

# COMMITTEE OF BAR EXAMINERS

## OPEN SESSION AGENDA ITEM

**AGENDA ITEM:** December 2018 – O-201

**DATE:** November 29, 2018

**TO:** Committee of Bar Examiners

**FROM:** Lisa Jeong Cummins, Program Manager, Examinations

**SUBJECT:** **REVIEW AND CONSIDERATION OF PROPOSED POLICIES RE REQUESTS FOR RECONSIDERATION BASED ON INCIDENTS OCCURRING DURING ADMINISTRATION OF THE CALIFORNIA BAR EXAMINATION OR THE FIRST-YEAR LAW STUDENTS' EXAMINATION, INCLUDING REQUIREMENTS AND DEADLINES**

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### **BACKGROUND**

The Committee of Bar Examiners (Committee) currently has a written policy regarding requests for reconsideration of an applicant's examination score based on grading issues or anomalies if the applicant establishes an arithmetical or clerical error. The policy is as follows:

The Committee believes that its grading and administrative systems afford each applicant a full and fair opportunity to take the examination, and a fair and careful consideration of all his or her examination answers on the bar examination and that no useful purpose would be served by further consideration by the Committee. For this reason, the Committee will consider requests for reconsideration only when an applicant establishes that one of the following resulted in failure or prevented the examination from being properly graded:

1. An arithmetical error in the calculation of the total written score from the final grades assigned to the written questions or in the calculation of the total MBE score; or
2. A clerical error.

The Committee will **not** extend reconsideration based on challenges to its grading system or the judgments of its professional graders. Requests for reconsideration submitted by or on behalf of an unsuccessful applicant must be in writing and meet the criteria noted above. Requests not meeting those criteria may be summarily denied on that basis, without further explanation.

Oftentimes, however, applicants request reconsideration of their examination results based on alleged incidents that occurred at the test center during administration of the examination. Sometimes documentation of the incident exists through incident reports written by staff or proctors and sometimes there is no documentation at all. Sometimes applicants write to the Office of Admissions about the incident before release of results and sometimes they only do so after they have received their failing results.

Staff research did not turn up any specific written policy of the Committee of Bar Examiners regarding requests for reconsideration of an applicant's examination score based on incidents occurring during administration of the examination. Historically, those decisions have been made on case-by-case basis, both as to incidents involving single applicants and those involving larger numbers of applicants. There are no set requirements which must be met before such requests can be made.

The Committee also does not have any established deadline for requesting reconsideration. The Office of Admissions has received requests for reconsideration many years after administration of the examination, long after memories have faded and documents have been destroyed in accordance with the State Bar's document retention policies. For example, incident reports generated from each exam are securely destroyed 5 years from the date of the exam; SMIC (Staff Member in Charge) boxes, containing attendance sheets, proctor timing reports, etc., are kept for one year after the date of the exam; and scratch envelopes, into which an applicant's used exam materials are placed, are only kept until the next exam administration. Long delays in requesting reconsideration make investigation of the incident difficult.

Staff brings this agenda item to the Committee in order to generate discussion and to receive some guidance from the Committee as to the direction in which it desires staff to proceed in drafting proposed policies and procedures to bring back to the Committee at a future meeting.

## **DISCUSSION**

Even though the Committee does not have a specific written policy regarding requests for reconsideration of an applicant's examination score based on incidents occurring during administration of the examination, the past has set some precedents.

For example, when an earthquake occurred in Southern California during the July 2008 bar exam, the Committee enlisted its psychometricians to do an analysis to determine statistically whether or not the earthquake affected applicants' test scores. In that case, points were added to some applicants' test scores, depending on their test center location. When it has appeared that points needed to be added for certain applicants, the point adjustments would be done during the grading process.

In addition, there have been occasions when an incident involving an individual applicant has been referred to the Committee's psychometrician for an analysis that determined whether the incident adversely impacted his or her examination score, resulting in a recommendation to adjust or not adjust the applicant's score. Specific

details as to these individual applicants cannot be disclosed in this Open Agenda Item, but can be discussed in the Closed portion of the Committee meeting.

Generally speaking, if an incident occurred that likely impacted a significant number of applicants, a specific determination would be made whether to conduct an analysis, the results of which would be taken into consideration as the exams were being graded. In those instances when an analysis of adverse impact and score adjustments, if any, have already been done in advance of release of results, any requests for reconsideration made by or on behalf of individual applicants based on the same incident would be denied since their circumstances would already have been taken into account in the overall analysis done by the Committee's psychometricians.

Since the gamut of types of incidents that could possibly occur during administration of an examination is wide-ranging, it would be difficult to craft a policy with specific criteria for grounds upon which the Committee would consider requests for reconsideration, as it has with requests based on grading issues or anomalies. However, a policy can be adopted that imposes requirements or thresholds in order for the Committee to consider the request. Staff suggests, at a minimum, the following:

1. A complaint about the incident must be brought to the attention of the Section Proctor and/or State Bar Staff, so that there is an opportunity to remedy the situation if possible.
2. The complaint must be made as soon as practicable after the incident occurs and, in any event, no later than the last day of administration of the examination.

The Committee should also establish deadlines for requesting reconsideration, applicable to the type of reconsideration being requested. Staff recommends that the deadlines take into consideration the length of time that the State Bar retains certain documents relating to each administration of the California Bar Examination and the First-Year Law Students' Examination when creating the deadlines.

For example, the deadline for requesting reconsideration based on a grading issue or anomaly should run from the date results from the particular exam are released. That makes most sense since an applicant who passes the exam will not have reason to want their scores reconsidered. Since investigation of an applicant's claim of a clerical error oftentimes involves the need to check the contents of this applicant's scratch envelope, the Committee would be wise to require that the request for reconsideration be received by the Office of Admissions prior to the date of the next administration of the applicable examination (which is the designated document destruction date).

There does not appear to be a similar bright line for establishment of a deadline to impose on requests for reconsideration based on incidents occurring during the administration of an examination, nor for a date from which that time should begin to run. Should it be from the last day of the exam, from the date results from the exam are released, or from some other date? If the deadline is too short and ends before results are released, there may be many requests made by applicants who ultimately pass the exam.

## **STAFF RECOMMENDATION**

After receiving input from staff, discussing the issues raised in this agenda item, and providing staff with direction on how to proceed, the Committee should request staff to draft proposed policies and procedures, including requirements and deadlines, for requesting reconsideration of examination results based on incidents occurring during the administration of the California Bar Examination or the First-Year Law Students' Examination, and to draft a policy imposing a deadline by which to request reconsideration of examination results based on an arithmetical error or a clerical error in the grading of the examination, and to report back with the proposed policies and procedures for the March 2019 Committee meeting. Staff could also consult with other bar jurisdictions to identify any policies or practices on the statute of limitations regarding reconsideration requests that the Committee can look to for formulation of policy or protocol.

## **PROPOSED MOTION**

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

Request staff to draft proposed policies and procedures, including requirements and deadlines, for requesting reconsideration of examination results based on incidents occurring during the administration of the California Bar Examination or the First-Year Law Students' Examination, and to draft a policy imposing a deadline by which to request reconsideration of examination results based on an arithmetical error or a clerical error in the grading of the examination, and to report back with the proposed policies and procedures for the March 2019 Committee meeting.