 2018 meeting. During the meeting, many recommendations were accepted, some were debated and rejected, and additional suggestions for improvement were offered.⁴

After the meeting, the consultants continued work to review practices in other jurisdictions and began report writing in conjunction with staff guidance on timing and report design.

General Background

Committee of Bar Examiners in Brief

The Committee of Bar Examiners (CBE) plays a critical role in the overall administration of the bar exam and the admission of lawyers to the State Bar of California. Historically, functioning as an oversight and appeals committee, the key activities of the CBE have been:

- Support the development, administration and grading of the California Bar Examination to over 14,000 applicants per year;
- Oversee the development, administration and grading of the First-Year Law Students' Examination to approximately 800 applicants per year;
- Oversee the moral character reviews of more than 7,000 applicants for admission to practice law in California per year; handle appeals prior to interim review by the State Bar Court or final review by the California Supreme Court;
- Support the accreditation process of 21⁵ law schools in California that are not approved by the American Bar Association and provide oversight of an additional 20 registered unaccredited law schools, a category which includes correspondence law schools, distance-learning law schools and fixed-facility law schools.^{6,7}

In addition, the CBE may consider items related to:

- Operations issues related to the administration of examinations; and
- Applicants' petitions for waivers of Committee policies and rules, which relate to such things as refunds, late fees and deadlines.

⁴ See Table 2 in References for Summary

⁵ Technically, CBE accredits 17 schools, but if branch campuses are included, 21 actual campuses are accredited. We use the number 21 as a more accurate reflection of the workload. We use 21 throughout this document. See Rule 4.105 Definitions, Rule 4.160 Standards, Rule 4.162 Periodic inspection, Rule 4.165 Major changes, as well as 170-172 for an overview on the California accreditation process.

⁶ <http://www.calbar.ca.gov/Admissions/Law-School-Regulation/Law-Schools#cals>. Numbers reflect a simple count. Branch schools are counted separately from parent.

⁷ California is one of five states that allows candidates from non-ABA accredited schools to sit for the bar. Several states also allow graduates from non-ABA law schools to sit for their bar exams, but only if they have been licensed in their sending state and successfully practiced, typically for three to five years.

Changes adopted in early 2018 formally eliminated legacy CBE activities (e.g., some budget review) that are not applicable, given structural, administrative, and judicial changes. Further, it was explicitly clarified that CBE is a committee of the State Bar, and thus reports directly to the Board of Trustees on all policy work and administrative matters, although not on individual admission recommendations.

Thus, the CBE suggests or recommends practice, process and policy changes to the Board of Trustees, but within the administrative system of the Supreme Court. A frequent sequence of events is: (1) any of a variety of stakeholders (e.g. public, Court, Bar, or CBE) might raise a concern or suggest a change (e.g., “our pass rates are too low” or “we should change the cut score”; other concerns and proposals might focus on exam design, exam validity, passing score); (2) Admissions staff, with agreement by the CBE, sponsors research into the topic; (3) Admissions Staff and CBE review the research and recommendations; (4) the CBE makes a recommendation to the State Bar Board; and (5) the Board reviews the recommendation, then forwards its recommendation onto the Court. As noted above, the only exception to this basic process is that of the formal bar pass candidate and admit list. Candidates for admission to the bar are conveyed directly from the CBE to the Court, without review by the Board.

The all-volunteer 19-member CBE committee consists of:

- 3 public members⁸ appointed by the Speaker of the Assembly;
- 3 public members appointed by the Senate Rules Committee;
- 3 public members appointed by the Governor; and
- 10 members appointed by the California Supreme Court, specifically to be 9 lawyer members and one judicial officer. At least one of the 10 examiners must be a judicial officer in this state, and the balance must be California licensed attorneys. At least one of the attorney examiners shall have been admitted to practice law in California within three years from the date of his or her appointment. The Court appoints from a list of nominees provided by the State Bar.⁹

All members are appointed for four-year terms, which may be renewed at most three times.¹⁰ All are eligible for appointment by the Supreme Court to one-year terms as Chair and Vice-Chair of the Committee.

⁸ Public member refers to a trustee appointed to represent the general public, and may or may not be a legal professional

⁹ This new lawyer appointment process was adopted January 1, 2018. Source: <http://www.calbar.ca.gov/About-Us/Who-We-Are/Committees-Commissions/Committee-of-Bar-Examiners>

¹⁰ Public members have occasionally stayed past their appointed terms if a replacement was not named/appointed by the Governor or Legislature. Lawyer members have not stayed past their terms.

Institutional Context

In considering the potential governance design and process recommendations, it is important to understand the organizational context in which the CBE operates. A recent review conducted by the State Bar Office of the General Counsel establishes the following foundational elements. Specifically:

- The Supreme Court has inherent authority over the practice of law in California, including Admissions functions to the State Bar.
- The State Bar is the administrative arm of the Court for admissions matters.
- The Legislature, in its shared authority with the Court over the State Bar, has set forth statutory obligations of the State Bar regarding Admissions.
- The State Bar's authority over the various Admissions functions is exercised through its Board, subject to the ultimate authority of the Court.
- As authorized by statute, the Board created CBE as a committee of the Board and promulgated rules setting forth the CBE's policies and procedures for establishing and enforcing admissions and educational standards.¹¹ Rules proposed by the CBE and approved by the Board must be submitted to the Court for review and approval.
- The CBE must comply with all Board policies, including but not limited to contract, fiscal, grant and personnel control policies.
- Accreditation of California law schools is undertaken by CBE based on legislative mandate, subject to approval by the Board, and not as part of the Court's inherent authority to regulate the practice of law in California.

The CBE administers admissions functions to the extent that the Board authorizes, subject to the ultimate authority of the Court. The CBE may not act on its own or without Board oversight in admissions matters. The CBE must report to and provide status reports on its work to the Programs Committee of the Board. Generally, CBE actions would be only recommendatory to the Board. Recent examples would include the approval of the Board sought by the CBE in 2016 to modify the format of the California Bar examination.

Law School Council in Brief

The Law School Assembly was created by the State Bar Board of Trustees as an organization to provide a forum for discussion with all members of California's legal academic community on topics of mutual concern relevant to the requirements for admission to the State Bar. Specifically, membership included all law schools, ABA- accredited and California-accredited and unaccredited law schools. From this body, a Law School Council is selected by vote of the Assembly members

¹¹ Section 6046 provides that the Board *may* establish an examining committee having the power to examine all applicants for admission to practice law, to administer the requirements for admission to practice law, and to certify to the Supreme Court for admission those applicants who fulfill the legal requirements. This examining committee is to have 19 members, 10 of whom are State Bar members or California judges, including one within 3 years of admission to the Bar, and 9 of whom are non-attorney members of the public.

according to school type. The 14-person Law School Council (Council) includes 10 law school deans, elected by their category of school and appointed by the State Bar Board, three CBE members appointed by the CBE Chair, and one trustee from the State Bar Board of Trustees. Law school members serve terms of three years and should proportionately represent student enrollment and first-time bar applicants (e.g., two from Public ABA-approved law schools, four from private ABA-approved law schools, two from California accredited law schools, one from California's unaccredited law schools (i.e. correspondence/distance schools). This distribution has sometimes raised issues as to whether the larger ABA schools engage sufficiently, often because the topics considered may not be of significance to them.

Over time the Council has functioned to advise the CBE on matters relating to content and form of the bar examination, problems of coordinating curricula, and on all aspects of law school education relevant to the bar examination process; it acts as a two-way channel of information and as a sounding board and source of expertise for the CBE for proposals from the CBE or from the law schools and advises on such other matters as may be appropriate from time to time.

The CBE's Advisory Committee on California-Accredited Law School Rules, known as the Rules Advisory Committee (RAC), was formed by the CBE to provide a forum for the California-accredited law school Deans and the CBE to discuss accreditation rules and guidelines in advance of any substantive changes and provide the opportunity for RAC to make recommendations before final actions are taken.

The Council meets one to two times a year and the full Assembly generally meets once each year if there are matters of mutual interest to discuss. The Council also designates two liaisons to attend CBE meetings. Both the Council and the Assembly may periodically become active in important discussions, such as when the bar examination minimum cut score was being explored. In addition, the Council may be asked to consider topics such as changes in the rules, bar examination scope and form, examination statistics, and other admission requirements that may directly affect the law school community.

An agenda for each Council or Assembly meeting is created and coordinated by the State Bar's Office of Admissions and mailed at least ten days prior to the meeting. The Chair of the Council has primary responsibility for approval of the agenda. Generally, the Office of Admissions produces a summary of each meeting, and copies of the summary are distributed to all California law school deans. The program for the Law School Assembly meeting (alternately held in the San Francisco and Los Angeles areas), is discussed with the Council, in coordination with the CBE.

Governance Design Comparisons

Discussion and Context

The design and functioning of Bar Examiners¹² varies widely across jurisdictions. In all cases, they reflect the unique character, size and history of their state. Generally, the nomenclature of Bar organizations is unclear and can be confusing. For instance, the term “Unified Bar” has very little documented formal explanation but typically means combining the local bar organizations into a single statewide bar organization in which membership is required for the practice of law (hence, meaning ‘mandatory’) or alternatively, unifying two distinct functions (regulatory and member services) into one organization. Some mandatory bars provide regulatory functions, and some do not. Some mandatory bar associations are responsible for the regulation of the legal profession in their jurisdiction; others are professional organizations dedicated to serving their members; in many cases, they are both.

Insert 1: Proposed Bar Terminology

Mandatory: a lawyer must be a member of the state bar in order to practice law in that state. In this context, a bar is an organization that is a governmental entity.

Voluntary: a lawyer may pay dues and be a member of the state or local bar, but it is not required to do so in order to practice in that state. These Bar entities are private organizations that promote the professional, social, educational, and political interests of their members.

Unified: A unified bar is one that has both regulatory and voluntary (e.g. trade associational) aspects.

Moreover, when the terms “unified,” “integrated,” “mandatory” and “voluntary” are used to describe bar organizations, there are no consistent definitions of the functions that each of these is required to include. Generally, ‘unified’ and ‘integrated’ are terms used interchangeably to describe bar organizations where both regulatory and representational functions are combined in one state-wide body, in which membership is required for the practice of law. Academic commentary and analysis generally stops with the recommendation that trade and regulatory functions should be placed in separate organizations, reflecting traditional legal concerns with separation of powers and conflict of interest between the regulator and regulated.¹³ There could be a benefit in the evolution of bar design from clarifying language, and to this end, this report proposes terminology as shown in Insert 1.

Despite these differences, this project reviewed other jurisdictions to ascertain how they allocated responsibility for lawyer admissions, ranging from the respective roles of the judiciary, legislature and bar organizations for exam

tions is not standard. State bar organizations may have boards of law or functional responsibility for a body that oversees a given state’s bar

¹³ Linda Katz’s chart described the California Bar before separation of the sections and provides comprehensive inventory of the specific functions that all bar organizations have in whatever organizational grouping. All states mandate that one must be a member of an official bar to practice law, but what functions are a part of that ‘official bar’ varies widely; some also mandate membership in a trade association bar organization. Functional areas may be based in a state (or public) as well as non-profit entities (e.g. LAP). And some states divide regulatory functions between the official and non-profit entity. For example, Arizona is considered a unified bar, yet all admissions functions are handled by the Court and its staff directly. The State Bar only becomes involved after membership has been granted and then only as a records manager and for discipline. Wisconsin is also considered unified, but its Bar only functions to collect dues (and pass them onto two court entities) and to serve its members as a trade association.

development, testing, admissions and follow up, and all the activities that arise in relation to these core activities bar exam development and the work associated with Moral Character and Fitness reviews.

Size of Bar Examiners

The size of the largely volunteer organizations that manage lawyer admissions ranges from three (Idaho, North Dakota, Washington) to 26 (Delaware).¹⁴ The mean average size is around nine members, and the most frequent size is seven. It should be noted, however, that more than one body may be involved in admissions, since some states divide responsibility for exam design and administration and character and fitness review between two organizations. Indiana, for instance, has a 10-person, jurisdiction-based Board of Law Examiners that is also responsible for legal intern certification, formation and renewal of professional corporations, limited liability companies and limited liability partnerships for the legal profession. Indiana also has the Indiana Committee on Character and Fitness, which numbers over 300 lawyers and interviews all applicants to the bar personally.¹⁵

Terms of Bar Examiners

Most jurisdictions set *terms* of members at three years, though some have longer terms with Missouri, at a nine-year term, the highest. Some states allow longer terms of service, or indefinite renewal.¹⁶ The majority offer two or three renewals and require that members step down when their terms are complete, or after reaching some specified number years of service. Some states specify staggered terms, thus ensuring a mix of experienced members with new, “fresh” views as well as smooth transitions. For instance, the Connecticut Bar Examining Committee, with 24 members, has 3 year terms renewable for 3 years and specifies that 1/3rd of the members terms must expire every year, ensuring that, at most, 1/3rd of the board would cycle off, or need to be replaced, in any given year. Nebraska, with a 6 person State Bar Commission, appoints for 6 year terms (2 term max) and specifies when of the six jurisdictions represented appoint a commissioner.¹⁷

Most significantly, the 2017 NCBE/ABA Code of Recommended Standards for Bar Examiners (“Code”), developed to establish standardized ‘best practices,’ recommends consistent and fixed, but staggered, terms, identical length for all members, with ‘sufficient’ rotation to encourage fresh views; most Bars consulted agree. See Reference 9 for a Summary of the NCBE/ABA Code.

¹⁴ See Reference 3: Table of Inter jurisdiction comparisons in References

¹⁵ IN BLE is responsible for the admission of attorneys, the certification of legal interns and the formation and renewal of professional corporations, limited liability companies and limited liability partnerships for the legal profession: <https://www.in.gov/judiciary/ace/2521.htm>

¹⁶ Some jurisdictions do have significantly longer terms (e.g. New York and Idaho).

¹⁷ For instance, the first judicial district appoints a commissioner in 2015, the fourth in 2016, the sixth in 2017 and so forth. Nebraska follows NCBE testing procedures and standards.

Appointment of Bar Examiners

Most commonly, the state Supreme Courts or their equivalent¹⁸ are the body that appoints Bar Examiners, often on recommendation from the Bar or Bar President. In some cases, there are specific liaisons appointed to sit on the committee. One variation is who appoints the chair – in some cases, the Court appoints the Chair and other positions; in other cases, the Board of Bar Examiners selects their own Chair.

There are usually general guidelines as to who may be appointed (lawyers, public representatives), although generally there are no overall composition guidelines (specifying type of experience, specialties, etc.). Typically lawyer members must be actively practicing law in good standing in the state, and there is some specified experience time frame (10 years of practice, for instance) set forth. Some states routinely use public member seats to provide relevant expertise (e.g. financial and psychological experts). Wyoming requires one substance abuse expert (the non-lawyer on its five-person board). Formal limits on service by legal academics as examiners are common, however there is increased interest in taking advantage of academic knowledge and skill. The Iowa board must be gender balanced, per Iowa Code §69.16A.

Activities and accountabilities of Bar Examiners

Bar Examiners in most states are tasked with overseeing the admissions process (see Illustrations in Insert 2).¹⁹ Specifically, Bar Examiners recommend the list of law candidates for admission to the bar to the Supreme Court. Generally, Examiners must also review appeals from decisions on accommodations and moral character (unless there is a separate entity tasked with this responsibility). In some states, Examiners are involved in writing exam questions and grading exams; however, with the increased use of the Uniform Bar Exam (now adopted by 30 states), the involvement of Examiners in writing questions is reduced, often limited to developing a state-specific educational program. However, UBE state Examiners may grade and be required to attend grading training offered by NCBE.

¹⁸ Note: this terminology and discussion is intended to include the highest state court in every jurisdiction, whether denominated as the Supreme Court, Court of Appeals, or Court of Last Resort, among others.

¹⁹ Illinois also shall appoint, with the approval of the Supreme Court, a Director of Administration to serve as the Board's principal executive officer, who may hire sufficient staff as necessary to assist the Board in fulfilling its responsibilities. And shall audit annually the accounts of its treasurer and shall report to the Court at each November term a detailed statement of its finances, with recommendations as seem advisable. Per http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VII/artVII.htm#Rule702. The NV BBE is part of the State Bar of NV, which is a public corporation operating under the supervision of the NV Supreme Court <https://www.nvbar.org/about-us/bar-committees/board-of-bar-examiners/> Refc Texas <https://ble.texas.gov/about>

Meeting frequency ranges from twice a year (Arkansas) to monthly (New York). Special meetings may be called for appeals procedures.

Compensation is usually limited to lodging and travel related meeting expenses. New York has a set pay for Bar Examiners. Others have compensation “set at the discretion of the court.” Alaska and Georgia pay Bar Examiners per exam, \$400 and \$7500, respectively, or \$800 and \$15,000 annually. In many states, Examiners are unpaid volunteers. However, service related expenses (travel, education, etc.) are typically covered.

CBE Governance Design Recommendations

This report supports the following recommendations derived from the CBE working group and CBE discussions: ²⁰

CBE WORKING GROUP RECOMMENDATIONS: Governance

1. Size and Structure

- a. Reduce the size of the CBE. A smaller CBE will make it easier to convene a simple majority quorum; a smaller CBE will be more conducive to member meeting participation. Size should be commensurate with workload.
- b. Set and enforce three-year subcommittee chair terms, and where applicable, committee chair terms. Enforce actual terms, opt for filling vacancies rather than continuing the past terms of incumbents until replaced.
- c. Develop a CBE Skills Matrix and apply it to recruiting efforts; utilize communications and recruiting efforts to attract members with needed skills and experience.
- d. Review CBE sub-committees.²¹

2. Activities

- a. Identify key policy and long-term items to be covered on the CBE agenda, including alignment with the State Bar Five-year Strategic Plan.²²

²⁰ These are summarized in Reference 2. It should be noted that the Feb 2, 2018 CBE discussion conversation generally accepted these recommendations, but they were not put to a formal vote. It is possible some members disagree with these conclusions but they were vetted and generally endorsed by the group as a whole.

²¹ Sub-committee design was discussed at the February 2, 2018 CBE meeting. A proposal was made to eliminate all but the Moral Character Sub-Committee and Examinations Sub-Committee (for appeals and review). Though this was endorsed, it was also debated again at future CBE meetings. At the time of this writing, Sub-Committee design and role remains under discussion.

²² Specific State Bar Strategic Plan Goals relevant to CBE’s work can be found in Reference 6.

- b. Strengthen onboarding practices, e.g., create mentors, provide the opportunity to role-play an appeals session before actually conducting one²³, and opportunities to observe Moral Character reviews.
- c. Staff should provide uniform agenda and agenda management process.
- d. Eliminate CBE involvement in formal financial reviews; limit it to approving bar examination fees only.

3. Cooperation with the State Bar Board, Staff, Court and Legislature

- a. Identify positive scenarios of how CBE, the State Bar of California and the Court should work together, both by using successful cases from experience, as well as developing prospective cases for future guidance.²⁴
- b. Validate roles and authorities of all respective bodies pursuant to an Office of General Counsel review.
- c. Improve training of CBE volunteers on their respective roles, authorities and accountabilities.

4. Law School Council to Facilitate Communications between Deans and CBE

- a. Work/study with deans and LSC to design a more robust partnership.
- b. Institutionalize points when LSC and law school deans “weigh in” at key points – but be sensitive to Bagley-Keene requirements. The Bar and CBE should consider options to gauge interest and opinions early on to build trust and collaboration. For instance, as a policy change or important matter with implications for law schools is considered, a first step would be an open webcast with a call in for public comment.
- c. Ensure including an annual “Admissions Day” on the State Bar Calendar²⁵; ascertain the possibility of extending Admissions Day training to Law School constituents/deans (next step: consult with those who attended the Board of Trustees Admissions review session).
- d. Take advantage of the Ad Hoc Committee currently being formed to discuss Bar Exam review, to engage all deans in the process of overseeing the Job Analysis; review this work at the State Bar Annual Planning Committee meeting.
- e. Pending study about the original reasons for creating both LSC and RAC, consider combining both into a single organization to broaden perspective and avoid conflict of interest.

Many of the above recommendations will improve the functioning and focus of the CBE. However, as noted below, the consultants also believe that there is further opportunity to simplify and focus the CBE on work core to its critical admissions responsibility at a time of significant challenge to its licensing function.²⁶

Generally, in good governance and organization design, a committee should operate in a defined arena to keep roles clear, unconflicted and build competence at its core task. This principle suggests that the CBE should focus primarily on admissions-related tasks, which would, in turn, simplify and focus the role of volunteers and enable greater professionalization of the admissions process. Further, an admissions focused CBE would eliminate perceived or actual conflicts, reduce an unrealistic span of expertise expectations (thereby assuring that Bar Examiners are providing informed oversight, not merely sitting as a “jury of peers”), and create a more reasonable scope of

²³ The concept of role-play is both to allow examiners to practice their role, and also to gain an understanding of the process from the candidate’s point of view.

²⁴ Of note: a specific issue and its resolution path may be seen differently by the CBE and the Bar, thus scenarios should serve as a joint learning process to achieve a common understanding what constitutes an effective issue identification and resolution process

²⁵ Discipline Day has been on the Bar Agenda over the years with the goal of keeping all Trustees, new and experienced, educated and up to date on the current discipline practices, processes, constituents, and results. The Admissions Day’ idea received attention in response to the 2017 concern about the Bar Exam passing score. In addition, admissions decisions represent a complex and challenging administrative process, along with some highly technical concepts (e.g. test validation and the application of psychometric principles) which the Board of Trustees had not considered in recent time. Admissions has been a focus of antitrust concerns as well. The State Bar Board had an Admissions Day in 2018 and will institutionalize it in Board processes, with the potential to replicate it for the Council and beyond.

²⁶ The current Appendix I review should give the State Bar of California a valuable opportunity to review all admissions responsibilities to align them for maximum effectiveness and maximize the CBE’s contribution.

activity, commensurate with delegated authorities. More specific recommendations (including the simplification of Moral Character Reviews, as well as Accreditation function outsourcing) are considered below.

Moral Character Approach

Discussion and Context

The basic structure of licensing lawyers through a written exam and review of moral character and fitness by lawyers, sometimes assisted by public members, has remained largely unchanged considered since the early 20th century. Even so, there are considerable variations across jurisdictional approaches. Moral Character (or Character and Fitness) reviews relied on no uniform definition of Moral Character, and only 39 states have published moral character standards.²⁷ Required timing for applications also differs. Some states open a file during the second year of law school, some require a Character Review just before the exam, blocking those who do not pass from taking the exam, and other jurisdictions require the application only after the applicant has passed the Bar Exam.²⁸ Students and applicants alike see variances in approach across jurisdictions, as well as in the tone in the decisions of different states. One lawyer offers online advice to an applicant concerned about juvenile convictions:

Florida C&F process is rigorous, and they try to intimidate people into abandoning the process, but they know perfectly well judges (who are the ultimate arbiter of C&F proceedings) have no problem smacking them down when they get ridiculous. If you don't give up and force them to litigate it, they'll either give up or probably lose.²⁹

Alongside varying processes, moral character review *scope* vary as well. Some states interview all applicants; in other states reviews are selective according to problems identified.

Usually the review of denied applicants may involve either three or four steps but at least: an informal subcommittee conference (or panel), a board review, and final Supreme Court review. Some jurisdictions provide:

- Final board hearing before a quorum of the Board;
- Intermediate court review before the Supreme Court; and
- One state allows the Chair to override a negative decision on taking the test.

Arizona has a 15-member Character and Fitness (C&F) Committee. Staff approves approximately 65% of reviews, and the remaining 35% go to an individual member of the C&F Committee. Of these, the individual members determine over 2/3rds of the assignments on their own, slightly less than 10% of all applications go into a subcommittee review. This portion goes before a subcommittee of three different members of Character and Fitness Committee for an informal in-person meeting, which is a non-adversary proceeding without recordings or sworn testimony. This first review panel may admit, conditionally admit, or refer the applicant to a hearing, but it may not deny the applicant the opportunity to take the Bar Exam. Approximately 2-3% of

²⁷ The Code recommends that standards be published; while 70% of jurisdictions do so, California was not identified as one of this group.

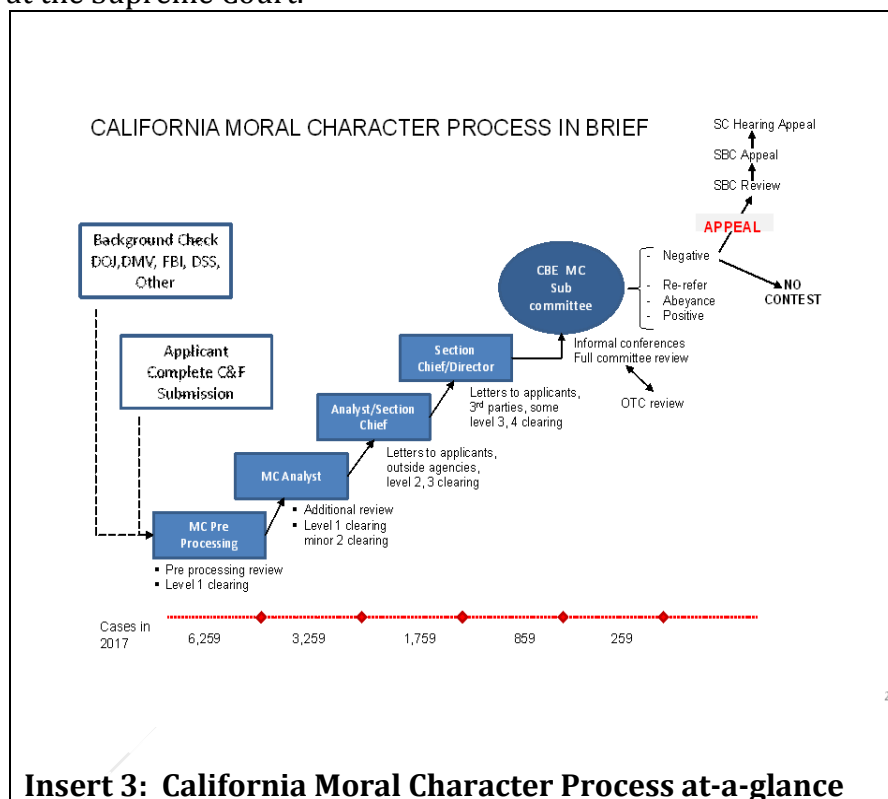
²⁸ <https://abaforlawstudents.com/2013/12/01/bar-hurdle-character-fitness-requirement/>

²⁹ <https://www.jdunderground.com/admissions/thread.php?threadId=109496>

applicants go to a second evidentiary hearing before a new five-member subcommittee, with the original committee member acting as the ‘prosecutor’ and testimony taken under oath. This second five-person subcommittee is composed of different members of the Character and Fitness Committee and it may act to deny an applicant’s admission to the State Bar. Appeals from such a decision are only to the Arizona Supreme Court. As with most jurisdictions, a very small portion of all applications eventually end up at the Supreme Court.

Using a different approach, New York State processes character and fitness applications through the four departments of the Appellate Division Court. Applicants must submit two applications: first an application to sit for the bar exam and then, one certified as having passed the exam, an application for moral character review which is handled by one of Appellate Division Courts. The four departments each have staff who review applications initially and then assign applicants a volunteer member of New York Committee of Character and Fitness for review and a personal interview. If staff identifies an

issue, the application is sent to the full committee for review. Each Appellate division appoints its own volunteers to manage the review work. Notably every applicant has a personal interview.



Overall, twenty-four states have created a separate entity that assesses moral character.³⁰ The variety of organizational and governance structures of these entities is large and there is no consistent format, but generally there are three basic types: (a) an entity placed within the highest court or a part of the judicial branch; (b) a separate public non-profit entity; and (c) a component of the state bar organization. For instance, the Arizona C&F Committee is a component of a state high court and has court staffing. Wisconsin is separately organized as an entity, governed by the high court but structurally distinct Florida operates as a separate non-profit public entity with its own governing bodies, responsible to the Court. Oregon and California are part of the bar organization itself. In all cases, the decision of these organizations, no matter their structure, are overseen by the highest court of the jurisdiction.

³⁰ Alabama, AZ, CO, GA, IL, IN, KY, LA, MA, MI, Mississippi, Missouri, Montana, Nebraska, NH, NJ, NY, OH, RI, SC, UT, VT, WA, WV, WY

The history of Moral Character reviews is mixed; they have sometimes been used for an agenda other than public protection, for instance:

- *"Much of the initial impetus for more stringent character scrutiny arose in response to an influx of Eastern European immigrants, which threatened the profession's public standing. Nativist and ethnic prejudices during the 1920s, coupled with economic pressures during the Depression, fueled a renewed drive for entry barriers."*³¹

Generally, moral character reviews have raised issues of definition and validity among the public, applicants and examiners alike. Several CA bar staff and examiners interviewed for this project criticized the predictive value of character and fitness reviews; given the relatively young age of most applicants, youthful infractions may not predict lifelong character issues. Some suggested that, despite guidance and calibration, standards for rejection seemed uneven and, at times, imbalanced.³² The lack of good standards for defining moral character has been widely noted.³³

In addition, there have been concerns about whether substance abuse and mental health inquiries constitute a character failure of character and consequent risk to the public. Equally, this area of inquiry may violate the Americans with Disabilities Act. Though many debate the appropriate approach, all jurisdictions continue to include substance abuse and mental health issues as part of the Moral Character screen.³⁴ Many states allow conditional admission for those with substance abuse or psychological problems. Some offer treatment for substance abuse or psychological problems. Most allow rehabilitated felons to seek admission; notably Florida does not. Most states also allow applicants to seek re-admission after denial, usually after a prescribed waiting period.

A lack of rigorous analysis appears to be part of a long-standing problem in the general approach to bar examinations. Among the bar organizations contacted, none made use of data available from a variety of sources to study and examine the efficacy of bar admission practices dating back to the mid-twentieth century. Little has been done to study the relationship between licensing requirements and their impact on public protection. We know of no studies that establish a correlation between character and fitness reviews and subsequent discipline. The complete absence of a definition of minimum competence is part of this problem, as is the lack of an occupational analysis to validate the form, content and structure of bar exams (with the single exception of a job analysis conducted by the NCBE in 2009).³⁵

³¹ The Troubling Rise of the Legal Profession's Good Moral Character; Barbarians at the Bar.

³² For instance, one interviewee reported discussions on denying an applicant based on missing an application deadline due to a family illness; another applicant with a history of abuse was not denied.

³³ There are frequent comments raising this concern in law reviews and during our review, researchers at the Stanford School of Law contacted us regarding their interest in studying the problem. The role of moral character review is currently also under review by the Solicitors Regulation Authority in the U.K. See Appendix A for the interview with Julie Brannan, SRA's Director of Education and Training.

³⁴ <https://abaforlawstudents.com/2013/12/01/bar-hurdle-character-fitness-requirement/>

³⁵ The State Bar of California has an unusual amount of data which might be analyzed to inform admissions policies (e.g. data from the 'Baby Bar' and a broadly inclusive approach to those who take the bar would seem to offer a chance to study the success of current approaches to attorney licensing.)

In the licensing practices by other professions, most if not all conduct background checks via core databases (FBI, DOJ, etc.), yet none have the separate, formal C&F application and review process the legal profession does. The medical profession, for instance, has three distinct tests and testing points which a student must pass before she is admitted to the practice of medicine.³⁶ Applicants may be denied a license for past actions, but there is not a separate review of moral character. It is presumed that, if issues exist, they will arise during academic and internship work and can be addressed in those venues.

Moral Character Recommendations

Consistent with the CBE Working Group suggestions, this report agrees with the following actions be implemented:³⁷

CBE WORKING GROUP RECOMMENDATIONS: Moral Character

1. Ensure Moral Character review has more specific, clearly articulated standards/guidelines for determinations; document and publish specific guidance for decisions beyond the existing high-level description; include “if-then” protocols for decision sequences;³⁸ reinforce, extend, and clarify Rule 4;
2. Compare California’s guidelines to those used by the NCBE guidelines annually;
3. Undertake a review of the reform efforts being developed in other jurisdictions, notably the State Bar of Utah and the Solicitors Regulation Authority in the U.K., to determine what possible alternate approaches to reform may be possible;³⁹ and
4. Retain CBE level review of appeals denied.⁴⁰

Further, this report does not recommend that CBE, or the Court, create a separate entity to review Moral Character appeals, as occurs in other states.⁴¹ Forming and supporting a separate committee or delegating Character Reviews to separate entities (as do New York and Maryland) would require selecting, training, managing, and supporting an additional group of volunteers. In the spirit of retaining focus and simplification, character appeals should continue to be reviewed

³⁶ <http://www.bennettlawfirm.com/practice-areas/texas-medical-board/>

³⁷ http://calbar.granicus.com/GeneratedAgendaViewer.php?view_id=3&clip_id=245

³⁸ For instance, rather than stating general considerations (nature of offense, date of offense, age at time of offense); state specifics (if applicant was under 25, then said offense will not be considered in character review).

³⁹ As noted above, work by researchers at Stanford may provide an opportunity for collaboration in a review of moral character and fitness standards.

⁴⁰ Specifically, the group argued that the Committee level review best reflected the due process that should be accorded candidates. Thus, character and fitness applications that were denied or questioned by staff or subcommittee should be reviewed by the full committee (as opposed to going directly from subcommittee to State Bar Court).

⁴¹ The CBE discussed potential for allowing subcommittee that constitutes a quorum of the board to make the final decision and thus avoiding appeals which all 19 hear

by CBE panels, with improved support, functional and administrative processes. The review processes employed should, however, be simplified and include only a single review by a quorum sized CBE subcommittee before appeal to the State Bar Court and the California Supreme Court.⁴²

Based on comparisons and the issues discussed in this report, we posit that the State Bar of California should take a very fundamental re-look at character and fitness reviews. In its most primary mission – to serve and protect the public – the State Bar and the CBE have both the opportunity and an obligation to redesign current practice for C&F reviews to correspond more directly with relevant outcomes and fairness. Given the history of bias and subjectivity in the character and fitness screens, California should strive to counter these forces.

More specifically, we find that the California State Bar could:

- Conduct regular reviews of the appropriateness and consistency of decisions to ensure consistency and compliance with applicable standards;
- Create a specific path for substance abuse and mental health issues, including conditional admission and support; and
- Take a broader, more evidence-based approach to establishing the validity of character and fitness process and decisions.

Taking a broader approach toward character and fitness validity would require use of data across a broader time frame, and across multiple parties. It could involve partnership with academia or using available data more affectively (e.g., Baby Bar data). Evolving work on character and fitness must consider privacy concerns and adverse impact concerns. Most important is the overall integrity of the process, as it is used to make such a fundamental decision about the ability of individual applicants to become licensed as lawyers.

Accreditation Approach

Discussion and Context

The U.S. system of higher education accreditation is generally considered the world's 'gold standard' process for external quality review of educational institutions. A critical element in this system is the core principle is that accreditation is most effectively done in an objective context, among peers with relevant expertise and members of the public. Concomitantly, accreditation should be the responsibility of private, non-profit entities composed of peers and the public, and not done by government or government regulators.

As such, accrediting organizations in the U.S. are structured as peer review activities, managed by various non-profit educational and professional organizations pursuant to clearly articulated standards. These accreditation organizations must in turn be qualified through review of

⁴² This report recommendation may be consistent with the CBE Working Group recommendation of retaining Committee level reviews; it is distinct or different to the extent that we recommend only a one stage (committee quorum) review vs. subcommittee plus full committee.

published standards to achieve ‘recognition.’ Accreditation and recognition are thus distinct processes; accreditation is considered a non-governmental function; recognition is not.

Recognition is done using parallel processes by the private non-profit Council for Higher Education Accreditation (CHEA) and the U.S. Department of Education (USDE). CHEA recognition confers academic legitimacy on accrediting organizations, helping to solidify their place in the national higher education community. USDE recognition is required for accreditors whose accreditation is a prerequisite for granting student federal loan support for individual institutions and programs. In its recognition activity, USDE relies on the National Advisory Committee on Institutional Quality and Integrity (NACIQI), a separate body composed of educators and public members, who review the recognition accorded to such accrediting bodies. Although the purposes of their recognition differ, many CHEA and USDE requirements and processes are the same. Importantly, both require periodic external review by accrediting organizations.

CHEA includes in its membership the majority of U.S. accrediting organizations. At the national level, CHEA recognizes 18 institutional and 62 program accreditors. Notably, CHEA standards preclude governmental organizations from membership as accrediting bodies.⁴³

CHEA considers four types of accreditation; the two relevant to the CBE are based on review of either programs or institutions, but not both. CHEA requires that each accreditation member select one of these for which it will serve as the accrediting body. Managing both functions is generally not allowed.

Nationally there are several regional organizations responsible for institutional accreditation in their respective geographical areas. Numerous other organizations are responsible for program accreditation, but only one, the Accreditation Committee of the Section of Legal Education and Admissions to the Bar, within the American Bar Association (ABA), serves to accredit legal programs. Normally accrediting organizations have decision-making bodies (commissions) made up of administrators and faculty from institutions and programs as well as public members. Accreditors undertake an organizational self-assessment on a routine basis and are required to have internal complaint procedures.

The Western Association of Schools and Colleges (WASC) is one of four regional accreditors recognized by CHEA and the only institutional accreditor of educational institutions in California. WASC is a nationally recognized leader in adopting accreditation standards based on learning outcome assessment, a signature focus of all its accreditation work. While WASC is designated as an institutional accreditor, rather than a program accreditor, many of the institutions it accredits are small and based on single programs (e.g. Charles Drew Medical College and the San Joaquin College of Law). Thus, the distinction between program and institutional accreditation becomes

⁴³ Dr. Eaton was willing to consider whether CHEA could review the current standards employed by the CBE in its accreditation of California law schools. Alternatively, she was also prepared to suggest names of experts in the field of accreditation.

less significant for smaller institutions; accreditation for such single program institutions does, however, rely on participation by those with program expertise.

Law School Accreditation & California

Almost all states require graduation from an ABA accredited school for eligibility to take the bar exam. California is one of six states that permit accreditation of non-ABA schools, as follows:

- Connecticut allows all ABA Law Schools, and one Massachusetts state accredited school to sit for its bar exam;⁴⁴
- Alabama does not require graduation from an ABA Accredited Law School as a pre-requisite for taking the bar and has two non-ABA accredited law schools – Birmingham School of Law and Miles School of law.^{45 46}
- Nashville YMCA School of Law is accredited in perpetuity by the Tennessee Board of Bar Examiners.⁴⁷
- Massachusetts also allows students to sit for the bar exam if they have earned a Bachelor of Laws or Juris Doctorate degree from the Massachusetts School of Law at Andover, a school authorized by the Commonwealth and accredited by the New England Association of Schools and Colleges (NEASC).
- On behalf of the State Bar of California, the CBE accredits 21 law schools located within the State of California.

With the largest number of state accredited law schools and an unusually open process for taking the Bar Exam⁴⁸, California is the only state that must address law school accreditation on an ongoing and substantial basis. Historically, this has been overseen by the State Bar and the CBE with the assistance and participation of law school deans and other legally trained volunteers. Specific activities include:

- Processing of applications for the registration of new law schools or the accreditation of unaccredited law schools;
- Annual compliance reporting of accredited and unaccredited law schools;
- Inspecting schools every five years to re-confirm the operational compliance of accredited and unaccredited law schools;
- Enforcing compliance through issuance of Notices of Noncompliance, subsequent inspections and, if needed, CBE hearing and action;

⁴⁴ <https://www.lawyeredu.org/connecticut.html>. In 2016 a second Massachusetts state approved law school, the University of Massachusetts School of Law-Dartmouth, which had been recognized by Connecticut received full ABA accreditation; previously it had been accredited by the New England Association of Schools and Colleges.

<http://www.bennettlawfirm.com/practice-areas/texas-medical-board/>

⁴⁵ See <https://web.archive.org/web/20100316224800/http://www.legislature.state.al.us/CodeofAlabama/1975/34-3-2.1.htm>. Graduates from both law schools are by statute authorized to sit for the exam; it is unclear whether either is accredited by any state accrediting institution.

⁴⁶ <https://admissions.alabar.org/july-2017-statistics>. Recent Bar pass rates for non-accredited schools is notably lower than overall Alabama average (e.g., 18% vs. 78%).

⁴⁷ https://en.wikipedia.org/wiki/Nashville_School_of_Law

• ⁴⁸ In addition to ABA and California accredited law schools, students may also sit for the Bar Exam with a degree from an unaccredited correspondence law school; a distance-learning law school; or a fixed-facility law school.

- Reviewing and recommending CBE action regarding requests for variances, waivers of requirements and major changes by accredited and unaccredited law schools;
- Drafting recommended changes to the CBE's accreditation or registration standards; and
- Assisting the CBE in the adoption of all such changes.

The State Bar and the CBE have responsibility for accrediting 21 California law schools, and oversight of an additional 20 registered unaccredited law schools: which includes correspondence law schools, distance-learning law schools and fixed-facility law schools.⁴⁹ In accordance with Education Code Section 94900, the CBE has been delegated the responsibility for the approval, regulation and oversight of accredited degree-granting law schools. The accreditation rules are contained in the Accredited Law School Rules. All ABA-approved law schools are deemed accredited; and the CBE does not exercise any oversight of these schools.

Schools seeking accreditation by the CBE must file an Application for Provisional Accreditation. If there appears to be a reasonable probability that the school will meet the requirements, the school is visited. Following the visit and the filing of a report, provisional accreditation may be conferred. If a school does not appear to be eligible, it will be so advised and asked to withdraw its application. Following a two-year period as a provisionally accredited law school, the school may seek full accreditation.

All California accredited schools are subject to re-inspection every five years, or more often if the Committee so determines, at the school's expense.⁵⁰ In addition to other reports that may be requested, all California accredited schools must file an annual report in November of every year.

Accreditation is a mission critical and serious endeavor; it consumes significant resources and needs to be done with transparency, rigor and validity. The current process has invoked concern, engagement and criticism from several stakeholders, and for different reasons.⁵¹ A comparison of bar pass results between ABA, California accredited and unaccredited law schools suggests a need for careful oversight of non-ABA schools as a matter of consumer protection for potential students. While some are highly successful and well regarded (e.g. the WASC accredited San Joaquin College of Law whose bar pass outcomes are better than many ABA accredited institutions), overall the record is mixed, as reflected in a much lower pass rate by non-ABA schools.

Nonetheless, California accredited law schools do offer several important advantages: flexible schedules, lower admissions standards and lower tuition fees. At a time of significant increase in

⁴⁹ The authority to accredit law schools is derived from Education Code 94310 and Business and Professions Code Section 6060.

⁵⁰ The assessment of charges or expenses varies by size of school and other factors, and may not, in a specific case, cover the precise expense of the individual program accreditation.

⁵¹ A July 25, 2015 article in the *Los Angeles Times* was particularly critical of California's unaccredited law schools. (See www.latimes.com/local/education/la-me-law-schools-20150726-story.html). New statutory reporting requirements for all non-ABA accredited law schools were adopted in 2017 and these may, however, address the problems of such schools by requiring more accurate reporting among other things their enrollment statistics and outcomes, along with curriculum offerings and financial practices. See Business and Professions code, § 6061.7.

the cost of legal education, these benefits may be significant, and may outweigh perceived drawbacks of lesser prestige, mobility and predicted earning power. However, if quality and educational service suffers because of inadequate oversight and regulation, these schools are doing a disservice to students and the public. California's non-ABA schools are an important resource but require thoughtful attention.

With an already significant task of managing the Bar Exam and admissions, including the accreditation function in the CBE responsibilities raises questions about focus, resource allocation and even conflict of interest. To this end, proposals arose around different approaches, including the option to outsource accreditation to a third-party expert, specifically, the Western Association of Schools and Colleges (WASC).⁵² Three principal arguments have been put forth for outsourcing accreditation to a third party:

1. Bringing the rigor of nationally recognized educational standards and practices to bear on the accreditation of all non-ABA approved law schools;
2. Taking advantage of the deeper skills and experience in accreditation by an organization such as WASC, a highly recognized leader in the field; and
3. Eliminating a set of activities which distract from organizational, management and resources of the CBE, Board and staff.

Four arguments *against* outsourcing to WASC were discussed at the CBE's December 2017 meeting; they are:

1. The WASC long review cycle⁵³ and focus on larger institutions, with a review authority limited to accrediting institutions, not programs, would not meet the needs of the 39 California non-ABA law schools (both California accredited and unaccredited), which are smaller and have a single program focus;
2. WASC would be unlikely to be qualified to specify required studies or courses as pre-requisite to practicing law, as is currently done for both ABA and California approved schools;
3. The current process incorporates law school dean involvement in accreditation reviews which creates valued mutual learning and peer feedback, along with in-depth experience-based critiques and recommendations. This is highly valued;⁵⁴ and there is concern that WASC reviews would eliminate the benefits of this important practice.
4. The cost of the WASC accreditation process would be higher and could force a tuition increase, offsetting one of the principle benefits of the lower-cost California accredited law schools.⁵⁵

⁵² Accrediting Commission for Schools Western Association of Schools and Colleges, www.acswasc.org/.

⁵³ WASC review cycle may be up to 10 years

⁵⁴ Notably, by representatives of non-ABA approved law schools

⁵⁵ It should be noted that a 2017 review revealed that accreditation costs are not fully funded by the fees charged, thus requiring subsidization from other revenue sources.

The majority of CBE members strongly preferred to keep the accreditation function within the State Bar and there has been no specific evidence put forward that the CBE's review processes or its standards, now strengthened by the new disclosure requirements contained in 2017 legislation, are inadequate.⁵⁶ At the same time, the CBE's accreditation practices themselves have never been reviewed by either national or state bodies charged with setting best accreditation practices.⁵⁷ To take full advantage of its unusually diverse system for educating lawyers, California must ensure that its accreditation standards are well-designed and effectively implemented, consistent with best practices. To achieve this result, a three-year audit process by an accrediting review organization is recommended to ensure that California's accreditation practices are on par with, or superior to, existing best practices for accrediting pre-licensure education. The CBE members supported this recommendation.

Outsourcing concerns merit further consideration but may not be sufficiently determinant to eliminate the WASC outsourcing option.⁵⁸ For instance, the cost of accreditation must be balanced against the values of quality, rigor and independence, particularly as it relates to the mission to protect the public. The accreditation design and governance decision should be driven by the solution that best meets the mission, with costs managed subsequently within the budget envelope. In addition, cost analysis may be imbalanced if it underestimates true internal costs (e.g., as current staff and CBE operating costs, not investments required to maintain expertise consistent with emerging laws, technology and educational practice) or overestimates third party costs (which may be negotiated or reduced for more precisely or narrowly scoped service).

Other concerns⁵⁹ about outsourcing may be mitigated by further investigation. For instance, WASC does accredit small, single program institutions and can create teams of subject matter experts appropriate to the task,⁶⁰ and may have flexibility in length of review cycle.

Accreditation Recommendations

Based on our reviews and discussions with the CBE⁶¹, this report supports the following recommendations outlined by the CBE working group:

⁵⁶ This statement summarizes discussions and interviews held with the consultants, as well as the state of discovery as of this writing.

⁵⁷ As detailed in the attached memo on accreditation practices, it is standard to have accrediting bodies certified themselves and to be reviewed periodically. Because this has never been done in the case of the State Bar and because the State Bar is unusual in being a governmental body, rather than a private entity, inconsistent with standard accreditation practices, such a review would seem particularly useful.

⁵⁸ Staff estimates suggest the cost of a WASC accreditation would likely exceed the current Average Annualized Law School Regulation Cost of the State Bar review process (i.e. \$1,735-\$6,319). Both the cost of the seven-year ABA Annual Law School Review (i.e. \$17,8186) and that of the ten-year WASC review (i.e. \$8,340-\$11,575) would be greater.

⁵⁹ (i.e. length of review cycle; limitations of size and authority for institutional, rather than program, review; and involvement of subject matter experts in legal education)

⁶⁰ Information about the WASC review processes appears in the attached interview report with Dr. Elizabeth Griego, a former WASC Associate Director with responsibility for accreditation standards and review.

⁶¹ http://calbar.granicus.com/GeneratedAgendaViewer.php?view_id=3&clip_id=245. As noted, CBE members expressed a strong preference that accreditation not be outsourced to WASC or another entity. This perspective was strongly supported by representatives from California accredited school members of the Law School Council as well.

CBE WORKING GROUP RECOMMENDATIONS: Accreditation

1. A three-year audit should be conducted to understand and ensure that CBE accreditation practices are consistent with national education accreditation standards.
2. The first audit should begin in 2018.⁶²
3. Before beginning this process, the State Bar should solicit input from the Supreme Court and the Legislature.
4. Pursue value driven innovation in education and licensure based on growing knowledge and skill assessment practice.

CBE and Council members had a clear preference to retain accreditation as part of the CBE scope; contrary to this preference, this report argue that the current approach to accrediting California law schools is inconsistent with good governance design.⁶³ Accreditation is a separate function, requiring skills and processes different from those needed to evaluate bar exams and applicant character. While there is a relationship between the body of information and ability law schools offer and what constitutes minimum competence for professional licensing, the two domains are distinct. Volunteers cannot be expected to master both areas.

In fact, there is a natural conflict between those accountable for creating a robust and valid admissions exam testing vital knowledge domains, and those wishing to achieve impressive exam pass rates. The two responsibilities should remain separate for their own integrity and effectiveness.

There are specific design considerations that suggest the State Bar might benefit from outsourcing accreditation. These include:

- Accreditation requires a wholly different set of activities and skills than overseeing admissions.
- Addition responsibility for accreditation adds burden and distraction to the core focus of the volunteers.
- Overseeing both accreditation and admissions may invite conflicts of interest or perspective, particularly given the apparent dominant role of law school deans in the accreditation process.
- Additionally, past practice has shown little interest in review and improvement of the CBE accreditation process.

⁶² The original proposal was to begin the audit concurrently with the legislative mandate on accreditation. However, as the timing of the legislation has changed, the recommendation has been modified to reflect the original intent that the audit begin immediately.

⁶³ This represents the opinion of the authors of the report.

- Maintaining the expertise to oversee accreditation may be an expensive time and resource demand on staff and volunteers; alternatives to an internal CBE-led accreditation process either exist now or could be developed.

California is unique in having its own state accredited law schools and providing opportunities for legal education in an exceptionally broad spectrum of educational venues, more than is available in any other state. As such, deriving recommendations from common practice or best practice is not possible, beyond the observation that the focus on admissions activity is the norm. Given that there is no comparable practice, the California current approach relies purely on historical events and precedent.

Given the above considerations, the consultants believe that the burden should be on the State Bar of California to demonstrate why it should not separate its accreditation function from the Bar and/or why it should retain the function in CBE.

Opportunities for the CBE and the State Bar

The work done by the CBE and its working group resulted in important recommendations which should be implemented. We expect that these actions, standing alone, will result in better communications and more aligned action. The State Bar of California can, and should, consider additional specific actions to increase focus of the CBE on policy and its specific admissions tasks, eliminating a range of activities that are more appropriately delegated to staff or outside organizations with greater subject matter expertise, rather than relying on over-burdened volunteers. This may materially reduce the tasks of the CBE and would support a reduction in Committee size. While a larger committee allows tasks (i.e., appeals, question review) to be spread over a greater number of examiners, it also carries additional costs of coordination and expense, and dilutes policy focus. It may also increase risks of role confusion, outcome inconsistency, and redundancy.

Standard and well-recognized organization design goals for any committee such as the CBE help us to identify additional recommendations. Summarized in Insert 4, these design criteria apply to the CBE in the following ways:

1. *Form should follow function.* The design of the CBE should reflect its role and contribution in the overall State Bar Strategic Plan, as well as the responsibilities of the Court.
2. *Design for clarity.* Particularly in the case of volunteers, the State Bar will do a service to its volunteers, the public, and the lawyer population by providing a very clear remit of the tasks needed to be done, and the commensurate and relevant skills required. For instance, only

Insert 4: Governance Design Criteria

1. *Form should follow function.*
2. *Design for clarity.*
3. *Focus on domain of influence.*
4. *Design for accountability.*
5. *Design for skill and strength.*
6. *Design for collaboration by effective communication.*
7. *Design for impact.*
8. *Design for privacy and data protection.*

admissions testing related tasks (e.g. oversight of exam development, exam policy, grading and character appeals) require the practice and learning that comes from professional calibration and experience. These skills are independent from those required to review budgets or oversee the sufficiency of academic programming. By setting forth a clear and defined task, the State Bar will elicit stronger service from its volunteers.

3. *Focus on domain of influence.* It is important to determine what a group can understand, manage effectively. While there may be some interdependent outcomes (e.g. the percent of Bar Exam pass rate could reflect both exam design as well as the content of academic programs), this does not mean that CBE should engage in overseeing, shaping, or monitoring all related outcomes.
4. *Design for accountability.* To promote accountability, a clear delineation of responsibility, action, expertise is needed. Committees and organizations can function more effectively when accountability is clearly delegated to a specific group. Thus, when errors occur, the source of errors may be more readily identified and remedied. In contrast, when accountability is diffuse, organizational failure is more difficult to identify and remediate. For this reason, focused accountability for the CBE is should be a goal and is strongly advocated.
5. *Design for skill and strength.* This is particularly important for key stress points in any process. For the State Bar, Admissions a critical activity and appropriately much scrutinized, but multiple accountabilities and activities can pose serious problems. Only when a task is clearly focused task, can volunteers spend their time devoted to doing the best job, omitting unnecessary tasks, training new volunteers, and identifying sources of strength and sources of error.
6. *Design for collaboration by effective communication.* All committees/teams must operate in a larger context; the ability to communicate and work effectively with other relevant parts of the organization is essential for overall organizational effectiveness and requires careful oversight and design, based on clear lines of authority, clear task delineation, and effective, frequent, constructive communication. The relationship between communications and informal relations should not be overlooked. Many problems arise as the result of informal conversations, misguided conclusions, or erroneous assumptions or beliefs about respective roles and rights. Designing and monitoring informal relations is as important as designing the formal rules structures and authorities. Throughout this study, several factors suggest that the California State Bar may want to look further into focusing CBE activities and the State Bar as an organization to avoid misalignment of approach.
7. *Design for impact.* As one of the largest lawyer licensing jurisdictions, California has the scale to try different and promising approaches to overseeing admissions and practice of law. This criterias should be a focus in adopting change.
8. *Design for privacy and data protection.* Given growing concerns about privacy and security, require that the State Bar and CBE ensure that all systems and processes are designed to minimize the risk of leaks, hacks or other system intrusions, which might damage

individual members of the public, California’s licensed lawyers, and the trust needed to preserve confidence in the legal system.

Applying these criteria clearly argues for a redesign of current tasks and activities of the CBE. California CBE tasks beyond admissions (accreditation, financial, etc.) should be reassigned to appropriate divisions or entities. Consistent with the design of larger Law Examiner structures in the US, administrative tasks not directly related to overseeing a fair, effective admissions process should not be the remit of the CBE. The CBE’s role, consistent with the State Bar Strategic Plan, should be limited to ensuring that it is delivering an effective, unbiased admissions process to protect both the public and the applicants. Where the professionalization of Bar practices continues, some CBE work could, and should, be done by professional staff (with oversight reporting to the CBE).⁶⁴ This would enable the CBE to do its best work providing input on policy and emerging admissions issues, and managing a defined set of appeals.

Summary of Additional Report Recommendations

Thus, in addition to the CBE recommendations, this study strongly recommends that:

1. CBE tasks should be focused primarily on admissions related work, specifically handling only the most difficult appeals and, where appropriate, adjudicating and offering opinions on critical matters of policy and capabilities.
 - Additional input on policy and strategy matters should address relevant items of the Bar Strategic Plan (see Reference 6).
2. A thorough review of the State Bar’s approach to Moral Character assessment should be undertaken, examining, to the extent possible within privacy protections, the correlations and predictive value of moral character reviews. In addition, the State Bar should be sure that the character reviews are as effectively as possible “de-biased.” This could involve another course of research as well as setting in affirmative practice to counteract unconscious bias.
3. Accreditation outsourcing should be reviewed seriously considered by the State Bar. Many of the positive features described above could be built into a customized approach. However, outsourcing would provide the State Bar access to current and evolving expertise as well as best practice in accreditation. It will also allow for greater independence and perceived or actual objectivity. Further, this report asserts that the burden is on the State Bar of California to demonstrate why it should not separate its accreditation function from the CBE.

⁶⁴ A recent example was of the selection of a new IT system, to be used by multiple functions in the State Bar. Some CBE members argued that the full CBE should have had a chance to review the vendor offers and offer opinions on the choice. Such a role seems well beyond CBE accountability or knowledge domain. More appropriately, perhaps when institutional changes may affect the CBE’s work, the CBE should have an opportunity to request or specify functionalities needed in the system, but not take part in the process of vendor selection.

4. The State Bar should continuously scan for innovations in licensure, certification and validation. Test and evaluations tools and methods are evolving rapidly and there may be an opportunity for California, with its unique history and experience to innovate improvements in the preparation of lawyers and improvement of legal access in California. California's CBE is responsible for managing the largest admissions system in the U.S. California's expansive educational qualification options (e.g., online, rural, job experience, etc.) may afford the opportunity for more people, particularly those limited by geography or financial resources, to attend law school, thus expanding access to the legal system. This unique context may offer opportunities to evaluate current educational and licensing technologies and to experiment with new designs, to demonstrate the relationship of law student preparation to the licensing qualifications and capabilities required of minimally competent lawyers. Such an effort would be of great benefit to California, and potentially to other jurisdictions as well, given California's significance in the market place of legal education. The underlying challenge will be to determine the unique, innovative, fair, and cost-effective approaches which California can take to testing and admissions processes.
5. This State Bar must be intentional about introducing and managing change. This report offers a checklist of recommended activities, as well as identifying bigger ideas for change and alignment. Redesigned admissions and organizational processes require change across several actors and constituencies. To implement the recommendations set forth in this report, the Bar needs a road map, or transition plan. A change plan needs to outline compelling opportunities, specify new rules, roles and behaviors, and bring key constituents along to realize positive impact as well as to minimize the costs and conflicts of change.

Further, a restructuring, such as outsourcing accreditation, requires alignment and coordination across diverse constituents, during the transition process, and in the future. Such a change should clearly define and ultimately measure the anticipated benefits of the new design (including practices to keep from the current model) and must be executed to minimize implementation costs and risks. Change of this scope must have a well-documented transition project plan and effective project management.

Managing the admission of lawyers in all states is a matter of great importance with a direct impact on public protection. For the State Bar of California, however, this is a responsibility comparatively unequalled in both the size of the lawyer population and the scope of functions involved. Current changes in the legal profession and legal education, combined with advances in the science of psychometrics and data analytics, make review of lawyer licensing nationally overdue. All jurisdictions, like California, have largely relied on licensing systems which date from the early twentieth century. This review of the Committee of Bar Examiners, mandated by the State Bar of California Board of Trustees, is thus both a timely undertaking and a valuable opportunity.

The recommendations set forth above seek to retain the best of past practice, and to re-balance the role of the volunteers, staff, constituencies, and experts. By focusing the CBE on its core task of admissions (as well as input into policy formation and review), the goal is to leverage the insight, experience and opinions of volunteers for admissions appeals and adjudication. Specialist and administrative tasks should be appropriately assigned to staff or outside experts; while policy making should take place in a larger context overseen by the Court. The goal is to increase efficiency and economy and improve performance with increased professionalization. By doing so, the State Bar of California will build on its legacy of excellence and set a national standard for best practices in lawyer licensing.

REFERENCES

Reference 1: Interviewee List

Reference 1: CBE Interview List

<p><u>CBE Members</u></p> <ul style="list-style-type: none"> ▪ Angeli Agatep, CBE Member ▪ Robert Brodie, CBE Member ▪ Alex Chan, CBE Member ▪ James Efting, CBE Member ▪ Delores Heisinger, CBE Member ▪ Erika Hiramatsu, CBE Member and Chair ▪ Larry Kaplan, CBE Member ▪ Paul Kramer, CBE Member ▪ Alexander Lawrence, CBE Member ▪ Ester Lin, CBE Member ▪ Larry Sheingold, CBE Member* ▪ David Torres, CBE Member ▪ Lee Wallach, CBE Member* <p><u>Board Members</u></p> <ul style="list-style-type: none"> ▪ Michael G. Colantuono, President State Bar Board ▪ Joanna Mendoza, Chair Programs Committee, State Bar Trustee <p><u>Staff</u></p> <ul style="list-style-type: none"> ▪ Andrew Conover, Principal Program Analyst ▪ Lisa Cummings, Program Manager, Examinations Admissions ▪ Donna Hershkowitz, Chief of Programs ▪ George Leal, Director Admissions ▪ Gayle Murphy, Director, Admissions ▪ Amy Nunez, Interim Director Admissions ▪ Greg Shin, Admissions ▪ Mark Torres-Gil, Program Manager Moral Character Determinations ▪ Leah Wilson, Executive Director <p><u>U.S. Bar Admissions Organizations</u></p> <ul style="list-style-type: none"> ▪ Alaska – Elizabeth O'Reagan ▪ Arizona—John Phelps ▪ Florida-- Missy Gavagni ▪ Idaho-- Maureen Ryan Braley ▪ Michigan—Janet Welch ▪ New York—John McAlary ▪ Oregon—Troy Wood ▪ Pennsylvania-- Gicine Brignola ▪ Texas—Susan Hendricks ▪ Washington State—Paula Littlewood 	<p><u>Other Individuals and Groups</u></p> <ul style="list-style-type: none"> ▪ Dr. Tracey Montez, Head Psychometrician, California Department of Consumer Affairs ▪ Dr. Mary Pitoniak, Consulting Psychometrician, Educational Testing Service ▪ Dr. Chad Buckendahl, Consulting Psychometrician (on contract to the California State Bar) ▪ Dean Barry Currier, ABA Managing Director of Accreditation and Legal Education ▪ Erica Moeser, CEO Emerita, National Commission of Bar Examiners ▪ Dean Judith Areen, Executive Director, Association of American Law Schools ▪ Dean Kelly Testye, CEO, Law School Admissions Council (formerly Dean, University of Washington) ▪ Christopher Chapman, CEO, Access-Lex ▪ Dr. Elizabeth Griego, Educational Consultant and former head of standards, WASC ▪ Dr. Judith S. Eaton, CEO of the Council for Higher Education Accreditation ▪ Bridgette Gramme, Center for Public Interest Law ▪ Julie Brannan, Director of Education and Training, U.K. Solicitors Regulation Authority
---	--

*Term completed as of May 2018

Reference 2: CBE Working Group 24 Recommendations and Discussion Summary

I. Governance Recommendations

1. On Size and Structure

- a. Reduce the size of the CBE. A smaller CBE will make it easier to convene a simple majority quorum; a smaller CBE will be more conducive to member meeting participation.
- b. Set and enforce three-year CBE chair terms; and where applicable, CBE chair terms. Enforce actual terms, opt for filling vacancies rather than continuing the past terms of incumbents until replaced.
- c. Develop a CBE Skills Matrix and apply it to recruiting efforts; utilize communications and recruiting efforts to attract members with needed skills and experience.
- d. Review CBE Sub-committees role and activities for alignment with focused design.

2. Activities

- a. Identify key policy and long-term items to be covered on the CBE agenda, including alignment with the State Bar Five-year Strategic Plan.
- b. Strengthen onboarding practices, e.g., mentors, role play practice, observing join Moral Character reviews.
- c. Staff should provide uniform agenda and agenda management process.
- d. Eliminate CBE involvement in formal financial reviews; limit it to approving bar examination fees only.

3. Cooperation with the State Bar Board, Staff, Court and Legislature

- a. Identify positive scenarios of how CBE, the California Bar and the Supreme Court can most effectively work together, both by using successful cases from experience, as well as developing prospective cases for future guidance.⁶⁵
- b. Validate roles and authorities of all respective bodies via an Office of the General Counsel review.
- c. Educate and inform constituents (CBE members, Trustees, staff, judicial and legislative authorities) on respective roles, authorities and accountabilities.

4. Law School Council Should Facilitate Communications between Deans and CBE

- a. Work/study with deans and LSC to design a more robust partnership.
- b. Clarify and institutionalize points when LSC and law school deans “weigh in” at key points, being sensitive to Bagley-Keene requirements; The Bar and CBE should consider options to gauge interest and opinions early on to build trust and collaboration. For instance, as a policy change or important matter with implications for law schools is considered, a first step would be an open webcast with a call in for public comment.
- c. Ensure annual “Admissions Day” is permanently on Bar Calendar; ascertain possibility of extending Admissions Day training to Law School constituents/deans (next step: consult with those attending the Board of Trustees Admissions review session for their recommendations).
- d. Take advantage of the Committee being formed to discuss Bar Exam review, to engage all deans in the process of overseeing the Job Analysis; review this work at the Planning Committee meeting.
- e. Pending study about the original reasons for creating both LSC and RAC, consider combining both into a single organization to broaden perspective and avoid conflict of interest.

II. Moral Character Recommendations

- a. Ensure Moral Character review has more specific, clearly articulated standards/guidelines for determinations; document and publish specific guidance for decisions beyond the existing high-level description; include waterfall, “if-then” protocols for decision sequences; reinforce, extend, and clarify Rule 4;
- b. Compare California’s guidelines to those used by the NCBE guidelines annually;
- c. Undertake a review of the reform efforts being developed in other jurisdictions, notably the State Bar of Utah and the Solicitors Regulation Authority in the U.K., to determine what possible alternate approaches to reform may be possible; and
- d. Retain CBE level review of appeals denied.⁶⁶

III. Accreditation Recommendations

- a. A three-year audit to understand and ensure that CBE accreditation practices are consistent with national education accreditation standards;
- b. Begin the first audit immediately in 2018;⁶⁷
- c. Before beginning this process, the State Bar should solicit input from the Supreme Court and the Legislature.
- d. Pursue value driven innovation in education and licensure based on growing knowledge and skill assessment practice.

⁶⁶ Specifically, the group argued that the Committee level review best reflected the due process that should be accorded candidates. Thus, any character and fitness applications that were denied or questioned by staff or subcommittee should be reviewed by the full committee (as opposed to going directly from subcommittee to State Bar Court).

⁶⁷ The original proposal was to begin the audit concurrently with the legislative mandate on accreditation. However, as the timing of the legislation has changed, the recommendation has been modified to reflect the original intent that the audit begin immediately.

CBE Working Group Recommendations: Discussion Record

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
1. Governance and composition	<ul style="list-style-type: none"> 10 lawyers (appt BOT) 9 public members (apptd by legislature, senate, court) 	<p>↓ Absences may make it challenging to have a quorum (majority)</p>	<ul style="list-style-type: none"> If work is redesigned, consider smaller board. Smaller board makes majority quorum easier to convene Smaller board may be more conducive to member meeting participation 	<ul style="list-style-type: none"> NY 5 long-termed examiners, paid board service; Texas 9 lawyers, WI 11, FL 12
a. Terms	<ul style="list-style-type: none"> Public: 4-year term, renewable for 4 terms total Licensed: 4 yr. terms Serve until position filled 	<p>↓ No effective terms for public members; some serving up to 17 years</p>	<ul style="list-style-type: none"> Enforce actual terms, opt for vacancy vs. continuance of past terms Utilize communications and recruiting efforts to gain members with needed skills and experience 	<ul style="list-style-type: none"> NCBE/ABA Code of Recommended Standards for Bar Examiners (“Code”) recommends consistent and fixed, but staggered, terms, identical length for all members, with ‘sufficient’ rotation to encourage fresh views; most Bars consulted agree.
b. Leadership and Composition	<ul style="list-style-type: none"> Annual member rotation Fixed sub-committee leadership 	<p>↑ Stable leadership, institutional knowledge</p> <p>↑ Opportunity to participate in all committees/don’t get stuck in one committee</p> <p>↓ Entrenchment of leadership</p> <p>↓ Newer members may have challenge participating</p>	<ul style="list-style-type: none"> 3-year subcommittee chair terms 3-year committee terms Develop a Committee Skills matrix, apply to recruiting efforts Strengthen onboarding practices, e.g., mentors, role play practice, join MC reviews 	<ul style="list-style-type: none"> Many Bars have predictable rotation of Chair and Vice Chair for continuity

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
c. Meeting agendas/ meeting management	<ul style="list-style-type: none"> Agendas sent out 1 week prior Materials posted Dinners, social activity supplement formal meetings 	<ul style="list-style-type: none"> ↓ Oscillating between open and closed sessions has been confusing ↓ Acronyms, “lawyer speak” may discourage public member engagement ↓ Materials are not received in sufficient time ↑ Informal time seen as helpful to collegiality 	<ul style="list-style-type: none"> Staff to provide uniform agenda and agenda management process (Herschkowitz to review) Identify key policy and long-term items to be covered on committee agenda, including alignment with Bar 5-year Strategic Plan 	Most admissions management organizations meet monthly.
d. Sub-Committee Design	<ul style="list-style-type: none"> Educ Standards Examinations Moral Character Ops & Mgt 	<ul style="list-style-type: none"> ↓ May be challenging under Bagley Keene, subcommittee sessions are closed 	<ul style="list-style-type: none"> Per 2/2 CBE meeting; eliminate Sub-committees except MC [NOTE: Revised to “Review Sub Committee roles and activities”] 	<ul style="list-style-type: none"> Many Bars have separate entities or committees for Moral Character and Fitness and Exam Administration; some are also in separate organizations

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
2. Moral Character Approach	<ul style="list-style-type: none"> ▪ Appeals rec'd by staff to MC Subcommittee (of approx. 7K 2017 appeals, 259 to Subcommittee) ▪ Teams receive folios, have informal conference with applicant, staff member present. ▪ Staff provides history and calibration 	<ul style="list-style-type: none"> ↓ Significant reading demand on volunteer ↓ Varied outcomes – no “rules” for determinations ↑ Staff informs for consideration ↑ Important to have public, eclectic, “human” perspective ↑ Full committee review realizes due process ↑ Review of individual situations allows CBE to be current on policy and interpretation issues; may identify areas where policy is unclear 	<ul style="list-style-type: none"> ▪ Ensure Moral Character review has more specific, clear standards/guidelines for determinations; document and publish specific guidance for decisions beyond existing high-level description; include waterfall, “if-then” protocols for decision sequences; Reinforce, extend, clarify Rule 4 ▪ Compare to NCBE guidelines ▪ Retain Committee level review <p>--NO: Outsource Moral Character to separate entity</p>	<ul style="list-style-type: none"> ▪ The Two-level review with final decision by the Supreme Court is standard. The final review for some Bars is based on a quorum (not all members) of the Board of Bar Examiners (e.g. about 3-5 members) ▪ 39 states have published moral character standards ▪ 24 states have separate entity that assesses moral character <p>The Code recommends a clearly articulated and published set of standards with which to guide C&F reviews; 70% of U.S. jurisdictions comply; California appears to lack such a set of standards.</p>

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
3. Accommodations Approach	<ul style="list-style-type: none"> ▪ Staff reviews application, background documentation, including other accommodations made – makes recommendations ▪ Reviewed by Ops & Mgt; closed session ▪ Important to have experts’ opinion on disabilities ▪ 2017: @ 800 applications; 100 appealed to CBE 	<ul style="list-style-type: none"> ↓ Staff/SMEs guide decisions – CBE subcommittee members have little to add ↓ Frustrating to both sides – very challenging and complex to determine actual from false claims ↑ Very important to have due process ↑ Likely recent national decisions will make accommodations decisions more rote 	<ul style="list-style-type: none"> ▪ Delegate to staff per evolving precedent 	<ul style="list-style-type: none"> ▪ The State Bar’s organizational approach to accreditation should be reviewed and alternate models considered considering national practice and state bar funding.
4. Accreditation	<ul style="list-style-type: none"> ▪ Done primarily by staff ▪ Site visits by CBE members ▪ Require Cal-accredited schools have acceptable pass rate of student 	<ul style="list-style-type: none"> ▪ CA has most expansive qualification options (e.g., online, rural, job experience) 	<ul style="list-style-type: none"> ▪ Propose accreditation audit every 3 years to ensure accreditation practices are consistent with national education standards ▪ First audit concurrent with legislative mandate on accreditation- ▪ PROS: Legislature might like, should discuss approach with legislature ▪ NO: Outsource to WASC 	<ul style="list-style-type: none"> ▪ No other State Bar organization accredits law schools; Massachusetts appears to use the Regional Accrediting Body to accredit its state approved law school (further clarification required) ▪ Many states require graduation for an ABA accredited school for eligibility to take the bar exam.
a. Recommendation of Admittance	<ul style="list-style-type: none"> ▪ Done by CBE 	<ul style="list-style-type: none"> ▪ Continued studies and debates 	<ul style="list-style-type: none"> ▪ Remain as is 	

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
b. Policy changes	<ul style="list-style-type: none"> ▪ CBE, BOT, Staff can initiate, propose policy changes ▪ Staff studies, CBE and BOT review 		<ul style="list-style-type: none"> ▪ Remain as is ▪ Worth reviewing appropriate scenarios, particularly since clarity and alignment will be needed in approaching upcoming policy question 	
c. Financial Oversight	<ul style="list-style-type: none"> ▪ CBE oversees collection, finances ▪ CBE reviews fees 	<p>↓ History of concern that CalBar treats admissions as a “cash cow”</p> <ul style="list-style-type: none"> ▪ CBE has substantial fiscal reviews are inconsistent with current structure and regulatory framework Few CBE members expressed interest in great/greater in depth fiscal reviews 	<ul style="list-style-type: none"> ▪ Re-allocate financial oversight to accountable staff (e.g., ED, CFO, etc.) ▪ Review fees annually; recommend to BOT ▪ Potential for further education and understanding re CBE role 	

Design Element	Documented (Report Section II)	Actual/pros/cons/ questions (Report Section II)	Proposed for consideration (Report Section VI)	Observations from compares (Report Section II)
7. Cooperation, among bar examining authority, law schools, the judiciary, and the bar	<ul style="list-style-type: none"> Law School Council to facilitate communications between deans and CBE Ad hoc meetings between BoT members, staff and judiciary Law School Assembly (all deans) meets 1x year RAC focus is on accreditation; LSC on exam 	<ul style="list-style-type: none"> ↓ Unclear there is consistent or sufficient LSC engagement ↓ Ad hoc meetings undermine transparent communication and aligned action ↓ What is the overlap, redundancy between LSC and RAC 	<ul style="list-style-type: none"> Work/study with deans and LSC to design a more robust partnership Institutionalize points when LSC and law school deans “weigh in” at key points – need to be sensitive to BK; need to gauge interest early on to build trust and collaboration, could do webcast w call in for public comment Ensure annual “Admissions Day” on Bar Calendar; ascertain possibility of extending Admissions day training to Law School constituents/deans (ask deans who attended BoT session) Committee being formed to discuss Bar Exam review, will engage the deans, will oversee the Job Analysis, will review at Planning Committee meeting Pending study on original reason formation of both LSC and RAC, consider combining 	The Coder recommends this stake-holder collaboration. It is unclear how well California meets this recommendation.

Reference 3: Comparisons with other jurisdictions

Reference 3: Table of Inter jurisdiction comparisons

Note: ● Mandatory Bar State ● Voluntary Bar StateSources and abbreviations:⁶⁸

	Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte
Alabama	BBE ⁶⁹	15	1	4			President of AL State Bar	Y	Y
Alaska	Law Examiners Committee ⁷⁰	20 ⁷¹	3	Y	N		President	Y	
Arizona	Committee on Examinations	11						Y	18
Arkansas	Admin Office of Court	11	6			2 per (4) judicial districts, 3 at large, [Incl 1 liaison/judge]	per curiam		
California	CBE	19	3	4x					
Colorado	BLE - Law Committee	11; + 2 Liaisons						Y	
Connecticut	CT Bar Examining Committee	24	3	3x	1/3 expire each year	practicing attorneys + 1 judge	Judges of the Superior Court		
Delaware	Board of Bar Examiners	26 ⁷²	3	2x		+ liaison judge & Exec Dir		Y	NCBE does C&F

⁶⁸ Most of the documentation comes from published websites and Rules of the Court. Effort was made to reflect naming conventions of the source. Where traditional names (Board of Law Examiners, Committee of Law Examiners), abbreviations (BLE, CLE) are used. Where the state name is included in the name (e.g., Florida Board of Bar Examiners), it is included here.

⁶⁹ "members of the bar of Alabama are members of a private incorporated association."

⁷⁰ Law Examiners are paid \$800/y (\$400 per exam period graded)

⁷¹ Alaska down from 31 before UBE

⁷² DE repr 3 counties: currently 23 members plus 24 Associates, liaison justice & Exec Dir

Reference 3: Comparisons with other jurisdictions

	Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte
DC	Committee on Admissions	7	3	2x		1 member of counsel ⁷³	Court	Y	N
Florida	Florida BBE	18.		No		5 L; P 1	State Court nominated by Bar		15 ⁷⁴
Georgia	Office of Bar Admissions	6	6				Court; Court appts Chair		10 ⁷⁵
Hawaii	HI BBE	per SC Quorum is 15	Set by Court				Court; Court appts Chair; Sec'y is Clerk of Supreme Ct	Y	NCBE ⁷⁶
Idaho	Bar Exam Preparation Committee ⁷⁷	3						Y	9 ⁷⁸
Illinois	IL Board of Admissions to the Bar	7	3	3x	Y	+ law school dean ⁷⁹	Supreme Court, each justice gets 1 appointee, done by district		
Indiana	BLE	10.							300+ ⁸⁰
Iowa	BLE	7	3	3x		5 L, 2 P, gender balanced	Supreme Court	Y	
Kansas	KBLE	10	5	2x ⁸¹		Lawyers & Judges		Y	N

⁷³ DC – all members of the Bar⁷⁴ Min 4 public members⁷⁵ GA C&F 6 attny, 3 public, 1 apptd by chair of BBE – 5 yr terms⁷⁶ HI application reviewed by Bd, Staff, Judiciary; The Board or the ARC shall consider whether the evidence meets the standard of character and fitness set forth in Rule 1, RSCH⁷⁷ Reviews questions and analyses for each bar exam and provides feedback to the National Conference of Bar Examiners. Meets twice per year; 3 members.⁷⁸ ID Apptd by Bar Board appoint a nine-members of CF committee (7 members in good standing of the Bar and 2 non-lawyer members. 0 Reviews character or fitness issues of applicants for admission. Makes recommendations to the Board of Commissioners Meets 5-6 times per year; 8 members (2 non-lawyers)."⁷⁹ ex officio, non-voting⁸⁰ IN the Committee on Character and Fitness now numbers over 300 lawyers and interviews personally all applicants to the bar.⁸¹ KS BLE terms specified as maximum

Reference 3: Comparisons with other jurisdictions

	Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte
Kentucky	KY Office of Bar Admissions ⁸²	7						Y	4
Louisiana	LASCBA Committee on Bar Admissions	19	5	2x ⁸³			Court, recommended by Bar		3 ⁸⁴
Maine	BBE	9	5	Until successor		7 L, 2 P+ court liaison	Governor, L on rec's of Supreme Judicial Court	Y	By panel
Maryland	State BLE	7					Court		7 ⁸⁵
Massachusetts	BBE	5	5	?		Lawyers, 4 residing in diff MA counties,	Justice of the Supreme Judicial Court		
Michigan	MI BLE	5	5	Y			Governor; nom'd by SC		
Minnesota	MSBLE	9	3	3 ⁸⁶		7L, 2P	Supreme Court	Y	
Mississippi	Mississippi Board of Bar Admissions	5							
Missouri	MBLE	6	9	1 term			Court	Y	
Montana	BBE	7 ⁸⁷	Til successor apptd				Supreme Court	Y	9 ⁸⁸

⁸² KY Office of Bar Admissions which shall be comprised of the Kentucky Board of Bar Examiners, as defined in SCR 2.020 and the Character and Fitness Committee, as defined in SCR 2.040.

⁸³ LA BLE terms specified as maximum

⁸⁴ LA Director of Character and Fitness and two other members of the BA Committee

⁸⁵ MD C&F Committees 5 members by jurisdiction

⁸⁶ No more than 3 terms of 3, except president.

⁸⁷ MT The Board may engage the services of active members of the State Bar of Montana to augment the grading performed by members of the Board if necessary.

⁸⁸ MT Commission on C&F appointed by the Montana Supreme Court; 9 members, 6 licensed Montana attorneys, 3 lay members, nominated by either the State Bar or the Montana Supreme Court. Each member serves until a successor is appointed.

Reference 3: Comparisons with other jurisdictions

Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte	
Nebraska	Nebraska State Bar Commission	6	6	2x	Y	One commissioner per judicial district		Y	
Nevada	BBE	14 ⁸⁹	3	No limit		Liaison for BOG, Staff			
New Hampshire	BBE	15+ ⁹⁰	3	3			Court, Court appts BBE Chair, VC	Y	9 ⁹¹
New Jersey	BBE	per SC	3	3			Supreme Court SC appts chair, appts Sec'y who is not a member	Y	Y ⁹²
New Mexico	NMBBE	12 members of State Bar	5	Y	Y				
New York	NYSBLE	5	3	Y			Ct of Appeals		
North Carolina	NCBLE	11 ⁹³					Elected by Council of NC State Bar	Y	
North Dakota	SBLE	3				+ court clerk as Sec'y/ Treasr	Supreme Court	Y	
Ohio	BBE	18					Supreme Court		

⁸⁹ NV Board of Bar Examiners, 14 members plus 2 liaisons from the Board of Governors, writes and grades the bar examination questions and oversees the administration of the two bar examinations. The board works closely with the Supreme Court and the Board of Governors in formulating rules and procedures for admission to the State Bar of NV

⁹⁰ NH BBE no fewer than 13

⁹¹ NH 9 A Supreme Court committee 2 non-attorney members and 7 members of the New Hampshire Bar Association as follows: (i) one member of the board of bar examiners; (ii) one member who is a member of the committee on professional conduct; (iii) the attorney general of New Hampshire or his or her designee; (iv) the clerk of the supreme court or his or her designee; and (v) three other members of the New Hampshire Bar Association, one of whom shall be designated chair of the committee. The terms of the attorney general and of the clerk of the supreme court as members of the committee shall be coterminous with their terms of office; and, in the absence of either the attorney general or the clerk of the supreme court, his or her designee is authorized to act as an alternate, exercising all the powers of an appointed member of the committee. Each other member of the committee shall be appointed for a term of three years and shall be eligible for reappointment.

⁹² NJ Supreme Court shall appoint the Committee on Character, which shall consist of such members of the bar as the court may determine. Members shall serve for terms of three years and may be reappointed at the discretion of the Supreme Court.

Reference 3: Comparisons with other jurisdictions

	Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte
Oklahoma	OKBBE	9				from districts	Supreme Court		
Oregon	OSBBE	14				4 Bar, 2 public, no academic	Court	Y	-
Pennsylvania	PBBE	7	2	2 max			Supreme Court		
Rhode Island	BBE	11					Supreme Court		
South Carolina	BBE	?						Y	Y
South Dakota	BBE	5		3			Supreme Court ⁹⁴		
Tennessee	TBLE	?						Y	
Texas	TBLE	9	6	2	Y	35+ yr old, 10 yrs exp	Supreme Court		
Utah	Board of the Bar	13-15	3	until success or appointed		Pract'g for 10 years+ 11 L, 2 P	11 elected lawyers, 2 non lawyers appt by SC		
Vermont	BBE	16 ⁹⁵	4	2 term max ⁹⁶		9 Exmnrs (7 L, 2 P) 7 Assoc Exmnrs	Court	Y	5 ⁹⁷
Virginia	VBBE	5				+ Scy/Trs			5
Washington	BBE ⁹⁸	3							
West Virginia	BLE	7	7	No cap			Supreme Court of Appeals	Y	48 ⁹⁹

⁹⁴ The court shall designate a chairman and the clerk of the SC or officer of court is ex officio Secretary of board. No academic

⁹⁵ VT BBE includes 9 Examiners (7L, 2P) and 7 Associate Examiners

⁹⁶ VT Each term of appointment is for four years, plus time to find successor NO appts > 2 terms, but can come back after year lapse.

⁹⁷ VA C&F 2 L, 2P, 1 ret'd SC justice or judge. No current Examiner or Associate Examiner of the Board may serve as a Member of the Committee.

⁹⁸ WA BBE Members must attend mandatory training sessions and four-day grading conferences in March and August. All positions are funded <https://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/board-of-bar-examiners>

	Name	Size	Term	Renewable	Staggered	Composition	Apptd by	UBE	C&F Cmte
Wisconsin	BBE	11	3	2 max		5L, 3 judge/law school, 3P			
Wyoming	BLE	5	3	3 max			Court , Recommended by Bar Prez	Y	5, ¹⁰⁰

⁹⁹ WV Bar Admissions Administrators coordinate character and fitness investigations by the National Conference of Bar Examiners, the District Character Committees and the Board of Law Examiners. 16 District Character Committees = 3 members from district, apptd by Supreme CT of appeals from district judges' nominations, 5 yr renewable terms. Must select Chair & Secy <http://www.courtswv.gov/legal-community/rules-for-admission.html#rule5-1>

¹⁰⁰ four active, resident members of the Bar and one non-lawyer with special training in substance abuse, mental health, financial management or another area of value to the assessment of good moral character and fitness to practice law of applicants

Reference 4: Moral Character in Other Jurisdictions

Alabama The Committee on Character and Fitness of the Alabama State Bar conducts hearings and makes a determination for law student registrants and applicants seeking admission by bar examination, reciprocity, and transfer of UBE score.

Georgia The Board to Determine Fitness of Bar Applicants is separate and distinct from the Board of Bar Examiners. The Fitness Board makes character and fitness determinations. The Office of Bar Admissions reports to both Boards, and both Boards must certify an applicant to the Supreme Court.

Illinois Committee appointed by the Supreme Court determines whether applicants having been assigned to the committee for certification possess good moral character and general fitness for admission to the practice of law.

Indiana The Indiana Supreme Court's Committee on Character and Fitness interviews each applicant and then submits a report and recommendation to the Board of Law Examiners, which makes a final determination.

Kentucky The Character and Fitness Committee is responsible for determining the eligibility of applicants for admission to the Kentucky Bar.

Maryland Character Committees appointed by the Court of Appeals of Maryland perform character investigations and interviews and make recommendations to the State Board of Law Examiners.

Mississippi The Board of Bar Admissions appoints persons to serve on the Committee on Character and Fitness. This committee reviews applications, conducts conferences and hearings with applicants, and makes recommendations to the Board. The Board makes the final determination to approve or deny an applicant on character and fitness grounds.

Montana Montana's Character & Fitness Commission, which is separate from the Board of Bar Examiners, evaluates all applicants to determine certification.

New York Character and fitness applications are processed by 1 of 4 appellate departments.

Ohio Local bar association admissions committees make recommendations to the Board of Commissioners on Character and Fitness, which makes final determinations. This Board is separate from the Board of Bar Examiners.

Rhode Island The Rhode Island Supreme Court Committee on Character and Fitness makes character and fitness determinations for the Court. The Committee on Character and Fitness is separate from the Rhode Island Supreme Court Board of Bar Examiners, which deals with testing content and administration.

Washington The Washington Supreme Court makes the final character and fitness determinations.

West Virginia District Character Committee conducts character and fitness investigation and interviews each applicant, then submits report and recommendation to the Board of Law Examiners.

Source: 2017 Bar Administration Practices, NCBE.

Reference 5: Bar and Admissions Activities
Reference 5A: Bar Activities

Regulatory and Discipline										Mandatory					Voluntary				
Program Area	Admissions	Member Records and Compliance	Professional Competence	Discipline	Client Security Fund	Lawyer Assistance Program	Mandatory Continuing Legal Education	Legal Specialization	Mandatory Fee Arbitration	Judicial Nominees Evaluation	Legal Services	Diversity & Bar Relations	Legislative Activities	Sections & California Young Lawyers Association					
Funding	S	M	M	M	M	M	M	S	M	M	G/V	V	V	S					
Principal Functions	Bar Exam Development	Maintain Attorney Records	Rules of Professional Conduct	Chief Trial Counsel	Investigation and Payment of Claims	Monitored LAP	Compliance Tracking	Certification of Legal Specialists	Arbitration of Fee Disputes	Evaluation of Nominees	Access to Justice	Elimination of Bias	Legislative Advocacy	Education					
	Bar Exam Grading		Ethics Hotline	Probation		Support LAP	Accreditation of Providers				Program Development	Bar Relations	Town Hall Meetings						
	Moral Character Determination		Ethics Opinions	State Bar Court							Legal Services Trust Fund	Council on Access and Fairness							
	Law School Regulation		Education																
	Special Admissions																		
Staff Size	54.0	15.7	12.0	267.8	11.0	7.0	5.3	8.0	5.0	4.0	17.0	4.0	2.0	16.2					
Direct Cost	15,952	1,855	1,706	36,193	7,040	1,158	665	1,117	637	647	31,597	1,014	527	7,085					
Indirect Cost	3,558	753	654	15,354	702	433	122	426	190	145	1,081	277	98	1,440					
Total Cost	19,510	2,608	2,360	51,547	7,742	1,591	787	1,543	827	792	32,678	1,291	625	8,525					
Regulatory and Discipline: governing the licensing, discipline, and competence of lawyers Mandatory: other mandated programs and activities required by statute or court rule which contribute to the public protection mission of the State Bar Voluntary support for the association: activities which contribute to the broader mission of the State Bar of educating the public, supporting the professional development of members of the Bar, and improving the administration of the legal system Funding Sources: G = Grant Funding; M = Mandatory Membership Fees; S = Self-Funded by User Fees Indirect Costs include an allocation of the costs of each of the following departments: Executive Director's Office, Finance, General Counsel, Human Resources, Information Technology, Communications, and General Services																			

Reference 5: Bar and Admissions Activities (cont'd)
Reference 5A: Admissions Tasks

Reference 5b: Admissions Tasks				
Goals and Policy	Design & Development	Administration, Including appeals	Evaluation, modifications, maintenance	
<ol style="list-style-type: none"> 1. Set Admissions Criteria and Standards, broadly 2. Anticipate and address policy issues as raised by the public, the legislature or key constituents 3. Ensure overall process integrity 4. Manage appropriate engagement of constituents (e.g., Law School Council) 	<ol style="list-style-type: none"> 5. Identify and adopt key elements of Bar licensing requirements, including exam components (e.g. MBE, MPE, written and practice tests etc.), as well as Moral Character requirements 6. Select key questions for California Essay Questions 7. Manage exam testing 8. Ensure sufficient inventory of reliable, valid questions 9. Ensure and oversee professional expertise available and consulted on key exam elements (administration, question development, exam validation, etc.) 	<ol style="list-style-type: none"> 10. Administer approximately 5,000 applications, including exam components (e.g. MPE, MPRE, jurisdiction questions) and Moral Character standards 11. Manage any and all appeals processes 12. Process special admissions, foreign applications 	<ol style="list-style-type: none"> 13. Ensure technology, facilities, and other key process and procedural elements are in place to administer exam and admissions process are conducted reliably, with integrity 14. Oversee and implement technology or other updates as appropriate 15. Manage any and all appeals 	

Reference 6: State Bar Strategic Goals Relevant to CBE

Goal 1. b. Implement and pursue governance, composition, and operations reforms needed to ensure that the Board's structure and processes optimally align with the State Bar's public protection mission.

Goal 2: Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

2. n. For greater transparency, accountability, efficiency, and access, develop and deploy a new case management system for the Office of Admissions by June 30, 2019.
 - o. After the results of the February 2019 Bar Exam are published, evaluate the results of the two-day exam on pass rates and costs.
 - p. No later than June 30, 2019, conduct a California specific job analysis to determine the knowledge, skills, and abilities for entry level attorneys. Upon completion, conduct a new content validation study.
 - q. No later than December 31, 2018, review special admissions rules to determine whether changes are needed to support the goal of increased access to legal services or for other reasons, and implement needed changes.

Goal 3 1. No later than November 30, 2018, develop goals and objectives for each functional area of the Bar and use those to develop organizational performance metrics.

Goal 4: Support access to justice for all California residents and improvements to the state's justice system.

- a. Support increased funding and enhanced outcome measures for Legal Services.
- b. Study and implement improved programmatic approaches to increasing access to justice.
- c. By December 31, 2018, review Lawyer Referral Services certification rules with a goal of increasing access to justice.
- d. Commencing in 2018 and concluding no later than December 31, 2019, study online legal service delivery models and determine if any regulatory changes are needed to better support and/or regulate the expansion of access through the use of technology in a manner that balances the dual goals of public protection and increased access to justice.
- e. No later than December 31, 2019, complete a California Justice Gap Study. The Justice Gap Study will be modeled on the 2017 Legal Services Corporation Justice Gap Study but will also include an evaluation of the costs of legal education in California and the impact of those costs on access to justice, as well as possible approaches to addressing the costs of legal education including loan forgiveness programs or other means.

Reference 6: State Bar Strategic Goals Relevant to CBE (cont'd)

Goal 4 f. No later than December 31, 2020, explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other paraprofessionals.

Goal 5: Proactively inform and educate all stakeholders, but particularly the public, about the State Bar's responsibilities, initiatives, and resources.

- a. No later than July 1, 2018, develop and implement a Communication Strategy Plan for timely and effective communication about public protection goals, objectives, and accomplishments to external audiences including the public, oversight bodies, regulated parties, and other bars.
- b. Develop metrics to measure both the quality and effectiveness of the Bar's communication and stakeholder engagement strategies and use those metrics to inform modifications to strategy.
- c. Maintain and enhance relationships with courts and other regulatory and enforcement agencies that share a mission of public protection.
- d. Improve transparency, accountability, accessibility, and governance by increasing the availability of meeting materials and public access to meetings and records and reporting these efforts to stakeholders and the general public

Reference 7: National Practices for Lawyer Licensing

An effort was undertaken to identify best practices and trends for assessing the lawyer licensing responsibilities of the California State Bar and its Committee of Bar Examiners (CBE). Twenty-two interviews were conducted of knowledgeable individuals between November 2017 and March 2018, along with related research of relevant websites of various bar organizations and relevant literature. Those interviewed were selected for their expertise and involvement in the preparation, education and licensing of lawyers, with a particular focus on the design, management and implementation of bar exams.¹⁰¹ The goal of this work was to ensure that California was aware of best practices which might be identified and could be used to enhance the role and contributions of the CBE at a time of profound change in the legal profession and legal education, even as access to legal services also continues to decline.

A number of concerns were identified as shared among all surveyed bar organizations (e.g. ensuring high court control of admissions; designing structures to insulate regulatory responsibilities from the fact or appearance of influence by practicing lawyers; interest in professionalizing bar examinations by greater use of psychometrically validated testing design). In contrast, the organizational structures bar organizations employed to execute their responsibilities varied significantly. Nonetheless, the comparison produced a rich menu of alternatives which may prove useful in considering alternatives to California's current operational design.

Summaries of selected interviews follow.¹⁰² Additional context is provided by the 2017 Comprehensive Guide to Bar Admission Requirements (National Conference of

¹⁰¹ Individuals involved in regulatory organizations included those principally responsible for lawyer licensing and bar exam development from the following bar organizations: *Arizona* (John Phelps and Mark Wilson); *Florida* (Michele A. Gavagni); *Idaho* (Maureen Ryan Braley); *Michigan* (Janet Welch); *New York* (John McAlary); *Oregon* (Troy Wood); *Texas* (Susan Hendricks); *Washington State* (Paula Littlewood); and *The U.K. Solicitors Regulation Authority* (Julie Brannan).

Other knowledgeable individuals included: Dr. Tracey Montez, Head Psychometrician, California Department of Consumer Affairs; Dr. Mary Pitoniak, Consulting Psychometrician, Educational Testing Service; Dr. Chad Buckendahl, Consulting Psychometrician (on contract to the California State Bar); Dean Barry Currier, ABA Managing Director of Accreditation and Legal Education; Erica Moeser, CEO Emerita, National Conference of Bar Examiners; Dean Judith Areen, Executive Director, Association of American Law Schools; Dean Kelly Testye, CEO, Law School Admissions Council (formerly Dean, University of Washington); Christopher Chapman, CEO, Access-Lex; Dr. Elizabeth Griego, Educational Consultant and former head of standards, WASC; Dr. Judith S. Eaton, CEO, Council for Higher Education Accreditation; Bridget Gramme, Center for Public Interest Law, University of San Diego School of Law; and Dr. Ron Pi, State Bar of California.

¹⁰² Complete reports of many conversations are also available.

Bar Examiners and ABA Section of Legal Education), a summary of which has been provided separately.¹⁰³

¹⁰³ See, <http://www.ncbex.org/publications/bar-admissions-guide/>.

Interview Summaries: Individual Bar Organizations

Arizona

Operating as a unit within the Supreme Court since the late 1980's, two separate volunteer committees are directly supported by Court staff to manage all aspects of admissions. Staff now approves approximately 65% of applicants; less than 1-2% are referred for a formal hearing before a five-member panel selected from the 15 member Character and Fitness Committee. Appeals are to the Arizona Supreme Court and applicants may be denied sitting for the bar exam for up to five years; conditional admissions are allowed for two years. A UBE state, 50% of bar takers seek to transfer scores out of state and the Examinations Committee now only grades exams; all applicants must also take an on-line, ungraded course on Arizona law. In 2011 the Court created a 16 member Attorney Regulations Advisory Committee to periodically review admission and discipline.

Florida

One of the four largest U.S. bar organizations, admissions functions are the responsibility of the separately organized Florida Board of Bar Examiners and are completely self-funded. Fifteen members (12 lawyers, three public) are appointed by the Supreme Court from nominees jointly chosen by the Bar and the Board and serve five-year renewable terms. Typically members serve one term, but may continue as emeritus members on investigative or formal hearing panels. Application denials are formally heard by a five member panel which is binding on the full Board and only appealable to the Supreme Court. Florida has not adopted the UBE but has studied the comparative cost of doing so, concluding that it would increase expense. In 2008 the Court appointed an independent 16 member Testing Commission to review exam topics and process, assisted by a psychometric consultant; the exam was validated with only minor changes recommended.

Idaho

A Director of Admissions staffs the day-to-day admissions activities, reporting through the State Bar Executive Director to the elected five-member Board of Commissioners, a sub-entity of the Idaho Supreme Court. A separate nine member Character and Fitness Committee and a three member Accommodations Committee manage admissions and operate with considerable independence as a result of their tenure and expertise. Idaho limits applicants to taking the bar exam three times; thereafter special permission is required. Appeals from denials on moral and fitness grounds are initially to the Character and Fitness Committee, followed by an appeal to the full Board and a final review by the Supreme Court. Idaho adopted the UBE in 2011, in order to obtain a more sophisticated exam which would be better able to withstand possible challenges.

Michigan

The Michigan State Bar was created in 1935 as a public corporation to be responsible for licensing and discipline functions. In 1992 the Michigan Supreme Court separated these functions from the Michigan State Bar Association to avoid appearance of conflict of interest. Now directly under the State Supreme Court, a separate five member Board of Law Examiners manages everything related to admissions and licensing except moral character and fitness reviews which are done locally by regional committees. The 15 member Standing Committee on Character and Fitness uses interview panels who recommend action to the full Committee; when rejected, an applicant is entitled to a full formal hearing, usually before three members, a subsequent hearing before the full Board is also possible. The only subsequent review is to the Michigan Supreme Court.

New York

New York's regulation, admission and discipline of lawyers is a judicial function, separated from the voluntary New York State Bar Association. Although New York's number of licensees exceeds that of California, its population of bar takers is typically smaller due to higher pass rates and the possibility to transfer UBE scores in lieu of taking the New York exam. Responsibility for the design and administration of the bar exam rests with the five member Board of Law Examiners, paid part time employees, who are part of the highest New York court, the Court of Appeals; character and fitness review and actual admission after a lawyer is certified as having passed the bar exam, is managed by the four Appellate Division Department courts according to an applicant's residence. New York adopted the UBE in 2016 and is studying its impact now; it also has begun a study to look at the characteristics of those who fail the bar initially but pass subsequently.

Oregon

Part of the Judicial Department, the Oregon State Bar is governed by a 16 member Board of Governors which reports to the Supreme Court; it contains an admissions function that reports to the Executive Director through its Director of Regulatory Services, who has dual reporting to the 14 member Board of Bar Examiners and the Board of Governors. A three member hearing panel is responsible for all formal hearings. Final appeals are to the Supreme Court. Oregon's adoption of the UBE in 2016 was designed to encourage lawyers to locate to Oregon; it adjusted its bar pass score to support this goal, but remains among the states with the highest passing score. Until 2018 the only U.S. bar to require malpractice insurance, data from the Oregon Professional Liability Fund informs continuing legal education offerings and other lawyer support.

Texas

A separate Board of Bar Examiners administers a two and a half-day; members participate directly in question preparation. The Board only refuses applications from those who do not meet the legal education requirements or who have been sentenced for a felony conviction, if the application is made less than five years after completion of the sentence, but this requirement may also be waived upon request. The Board makes broad use of conditional admissions. Hearings on moral character and fitness grounds before a three-member panel of the Board are closed; denials are appealed directly to the Supreme Court. A study of the UBE is underway; in 2017 the Executive Director studied the cost differential and found no financial impact would result from adopting the UBE. Texas has experienced an almost 50% increase in accommodation requests between 2015 and 2017.

U.K. Solicitors Regulation Authority

The U.K. Solicitors Regulation Authority (SRA) is engaged in a deep review of licensing for solicitors, responding, among other issues, to concerns about the lack of access to the legal profession by an increasingly diverse society and the resulting impact on access to justice.

An extensive occupational analysis has been completed and SRA is preparing to pilot a national two part exam: both a test of knowledge and of skills, the first administered before the U.K.'s two year practicum requirement and the second after the completion of the practicum. Their reform-minded approach is described on their web site (sra.uk.org)¹⁰⁴ and they are also exploring reform of moral character and fitness standards and implementing reform in other areas, as well (e.g. CLE).

SRA's reform efforts may to be unique among bar organizations. They appear to have set a high standard for improving the licensing of lawyers. This, and SRA's comparable size to California, makes them a jurisdiction of particular interest.

¹⁰⁴ See the following sections on the SRA website: Statement of Solicitor Competence; Statement of Legal Knowledge; Threshold Standard; and Assessment Specification.

Reference 8: Summary of NCBE/ABE 2017 Comprehensive Guide to Bar Admission Requirements

National Conference of Bar Examiners and ABA Section of Legal Education¹⁰⁵

Code of Recommended Standards for Bar Examiners (agreed upon by the ABA, NCBE and AALS).

The ABA/NCBE Code of Recommended Standards for Bar Examiners sets forth best practices in the management of bar exam management and testing. The questions below (following Code numbering) are suggested as relevant to a review of the admissions processes and standards as employed by the State Bar of California and the Committee of Bar Examiners (CBE).

1. Presence of a published Code. Does the State Bar of California subscribe to the principles recommended by the ABA/NCBE Code? If not, does it have its own code?

2. Member Tenure: How does the California State Bar compare to the ABA/NCBE Code's recommendation that members of bar examining boards:

- be appointed by, and responsible to, the judicial branch of government;
- serve for fixed terms, eligible for reappointment;
- have staggered terms; but with
- sufficient rotation among members.

3. Conflict of Interest: Does the State Bar of California ensure that there is no participation by purveyors of bar preparation courses, or other interested parties, in the design and administration of the bar examination?

6. Required legal education. The ABA/NCBE Code requires that all applicants for admission to the bar be graduates of an accredited ABA school. 'Neither private study, correspondence study, law office training, age, nor experience should be substituted for law school education.' What steps has the State Bar of California and the CBE taken to ensure that its more inclusive approach to lawyer education is consistent with public protection and best educational practices?

7. Character and Fitness. The ABA/NCBE Code requires that "The primary purpose of character and fitness screening before admission to the bar [be] the protection of the public and the system of justice." What has the State Bar of California and the CBE done to ensure meeting this requirement?

¹⁰⁵ This summary, prepared by Elizabeth Parker, is based on a report prepared annually by the National Conference of Bar Examiners and ABA Section of Legal Education and Admissions to the Bar, see <https://www.americanbar.org/.../aba/.../ComprehensiveGuidetoBarAdmissions/2017> (May 1, 2017). A 2018 version became available after completion of this Report.

9. Definition of Character and Fitness. The ABA/NCBE Code requires that “Character and fitness standards ... be articulated and published by each bar examining authority.” Does the State Bar of California and the CBE meet this requirement?

The ABA/NCBE Code sets forth additional specific requirements for the design and development of bar examinations. Does the CBE process meet the following ABA/NCBE Code recommendations (following Code numbering)?

- “21. Before an essay question is accepted for use, every point of law in the question should be thoroughly briefed and the question should be analyzed and approved by the members of the bar examining authority.
- 24. The grading process and grade distributions should be periodically reviewed in order to assure uniformity in grading.
- 26. An applicant who has failed to pass three or more bar examinations may be required to complete additional study...before being permitted to take any subsequent examination.
- 29. A thorough study should be periodically made of the results of the bar examination to determine...[its impact],
- 31. Each jurisdiction should have an active committee on cooperation, consisting of representatives of the bar examining authority, the law schools, the judiciary, and the bar, which meets at least annually to consider issues relating to legal education, eligibility and admission to the bar.”

A review of various charts and surveys contained in the ABA/NCBE Comprehensive Guide reveals the following points relevant to the current review of the CBE and bar admissions processes.

Chart 2: Character and Fitness Determinations

- California does not have published character and fitness standards. 70% of jurisdictions (i.e. 39 of 56) reported having such standards.
- California does not have a separate entity which evaluates character and fitness. 43% of jurisdictions (24 of 56) do have such a structure.

Chart 3: Eligibility to Take Exam: Legal Education

Although 70% of jurisdictions (39 of 56) do not limit taking the exam to ABA law school graduates, California is the most liberal in wide variety of the legal education it requires as a pre-requisite for taking the bar exam.

Chart 5: Eligibility for Admission: Additional Requirements

California requires 25 hours of MCLE every three years. Only four jurisdictions require less MCLE than California (Alaska, Hawaii, Palau and Puerto Rico). All others require between 10 and 15 hours per year.

Supplemental education is required by 66% of jurisdictions: before admission by 11 jurisdictions and after admission by 26 jurisdictions.

Chart 6: Length of Examination, UBE

36% (20 jurisdictions) limit the number of times an applicant may take a bar exam (from 2 in Iowa to 6 in Idaho, North Dakota, Utah and Puerto Rico).

Slightly over 50% of the jurisdictions (29 reported, but 30 according to E. Moeser with Maine's adoption) now use the Uniform Bar Exam (UBE), first introduced in July 2011, for the written portion of their exam. 45% (26 jurisdictions, including several larger states such as Arizona, Colorado, Connecticut, DC, Massachusetts, New Jersey, New York, and Washington) also accept UBE scores from other jurisdictions. Their charges for such UBE admission range from \$150 to \$1,000 (see Chart 10). Most also have a time limit for which they will accept UBE scores.

Chart 7: Bar Examination Application Fees

California's bar exam fee for first-time takers is \$1,228 and larger than the majority of jurisdictions, which range from a low of \$300 (Oklahoma, South Dakota, Vermont and Palau) to a high of \$950 (Illinois). Comparisons may not, however, be exact and change by character of the exam taker (i.e. licensed attorney, repeater, international applicant).

Chart 8: Test Prerequisites for Licensure

California requires the Multistate Bar Examination (the MBE is a multi-choice exam), as do all other jurisdictions except Louisiana and Puerto Rico (both civil law jurisdictions).

California does not require the Multistate Essay Examination (MEE), which is required by 30% (17 of the jurisdictions).

California does not require the Multistate Performance Test (MPT); all but ten other jurisdictions require the MPT (Florida, Kentucky, Louisiana, Massachusetts, Michigan, North Carolina, Oklahoma, Pennsylvania, Virginia, and Puerto Rico.)

California requires The Multistate Professional Responsibility Examination (MPRE) as do all but three jurisdictions (Maryland, Wisconsin and Puerto Rico).

28 jurisdictions, including California, draft their own exam questions.

California is among the 55% of jurisdictions that do not accept MBE scores from other jurisdictions.

Only the District of Columbia, Minnesota, and North Dakota admit applicants on the basis of MBE scores alone.

Chart 9: Grading and Scoring

Although California's combined passing score of 144 is the second highest in the nation, for the MPRE, where scores range from 50-150, the scores required by jurisdictions requiring the MPRE fall in a relatively narrow range, from 75 to 86. California requires a score of 86, as does Utah. Twenty states, 36% require a score of 85; eighteen, 32% require 80, with the remaining thirteen 23% requiring scores between 75-79.

Chart 11: Admission on Motion/Fees

California is one of nine jurisdictions that does not grant admission on motion of lawyers licensed in other jurisdictions. Fees for such admission by the 47 states that do allow such admission (84%) range from \$100 (Puerto Rico) to \$2,000 or more (Montana, New Mexico, North Carolina, Oklahoma, West Virginia). 16 states charge \$1,000 or more. Thus a majority of states charge significantly more for admission on motion than by taking the bar exam.

Chart 12: Reciprocity, Comity, and Attorneys' Exams

California is one of eight states that offers an attorney's exam and one of only four that does not require that an applicant be a graduate of an ABA approved law school.

Chart 13: Other Licenses and Registration Fees

New York does not charge for certifying foreign legal consultants, corporate counsel, legal services lawyers or pro bono lawyers. In contrast, California charges \$1,135 for foreign legal consultants, and \$1,400 for corporate counsel and legal services lawyers, the latter is the second highest fee after the District of Columbia. Most states charge between \$90 and \$500 for certifying a lawyer to work as a legal services lawyer.

Submitted by:

Elise Walton, Ph.D.
Principal, Organization & Governance Consulting

Elizabeth Parker
Executive Director (retired) California State Bar

--End of document--

Table A: Staff Proposal by Function

Licensing Functions	Proposed Responsible Entity: CBE, Staff or Other	Change from Current Structure?	Consistent or Inconsistent with Statute, Rules and/or Legal Opinion?
<p><i>Exam Development</i></p> <ol style="list-style-type: none"> 1. Development of questions 2. Review of questions 3. Review and evaluation of grading process 4. Sampling plan (to determine exam content areas) 5. Challenges to exam questions 6. Set exam fees 	<ol style="list-style-type: none"> 1. EDG team 2. CBE 3. CBE 4. Staff 5. CBE 6. CBE 	<ol style="list-style-type: none"> 1. Status quo 2. Status quo 3. New 4. New 5. Status quo 6. Status quo 	<p>Consistent.</p> <p>1-5: B&P §6046 and Rules of Court, Rule 9.3 authorize CBE (a) to examine all applicants for admission to practice law; and (b) to administer the requirements for admission to practice law. The Supreme Court has the inherent power to admit persons to practice law in California.</p> <p>B&P §6046.5: “The public members shall have the same rights, powers, and privileges as any attorney member except that such a member shall not participate in the drafting of questions submitted to applicants on the California bar examination.”</p> <p>Rules of Court, Rule 9.6(a) CBE to determine the bar examination’s format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court. The Supreme Court must set the passing score of the examination.</p> <p>B&P §6060(h)(1): FYLSX 6: B&P §6063: applicants shall pay “reasonable fees, fixed by the board, as may be necessary to defray the expense of administering the provisions of this chapter, relating to admission to practice. These fees shall be collected by the examining committee and paid into the treasury of the State Bar.”</p> <p>SB Rule 4.10: CBE may set reasonable fees.</p>

<p><i>Exam Analysis/Review</i></p> <ul style="list-style-type: none"> • Standard Setting Study • Content Validation Study • Job Analysis 	<p>Staff with consultant support.</p>	<p>CBE to participants to be included on working groups convened to assist/advise staff/consultant.</p>	<p>Consistent. B&P §6046.8: “the board of trustees shall oversee an evaluation of the bar examination...” Rules of Court, Rule 9.6(a) CBE to determine the bar examination’s format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court. The Supreme Court must set the passing score of the examination. Rules of Court, Rule 9.6(b): “At least once every seven years, or whenever directed by the Supreme Court, the State Bar must conduct an analysis of the validity of the bar examination.”</p>
---	---------------------------------------	---	---

<p><i>Moral Character</i></p> <ol style="list-style-type: none"> 1. Reviews/Informal Conferences 2. Appeals of denials 	<ol style="list-style-type: none"> 1. Staff 2. CBE 	<ol style="list-style-type: none"> 1. Change 2. Status quo 	<p>Consistent. B&P §6046(c): CBE certifies to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter. B&P §§6060 and 6062 require a person to be of good moral character in order to be certified. Giannini v. Real (9th Cir. 1990) 911 F.2d 354, 357: Procedural due process met for applicant denied admission because he was able to see scores and petition to Supreme Court. 2:Inconsistent with SB Rule 4.46: CBE may invite applicant to an informal conference. An applicant notified of an adverse determination may request an informal conference with the CBE. Consistent. SB Rule 4.47: An applicant notified of an adverse moral character hearing may file a request for hearing with the State Bar Court. Consistent. Rules of Court, Rule 9.13 (d): Applicant may file a petition with the Supreme Court to review the State Bar Court's decision.</p>
<p><i>Testing Accommodations</i></p> <ol style="list-style-type: none"> 1. Reviews of petitions 2. Review of appeal of denial / partial grant 	<ol style="list-style-type: none"> 1. Staff (with consultant support) 2. CBE 	<ol style="list-style-type: none"> 1. Status quo 2. Status quo 	<p>Consistent. B&P §6046 authorizes CBE (a) to examine all applicants for admission to practice law; and (b) to administer the requirements for admission to practice law. SB Rules 4.80 et seq.</p>

<i>Eligibility to sit for exam / challenges to exam policies / Chapter 6 violations</i>	<ol style="list-style-type: none"> 1. Staff for initial determinations 2. CBE for appeals 	<ol style="list-style-type: none"> 1. Change 2. Status quo 	<p>Consistent. B&P §6046 and Rules of Court, Rule 9.3 authorize CBE to examine all applicants for admission to practice law. B&P §6060.3 sets GBX application filing dates. SB Rules 4.55 et seq. FYLSX SB Rules 4.60 et seq. GBX 1:Inconsistent. SB Rules 4.70 et seq. Chp. 6.</p>
<i>Other Budget Issues</i>	Staff	Change	<p>Consistent. SB Rules 6.20 and 6.21 – CBE has power and duties delegated by Board.</p>
<i>Personnel Issues</i>	Staff	Status quo	<p>Consistent. SB Rules 6.20 and 6.21 – CBE has power and duties delegated by Board.</p>
<i>Trends in Licensing and Certification</i>	CBE	New	<p>Consistent. SB Rules 6.20 and 6.21 – CBE has power and duties delegated by Board.</p>
<i>Maintaining Relationships with Legal Institutions</i>	CBE	Status quo	<p>SB Rules 6.20 and 6.21 – CBE has power and duties delegated by Board.</p>
<i>Accreditation of Law Schools</i>	<ol style="list-style-type: none"> 1. Staff and/or outsource 2. If maintain in house, CBE to hear appeals of denials of accreditation or branch/satellite campuses 	<ol style="list-style-type: none"> 1. Change 2. Change 	<p>Inconsistent. B&P §6060.7(b)(1):CBE is responsible for approval, regulation and oversight of degree granting school. B&P §6060(e)(1) refers to law schools accredited by the CBE. SB Rule 4.100 et seq: CBE is authorized to accredit law schools and over and regulate those law schools; a California accredited law school is a law school that has been accredited by CBE.</p>

Table B: Recommendations from Walton/Parker Report

Area	Recommendation	Consistent with Statute, Rules and/or Legal Opinion?
<i>Governance Recommendations</i>	<p>On Size and Structure</p> <ul style="list-style-type: none"> a. Reduce the size of the CBE. A smaller CBE will make it easier to convene a simple majority quorum; a smaller CBE will be more conducive to member meeting participation. b. Set and enforce three-year CBE subcommittee chair terms; and where applicable, CBE chair terms. Enforce actual terms, opt for filling vacancies rather than continuing the past terms of incumbents until replaced. c. Develop a CBE Skills Matrix and apply it to recruiting efforts; utilize communications and recruiting efforts to attract members with needed skills and experience. d. Eliminate CBE Sub-committees except Moral Character Sub-Committee and Examinations Sub-Committee (for review of testing accommodation appeals)-IN PROGRESS W/CBE 	<p>a. Inconsistent B&P §6046: “The examining committee shall be comprised of 19 members.”</p> <p>b-d. Consistent. B&P §6046.5: four year terms B&P §6046.5: states appointing bodies Rules of Court, Rule 9.6: The Supreme Court is responsible for appointing ten examiners to the Committee of Bar Examiners</p>
	<p>Activities</p> <ul style="list-style-type: none"> a. Identify key policy and long-term items to be covered on the CBE agenda, including alignment with the State Bar Five-year Strategic Plan. b. Strengthen onboarding practices, e.g., mentors, role play practice, observing join Moral Character reviews. c. Staff should provide uniform agenda and agenda management process. –COMPLETED d. Eliminate CBE involvement in formal financial reviews; limit it to approving bar examination fees only.-IN LICENSING FUNCTION TABLE 	<p>Consistent. d. See Table A. a, b and d. Consistent. SB Rules 6.20 and 6.21: CBE has power and duties delegated by Board.</p>

	<p>Cooperation with the State Bar Board, Staff, Court and Legislature</p> <ul style="list-style-type: none"> a. Identify positive scenarios of how CBE, the California Bar and the Supreme Court can most effectively work together, both by using successful cases from experience, as well as developing prospective cases for future guidance. b. Validate roles and authorities of all respective bodies via an Office of the General Counsel review. c. Educate and inform constituents (CBE members, Trustees, staff, judicial and legislative authorities) on respective roles, authorities and accountabilities. 	<p>Consistent. SB Rules 6.20 and 6.21 – CBE has power and duties delegated by Board.</p>
	<p>Law School Council Should Facilitate Communications between Deans and CBE</p> <ul style="list-style-type: none"> a. Work/study with deans and LSC to design a more robust partnership. b. Clarify and institutionalize points when LSC and law school deans “weigh in” at key points, being sensitive to Bagley-Keene requirements; The Bar and CBE should consider options to gauge interest and opinions early on to build trust and collaboration. For instance, as a policy change or important matter with implications for law schools is considered, a first step would be an open webcast with a call in for public comment c. Ensure annual “Admissions Day” is permanently on Bar Calendar; ascertain possibility of extending Admissions Day training to Law School constituents/deans (next step: consult with those attending the Board of Trustees Admissions review session for their recommendations). d. Take advantage of the Committee being formed to discuss Bar Exam review, to engage all deans in the process of overseeing the Job Analysis; review this work at the Planning Committee meeting e. Pending study about the original reasons for creating both LSC and RAC, consider combining both into a single organization to broaden perspective and avoid conflict of interest. 	<p>Consistent. B&P §6046.6(b): “The examining committee shall communicate and cooperate with the Law School Council.”</p> <p>SB Rules 6.20 and 6.21: CBE has power and duties delegated by Board.</p>

<i>Moral Character</i>	<p>Moral Character Recommendations</p> <ul style="list-style-type: none"> a. Ensure Moral Character review has more specific, clearly articulated standards/guidelines for determinations; document and publish specific guidance for decisions beyond the existing high-level description; include waterfall, “if-then” protocols for decision sequences; reinforce, extend, and clarify Rule 4; b. Compare California’s guidelines to those used by the NCBE guidelines annually; c. Undertake a review of the reform efforts being developed in other jurisdictions, notably the State Bar of Utah and the Solicitors Regulation Authority in the U.K., to determine what possible alternate approaches to reform may be possible; and d. Retain CBE level review of appeals denied. 	<p>a-d. Consistent. B&P §6046(c): CBE certifies to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter.</p> <p>B&P §§6060 and 6062 require a person to be of good moral character in order to be certified.</p> <p>Inconsistent SB Rules 4.40 et seq.</p>
<i>Accreditation Recommendations</i>	<p>Accreditation Recommendations</p> <ul style="list-style-type: none"> a. A three-year audit to understand and ensure that CBE accreditation practices are consistent with national education accreditation standards; b. Begin the first audit concurrently with the legislative mandate on accreditation; c. Before beginning this process, the State Bar should solicit input from the Supreme Court and the Legislature. d. Pursue value driven innovation in education and licensure based on growing knowledge and skill assessment practice. e. Accreditation outsourcing should be reviewed seriously considered by the State Bar. 	<p>a-d. Consistent with Licensing Function chart.</p> <p>e. Inconsistent with statute.</p> <p>B&P §6060.7(b)(1):CBE is responsible for approval, regulation and oversight of degree granting school.</p> <p>B&P §6060(e)(1) refers to law schools accredited by the CBE.</p>
<i>Trends in Licensing and Certification</i>	<p>The State Bar should continuously scan for innovations in licensure, certification and validation.</p>	<p>Consistent with Licensing Function Chart. Consistent with SB Rules 6.20 and 6.21 – CBE has power and duties delegated by Board.</p>