

OPEN SESSION AGENDA ITEM

**54-113 JULY 2018
EX COMM ITEM III.C.**

DATE: July 20, 2018

TO: **Members, Board Executive Committee**
Members, Board of Trustees

FROM: Todd Stevens, Board Executive Committee Appointments Liaison
Joanna Mendoza, Board Executive Committee Appointments Liaison

SUBJECT: Committee of Bar Examiners, Annual Nomination of Candidates for Supreme Court Appointment

EXECUTIVE SUMMARY

On January 1, 2018, the Supreme Court of California assumed responsibility for appointing ten examiners to the Committee of Bar Examiners (CBE), a responsibility that previously belonged to the Board of Trustees. The new role of the Board of Trustees is to nominate CBE candidates to the Supreme Court for consideration. The State Bar received eleven applications for three open positions on the CBE. Board Executive Committee's Appointments Liaisons, Todd Stevens and Joanna Mendoza, reviewed the application materials, conferred with one another and arrived at a set of recommendations, as presented herein. Upon recommendation of the Board Executive Committee, the Board of Trustees will take action to nominate candidates to the Supreme Court, from which the Supreme Court will appoint three new members to the CBE.

BACKGROUND

The CBE is tasked by Business and Professions Code section 6046 with examining all applicants for admission to practice law; administering the requirements for admission to practice law; and certifying to the Supreme Court applicants who fulfill the admissions requirements. The scope of CBE work includes development and administration of the California Bar Examination and the First-Year Law Students' Examination; moral character determinations; testing accommodation determinations; accreditation of law schools; and registration of unaccredited law schools.

Prior to January 1, 2018, the Board of Trustees appointed ten lawyers to the nineteen-member CBE. With adoption of Rule 9.4 of the California Rules of Court, effective January 1, 2018, included as Attachment A, the Supreme Court of California assumed responsibility for making appointments to these ten seats. The remaining nine seats on the CBE are held by public (non-lawyer) members appointed by the Governor, Senate Rules Committee and Speaker of the Assembly.

The Court implemented Rule 9.4 through promulgation of the Procedure for Nominating Candidates for Supreme Court Appointment to the Committee of Bar Examiners (Procedure), included as Attachment B. Pursuant to the Procedure, the Board committee responsible for overseeing the appointment process is tasked with selecting candidates for consideration. The Board committee assigned that responsibility is the Board Executive Committee. Under its charter, the Board Executive Committee is responsible for nominating and appointing individuals to serve on State Bar sub-entities and external entities.

Upon recommendation of the Board Executive Committee, the Board of Trustees is required at its July meeting to nominate candidates to the Supreme Court. Under the Procedure, the Board of Trustees is tasked with nominating “at least” three candidates for each open position “if possible.” In August, the Supreme Court will appoint the new examiners from the list of nominated candidates and will select a chair and vice chair for the CBE. The officer selection process is handled by the Supreme Court. At the conclusion of the annual meeting in September, the new examiners and officers will begin their four-year terms.

Under Rule 9.4, and its implementing Procedure, at least one of the ten examiners appointed by the Supreme Court must be a California judicial officer and at least one other examiner must be a California licensed attorney admitted to practice law in California within three years of the date of appointment (“new lawyer”).

DISCUSSION

There are three vacancies on the CBE for the Supreme Court to fill: (1) the seat to be vacated in September 2018 by current Chair Erika Hiramatsu; (2) the seat to be vacated in September 2018 by former Chair Karen Goodman; and (3) the seat that is currently vacant (term 2017-2021). When the terms of the remaining seven members of the CBE appointed by the Board of Trustees expire, these positions will be filled by the Supreme Court under the procedures outlined in this report. The current terms of these CBE members will expire as follows:

- September 2019
 - David A. Torres
- September 2020
 - Robert S. Brody
 - James H. Efting
 - Paul A. Kramer
- September 2021
 - Alex H. Chan
 - Esther P. Lin
 - Bethany J. Peak, the new lawyer member

(See Attachment C, 2017-2018 Committee of Bar Examiners Roster; and Attachment D, 2017-2018 Committee of Bar Examiners Terms.)

Of the eleven applications received for the three open positions, three are from judicial officers (two judges and one court commissioner). Of the remaining eight applicants, two qualify as new lawyers, one having passed the most recent California Bar Examination administered in February 2018.

As part of the appointments process, information about public discipline and reportable actions is gathered for consideration. In the Court-approved Procedure, the State Bar has also been tasked with collecting information about private discipline. Each of the applicants executed a release, authorizing the release of this information from the Commission on Judicial Performance (CJP) or the Office of Chief Trial Counsel (OCTC) – as the case may be – to the State Bar and the Supreme Court. None of the lawyer applicants had any record of private or public discipline from the OCTC and none of the judicial officer applicants had any record of private or public discipline from the CJP.

The recommendations of the Appointments Liaisons include candidates that qualify as judicial officers and candidates that qualify as new lawyers. Although CBE member Bethany J. Peak currently occupies the new member seat, and her term does not expire until 2021, the Appointments Liaisons believe it important to provide the Supreme Court with its own appointment opportunity in this category. The Procedure refers to the CBE including “at least” one judicial officer and “at least” one new lawyer position. Under the Procedure, there is no barrier to appointing more than one judicial officer and more than one new lawyer to the CBE.

The applicants recommended by the Appointments Liaisons for the three open positions are listed in alphabetical order below.¹

- **Judicial Officer**
 - Judge Andre Da La Cruz
 - Commissioner William V. McTaggart, Jr.
 - Shelly Baron Torrealba
- **New Lawyer**
 - Joseph Lloyd Buckley, Jr.
 - Michael Andrew Iseri
- **Other Lawyer**
 - James Fox
 - Carolyn J. Olson
 - Alan Joseph Smith

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

¹ Eight of the eleven applicants are recommended for appointment. The other three applicants are: Kimberly R. Arnal, Patrick R. Dixon and Sean M. McCoy.

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATION

The Board Executive Committee recommends for approval by the Board of Trustees the following resolution:

RESOLVED, that upon the recommendation of the Board Executive Committee, the Board nominate the following candidates to the Supreme Court of California, from which the Supreme Court will appoint three new examiners to the Committee of Bar Examiners: (1) *Judicial Officer*: Andre De La Cruz; William V. McTaggart, Jr.; Shelly Baron Torrealba; (2) *New Lawyer*: Joseph Lloyd Buckley, Jr; Michael Andrew Iseri; and (3) *Other Lawyer*: James Fox; Carolyn J. Olson; Alan Joseph Smith; each for a term effective at the close of the 2018 State Bar annual meeting, and expiring at the close of the 2022 State Bar annual meeting, or until order of the Supreme Court, whichever occurs earlier, and it is

FURTHER RESOLVED, that upon the recommendation of the Board Executive Committee, the Board of Trustees direct staff to prepare a list of the candidates so nominated by the Board of Trustees at its meeting on July 20, 2018, and submit it to the Supreme Court of California for consideration on behalf of the Board of Trustees.

ATTACHMENT(S) LIST

- A. California Rules of Court, Rule 9.4 – Nomination and Appointment of Members to the Committee of Bar Examiners
- B. Procedure for Nominating Candidates for Supreme Court Appointment to the Committee of Bar Examiners
- C. 2017-2018 Committee of Bar Examiners Roster
- D. 2017-2018 Committee of Bar Examiners Terms

ATTACHMENT A

[West's Annotated California Codes](#)[California Rules of Court \(Refs & Annos\)](#)[Title 9. Rules on Law Practice, Attorneys, and Judges \(Refs & Annos\)](#)[Division 2. Attorney Admission and Disciplinary Proceedings and Review of State Bar Proceedings \(Refs & Annos\)](#)[Chapter 2. Attorney Admissions \(Refs & Annos\)](#)

Cal.Rules of Court, Rule 9.4

Rule 9.4. Nomination and appointment of members to the Committee of Bar Examiners

[Currentness](#)**(a) Appointments**

The Supreme Court is responsible for appointing ten examiners to the Committee of Bar Examiners, each for a four-year term. At least one of the ten examiners must be a judicial officer in this state, and the balance must be members of the State Bar. 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 may reappoint an attorney or judicial officer examiner to serve no more than three additional full terms, and may fill any vacancy in the term of any appointed attorney or judicial officer examiner.

(b) Nominations

The Supreme Court must make its appointments from a list of candidates nominated by the Board of Trustees of the State Bar pursuant to a procedure approved by the court.

Credits

(Adopted, eff. Jan. 1, 2018.)

Cal. Rules of Court, Rule 9.4, CA ST PRACTICE Rule 9.4

California Rules of Court, California Rules of Professional Conduct, and California Code of Judicial Ethics are current with amendments received through April 1, 2018. California Supreme Court, California Courts of Appeal, Guidelines for the Commission of Judicial Appointments, Commission on Judicial Performance, and all other Rules of the State Bar of California are current with amendments received through April 1, 2018.

End of Document

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ATTACHMENT B

SUPREME COURT
FILED

APR 25 2018

ADMIN. 2018-04-25

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

STATE BAR NOMINATIONS FOR THE COMMITTEE OF BAR EXAMINERS

Pursuant to rule 9.4 of the California Rules of Court, the court hereby orders the State Bar's adherence to the following nominations procedure for the Committee of Bar Examiners.

**PROCEDURE FOR NOMINATING CANDIDATES FOR SUPREME COURT
APPOINTMENT TO THE COMMITTEE OF BAR EXAMINERS**

1. With the adoption of Rule 9.4, effective January 1, 2018, the Supreme Court of California is responsible for appointing ten examiners to the Committee of Bar Examiners.
 - a. The Supreme Court may fill any vacancies at any time.
 - b. At least one examiner must be a judicial officer in this state.
 - c. The other examiners must be California licensed attorneys, at least one of whom shall have been admitted to practice law in California within three years of the date of appointment.
 - d. Each examiner shall serve for a term of four years and may apply for reappointment by the Supreme Court for up to three additional full terms. Reappointments are at the discretion of the Supreme Court and subject to the limitation that the Committee of Bar Examiners must include at least one judicial officer in this state and at least one examiner who shall have been admitted to practice law in California within three years of the date of appointment.
 - e. The terms of the Chair and Vice Chair shall be one year.
 - f. Each examiner appointed by the Board of Trustees of the State Bar of California prior to January 1, 2018, may serve out the remainder of his or her term. The Supreme Court will appoint examiners to fill these positions upon vacancy or the expiration of the term, whichever occurs first.

2. The Board of Trustees will nominate candidates to fill the vacancies for Supreme Court appointment and provide a list of nominated candidates to the Supreme Court. The Supreme Court will make appointments from that list.
3. Unless the Supreme Court directs otherwise, the time line and process for the Board of Trustees to develop its list of nominated candidates for Supreme Court appointment to the Committee of Bar Examiners are as follows:
 - a. November/December – January/February: Recruitment for examiner positions for the Committee of Bar Examiners will be conducted in conjunction with the State Bar’s regular process for volunteer recruitment. Positions and application materials will be advertised on the State Bar website. Other outreach and publicity activities may include disseminating application information through the Board of Trustees, bar associations, California Lawyers Association, California Judges Association, California Bar Journal, social media, Law School Council, the Committee of Bar Examiners, and any other means likely to attract interested and qualified applicants.
 - b. February/March: The application period will close.
 - c. March/April: Appointments staff will conduct an administrative screening of applicants to determine:
 - i. Whether the applicant is a California judicial officer or a California licensed attorney.
 - ii. Whether the applicant submitted the required supporting documents with his or her application including a resume or biography, up to three letters of recommendation, and an authorization for the Appointments staff, the Board of Trustees, and the Supreme Court to obtain and review any prior discipline, including any private discipline, imposed on the applicant by the State Bar and/or the Commission on Judicial Performance. If not, Appointments staff will obtain these materials and authorization from the applicant.
 - iii. Whether the applicant has a record of prior discipline imposed by the State Bar or the Commission on Judicial Performance.
 - iv. Whether the applicant has a history of prior service on the Committee of Bar Examiners or a member of the applicant’s firm is already serving on the Committee of Bar Examiners.
 - d. April/May/June:
 - i. Application materials and information gathered in the administrative screening process will be forwarded by

Appointments staff to the Board committee responsible for overseeing the appointments process.

- ii. From the pool of applicants, the Board committee responsible for overseeing the appointments process will select candidates for consideration.
 - 1. To aid in the consideration of candidates, the Board committee responsible for overseeing the appointments process may request that the Appointments staff coordinate interviews of the candidates.
 - 2. To further aid in the consideration of candidates, the Board committee responsible for overseeing the appointments process may solicit an evaluation of the candidates from potentially knowledgeable persons including the Chair and Vice Chair of the Committee of Bar Examiners.
- iii. Appointments staff will solicit the examiners on the Committee of Bar Examiners for their interest in serving as the successor Chair or Vice Chair, and will instruct any examiner interested in serving to, by July 1:
 - 1. Submit a resume and a letter of interest to the Supreme Court stating his or her qualifications for the office; and
 - 2. Send an electronic copy of the submission to the Principal Attorney to the Chief Justice and Appointments staff.
- e. July: The Board of Trustees, upon recommendation of the Board committee responsible for overseeing the appointments process, will submit a list of nominated candidates to the Supreme Court, identifying, if possible, at least three candidates for each open position.
- f. August: The Supreme Court will appoint new examiners from the list of nominated candidates submitted by the Board of Trustees, and a successor Chair and Vice Chair, and will notify each appointee and officer of his or her selection.
- g. September/October: The newly appointed examiners and officers will begin their terms of office at the conclusion of the annual meeting.
- h. Upon a request from the Supreme Court, the State Bar will initiate the above-described process outside the prescribed time line to assist the Supreme Court in filling any vacancy that is created when a Supreme Court-appointed examiner or officer on the Committee of Bar Examiners leaves or becomes ineligible to serve before the expiration of his or her term.

It is so ordered.

Cante-S A

Chief Justice

Chen

Associate Justice

Chen

Associate Justice

Zi

Associate Justice

Wang

Associate Justice

Lin

Associate Justice

Associate Justice



The State Bar of California

Committee of Bar Examiners Roster

Officers

Chair

Erika Hiramatsu

San Diego

Vice-Chair

David A. Torres

Bakersfield

Members

Angeli O. Agatep, M.D., FACP

Los Angeles

Robert S. Brody

Pasadena

James H. Efting

Sunnyvale

Karen M. Goodman

Sacramento **Larry**

Kaplan

Los Angeles

Alexander C. Lawrence, Jr.

Los Angeles

Bethany J. Peak

Bakersfield

James A. Bolton, Ph.D.

Altadena

Alex H. Chan

San Francisco

Kareem Gongora

Fontana

Dolores Heisinger

Belmont

Paul A. Kramer, Jr.

Sacramento

Esther P. Lin

Costa Mesa

Patricia M. Villalobos

Montebello

COMMITTEE OF BAR EXAMINERS - TERMS

	<u>Term Began</u>	<u>Term Ends</u>
Board of Trustees Appointments:		
Vacant	09/07/2017	Annual Meeting 2021
Alex H. Chan (San Francisco)	09/07/2017	Annual Meeting 2021
Esther P. Lin (Irvine)	09/07/2017	Annual Meeting 2021
Bethany J. Peak* (Bakersfield)	09/07/2017	Annual Meeting 2021
Robert S. Brody (Pasadena)	10/02/2016	09/13/2020
James H. Efting (Sunnyvale)	10/02/2016	09/13/2020
Paul A. Kramer (Sacramento)	11/18/2016	09/13/2020
David A. Torres (Bakersfield)	10/11/2015	09/15/2019
Karen M. Goodman (Sacramento)	09/14/2014	09/16/2018
Erika Hiramatsu (San Diego)	09/14/2014	09/16/2018
Governor Appointments:		
Vacant	01/02/2015	01/01/2019
Angeli Agatep (Los Angeles) (Appt 08/25/2017)	01/02/2017	01/01/2021
Alexander C. Lawrence** (Los Angeles) (Appt. 10/1/2014)	01/02/2017	01/01/2021
Senate Rules Committee Appointments:		
Dolores Heisinger (Belmont) (Appt. 05/16)	09/30/2015	10/01/2019
Vacant	09/30/2015	10/01/2019
James A. Bolton** (Altadena) (Appt. 06/02)	09/30/2017	10/01/2021
Speaker of the Assembly Appointments:		
Kareem Gongora (Fontana) (Appt. 02/18)	02/14/2018	10/01/2021
Patricia M. Villalobos** (Montebello) (Appt. 04/14)	10/01/2017	10/01/2021
Larry Kaplan (Los Angeles) (Appt. 5/17)	10/01/2014	10/01/2018

* Young Lawyer Member

** Reappointed