



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

702 JANUARY 2019

DATE: January 25, 2019

TO: Members, Board of Trustees

FROM: Leah Wilson, Executive Director
Vanessa Holton, General Counsel
Donna Hershkowitz, Chief of Programs
Dag MacLeod, Chief of Mission Advancement & Accountability

SUBJECT: Approval of Omnibus Appendix I Subentity Review Recommendations Re (1) Law School Engagement and Accreditation, California Commission on Access to Justice and Legal Services Trust Fund Commission; (2) Implementation of Global Changes Including Request to Circulate for Public Comment Package of Related Rule Revisions

EXECUTIVE SUMMARY

This agenda item presents follow up recommendations related to actions taken by the Board of Trustees at its September 13, 2018, meeting pursuant to the Appendix I review of State Bar subentities. The item specifically addresses law school engagement and accreditation, the Access and Legal Services Trust Fund Commissions, and various rule revisions needed to implement recommendations approved by the Board at its September meeting.

BACKGROUND

In September 2018, the Board of Trustees approved a set of recommendations regarding the number, size, organizational structure, and functions performed by many of the committees, commissions, boards, and councils that support the work of the State Bar, also known as the "subentities." The recommendations were developed by Bar staff at the direction of the 2017 Governance in the Public Interest Task Force.

At the November 2018 meeting of the Board, Bar staff returned with implementation plans related to these recommendations. The implementation plans were divided into two broad

groups – global recommendations that apply to most or all subentities, and specific recommendations that relate to individual subentities. The plans provided broad timelines and general parameters for the implementation of the recommendations.

This agenda item seeks Board approval to circulate for public comment proposed State Bar Rule changes necessary to effectuate prior Board decisions related to the subentity review. This item also seeks Board approval for a number of initiatives related to subentities that were not fully addressed by the Board at its September and November 2018 meetings. Specifically, staff seeks Board approval for a new approach to engagement with law schools; a new approach to law school accreditation; and for the separation of the California Commission on Access to Justice (CCAJ) from the State Bar.

The report that follows first discusses proposed changes to the operations of the Committee of Bar Examiners, including changes to the Bar’s engagement with law schools, and changes to the process of accrediting law schools. The report then addresses the CCAJ and summarizes the process of stakeholder engagement undertaken since the September 2018 Board meeting. The report then goes on to discuss a new, proposed conflict of interest policy that would cover eight subentities. The report concludes with a summary of all of the rule changes necessary to effectuate these changes, included as attachments to this report in mark-up text.

DISCUSSION

The Committee of Bar Examiners (CBE)

At the September 2018 meeting of the Board of Trustees, following input of the CBE, consultants Elise Walton and Elizabeth Parker, and State Bar staff, the Board adopted a number of revisions to the role of the CBE for the purpose of improving governance and service delivery. The overall tenor of the revisions, consistent with other changes adopted by the Board in implementing Appendix I recommendations, was to involve CBE in the development of policy while in large part leaving administration of that policy to staff. Changes adopted included:

- Providing that CBE would assume responsibility for evaluating the examination grading process;
- Directing CBE to develop an empirically sound sampling plan to determine the appropriate distribution of subjects across multiple bar exams;
- Shifting the responsibility to staff for conducting informal conferences to determine if an applicant for the Bar examination possesses the requisite moral character, with CBE hearing “appeals”;
- Shifting the responsibility to staff for determining violations of exam rules and the appropriate sanctions with the CBE hearing “appeals”; and
- Memorializing that staff and the Board, not CBE, are responsible for budget development and management for the Office of Admissions.

Moral Character

At its December 7, 2019, meeting, the CBE approved a motion, by a vote of 14-1, with 1 abstention, respectfully requesting that the Board of Trustees reconsider the decision to transfer the responsibility for conducting informal moral character conferences from members of the CBE to staff. Staff continues to believe that assigning this responsibility to staff is more appropriate. While the CBE should establish the policy – the guidelines for determining what constitutes requisite moral character – staff should be responsible for the administration of the policy. The proposed rule changes outlined in a later section of this agenda item reflect both prior Board action and staff's position regarding the appropriate roles of the CBE and staff. Upon Board approval of the recommendations contained in this agenda item regarding the use of ad hoc committees to enhance law school engagement (outlined in the following section), Bar staff will work with the Chair of the CBE to launch an ad hoc committee to develop guidelines for moral character determinations to ensure transparency, accountability, and consistency. Staff believes the working group should also reconsider the Bar's approach to determining moral character in light of broader societal emphasis on rehabilitation.

Law School Engagement and Accreditation

At its September 2018 meeting, the Board deferred action on the issues of law school engagement and accreditation so that staff could finalize discussions with law school representatives. On October 2 and October 5, 2019, staff convened meetings with law school deans. One meeting was held in San Francisco, and the other in Los Angeles. Invitations to the meetings were sent to deans of all law schools located in California – ABA approved, California Accredited, and registered/unaccredited. Deans were given the opportunity to participate by phone, and the Los Angeles meeting was webcast.

At the conclusion of the meetings, a draft proposal regarding law school engagement and accreditation, reflecting the input received by the deans as well as staff recommendations, was circulated to all law school deans (See Attachment A).

In response to the proposal, staff received a letter signed by 13 California Accredited Law Schools (CALS) and 10 registered law schools (See Attachment B). In addition, staff received separate input from one of the signatories to the above letter (See Attachment C) and a response from one additional CALS dean (See Attachment D). A brief email from one ABA dean simply indicated support for the proposal.

Staff considered the input, and made revisions to the proposal which the Board is now being asked to consider.

Law School Engagement

The proposal seeks to improve engagement with the law schools and improve the flow of information to and from the law schools. Specifically, in the October meetings with the deans the following engagement values were identified:

- Meaningful opportunities for participation and engagement;
- Ability to respond to issues raised by CBE and staff and to raise issues for consideration by CBE and staff;
- Opportunities for representation from all categories of law schools;
- Opportunities for participation by more than just a core group of deans;
- More frequent updates from the State Bar; and
- Ensure the interests of the public remain at the forefront.

Highlights of the staff proposal contained in Attachment E are as follows:

- Maintain the annual meeting of law school representatives, referred to as the Law School Assembly. However, topics for discussion will be identified with the input of law school deans, and will be relevant to all law school types. Staff envisions moving from more “nuts and bolts” discussions of the work of the Office of Admissions to broader policy questions, such as how to improve the diversity of law school graduating classes, wellness issues for law students, or the use of testing accommodations;
- Replace the Advisory Committee on California Accredited Law Schools Rules (RAC) with the Committee of State Bar Accredited and Registered Schools (CSBARS), to provide feedback on both accredited and unaccredited law school rules and guidelines;
- Make the Law School Council a committee of California ABA law school representatives only;
- Authorize the formation of ad hoc working groups to develop recommendations on discrete issues. Topics for the working groups can be suggested by CBE, CSBARS, LSC, the Board, or staff;
- Develop and distribute an e-newsletter to provide a more timely and consistent flow of information to the law schools.

CBE Accreditation

Under California Business & Professions Code section 6046.7, CBE is responsible for accrediting non-ABA-approved law schools in California under rules adopted by the Board of Trustees. California is one of only five states that permit accreditation of non-ABA-approved law schools.¹

The CBE is a programmatic accreditor, focusing on the nature, administration, and content of a school’s J.D. program and acquiescing, if appropriate, to its other non-J.D. legal degrees.² CBE oversees two different types of schools: registered, unaccredited schools and California Accredited law schools (CALS). Most schools start out as registered, unaccredited schools and

¹ Of the other four, two (Connecticut and Massachusetts) allow schools accredited by a regional accreditation provider (New England Association of Schools and Colleges); one (Tennessee) uses the state’s Board of Bar Examiners; and the other (Alabama) does not require law school accreditation by the ABA in order for graduates with a J.D. to sit for the bar examination.

² Schools must seek acquiescence before offering non-J.D. legal programs, even though the Committee does not officially approve the content of these programs, so that the Committee can confirm that the program will not adversely affect the school’s J.D. program. The ABA uses a similar process to review non-J.D. programs.

then proceed to apply for California Accreditation, which requires meeting a more comprehensive and stringent set of standards.

Law schools may become California accredited after completing a successful self-study and inspection, demonstrating to an inspection team and to CBE that the school is in compliance with all Rules and Guidelines for Accredited Law Schools. After two successful years in a provisional status, the school may seek full California accreditation. To maintain accreditation, the school must comply with the Committee's Rules and Guidelines for Accredited Law Schools including maintaining a five-year cumulative minimum bar passage rate of at least 40 percent.

To date, only fixed facility law schools have been California Accredited. The rules have not allowed for accreditation of online schools, although two CALS have been approved to conduct hybrid programs that include in-person classes and online classes.

Regional Accreditation

Consultants Elise Walton and Elizabeth Parker issued a report in the initial phase of the CBE review process addressing the question of State Bar recognition, or requirement, of regional accreditation:

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).³ 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.⁴

Although not noted in the Parker/Walton report, additional factors supported consideration of regional accreditation. First, while law schools are not required to be regionally accredited in California, six of the fifteen California Accredited Law Schools (CALS) are already accredited by WASC, and three more schools anticipate becoming accredited in 2019. Thus, by the end of

³ The Western Association of Schools and Colleges (WASC) is one of six regional accreditation agencies. It accredits the entire institution's educational system, rather than individual degree programs throughout the western United States and the Pacific Region, as well as some international locations. Its senior staff are longtime educators from a wide range of educational institutions at all levels. See [Accrediting Commission for Schools Western Association of Schools and Colleges, www.acswasc.org/](http://www.acswasc.org/).

⁴ See Appendix I Sub-Entity Review, Agenda Item 702, Meeting of the Board of Trustees, September 13, 2018, Appendix A, page A-26.

2019 over half of all CALS will be WASC accredited.⁵ Second and related, accreditation is costly, and often the associated costs are borne by students.

Over a period of several months last year, CBE and law school deans thoroughly vetted the possibility of outsourcing accreditation. Neither the CBE nor law school deans were in favor of full outsourcing or mandatory regional accreditation. Staff agreed that while regional accreditors have a level of expertise and capacity not present at the State Bar, complete outsourcing of the function, with no ability to impose law school specific accreditation standards on CALS would be problematic.

Regional accreditors do not establish requirements for specific degree programs. Rather, they evaluate the school's system of learning as applied to all programs. Regionally accredited schools are required to establish outcome goals, create the capacity to meet those outcomes, measure, and evaluate the outcomes for future improvement. Using WASC as an exemplar of the most likely CALS regional accreditor, Attachment F illustrates the variances between regional accreditation, CALS accreditation, and registration requirements for unaccredited law schools in California.

The staff proposal for accreditation, like the proposal for law school engagement, was discussed with law school deans at meetings on October 2 and October 5, 2018. Reflecting input provided at these meetings and subsequently, the staff proposal, provided in Attachment G, includes the following:

- Recognize regional and national accreditation from entities authorized to accredit the first degree in law, similar to the way ABA approved schools are recognized;
- Require law schools with other regional or national accreditation (as distinct from ABA-approved law schools) to meet additional State Bar requirements, such as minimum bar passage rates and annual reporting requirements, pursuant to rules and guidelines to be developed by CSBARS, reviewed by CBE, and adopted by the Board;
- Continue to accredit all other CALS, pursuant to improved updated accreditation rules and guidelines;
- Allow accreditation of online law schools;
- Partner with the Legislature to pursue mandatory accreditation of law schools, ultimately eliminating the category of registered, unaccredited law schools.

California Commission on Access to Justice

The California Commission on Access to Justice (CCAJ) was created by the Board of Trustees in 1996 to improve access to civil justice for low-income Californians. The establishment of CCAJ was proposed by the State Bar-appointed Access to Justice Working Group in its report, adopted by the Board of Trustees in 1996, entitled *And Justice for All: Fulfilling the Promise of Access to Civil Justice in California*. CCAJ was originally envisioned as the entity to provide

⁵ One unaccredited school is also WASC accredited, California Southern School of Law.

ongoing leadership to increase the funding for and improve the delivery of legal services in civil matters for persons of modest means through representation from the State Bar, judiciary, business, and community organizations.

CCAJ consists of 26 members. The State Bar appoints 10; 16 other members are appointed by 14 other statewide entities. The Judicial Council and the Governor each have two (2) appointments, and the following all have one (1) appointment: California Attorney General, California Chamber of Commerce, California Council of Churches, California Judges Association, California Labor Council, Council of California Law Librarians, Consumer Attorneys of California, League of Women Voters, Legal Aid Association of California, President Pro Tem of the Senate, Speaker of the Assembly, and the Supreme Court of California.

The Appendix I review process brought to the attention of Bar staff and members of the Board a number of unique features of CCAJ that set it apart from other subentities. Conversations were held with the leadership of CCAJ, and CCAJ as a whole, about the following issues, among others:

- The operational autonomy with which CCAJ has operated;
- The breadth of CCAJ's work which may exceed the scope appropriate for the State Bar;
- The use of staff resources to work on CCAJ priorities that may exceed the scope of and/or differ from the priorities set by the Board;
- The possibility – rare though it might be - that CCAJ could pursue a legislative strategy or issue a report that conflicts with the interests of the State Bar.

Needing further input, staff did not present CCAJ-related recommendations to the Board at the September 2018 meeting at which other subentity recommendations were considered. Rather, staff presented a proposal to create a CCAJ Stakeholder Working Group (CCAJSWG) to explore the issues further with the access community and CCAJ before making a recommendation. The CCAJSWG, co-chaired by Trustee Joanna Mendoza and CCAJ Chair Judge Mark Juhas, included the following:

- 3 members of CCAJ selected by the Chair and Vice-Chair of CCAJ: Judge Timothy Dillon, Amos Hartston, Toby Rothschild
- Assembly Judiciary Committee appointment: Alison Merrilees
- Senate Judiciary Committee appointment: Margie Estrada
- Board of Trustee appointment: Ruben Duran
- Judicial Council appointment: Jody Patel
- Supreme Court liaison: Carin Fujisaki
- State Bar staff liaison: Donna Hershkowitz

The CCAJSWG reviewed the current structure and operations of CCAJ, discussed the structure of Access Commissions in other states, and discussed options regarding the future structure and function of CCAJ, and the scope of CCAJ's work.

The CCAJSWG engaged in lively discussions about the need for CCAJ to operate independently of the agendas of any of its appointing authorities, to speak on behalf of the consumers of justice services, and potentially to advocate for access for consumers in ways that could be contrary to the interests of one or more of its appointing authorities. The CCAJSWG discussed the degree of State Bar oversight that would impede the ability of CCAJ to maintain its integrity. At the last meeting of the CCAJSWG, in an effort to resolve what seemed to be the biggest questions impacting the future of CCAJ and the Bar, staff presented a discussion proposal (See Attachment H) attempting to strike the right balance between the need for Board oversight, and the needs of CCAJ for flexibility, to be treated differently from other subentities, and to ensure the continued integrity and independence of CCAJ.

After much discussion, the CCAJSWG concluded that the best future for CCAJ would be to separate from the State Bar, with the understanding that CCAJ and the Bar would continue to work collaboratively on access issues where their interests overlap. The CCAJSWG talked about options for the State Bar to enter into annual deliverables-based contracts with CCAJ to use its expertise to assist the Bar in identifying and implementing its access priorities. In-kind support by the Bar such as the use of meeting space in Bar office buildings, was also discussed. On November 27, 2018, with a vote of 7-0, with 1 abstention, the CCAJSWG adopted a motion to:

- Recommend to the Board of Trustees that CCAJ separate from the State Bar, with the transition to occur no later than December 31, 2019;
- Recommend to the Board of Trustees that (State Bar appointed) CCAJ membership and leadership be reauthorized as it existed prior to September 1, 2018; the terms of those members and leaders continuing through the transition;
- Recommend that the Board of Trustees continue to provide support to CCAJ during the transition;
- Recommend to the Board of Trustees that CCAJ be authorized to take all necessary and reasonable efforts to effect its transition; and
- Establish a small CCAJ / State Bar transition team to work together on transition issues.

Trustee Joanna Mendoza, CCAJ members Mark Juhas, Catherine Blakemore, and Amos Hartston, Supreme Court staff Sunil Gupta, and State Bar staff Donna Hershkowitz and Brady Dewar convened as the transition team on January 8, 2019, for an initial discussion of the transition issues.

Legal Services Trust Fund Commission

The Legal Services Trust Fund Commission (LSTFC) underwent a process of stakeholder engagement and review similar to that of the CCAJ. The LSTFC Stakeholder Working Group will hold its final meeting on January 22. Staff will provide its report and the report of the Stakeholder Working Group following the conclusion of that meeting.

New Subentity Conflict of Interest Policy

In addition to specific recommendations related to the CBE and CCAJ, described above, staff also propose the creation of a new conflict of interest policy that will apply broadly to multiple subentities. Staff propose that the Board approve for circulation for public comment new State Bar Rules containing a conflict of interest policy for eight subentities of the State Bar.

Currently, over half of the subentities do not have any conflict of interest policy; others have self-adopted policies that have not been reviewed by the BOT. One of the covered subentities, the California Board of Legal Specialization, has a conflict of interest policy set forth in State Bar Rule 3.95. The new proposed rules will render this rule superfluous. Staff therefore propose repealing State Bar Rule 3.95 when the new proposed rules are adopted.

The following subentities would be subject to the new proposed conflict of interest policy:

- The Committee of Bar Examiners (CBE)
- The California Board of Legal Specialization
- The Council on Access and Fairness (COAF)
- The Client Security Fund Commission (CSF)
- The Lawyer Assistance Program Oversight Committee (LAP)
- The Commission on Access to Justice (CAJ)
- The Legal Services Trust Fund Commission (LSTFC)
- The Committee on Professional Responsibility and Conduct (COPRAC)⁶

In 2009, the Board adopted as State Bar Rules 7.24 and 7.25 a conflict of interest for the Commission on Judicial Nominees Evaluation (JNE), which is tailored to the work of that body. These rules would be unaffected by the proposed new rules, which do not apply to the JNE Commission.

Rationale

Because the subentities frequently play a major role in the State Bar's decision-making process, a uniform conflict of interest policy is necessary to ensure that decisions are not unduly influenced either through personal, business, or financial relationships.

The proposed rules set forth a conflict of interest policy for eight subentities, and will promote uniformity and strengthen the State Bar's commitment to maintaining a conflict-free decision-making process. The proposed rules at Rule 6.70, *et seq.*, of Title 6 of the State Bar Rules mirror the conflict policy applicable to the Board by requiring disqualification from decision-making that would have a reasonably foreseeable material effect on a subentity member's financial interests and/or when subentity members have a personal nonfinancial interest that would prevent them from applying disinterested skill and undivided loyalty to the State Bar in the decision-making process (See, for example, California Code of Civil Procedure section 6036).

⁶ Note that although COPRAC was not part of the Appendix I subentity review, staff believe that the conflict of interest policy should be applied to it.

Staff anticipate that, currently or in the future, individual subentity members may have financial or personal conflicts of a number or to a degree that will require them to disqualify themselves from multiple subentity decisions. To promote efficient operation of the subentities and avoid situations in which a subentity member is unable to participate meaningfully in the subentity's activities, OGC recommends adoption of proposed State Bar Rule 6.77, which would require subentity members either to resign or to eliminate the disqualifying conflict (for instance, by divesting their financial interest) if, in any three-month period, they are required to disqualify themselves from more than 25 percent of the subentity's votes. A similar approach is followed by the City of Los Angeles with respect to the city's boards and commissions.⁷ Setting the threshold at 25 percent will allow subentity members with limited conflicts to continue to serve, while ensuring that subentity operations are not impacted by an unreasonable number of conflict disqualifications.

As noted above, several of the subentities covered by the proposed rules have adopted conflict of interest policies specific to themselves. Staff has reviewed these internal policies, and determined that none of these internal policies conflicts with the proposed rules. Such internal policies are appropriately viewed as implementation guidelines for the proposed rules. Because such implementation guidelines can assist the subentities in adhering to the proposed conflict of interest policy, staff recommends that the Office of the General Counsel (OGC) be directed to work with staff and the subentities to evaluate the need for subentity-specific implementation guidelines for the proposed rules, and, as appropriate, to develop such guidelines (including, as appropriate, reaffirmation or revision of existing subentity specific guidelines).

Staff recommends that the conflict of interest policy for subentities be enacted as a formal State Bar Rule to promote clarity of and visibility of the policy and to highlight the importance of the conflict of interest principles enshrined in the policy. Further, enactment of the conflict of interest policy as a formal State Bar Rule requires circulation of the proposed rule for public comment pursuant to State Bar Rule 1.10. This process is appropriate for a policy of this significance, and could bring useful comments and perspectives to the BOT before final adoption of the proposed rules.

Bar staff anticipates working with staff to the affected subentities to evaluate the need for implementing guidelines and, as appropriate, to develop, these for individual subentities. Bar staff further anticipates that questions will arise regarding application of the new policy to

⁷ Under Section 707 of the Los Angeles City Charter, if a single conflict disqualifies a board or commission member from acting on three or more agenda items in any one-year period or if any conflict(s) disqualifies a member from acting on more than one percent of all agenda items in any one-year period, then the Ethics Commission must determine if the member has a significant and continuing conflict. If the Commission determines there is a significant and continuing conflict, the Commission then must order divestment of the conflicting interest. Proposed State Bar Rule 6.77 adopts a similar rationale, but adopts a higher triggering threshold (to allow participation by subentity volunteers with a relatively small number of conflicts), while applying an automatic resignation or divestment remedy (to allow for efficient operation of the sub-entities where disqualification is impacting subentity operations.)

specific fact-situations, and anticipates that OGC will provide advice to staff and/or subentity members regarding such questions.

Proposed Rule Changes

To effectuate the changes described in the previous sections, numerous changes to State Bar Rules will be required. Those changes are shown in mark-up text in Attachments I, J, K, and L. Below is a summary of the changes.

Revisions to Admissions Rules

In general, the rules are revised to replace reference to the “Committee” with the “State Bar” (or add the words “State Bar”) when referring to functions handled by the State Bar staff. Pursuant to Court Rule 9.3 (effective 1/1/18), the phrase “pursuant to the authority delegated to it by the Board of Trustees” is added to Rules 4.1 (Authority), 4.56 (First-Year Law Students’ Examination), and Rule 4.60 (California Bar Examination) when referencing the Committee’s authority. Rule 4.60 is also revised to reflect that pursuant to Court Rule 9.6(a) (effective 1/1/18), the Supreme Court must set the bar examination passing score. Rule 4.56 is revised to note that the State Bar develops the questions for the First-Year Law Students’ Examination.

The term “Director of Admissions” replaces the term “Senior Executive” to reflect the current position title.

Business and Professions Code section 6060.25 (effective 1/1/16; amended effective 10/2/17) provides that any identifying information submitted by an applicant to the State Bar for admission and a license to practice law and all State Bar admissions records that may identify an individual applicant shall be confidential. This section is added as a reference to Rule 4.4, which addresses confidentiality.

Rule 4.5 (Submissions) is revised to clarify how information obtained by the State Bar as a result of fingerprinting of an applicant is used and that it is confidential.

Rule 4.10 (Fees) is revised to note that the fees paid by Applicants are fixed by the Board of Trustees.

Rule 4.17 (Admission certification and time limit) is revised to provide that an applicant may request a review by the Committee of the State Bar’s decision regarding extending the five-year limit from the date the applicant passes the bar examination to meet all the requirements for admission.

The dates for registering to take the bar and to request testing accommodations in Rules 4.61 and 4.84 were revised to conform to the dates in Business and Professions Code section 6060.3 (amended effective 1/1/19).

Rules that require applicants to submit requests are revised to also apply to electronic submittals by removing reference to being “written” and removing reference to the location of the Office of Admissions.

Moral Character: Moral character informal conferences will be conducted by the State Bar. The State Bar will issue moral character determinations. An applicant may request a review of an adverse moral character determination by the Committee and may request review by the Committee of the State Bar’s decision concerning an application for Extension of Determination of Moral Character. An applicant may also request review by the Committee of the State Bar’s decision regarding abandonment of an application for moral character determination. (Rules 4.43, 4.45, 4.46, 4.47.1, 4.52.)

Examination Conduct Violations: If the State Bar affirms a Chapter 6 Conduct Violation that was issued during an examination, the staff will notify the applicant of the proposed sanction. An applicant may request a hearing with the State Bar. The State Bar must render Findings and Recommendations no later than 30 after the hearing. An applicant may request a review by the Committee of the State Bar’s Findings and Recommendations. (Rules 4.70, 4.71, 4.72, 4.73.)

Review of Denied or Modified Testing Accommodations: The term “appeal” is replaced with “review” to be consistent with the other review procedures. Rule 4.90 is also revised to note that the Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.

Revisions to Rules Affecting the Committee on Mandatory Fee Arbitration

Only one substantive revision is proposed to the rules regarding Mandatory Fee Arbitration. Rule 3.537 pertains to disqualification or discharge of arbitrators. A revision is proposed to Rule 3.537(C) which leaves the rule in tact with respect to arbitrators, but eliminates reference to the Committee on Mandatory Fee Arbitration. This is consistent with the transition from a standing committee to a staff-driven program.

Non-substantive edits to the same rule are also proposed which make the language of the rule clearer and to note that the rule applies while arbitrators are serving in that role.

Revisions to Rules Affecting the Client Security Fund

The revisions to the rules governing the Client Security Fund include changes necessary to comport with the Board’s decision to have the CSF Commission act as an “appellate” body, meaning that the Commission will delegate authority for the Tentative Decisions to be issued by Fund Counsel and will focus its review on those applications in which objections to the Tentative Decisions have been filed. The revisions also implement the decision to reduce the size of the Commission from seven to five members to address the reduced workload. Amendments include:

Change size of Commission from Seven to Five Members (3 licensees and 2 public member non-attorneys): The proposed rule change maintains an attorney majority of the Commission. Rule 3.421(A)

Grant Authority to Fund Counsel to issue Tentative Decisions on behalf of the Commission: Several rules are proposed to be amended to give Fund Counsel the authority to issue Tentative Decisions. These changes include clarifying that Fund Counsel, in addition to the Commission, have the ability to determine the appropriate level of reimbursement, waive certain eligibility requirements. (Rules 3.430(D), 3.432(B), 3.435, 3.436(B), 3.441(B), 3.441(C), 3.441(D), 3.441(E), 3.441(F), 3.443(A), and 3.443(D))

Committee as an appellate body. Rule 3.444 is revised to provide that the Commission will issue a Final Decision where a timely objection to a Tentative Decision has been received.

The proposal also includes a number of technical nonsubstantive clean-up or rewording of some of the rules.

FISCAL/PERSONNEL IMPACT

Proposed changes to the law school accreditation process may result in reductions in State Bar costs as related to the accreditation function; these savings would likely be offset by reduced accreditation revenue. While an independent CCAJ will require some financial support from the State Bar as provided via a deliverables based contract, the level of support will likely be similar to that currently afforded. With respect to the various rule amendments, to the extent that subentities are eliminated or reduced in size modest cost savings will be realized.

RULE AMENDMENTS

Title 3, Division 4, Chapter 1

Title 3, Division 4, Chapter 2

Title 4, Division 1, Chapters 1, 2, 4, 5, 6, and 7

Title 6, Division 3, Chapter 1

BOARD BOOK AMENDMENTS

Not applicable. Changes to Board Book pending approval at January 2019 meeting of the Executive Committee. Changes to Board Book Appendices, including changes to Charters of Board Committees and subentities will be presented to the Executive Committee in March, 2019.

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 1. Successfully transition to the “new State Bar”— an agency focused on public protection, regulating the legal profession, and promoting access to justice.

Objective: c. Determine the appropriate role of, and Board responsibility for, State Bar Standing Committees, Special Committees, Boards, and Commissions in the new State Bar.

RECOMMENDATIONS

RESOLVED, that the Board of Trustees approve the proposed approach to law school engagement set forth in Attachment E and directs staff to implement the proposal; and it is

FURTHER RESOLVED, that the Board of Trustees approve the proposed approach to accreditation set forth in Attachment G, and direct staff to implement the proposal; and it is

FURTHER RESOLVED, that, as to the California Commission on Access to Justice, the Board of Trustees adopt the recommendations made by the CCAJSWG on November 27, 2018, to wit:

- 1) That CCAJ separate from the State Bar, with the transition to occur no later than December 31, 2019;
- 2) That State Bar appointed membership CCAJ that termed off in September 2019, and leadership of CCAJ that termed off in December 2019, be reauthorized and those members reappointed, to continue through the time of the transition;
- 3) That the Board of Trustees and the State Bar continue to provide support to CCAJ during the transition;
- 4) That CCAJ is authorized to take all necessary and reasonable efforts to effect its transition; and
- 5) That State Bar staff continue their efforts with the transition team to address transition issues, including the development of a contract or MOU, as appropriate to effectuate the transition; and it is

FURTHER RESOLVED, that the Board of Trustees authorize staff to make available for public comment for a period of 45 days the proposed State Bar Rules that will effectuate the changes to the operation of the Committee of Bar Examiners and the Office of Admissions, shown in mark-up text in Appendix I and summarized above; and it is

FURTHER RESOLVED, that the Board of Trustees authorize staff to make available for public comment for a period of 45 days the proposed State Bar Rules that will effectuate the elimination of the Committee on Mandatory Fee Arbitration, shown in mark-up text in Appendix J and summarized above; and it is

FURTHER RESOLVED, that the Board of Trustees authorize staff to make available for public comment for a period of 45 days the proposed State Bar Rules that will effectuate the changes to the operation of the Client Security Fund, shown in mark-up text in Appendix K and summarized above; and it is

FURTHER RESOLVED, that the Board of Trustees authorize staff to make available for public comment for a period of 45 days the proposed State Bar Rules to establish a standard Conflict of Interest Policy for eight subentities, shown in mark-up text in Appendix J and summarized above;

FURTHER RESOLVED THAT, the Office of General Counsel is directed to work with staff and the subentities covered by the proposed State Bar Rules 6.70-6.77 to evaluate the need for subentity-specific guidelines for implementation of the proposed State Bar Rules 6.70-6.77, and, as appropriate, to develop such guidelines.

ATTACHMENTS LIST

- A.** Draft Law School Engagement Proposals
- B.** Letter from Association of California Accredited and Certain Registered Law Schools
- C.** Communication from Dean of Empire College School of Law
- D.** Memo to State Bar Board of Trustees from Dean of Southern California Institute of Law
- E.** Law School Engagement – State Bar Staff Proposal to the Board of Trustees
- F.** Comparison of WASC Accreditation and CBE Law School Registration and Accreditation
- G.** Accreditation: State Bar Staff Proposal to the Board of Trustees
- H.** Draft Proposal for State Bar Review of CCAJ Projects, Initiatives, Legislative Advocacy.
- I.** Proposed Changes to State Bar Rules Related to the CBE and Admissions in Mark-Up Text: Title 4, Division 1, Chapters 1, 2, 4, 5, 6, and 7.
- J.** Proposed Changes to State Bar Rules Related to Mandatory Fee Arbitration in Mark-Up Text: Title 3, Division 4, Chapter 2.
- K.** Proposed Changes to State Bar Rules Related to the Client Security Fund in Mark-Up Text: Title 3, Division 4, Chapter 1.
- L.** Proposed Changes to State Bar Rules Related to Conflicts of Interest Policy in Mark-Up Text: Title 6, Division 3, Chapter 1.

LAW SCHOOL ENGAGEMENT PROPOSALS

Current Engagement Body - Composition & Charge	Proposal	Other Considerations
<p>The Law School Assembly was created by the Board of Trustees. Members of the staff attend and participate in the activities of the assembly, but are not "members" of the assembly. The Law School Assembly generally meets once each year if there are matters of mutual interest to discuss.</p> <p>Composition: It is composed of one representative, to be selected by the school, from each school providing resident instruction in law in the State of California, whether ABA approved, California accredited, or unaccredited; the members of the CBE; and such persons as the Board of Trustees may appoint as liaison members to the assembly.</p> <p>Charge: Its function is to constitute a forum for disseminating information from the CBE to the law schools, providing feedback from the law schools to the CBE, and for the discussion of any matters that are within the functions of the council or the CBE.</p>	<p>Law School Assembly to meet annually</p> <ul style="list-style-type: none"> • Deans or representatives • Law schools to participate in setting agenda • Topics to be of shared interest to all law school types 	<p>The State Bar recommends that this convening be subject to Bagley-Keene, that teleconference be made available and that the convening be webcast when feasible.</p>
<p>Law School Council ("Council") is a statutorily created entity. Business and Professions Code section 6046.6 (b) provides "The examining committee shall communicate and cooperate with the Law School council."</p> <p>Composition: The Council consists of 14 persons: ten law school dean representatives from four categories of law schools (ABA public, ABA private, California accredited and California unaccredited), elected by their category of school and appointed by the Board of Trustees to serve on the Law School Council; three members are from the</p>	<p>Modify Law School Council:</p> <ul style="list-style-type: none"> • Comprised of ABA deans only • Charged with identifying topics appropriate for ad hoc working group creation • Charged with identifying ABA deans to serve on ad hoc working groups • Meets as needed 	

<p>Committee of Bar Examiners (“CBE”) who have been appointed by the CBE Chair; and one member is from the Board of Trustees (generally, the Chair of the Board’s Oversight Committee). The term of office for each law school member of the Council is three years.</p> <p>Charge: The Council advises the CBE on matters relating to content and format of the bar examination, problems of coordinating curricula and on all aspects of law school education relevant to the bar examination process, 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.</p>		
<p>The Advisory Committee on California Accredited Law Schools Rules (commonly known as the “RAC”) was created in May 2009. RAC was established to create a formal process for the CALS Deans to participate and make recommendations regarding the Rules and Guidelines pertaining to CALS. Because there is no statutory authority for RAC, it is discretionary.</p> <p>Composition: RAC is comprised of three representatives chosen by the CBE and three representatives chosen by the deans of California-accredited law schools (“CALS”).</p> <p>Charge: RAC “provides advice to the Committee of Bar Examiners of the State Bar of California (CBE) on matters relating to the promulgation of new rules, guidelines, and amendments to the Accredited Law School Rules (Rules) and the Guidelines for Accredited Law School Rules (Guidelines).”</p>	<p>Rename to Committee of State Bar Accredited and Registered Schools (CSBARS) to reflect expanded role.</p> <p>Modify composition:</p> <ul style="list-style-type: none"> • Add registered school deans • Reduce number of CBE appointees • Add outside expert, perhaps as paid consultant <p>Expand charge as follows:</p> <ul style="list-style-type: none"> • Continue to provide CBE advice/ recommendations on matters relating to the promulgation of new rules, guidelines, and amendments to the Accredited Law School Rules (Rules) and the Guidelines for Accredited Law School Rules (Guidelines) • Add advice and recommendation on matters relating to promulgation of new 	<p>The State Bar recommends that these convenings be subject to Bagley-Keene, that teleconference be made available and that the convenings be webcast when feasible.</p>

	<p>rules, guidelines, and amendments to the Unaccredited Law School Rules and Guidelines for Unaccredited Law School Rules.</p> <ul style="list-style-type: none"> • Add identification of topics appropriate for ad hoc working group creation • Add identification of Accredited and Registered School deans to serve on working groups <ul style="list-style-type: none"> ○ Sub-committee of CSBARS to serve in this capacity ○ Only Accredited and Registered deans on CSBARS will make working group appointment decisions 	
Ad Hoc Working Groups - NEW	<ul style="list-style-type: none"> • Created at request of the State Bar • Created at request of law schools via LSC and/or CSBARS • Initial topics will include moral character review process 	The State Bar recommends that these convenings be subject to Bagley-Keene, that teleconference be made available, and that the convenings be webcast when feasible.
E-Newsletter, Office of Admissions - NEW	<p>Content will include updates on bar exam standards, potential changes in eligibility, exam content and moral character policies, and trends in licensing and certification.</p> <p>Law Schools can participate by submitting topic suggestions and/or co-authoring articles.</p>	

LAW SCHOOL ACCREDITATION PROPOSALS

Accreditation Topic	Proposal	Other Considerations
Law School Accreditation – Recognition of Other Accrediting Bodies	<p>Recognize regional and national accreditation from specified entities (those authorized to accredit the first degree in law; consider future possibility of other statewide accreditor)</p> <ul style="list-style-type: none"> ○ For those schools so recognized identify necessary additional State Bar accreditation requirements <ul style="list-style-type: none"> ○ At a minimum, disclosures ○ Minimum bar pass rate ○ Additional requirements to be studied by CSBARS <p>For all other schools continue State Bar accreditation</p> <ul style="list-style-type: none"> ○ CSBARS to review accreditation standards to ensure they comport with best practices 	
Mandatory Accreditation	State Bar to pursue mandatory accreditation as outlined in the November 2017 proposal approved by the Board of Trustees.	
Accreditation of Online Programs	State Bar to bifurcate accreditation of online programs from mandatory accreditation such that an accreditation process for online programs can be implemented immediately.	

DATE: November 2, 2018

TO: Members, Board of Trustees

FROM: Association of California Accredited Law Schools and the Undersigned Registered Law Schools of California

SUBJECT: Revisions to Law School Engagement and non-ABA Law School Accreditation

EXECUTIVE SUMMARY

The Association of California Accredited Law Schools (CALS) and the signatory Registered Law Schools wish to support the initiatives of the State Bar to improve governance, reduce cost, and realign stakeholder engagement structures. Specifically, the schools write in strong, qualified support of the recent compromise proposal by the Executive Director, developed following meetings with the deans of these law schools and evidently responsive to the feedback received. As will be described, the schools' qualifications go to process and some details, not the revised staff proposal, which is appreciated and has strong support.

We believe the State Bar staff, CALS, the Registered law schools, the Board, and other stakeholders should all support the following:

LAW SCHOOL ENGAGEMENT PROPOSALS

I. Continue the Productive Engagement of Law Schools in the Work of the State Bar Through an Expanded and Robust Advisory Committee – CSBARS. The current Advisory Committee on California Accredited Rules, a/k/a the Rules Advisory Committee (RAC), is an advisory committee for the CBE that is currently composed of six members appointed by the CBE, of whom three are CALS nominees and three are CBE nominees. The RAC meets on the Thursday prior to CBE meetings, and advises only on Rules, Guidelines and other regulation that impacts the California-Accredited law schools. The signatories support the proposal to replace the RAC with the Committee of State Bar Accredited and Registered Schools (CSBARS) as outlined in the attached revised procedures document (Attachment A.) CSBARS will be an advisory committee for the CBE composed of seven members appointed by the CBE, comprising two CALS nominees, two members nominated by the Registered law schools, one member nominated by the CBE who is also a member of the CBE's Educational Standards Committee, one member nominated by the Board who is also a member of the Board's Programs Committee, and one at large member, nominated by the CBE, who has expertise in higher education accreditation. CSBARS will convene when there are matters within its charge requiring discussion or action. The functions of the CSBARS will mirror those of the RAC with two additions: 1) Advisory issues previously assigned to the Law School Council related to CALS and Registered law schools will be reassigned to the CSBARS as, under the proposal, CALS and Registered law schools will no longer be included as members of the Law School Council; and 2) CSBARS will participate in

advising the CBE on the creation of and assignments to ad hoc working groups related to the bar exam, licensing, and moral character. With this structure, and these additions to its charge, CSBARS will effectively support the State Bar's public protection function and especially its role in access to justice and diversity of the legal profession, by including both state-accredited and state-registered schools within its mission to support the Bar.

II. Limit the Proposed Law School Council to Matters Affecting Only ABA-Approved Law Schools.

The Law School Council (Council) is currently a statutory entity composed of representatives of ABA, CALS, and Registered law schools, as well as members of Board and other stakeholders. The recommended proposal is to reassign advisory issues related to the CALS and Registered law schools to the new CSBARS and reconfigure the Council to be composed only of representatives of the ABA law schools, with authority to appoint working groups to address matters of concern to those schools. Since CALS and Registered law schools will no longer be represented, it makes sense to re-define the Law School Council to increase ABA law school engagement by: 1) changing the nomination process to include pre-confirmation of the willingness and availability of nominated delegates to serve; 2) expanding the category of eligible elected delegates to include Vice Deans, Associate Deans, or former deans; 3) creating the option of holding conference call and other types of meetings that would reduce the number of in-person meetings; 4) establishing minimum attendance requirements and replacement processes for filling vacant positions due to absence or resignation; and 5) limiting the Law School Council charge to matters that do not effect non-ABA law schools or their students and graduates. These changes are either reflected in the procedures document already approved by the Law School Council and awaiting Board approval or included in the attached revised procedures document (Attachment B.) In the alternative, the Law School Council could retain its present scope and be comprised of any extant ABA Working Group (standing or formed for the purpose) and CSBARS, sitting together as the Law School Council on matters within its charge. This has the advantage of significantly streamlining administration of the Law School Council, and joint meetings have precedents and are easy to arrange.

III. Make the Law School Assembly More Relevant. We support staff recommendations to use one or two annual Law School Assembly meetings to convene representatives from all categories of law schools and engage law schools in setting the agenda for the Assembly, but only convene the meetings if there are meaningful and timely topics that are of significant importance to all law schools.

IV. Utilize Ad Hoc Working Groups as Proposed. We support staff recommendations to utilize ad hoc working groups, created and selected as proposed, subject to Bagley Keene, to explore issues relevant to all law schools and all law school students, such as moral character review process and policies, potential changes to the bar exam, and eligibility licensing requirements. The Law School Council will advise the staff and CBE on issues relevant only to ABA law schools, and CSBARS will advise the staff and CBE on issues relevant to the accreditation and regulation of non-ABA law schools.

V. Implement Office of Admissions E-Newsletters as Proposed. We support staff recommendations to implement annual E-Newsletters to provide updates and announcements

from the Office of Admissions pertaining to moral character policies, eligibility, bar exam content or standards, trends in licensing and certification, and potential changes to licensing requirements.

LAW SCHOOL ACCREDITATION PROPOSALS

VI. Streamline State Bar Accreditation Through a Revised Definition of Accredited Law

Schools. Currently, the 21 ABA law schools are “deemed accredited” if in compliance with the ABA’s various standards for approval. No additional oversight of these schools is required or conducted by the CBE. The 35 CALS and Registered law schools are regulated by rules and guidelines promulgated by the CBE and approved by the Board with non-binding advisory input from the Rules Advisory Committee (RAC). The recommended proposal does not affect ABA-approved law schools but adds to the definition of “deemed accredited” schools that are accredited by regional or national accreditors recognized by the U.S. Department of Education and any other accreditor recognized by the State of California for the accreditation of doctoral or first professional degrees. For the CALS and Registered law schools, this would reduce duplicative and expensive processes, and for the State Bar it would reduce the number of schools for which detailed and duplicative review is required. At the current time, approved accreditors would include the Western Association of Schools and Colleges (WASC), its counterparts in other regions, and the Distance Education Accrediting Commission (DEAC), all rigorous and carefully monitored accrediting bodies with standards aimed at ensuring public protection.

- a. *Under this recommendation, there would be no change related to the oversight of ABA law schools, since the ABA is already recognized as a national law school accreditor.*
- b. *Non-ABA law schools that are or become accredited to provide the doctoral or first professional degree by WASC, DEAC, or other recognized national, regional, or state approved accreditors would be “deemed accredited”. These law schools would still be required to comply with Rules and Guidelines specifically identified by CSBARS and approved by the CBE through the rule-making process, such as public disclosures, minimum bar pass rate, and competency training, among others. The schools would submit an annual report affirming compliance with the specifically identified Rules and Guidelines and pay an annual fee to support accreditation and regulatory functions. These schools would no longer be required to conduct the seven-year CBE accreditation site visits or other accreditation processes with the State Bar unless a formal complaint is filed with the CBE alleging harm from non-compliance with the applicable Rules, Guidelines, or statutes.*
- c. *All non-ABA law schools, not otherwise accredited, would continue to be accredited or registered by the CBE subject to the State Bar accredited and unaccredited law school rules and guidelines, would be required to submit annual self-study compliance reports and other required notifications and filings, and would pay an annual fee to the CBE to support the accreditation and regulatory functions. Law schools not accredited by any*

other recognized accreditor would continue to be required to conduct seven-year accreditation site visits and pay additional CBE site visit fees and expenses.

VII. Implement Distance Education Rules and Guidelines Immediately and Pursue Mandatory Accreditation Later. We support the recommendation to immediately implement the rules and guidelines as previously approved by the CBE and Board after extensive public processes, including several public hearings, notice and comment periods, and multiple votes of approval by the CBE and Board, to create a path to accreditation for all types of California law schools, including distance learning schools, and modernize the regulation of legal education delivery to encourage access, diversity, and innovation at affordable cost. We also support staff's recommendation to pursue requiring accreditation of all law schools *once a pathway to accreditation has been made available to all types of schools*. As mandatory accreditation requires more complex legislative and rule-making processes, it makes sense to stage the efforts in this manner. Since creation of a pathway to accreditation has wide support, a fully completed rulemaking processes, and a complete and discrete set of already approved amendments to existing Rules and Guidelines, we suggest that implementation can take place with immediate effect upon the Board's approval of the staff recommendation. Summaries of the approved changes to the Rules and Guidelines to create a path to accreditation for distance learning schools and modernizing the regulations, and changes to the Rules and Guidelines, Statutes and Court rules required to implement mandatory accreditation of all law schools are included as Appendices C and D, respectively, for your reference.

CONCLUSION

We believe the State Bar staff, the CALS, the Registered law schools, the Board, and other stakeholders can join together to make the Bar's sub entities, systems, and processes more effective and successful. The recent compromise proposal by the Executive Director, developed following meetings with the deans of many law schools and evidently responsive to the feedback received, represents a significant step toward building a consensus between and among the law schools and the State Bar, and deserves our support. Here, the schools have filled in some of the vital details required for the signatories' full support. California's law schools are critical resources and stakeholders to the Bar in achieving its mission. With these new processes, as described here, the Bar can proceed -- and succeed -- with the signatory law schools as engaged and enthusiastic partners.

ATTACHMENT(S) LIST

- A.** Proposed CSBARS Function and Procedures
- B.** Proposed Law School Council Procedures Document
- C.** Summary of Previously Approved Path for Distance Education Accreditation Rules and Guidelines
- D.** Summary of Previously Approved Mandatory Accreditation Rules and Guidelines.

California Accredited Law School Signatories

Cal Northern School of Law
Sandra Brooks, Dean

Empire College School of Law
Brian Purtill

Glendale University College of Law
Darrin Greitzer, Dean

Humphreys University Driven School of Law
Patrick Piggott, Dean

JFK University School of Law
Dean Barbieri, Dean

Lincoln Law School Sacramento
James Schiavenza

Monterey School of Law
Mitch Winick, Dean

Pacific Coast University
Andrea Lua, Dean

San Francisco Law School
Katharine Van Tassel, Dean

San Joaquin School of Law
Jan Pearson, Dean
*except as to VII

Santa Barbara and Ventura Colleges of Law
Jackie Gardina, Dean

Trinity School of Law
Eric Halverson

University of West LA School of Law
Jay Frykberg, Dean

Registered Law School Signatories

Abraham Lincoln University School of Law
Jessica K. Park, Dean

American Institute of Law
Edward Green, Dean

American International School of Law
Nitesh Patel, CEO and President

California Desert Trial Academy
John Patrick Dolan, Dean

California School of Law
William Hunt, Dean/CEO

Concord Law School at Purdue University Global
Martin Pritikin, Dean

Irvine University College of Law
George C. Leal, Dean

Northwestern California School of Law
Michael P. Clancy, Dean

Peoples Colleges of Law
Ira Shapiro
*except as to mandatory accreditation

St. Francis School of Law
Gregory J. Brandes, Dean

Taft Law School
Robert Strouse, Dean

**The Committee of Bar Examiners
of
The State Bar of California**

**COMMITTEE OF STATE BAR ACCREDITED
AND REGISTERED SCHOOLS (CSBARS)**

FUNCTION AND PROCEDURES

I. Function

The Committee of State Bar Accredited and Registered Schools (CSBARS) provides advice to the Committee of Bar Examiners of the State Bar of California (CBE) on matters relating to: a) the content and format of the bar examination; b) curricula of accredited and registered law schools, c) the promulgation of new rules, guidelines and amendments to the *Accredited and Registered Law School Rules (Rules) and Guidelines (Guidelines)*, Rules of Court, and statutes related to legal education; d) the identification of topics appropriate for ad hoc working groups and the nomination of accredited and registered law school deans to participate on CBE and other bar-appointed working groups; and e) and other matters affecting students and graduates of accredited and registered law schools and related to law school education relevant to the bar examination and licensing process;

- (A) The CBE will refer such matters to CSBARS for its review and recommendation prior to making a final decision.
- (B) The CBE will set reasonable deadlines for receipt and review of the CSBARS's comments and recommendations. Generally, the CSBARS will provide recommendations regarding new rules and guidelines within 90 days of receiving a referral from the CBE.
- (C) The CSBARS may also develop related proposals for consideration by the CBE.
- (D) The CSBARS will provide all comments, proposals and recommendations to the State Bar's Office of Admissions for distribution to the CBE in compliance with the CBE's regular notice requirements. However, recommendations provided to the CBE at least 30 days prior to a regularly scheduled meeting at which the matter will be presented will be distributed to the CBE as soon as practicable following receipt. Language in proposed rules and guidelines must be consistent with the State Bar's rule standards.
- (E) The CSBARS will be provided the opportunity during a regularly scheduled meeting to present the recommendations. After due consideration, the CBE will make a determination either to accept, modify or deny the recommendations of the

CSBARS, and the CSBARS will be advised of the CBE's decision within ten days following the last day of the CBE meeting where the matter was presented for a final vote. The CBE will have the sole and exclusive authority to decide the issues presented and its decision is final, unless the CSBARS by a majority vote determines to seek review pursuant to section (F) below.

- (F) Upon CBE's rejection or substantial modification of a CSBARS recommendation related to the *Rules* and *Guidelines*, by majority vote, the CSBARS may request review of the decision by the Programs Committee of the State Bar of California's Board of Trustees (Board). The Programs Committee may reject the appeal, request that all or part of the CBE decision be reconsidered, or choose to request a formal review by the Board. If the Programs Committee rejects the appeal, the decision is final with no further appeal to the Board.

II. Composition and Term of Office

- (A) The CSBARS will consist of up to seven members, as follows:
 - (1) two selected by the deans of the California accredited law schools;
 - (2) two selected by the deans of the Registered law schools;
 - (3) one selected by the CBE who is a member of the Education Standards Committee;
 - (4) one selected by the Board who is a member of the Programs Committee; and
 - (5) one selected by the CBE who has expertise in the area of higher education accreditation.
- (B) The term of office for each law school member is three years. The term of office for the CBE and Board members is in accordance with the CBE and Board appointment schedule. The term of office for the accreditation expert shall be set by the CBE in accordance with State Bar appointment policy.
- (C) The Chair of the CSBARS will be selected on an annual basis by its members. The Chair will serve a minimum of one year, in accordance with the State Bar's appointments schedule, with no prohibition on serving as Chair for more than one year.

III. Meetings, Agenda and Summaries

- (A) The CSBARS will meet as needed to provide timely advice to the CBE on matters within or related to its charge. CSBARS will approve a meeting schedule that is necessary to meet its responsibilities. Meetings will generally be scheduled in conjunction with regularly scheduled meetings of the CBE.
- (B) All meetings of the CSBARS shall comply with the requirements of Bagley-Keene. The logistics and agenda for each meeting will be coordinated by the State Bar's Office of Admissions in consultation with the Chair of CSBARS. The agenda and copies of all items under consideration will be distributed to CSBARS members at least 30 days prior to the meeting. Generally, distribution will be by email. CSBARS will also be provided any additional information related to CSBARS's recommendations that are included in the general agenda and materials provided to the CBE, consistent with the requirements of the Bagley-Keene open meetings laws. A member of CSBARS will be designated by the CSBARS Chair to compile a summary of the meeting for distribution to its members.

IV. Budget

- (A) CBE assumes expenses for meeting room, refreshments, AV support and broadcast, travel and per diem for CBE members and staff.
- (B) Board assumes expenses for travel and per diem for board member.
- (C) The law schools assume the expenses for travel and per diem for the law school members.

LAW SCHOOL COUNCIL FUNCTION AND PROCEDURES

I. Function

The Committee of Bar Examiners of the State Bar of California (CBE) shall communicate and cooperate with the Law School Council (Council) (California Code, Business and Professions Code - BPC § 6046.6 (b).) The Council may provide expertise and advice to the CBE for matters relating to aspects of ABA-approved law school education relevant to the bar exam and licensure, as may be requested by the law schools, the CBE, the State Bar Board of Trustees (Board), or the Court, may identify topics appropriate for ad hoc working groups related to those subjects, and may offer nominations of ABA law school deans to participate on CBE and other bar-appointed working groups.

II. Composition and Term of Office

The Council consists of up to seven persons: five members shall be law school deans who are nominated by the ABA law school members of the Law School Assembly and appointed by the CBE; one member shall be from the CBE who is a member of the Education Standards Committee; and one member shall be from the Board who is a member of the Programs Committee.

- (A) Persons selected from the law schools shall be deans, associate deans, or former deans.
- (B) The term of office for each law school member is three years. The term of office for the CBE and Board members is in accordance with the CBE and Board appointment schedule.
- (C) The Chair of the Council will be selected on an annual basis by its members. The Chair will serve a minimum of one year, in accordance with the State Bar's appointments schedule, with no prohibition on serving as Chair for more than one year.
- (D) Selection of Law School Representatives
 - (1) Members of the Council are nominated by the ABA law school members of the Law School Assembly and appointed by the CBE.
 - (2) Nominations to fill vacancies shall be made by the ABA law schools in September of each year. Upon confirmation that the nominee is available and willing to serve, ballots shall be distributed to respective Assembly members in October. Selection of nominees shall be by the majority of ballots cast. In the case of a tie, run-off ballots shall be distributed to the ABA Assembly members. The elected slate shall be presented to the CBE as nominees for appointment at the CBE's November meeting. New members begin their term at the December Council meeting.

- (3) If a Council member is absent two consecutive meetings in any 12-month period or three meetings during their term of office, the position shall be deemed vacant and a replacement election shall be held. In the case of extraordinary circumstances, the Council, upon majority vote, has the authority to waive this provision.
- (4) In the case of an unavoidable absence, Council members may request that an alternative representative attend the meeting in their behalf. The alternative attendee may be an Associate or Assistant Dean from their law school or a dean from another ABA law school. The alternative representative may participate in all discussions and votes. However, the attendance of an alternative member shall not affect the provisions of Section II (D)(3) related to member absences.

III. Officers

- (A) A Chair of the Council shall be selected annually by a majority vote of the Council members present at the first meeting of the Council following the beginning of each Committee year.

IV. Meetings, Agenda and Summaries

- (A) The Council shall meet at least two times per year in coordination with a regularly scheduled meeting of the CBE. Additional meetings may be convened upon request by the law schools, the CBE, or the Board.
- (B) The posting of meeting agendas and the holding of meetings shall be in compliance with Bagley-Keene requirements. The Chair of the Council has primary responsibility for approval of the agenda.
- (C) The State Bar of California's Office of Admissions shall produce a summary of each meeting, and copies of the summary shall be distributed to all members of the Assembly.
- (D) The Law School Assembly, representing the deans of all California law schools, shall convene at least one time per year in coordination with one of the two Council meetings. Any member of the Assembly, the CBE, or the Board may submit an agenda item for the Assembly meeting at least 30 days prior to the Assembly meeting. The Chairs of the Council and CSBARS have primary responsibility for the approval of the agenda. The posting of meeting agendas and the holding of Assembly meetings shall be in compliance with Bagley-Keene requirements.

V. Budget

- (A) CBE assumes expenses for the meeting room and refreshments during meetings of the Council, AV support and broadcasting, travel and per diem for CBE and

staff.

- (B) The Board assumes expenses for the travel and per diem for the Board representative.
- (C) The individual law schools assume the expenses for travel and per diem for the law school members of the Council.

ATTACHMENT C. Summary of Previously Approved Distance Education Rules and Guidelines**ATTACHMENT D. Summary of Previously Approved Pathway to Mandatory Accreditation Rules and Guidelines****BACKGROUND**

In November 2017, the Board of Trustees (“Board”) gave its *second* approval to the product of a nearly five-year effort by the Committee of Bar Examiners (CBE) to develop regulatory changes needed to achieve the twin goals of creating a path to accreditation for all types of law schools – including, for the first time, those whose principle methods of instruction are correspondence and distance learning -- and requiring mandatory accreditation of all California law schools. To effectuate both goals, changes were needed to the Business and Professions Code, Rule 9.30 of the Court Rules, the Accredited Law School Rules and the Guidelines for Accredited Law School Rules. The specific changes approved by the CBE in October and the Board in November had been worked out and thoroughly vetted through two Rules Working Groups, multiple reviews by staff, the law schools, the Rules Advisory Committee, the CBE, and the Board, and multiple rounds of public comment both by publication and at public hearings, since 2013. They were given final approval unanimously by the Board at its meeting on November 3, 2017.

Upon submission to the Court as directed by the Board, the Supreme Court reportedly requested an opinion from the State Bar Office of General Counsel (“OGC”) respecting its authority over law school regulation. The opinion reportedly noted that authority to regulate education is an established power of the California legislature, as is its ability to delegate that authority to an agency such as the State Bar or its Committee of Bar Examiners. Regulation of law schools – both accredited and unaccredited – was firmly delegated to the State Bar’s Committee of Bar Examiners by the changes made to the Business and Professions Code by SB 1568 in 2006 (colloquially, “the Dunn bill”). The OGC opinion was provided in January 2018 and apparently accepted by the Court. Thus, it appears the Court has declined to be involved in, at least, decisions about the content of accreditation Rules and Guidelines.

The Board set its legislative agenda for 2018 during Board meetings in January, February, and March 2018. Owing to legislative “fatigue” related to the State Bar expressed by legislative staff, a decision was made to limit the State Bar’s legislative agenda for 2018 and de-couple mandatory accreditation and other statutory and Court Rule changes from the widely-supported and non-controversial changes to the Accredited Law School Rules and Guidelines for Accredited Law School Rules that will create a path to accreditation for all types of law schools. Once de-coupled, the changes related to accreditation of all types of law schools would be implemented immediately while the changes related to mandatory accreditation would await legislative and court approval. This process was described in RAC, CBE, and Board meetings during the first quarter of 2018.

The approved changes were parsed by goal, with specific changes summarized and final recommended language provided, including minor typographical, grammatical, spacing and other clean-up corrections included where needed in May 2018. Very, very few ambiguities required resolution, as it was clear and easy to separate which changes related to accreditation standards and which related to mandatory accreditation (or other goals requiring legislative action, such as changes to the Committee’s scope of authority.) Reportedly, the State Bar OGC concurred in the suggested parsing offered by a member of the regulated community, with no or few additional changes suggested.

ANALYSIS

New and changing provision of the Rules and Guidelines related to a path to accreditation for distance learning can be implemented now and need not await Court or legislative action.

None of the changes approved to the Business and Professions Code or Rule 9.30 related to accreditation standards for distance learning law schools. All were related to mandatory accreditation or other Committee goals. (For further confirmation of this, review the staff memo provided to the Board in connection with its approval in November 2017; the staff memo describes the purposes of the approved changes to the Business and Professions Code and Rule 9.30 as related to requiring accreditation of all California law schools, or other CBE goals.)

Changes to the Accredited Law School Rules and the Guidelines for Accredited Law School Rules required to effectuate the goal of mandatory accreditation are likewise easily identified and separated and can await later implementation.

The proposed Rules and Guidelines move the accrediting standards forward by adopting an outcomes-oriented approach. They recognize that law schools may innovate in deciding the learning activities and experiences -- including the modality of education used to deliver them -- needed for each course and program outcome. Each school develops a plan for delivering its objectives, and that plan may include any kind of learning activity or experience the school believes will deliver the objective successfully to its students. It is, of course, incumbent on the school to show, through ongoing research and continuous improvement processes, that the activity or experience does in fact deliver that outcome. A plan for the curriculum is already required, and this element is added to the plan. This is the same way that regional accreditors approach accrediting; the school chooses how to achieve outcomes and then validates its curriculum choices over time.

Realistically, law schools have been using distance education for some course outcomes for 150 years. Reading assignments (and related case briefing exercises) are an asynchronous, self-paced learning activity intended to deliver certain course outcomes. Collectively, it was decided long ago that a very substantial portion of the content and skills outcomes of a law school course could be delivered through these very time-consuming, asynchronous, self-paced learning activities. If some of that time -- delivering the same outcomes -- can be converted to an online simulation of real lawyering, or an interactive online discussion with expert mentors or peers, or other modern and proven pedagogies, the goal of cost-efficient and accessible legal education can be achieved.

CONCLUSION

The Rules and Guidelines can easily and immediately be adjusted to effectuate the decisions of the CBE and Board to provide a path to accreditation for all types of schools and move the accrediting standards forward to embrace innovation (including innovations already proven by more than 15 years of bar exam results in some schools.) In all cases, the approved revisions related to accrediting standards adopted by the Board and CBE in 2017 can go forward as written, with no need to modify anything substantively to accommodate the removal of the mandatory accreditation objective. In a few spots, very minor spacing, punctuation, typographical or other adjustments to the approved text were suggested for clarity. There are no suggested substantive changes from the language already vetted, and none are needed in any provision related to accrediting standards.

From: Brian BP. Purtill [mailto:bpurtill@empirecollege.com]
Sent: Wednesday, October 24, 2018 4:03 PM
To: Louie, Ellen
Subject: RE: Follow Up | October Meetings, Law School Deans

Ms. Louie: Please pass this email on to Leah Wilson; thank you.

Dear Ms. Wilson:

Thank you for your October 19, 2018 email summarizing the current thinking on proposals to be made concerning the Law School Engagement and Accreditation issues. In response to your invitation to provide comments and thoughts, I offer the following, which is my own suggestion and which is not being made on behalf of the CALS Deans.

I am new to the CALS Deans' group, having started at Empire College School of Law in mid – August. I attended meetings at the State Bar Office on August 23 and 24 of this year, and I appreciate that much of what the Deans conveyed then and subsequently has been included in your current proposals. Continued accreditation through the CBE is very important to Empire; the delays and costs associated with attempting to obtain outside accreditation could prove to be unworkable here. Plus, as I said on August 24th, I think the State Bar accreditation process is important and quite valuable for many reasons unrelated to costs, most of which were well articulated by others, so I'm pleased to see that the current proposal is to keep that process intact for schools not accredited by an outside accrediting agency.

I do have a suggestion, however, with respect to the frequency of site visits and accreditation processes for the remaining State Bar Accredited schools. I am informed that due to a recent change, WASC-accredited schools are not subject to site visits any more frequently than 7 years minimum. The current proposal to the BOT, which I think is a good one, is to accept those schools as having been "deemed" accredited as far as the State Bar is concerned. It makes sense to me, then, to change the current CBE 5-year accreditation site visit schedule to match that same 7-year plan allowed by WASC. This would put all of the California schools on the same footing with regard to this issue, and result in a costs saving to the CBE by requiring fewer site visits per school over time. There is precedent for use of a 7-year time frame for related issues. For example, the CBE is to oversee and evaluate the bar exam every seven years pursuant to BP&C 6046.8; reviewing schools on that same basis seems appropriate.

Admittedly, I'm new to this, but I don't think much is likely to change significantly in five years for most of the CALS. And the extra two years between visits should not impact the quality of the school's services or facilities; the rules already provide that if a complaint is raised, a site visit can be required earlier than scheduled. The Annual Compliance reports we send in are another barometer for the CBE to use in determining whether an earlier visit would be required. So my suggestion seems to me to be a "win-win"; the schools save money on the costs of the visits, the CBE not only saves money and resources as well, it treats all CALS the same and maintains its ability to monitor the potential for earlier site visits. I encourage you to consider adding this change to the current proposals.

Thank you for your ongoing efforts on these issues; please feel free to contact me with any questions or comments.

Brian Purtill

Dean, Empire College School of Law
Santa Rosa, CA
Cc: CALS Deans, by email

November 06, 2018

1. Vanessa Horton
General Counsel
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

cc. Michael Colantuono
President

Leah T. Wilson
Executive Director

James P. Fox
Chair
Committee of Bar Examiners

Amy C. Nunez
Interim Director
Admissions

Natalie Leonard
Ed. Standards, Program Manager

RE: Draft Law School Engagement Proposal

Dear Ms. Horton:

On October 23, 2018 we forwarded you our Comments on the Law School Engagement Draft Proposals sent us on October 19, 2018.

Our faculty believes a useful summary is necessary that would incorporate a few issues relating to conflicts of issues presented by attorneys serving on state boards and committees and elaborate on the peculiar role of the judicial function as seen by the U.S. and state Supreme Courts. Given the historical nature of the proposals under review we believe this to helpful.

We submit this summary in the belief that the draft proposal is “subject to change” following review by the Board of Trustees including input from the Supreme Court. We leave it entirely to your discretion at this point as to whether to have the Supreme Court review our legal concerns as part of the broader “input” package of materials. Thank you again for your kind attention and I look forward to meeting you all the next time a meeting is scheduled in Los Angeles.

Sincerely,

Stanislaus Pulle Ph.D.
Dean of Law

November 06, 2018

TO: **STATE BAR BOARD OF TRUSTEES AND THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT**

FROM: **Southern California Institute of Law**

**SUMMARY OF LEGAL ANALYSIS TO
DRAFT LAW SCHOOL ENGAGEMENT PROPOSAL**

I. COMMERCE CLAUSE; TENTH AMENDMENT; AND STATE SEPARATION OF POWERS ISSUES

California has for over three quarters of a century established a specialized first professional law degree—the J.D. degree—to meet local needs and to serve predominantly state purposes. Indeed, it has been regarded as a traditional prerogative of the Supreme Court as a sovereign branch of government. Despite the new reality that this assumption was mistaken, and in truth the State Bar operates as an *executive* agency of the legislature, does not alter this function as a traditional state prerogative.

We argued before that the U.S. Department of Education, acting on powers delegated to it by Congress, through proxy of regional accreditors does trespass on core state sovereign powers protected under the Tenth Amendment.

The United States Supreme Court has emphasized that — “courts should assume that — “the historic police powers of the States” are not superseded — “unless that was the clear and manifest purpose of Congress.” (*Arizona v. United States* (2012) 567 U.S. __, __ [132 S.Ct. 2492, 2501]; see *Chamber of Commerce v. Whiting* (2011) 563 U.S. __, __ [131 S.Ct. 1968, 1985.] The Court has affirmed both in *Printz v. United States*, 521 U.S. 898, 923-924 (1977) and in *New York v. United States*, 505 U.S. 144, 166 (1992) that a law is not “*proper* for carrying into execution the Commerce Clause.” “[w]hen [it] violates [a constitutional] principle of state sovereignty.”

Ceding the oversight of state accredited schools to regional proxies not only violates the Commerce Clause and the Tenth Amendment, it breaches the walls of California’s separation of powers by ousting state judicial oversight

over a traditional state concern and transferring this oversight power over to federal courts. *Thomas M. Cooley Law Sch. v. Am. Bar Ass'n*, 459 F.3d 705, 711 (6th Cir. 2006) held that “U.S.C. 1099b(f) grants exclusive jurisdiction to the federal courts for lawsuits brought against such accrediting agencies involving the “denial, withdrawal, or termination of accreditation.”

Nor may federal accreditors assume powers of accreditation over purely *intrastate* first professional law degrees that has no real substantial and demonstrable impact on interstate commerce

The federal power to accredit the first professional law degree [J.D. degree] throughout the United States is the sole and exclusive province of a specialized agency: the ABA. We maintain that only accreditation of the J.D. program by the ABA entitles student students enrolled in such a program to seek and obtain Title IV federal funds.

Clearly no other federal or regional accreditors have been approved by the U.S. Department of Education to accredit the first professional law degree. And extending accreditation over a purely *intrastate* first professional law degree is unauthorized and violates the Commerce Clause and Tenth Amendment.

In his dissent in *Mistretta v. United States* 488 U.S. 361, 422 (1989) Justice Scalia recognized that Congress has an incentive to delegate regulatory power to private entities that are not squarely within the executive branch to avoid responsibility for controversial policy decisions.

However when Congress authorizes private entities (such as regional private accrediting bodies) outside of the federal government to promulgate regulations, “[i]t is *irrelevant* whether the standards are adequate, because they are not standards related to the exercise of executive or judicial powers.” (Justice Scalia, *Id.* 420) (Emphasis added).

The Draft as written would effect the extraordinary surrender of traditional state jurisdiction by state sovereign branches of government over an intrastate professional law degree to private federal accrediting agencies and the federal judiciary.

II. ATTORNEY CONFLICTS OF INTEREST

Attorney conflicts of interest for those serving on state boards cannot be overlooked. Just as attorney members of the Committee of Bar Examiners or the Board of Trustees may not be seated on rule discussions relating to and benefitting their own specific law firms or law practice etc., neither may law deans, consistent with laws governing state attorney conflicts of interest laws, serve on state board.

The proposed Committee of State Bar Accredited and Registered Schools (CSBARS) would have law schools and their representatives advocating the interests of their very own law schools.

Dissenting schools would be frozen out of having a seat at the table. For this, after all, is the very *raison d'être* for their representation.

III. THE RIGHT TO PETITION GOVERNMENT ON EQUAL TERMS

It is unprecedented at both the state and federal levels to empanel private individuals representing partisan interests, and promoting a majority industry interest, to serve alongside state agency decision-makers as participants in the process—who thereafter vote as members of the Committee of Bar Examiners to approve the resulting recommendations. Aside from anti-trust issues, this relates to a fundamental state and federal constitutional right of petitioning government for redress that must be open to all on equal terms.

Those seated on the panel will be sharing formal state power, euphemistically labeled “advice and recommendation” when in reality those deans and attorneys will be directly influencing regulations affecting the interests of their very own law school.

Never mind that some of the representatives empaneled by majority vote of CALS will have interests hostile to a competitor law school. While it is decidedly the function of the state legislature to seek political compromise on legislation, the task of agencies is confined to interpret delegated authority and to seek public comment on proposed delegated rulemaking on terms equal to all.

The preferential power-sharing treatment envisaged in the proposed Draft undermines fundamental state and federal constitutional imperatives.

IV. VIOLATION AGAINST THE CONSTITUTIONAL CANON OF NONDELEGATION OF LEGISLATIVE POWER

Both the Rules Advisory Committee as previously structured and the Draft proposal's enlarged Committee (CSBARS) are fundamentally flawed in seeking to construct an agency committee in which state officials and private interests representing a majority in the industry, including their own, are formally tied together in advancing industry proposals that are later voted upon by the Committee of Bar Examiners.

This is just as revolting to constitutional governance as if a state legislator(s) shared a legislative committee panel with members of a private industry to help structure a Bill—and then these same legislators would partake in introducing the Bill and vote for it.

The allied concerns relating to antitrust law as explicated in N.C Dental cannot be ignored.

V. ENTANGLING THE SUPREME JUDICIAL BRANCH OF STATE GOVERNMENT WITH NON-JUDICIAL FUNCTIONS

The United States Supreme Court has declared that the “essential criterion of appellate jurisdiction” is “that it revises and corrects the proceedings in a cause already instituted, and does not create that cause.” (*Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 175 [2 L. Ed. 60, 73].)

The Draft has the potential to “create that cause” within the judicial branch even while the Committee acts as an executive agency of the legislature.

As understood before, where the State Bar was acting as part of the inherent sovereign authority of the Supreme Court, except in cases of termination of accreditation, regulatory rulings on accreditation issues were generally not actionable in state courts where state officials could assert absolute immunity.

The Draft however widens the exposure of State Bar officials. Accredited and unaccredited, online, and registered law schools, that have been referred to in the blogs as no more than sham “fly-by-night” operations, and their faculty and students may obtain judicial review of State Bar decisions by commencing administrative mandate proceedings. (Code Civ. Proc., § 1094.5.)

The superior court has original jurisdiction of these administrative mandate proceedings. (Cal. Const., art. VI, § 10.) The Draft arrangement has the potential for enmeshing the state Supreme Court as a sovereign through the actions of a State Bar committee in litigation before lower courts that are unrelated to its core

and inherent powers. State Bar officials will be bereft of the benefit of any absolute immunity.

This is no small consequence, given the explosion of litigation in recent times against law schools and agencies where the state is an overseer. The Draft proposal exposes individual state officials within the judicial branch to civil rights suits under 42 USC §1983.

The impartiality, independence, and integrity of the state's highest court should not suffer any doubt as to its integrity occasioned by the wrongdoing of any of its agents, real or perceived. It is a price too high to pay simply to appease the demands of a handful of law deans representing schools some of which have benefitted by the prior structure of the Rules Advisory Committee.

They have obtained: branch campus approvals without being subject to the FYLSX; "acquiescence" on exclusively online postgraduate law degrees for which there are no regulations or oversight; hybrid J.D. degrees with seventy percent instruction online and not authorized under Business and Prof. Code §6060.7(b)(1); and launched *retroactive* minimum pass rate regulations impacting vested rights and reducing law school curriculum to a bar review pedagogy.

This is the damage the RAC has wrought. The recent anti-trust lawsuit filed in federal court (later withdrawn) by Lincoln Law School of San Jose against the State Bar exposed an overarching cloud of favoritism, or its appearance, in accreditation rulemaking.

CONCLUSION

How does a judicial agency of the Supreme Court navigate adroitly between the Scylla of engaging with private industry representatives in policy discussions and political preferences on law school accreditation, a role antithetical to the judicial function, and the Charybdis of then having the Supreme Court, should the moment come, appear as impartially interpreting regulations promulgated by its own agents in concert with some sections of a private industry?

Should potential conflicts of interests and ethical concerns be simply waived away?

Justice Stephen Breyer writing on the subject of "*Judicial Independence*" highlighted fairness and integrity as the bases for the "rock" upon which judicial institutions rest. (2006-2007 Georgetown L.J. 903 at 903.) Engrafting policy preferences with decidedly political dimensions onto the judicial role is to embark on a journey fraught with peril.

The advice of our nation's High Court here is worthy counsel where it commands "vigilance" against the "danger[]" of the judicial branch being "allowed 'tasks that are more properly accomplished by [other] branches.'" *Mistretta v. United States*, 488 U.S. 361, 38 (1989) (quoting *Morrison v. Olson* 487 U.S. 654 at 680–81 (1988)) (emphasis added.)

This is echoed by Justice Kathlyn Werdegarr (concurring with Justice Mosk) reaffirming the concept that: "[T]he judicial role in a democratic society is fundamentally to interpret laws, not to write them." *Kopp v. Fair Political Practices Commission*, (1995) 11 Cal. 4th 607, 675.

The Draft proposal, by embracing a restructured Rules Advisory Committee, would place the Court in the unenviable position of having to review the legality and application of quasi-legislative accreditation policies of its own agents produced in concert with private parties advocating partisan interests and applied across a broad spectrum of state law schools.

This is not the stuff of politicking that should be laid at the feet of a venerable institution that belongs to us all. Like Caesar's wife it and its agents must be above suspicion and above the fray of accreditation politics. Our High Court and the United States Supreme Court has made this abundantly clear:

"[C]ourts may not undertake to evaluate the wisdom of the policies embodied in [] legislation; absent a constitutional prohibition, the choice among competing policy considerations in enacting laws is a legislative function." (*Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 25, quoting *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 53.)

Chief Justice Roberts wrote in *Hollingsworth v. Perry*, 133 S.Ct. 2652 (2013): an "essential limit of our power" ... "is we act as *judges*, and do not engage in policymaking properly left to elected representatives." (Emphasis in original.)

Respectfully submitted,

Stanislaus Pulle Ph.D.
Dean of Law

LAW SCHOOL ENGAGEMENT: STATE BAR STAFF PROPOSAL TO THE BOARD OF TRUSTEES

Current Engagement Body – Composition and Charge	Proposal	Other Considerations
<p>The Law School Assembly was created by the Board of Trustees. Staff attend and participate, but are not "members" of the assembly. The Law School Assembly generally meets once each year.</p> <p>Composition: One representative selected by every law school providing instruction in the State of California, whether ABA approved, California Accredited, or Registered Unaccredited.</p> <p>The CBE and the BOT may appoint non-member liaisons to the Law School Assembly.</p> <p>Charge: The Law School Assembly is a forum for disseminating information from the State Bar and CBE to the law schools, receiving feedback from the law schools, and discussing any matters that are within the functions of the CBE.</p>	<p>Law School Assembly continues to meet annually</p> <ul style="list-style-type: none"> Attendees are Deans or their representatives Law Schools participate in setting agenda Topics to be of shared interest to all law school types 	<p>Staff recommends that this meeting be open to the public, noticed on the State Bar's website at least 10 days in advance of the meeting, that the law schools be permitted to attend via teleconference, and that the meetings generally be conducted consistent with the requirements of the Bagley-Keene Open Meetings Act. Since this is not an official state body, staff recommend that those participating by telephone need not have their locations open to the public or listed on the noticed agenda. This meeting will be webcast when feasible.</p>
<p>The Law School Council was created by California Business & Professions Code Section 6046.6(b): "[t]he examining</p>	<p>Modify Law School Council:</p> <ul style="list-style-type: none"> Seven ABA deans or their representatives (staff or faculty) who 	<p>Staff recommends that this meeting be conducted subject to Bagley-Keene Open Meetings Act, participants be allowed to</p>

Current Engagement Body – Composition and Charge	Proposal	Other Considerations
<p>committee shall communicate and cooperate with the Law School Council.”</p> <p>Composition: Fourteen Members:</p> <ul style="list-style-type: none"> • Ten law school deans from four categories of law schools (ABA public, ABA private, California Accredited, and California Registered, Unaccredited) • Law school dean members are elected by their category of school and appointed by the Board of Trustees • Three members are CBE members appointed by its Chair • One member is from the Board of Trustees (generally, the Chair of the Programs) • Terms are three years <p>Charge: The Law School Council advises the CBE on matters related to content and format of the bar examination, coordination of curricula and on all aspects of law school education relevant to the bar examination process; it also acts as a two-way channel for information that provides a sounding board and source of expertise for the CBE, and advises on such other matters as may</p>	<p>serve three year terms</p> <ul style="list-style-type: none"> • Candidates for member submit application to the State Bar for confirmation by CBE Chair and Vice-Chair. CBE Chair and Vice-Chair to select chair, following receipt of statement of interest. • Charged with suggesting topics appropriate for ad hoc working group creation • Charged with identifying representatives from ABA accredited law schools to serve on ad hoc working groups • State Bar sets meeting schedule as needed 	<p>attend via teleconference with proper notice, and the meeting be webcast when feasible. It also recommends that member travel be reimbursed in accordance with the State Bar Travel and Expense policy.</p>

Current Engagement Body – Composition and Charge	Proposal	Other Considerations
be requested.		
<p>The Advisory Committee on California Accredited Law School Rules (commonly known as “RAC”) was created in May 2009. RAC was established to create a formal process for California Accredited Law School (CALS) deans to participate in and make recommendations to CBE regarding the Rules and Guidelines pertaining to CALS.</p> <p>Composition: Six members total</p> <ul style="list-style-type: none"> • Three members selected by the CBE • Three members selected by deans of the CALS <p>Charge: RAC “provides advice to the Committee of Bar Examiners of the State Bar of California (CBE) on matters relating to the promulgation of new rules, guidelines, and amendments to the Accredited Law School Rules (Rules) and the Guidelines for Accredited Law School Rules (Guidelines).”</p>	<p>Rename to Committee of State Bar Accredited and Registered Schools (CSBARS) to reflect expanded role. State Bar staff to set schedule to meet as needed to provide timely advice to the CBE on matters within its charge. Meetings may be coordinated with a CBE meetings.</p> <p>Proposed Composition:</p> <ul style="list-style-type: none"> • Seven members: <ul style="list-style-type: none"> ○ Three Deans from accredited schools ○ Two Deans from registered unaccredited schools ○ Two members selected by CBE, one of which may include a non-voting consultant with expertise in accreditation issues • Each member serves for a three-year term • Candidates for member submit application to the State Bar for confirmation by CBE Chair and Vice-Chair. CBE Chair and Vice-Chair to 	<p>Staff recommends that this meeting be conducted subject to Bagley-Keene Open Meetings Act, participants be allowed to attend via teleconference with proper notice, and the meeting be webcast when feasible.</p> <p>CALS Deans and Registered Deans recommendations with specific time frames not incorporated. Time frames required by Bagley-Keene will be satisfied. In all other events, State Bar staff shall strive to provide notice and meeting materials with as much advance notice as is reasonably practicable.</p> <p>Staff recommends that member travel be reimbursed in accordance with the State Bar Travel and Expense policy.</p>

Current Engagement Body – Composition and Charge	Proposal	Other Considerations
	<p>select chair, following receipt of statement of interest.</p> <p>Charge:</p> <ul style="list-style-type: none"> • Providing feedback to CBE and State Bar on matters relating to the promulgation of new or amended Accredited Law School Rules and The Guidelines for Accredited Law School Rules • Providing feedback on matters relating to the promulgation of new or amended Unaccredited Law School Rules and Guidelines for Unaccredited Law School Rules • Suggesting topics appropriate for ad hoc working group creation within the State Bar’s regulatory scope • Identifying accredited and registered, unaccredited law school deans or administrators to serve on ad hoc working groups <ul style="list-style-type: none"> ○ Accredited and registered deans on CSBARS will identify participants for working groups <p>Other: CSBARS will be provided an opportunity during regularly scheduled meetings of</p>	

Current Engagement Body – Composition and Charge	Proposal	Other Considerations
	CBE to present their recommendations.	
Ad Hoc Working Groups – NEW	<ul style="list-style-type: none"> • Created by CBE at request of State Bar, CSBARS or Law School Council • Topics may be suggested by law schools via LSC or CSBARS for State Bar consideration • State Bar will consult with Law School Council and CSBARS when feasible in selecting members • Initial topics will include moral character review process 	Staff recommends that these groups be conducted subject to Bagley-Keene Open Meetings Act, participants be allowed to attend via teleconference with proper notice, and the meetings be webcast when feasible. It also recommends that member travel be reimbursed in accordance with the State Bar Travel and Expense policy.
E-Newsletter – Office of Admissions – NEW	<p>Content will include updates on State Bar examination standards, changes in eligibility for examinations, examination content, moral character policies, and trends in licensing and certification.</p> <p>Law schools can participate by submitting topic suggestions and/or co-authoring articles.</p>	

Key Comparison between WASC Accreditation and
Committee of Bar Examiners' Law School Registration and Accreditation

Attachment F

WASC Core Commitment 1: Define Institutional

Purpose and Ensure Educational Objectives

	<u>WASC</u>	<u>Committee Registered</u>	<u>Committee Accredited</u>
Formal Statement of Purpose/Values/Character	Yes	--	--
Educational objectives are stated, tracked, and posted publicly	Goals set, tracked, and posted	General Statistics Posted Publicly via CB&P S. 6067.1 Disclosure	6067.1 Disclosure and Minimum 5-Year 40% Bar Pass Required
Program level stated	J.D.	J.D.	J.D.
Retention Data	Goal, Benchmark, and public and student disclosure	Public Disclosure via 6067.1 posting	Public Disclosure via 6067.1 posting
Graduation Rate and Speed	Goal, Benchmark, and public and student disclosure	--	--
Academic Freedom Policy	Goal, Benchmark, and public and student disclosure	Must have policy	Must have policy
Diversity Policy	Demonstrated institutional commitment and legal compliance	Legal Compliance	Legal Compliance
Education as institution's primary purpose	Yes	--	--
Truthful representation to students/public; fair and equitable policies; timely completion	Yes	Yes	Yes
Operational transparency; grievance response; independent audit.	Yes; full independent audit required.	Policies required; audit not required	Policies required/audit not required
Honest, Open Communication with the Regulator	Yes	Yes	Yes

WASC Core Commitment 2: Achieve Objectives

Through Core Functions

	<u>WASC</u>	<u>Committee Registered</u>	<u>Committee Accredited</u>
Programs have appropriate contents, standards, faculty, peer review	Appropriate peer reviewed content and faculty	Bar Subjects offered; Professional Responsibility required	Bar Subjects offered; Professional Responsibility required
Clear admission and achievement levels defined	Yes	Yes	Yes
Student learning outcomes are defined and integrated with program, policy, advising	Yes	--	--
Faculty set, assess, demonstrate student learning outcomes	Yes	--	--
Students are challenged to learn and given feedback on progress	Yes	Feedback provided with exam grades	Feedback provided with exam grades
Graduates achieve stated levels of attainment	Yes	Grades/Test Scores	Grades/Test Scores
Program review including learning objectives, retention, graduation, external evidences, evaluations	Yes	--	--
Scholarship, creativity, and curricular instructional innovation valued and supported	Yes	--	--
Faculty Evaluations	Formal evaluation: scholarship, teaching, learning, service; multisource evaluations, peer review	Regular Evaluations	Evaluation at 1st year and every third year
School tracks student needs, achievement at disaggregated levels, student satisfaction and timely progress	Yes	--	--
Co-curricular programs aligned with program and assessed	Yes	School lists available services	School lists available services
Institution provides useful and complete program information and advising	Yes	List services; include academic counseling	List services; include academic counseling

Key Comparison between WASC Accreditation and
Committee of Bar Examiners' Law School Registration and Accreditation

Attachment F

Appropriate student support services planned, implemented and evaluated	Yes	--	--
Appropriate transfer policy	Yes	Yes	Yes

Key Comparison between WASC Accreditation and
Committee of Bar Examiners' Law School Registration and Accreditation

Attachment F

Programmatic Requirements (Not Specific WASC

Core Commitment)

	<u>WASC</u>	<u>Committee Registered</u>	<u>Committee Accredited</u>
Subjects required to be offered	School chooses appropriate content, standards, rigor and nomenclature conforming to recognized professional standards and subject to peer review	Bar subjects offered; Professional Responsibility Required	Bar subjects + Opportunity for 15 Credit Hours Practical Skills
Minimum Frequency of Course Offerings	WASC does not require specific curriculum elements, but it does require that the school chooses elements that support the stated objectives and skills to be learned, benchmarked against professional standards and peer reviewed.	School chooses schedule	First Year Courses annually; full range biennially; Half of required courses annually; AO offered every other year
Minimum of Classroom Time or Study Required for J.D. Program		1080 Hrs Classroom -or- 3456 Hrs Correspondence & Distance	1200 Hours Classroom Time
First Year Law Students' Examination Required?		Yes	In limited cases
Minimum 5-Year Bar Passage Rate (MPR)		None	40% 5-Year Cumulative Bar Pass Rate
Library		California Law Books and Textbooks	California, Federal, and National Legal Materials
Specific Pre-Legal and Admissions Requirements		Yes; LSAT not required	Yes; LSAT not required but used by 12/15 schools
Specific Record Keeping Requirements		Yes	Yes
Headquarters and records located in California	--	Yes	Yes

**WASC Core Commitment 3: Develop and Apply
Resources and Organization Structures to Ensure
Quality and Sustainability**

	<u>WASC</u>	<u>Committee Registered</u>	<u>Committee Accredited</u>
Sufficient, qualified and diverse faculty and staff	Qualified and diverse	JD	JD
Well-developed staff policies, practices and evaluation	Written policies for all stages of faculty development, evaluation and improvement.	Written	Written
Faculty and staff development	School makes, implements and measures faculty and staff development plan	Faculty are responsible for self-development	Faculty are responsible for self-development
School's financial position and enrollment management	Clean audit, no operational deficit for three years, management of past deficit	Sufficient resources to operate school	Sufficient resources to operate school
Facilities, Services and IT aligned with objectives	Sufficient facilities aligned with school goals	Sufficient facilities required	Sufficient facilities required
Leadership operates with integrity	Yes	Yes	Yes
Clear decision making structures to sustain capacity and effectiveness	Yes	--	--
Administrator Requirements	Full time CEO reporting to and evaluated by Independent Governing Board and Full Time CFO	Full Time Administrator with JD if >100 students	One Full Time Administrator with J.D.; Part Time Administrator at Branch until >30 students
Independent Governing Board	Yes	No	No
Academic Leadership by Faculty	Yes	--	--

**WASC Core Commitment 4: Creating an
Organization Committed to Quality Assurance,
Institutional Learning, and Improvement**

	<u>WASC</u>	<u>Committee Registered</u>	<u>Committee Accredited</u>
QA process to collect, analyze and interpret data, track and compare results, and make improvements over time	Yes	--	--
Sufficient institutional research capacity to evaluate, disseminate, and incorporate data in planning and research is assessed	Yes	--	--
Commitment to improvement based on data and evidence, including in teaching, learning, and campus environment, and utilization of results	Yes	--	--
Plan to continuously improve teaching, pedagogy and student assessment	Yes	--	--
Appropriate stakeholders involved in regular assessment of institutional effectiveness	Yes	--	--
Reflection and planning with multiple constituents, strategic plans align with purposes, address key priorities and future directions; revise and monitor as required	Yes	--	--
Anticipate and respond to changes in higher education/professional trends	Yes	--	--

ACCREDITATION: STATE BAR STAFF PROPOSAL TO THE BOARD OF TRUSTEES

Accreditation: Current State	Proposal	Other Consideration
<p>Law School Accreditation and Recognition of Other Accrediting Bodies</p> <p>21 California Law Schools have been approved by the ABA. These schools are deemed fully California Accredited and are not subject to regulation by CBE.</p> <p>The CBE approves certain law schools in California under The Rules and Guidelines for California Accredited Law Schools, and the schools are subject to the requirements set forth in the Rules and Guidelines.</p> <p>The CBE registers other unaccredited law schools in California under The Rules and Guidelines for Unaccredited Law Schools, and the schools are subject to the rights and responsibilities of those Rules and Guidelines.</p>	<p>Proposed Expansion of Accreditation Options in California</p> <p>Recognize regional and national accreditation from specified entities (those authorized to accredit the first degree in law; consider future possibility of other statewide accreditors).</p> <ul style="list-style-type: none"> State Bar to identify necessary additional State Bar requirements that must be satisfied, such as a minimum bar passage rate and required disclosures in order to continue operating in California. No site visit for regionally or nationally accredited schools or other accreditation requirement unless formal complaint is filed with the Bar alleging harm from non-compliance with applicable rules, guidelines, or statutes <p>One of the first assignments for CSBARS will be to develop and recommend to CBE, for recommendation to the Board, those additional requirements.</p>	<p>Any rule and statutory proposals may require approval by the Supreme Court.</p>

Accreditation: Current State	Proposal	Other Consideration
	For all other schools, continue State Bar registration or accreditation. State Bar, CBE and CSBARS will review registration and accreditation standards and modify as needed to comport with best practices.	
<p>Mandatory Accreditation</p> <p>In November 2017, the Board of Trustees approved a statutory and rule proposal to require accreditation of law schools over time.</p>	State Bar to pursue mandatory accreditation as outlined in the November 2017 proposal.	Any rule and statutory proposals may require approval by the Supreme Court.
<p>Accreditation of Online JD Programs</p> <p>The November 17 proposal approved by the Board of Trustees, included a path to accreditation for online programs. Because it was part of the mandatory accreditation proposal, the proposal required the accreditation of such schools.</p>	State Bar to bifurcate accreditation of online programs from mandatory accreditation such that an accreditation process for online programs can be implemented immediately under rules and guidelines previously approved by the Board of Trustees.	Any rule and statutory proposals may require approval by the Supreme Court.

Proposed Structure and Criteria for State Bar Review of Workplan Projects / Initiatives / Legislative Advocacy / Amicus Briefs, etc

Structure: For projects / initiatives / legislative advocacy / amicus briefs, etc (hereafter projects and initiatives) beyond State Bar Board of Trustee identified initiatives or priorities, whether within the Bar's scope of access work or broader:

- Projects and Initiatives shall be reviewed by Access Commission leadership with liaisons of Board of Trustees (either Access Liaisons, or Legislative Liaisons, or Litigation Liaisons (tbd)). Decisions shall be made by the Board liaisons, pursuant to the criteria set forth below. Approval by the Board liaisons is necessary to proceed.
- Executive staff of the Bar shall participate in meeting with Access Commission leadership and Board liaisons for background/insight, but shall not vote.
- CCAJ leadership and liaisons (along with Bar executive staff) will strive to identify acceptable alternative approaches in any instance in which the liaisons find the proposal to be adverse to the interests of the Bar or to propose an obligation the Bar is not prepared to assume.
- Projects and initiatives shall be reviewed at their inception. Bar liaisons will not micromanage content of a project or initiative approved to go forward.
- All approved projects and initiatives outside of the Board's identified initiatives or priorities – whether within the Bar's access mission or broader - to be conducted with resources outside of State Bar resources, including staff support, publishing and distribution of materials, etc.

Criteria for Review:

The review shall provide deference to the decision of the CCAJ to engage in a project or initiative unless liaisons determine that the project or initiative meets any of the following:

- The proposed project or initiative conflicts with / is adverse to the Bar's interest, including
 - The Board's fiduciary duty to the organization and its statutory and Board adopted mission statement
 - The Bar's fiscal interests
 - Positions taken by the Bar
 - The Bar's ability to have its priorities implemented / enacted
 - Conflict with Bar's statutory obligations
 - Interfering with the Bar's relationship with the Supreme Court
- The proposed project or initiative imposes an obligation on the Bar that the Bar is not prepared to assume (e.g. a new group of professionals to regulate)

DRAFT FOR CONSIDERATION BY THE CCAJ STAKEHOLDER WORKING GROUP

THIS PROPOSAL HAS NOT BEEN CONSIDERED BY THE STATE BAR BOARD OR TRUSTEES AND SHOULD NOT BE CONSTRUED AS REPRESENTING THEIR POSITION

TITLE 4. ADMISSIONS AND EDUCATIONAL STANDARDS

Adopted July 2007

DIVISION 1. ADMISSION TO PRACTICE LAW IN CALIFORNIA

Chapter 1. General Provisions

Rule 4.1 Authority

The California Supreme Court exercises inherent jurisdiction over the practice of law in California. The Committee of Bar Examiners (“the Committee”) is authorized by law, pursuant to the authority delegated to it by the Board of Trustees, to administer the requirements for admission to practice law; to examine all applicants for admission; and to certify to the Supreme Court for admission those applicants who fulfill the requirements.¹

Rule 4.1 adopted effective September 1, 2008.

Rule 4.2 ~~What these rules are~~ Scope of Rules

These rules apply to persons seeking to practice law in California. Nothing in these rules may be construed as affecting the power of the California Supreme Court to exercise its inherent jurisdiction over the practice of law in California.

Rule 4.2 adopted effective September 1, 2008.

Rule 4.3 Definitions

These definitions apply to the rules in this Division unless otherwise indicated.

- (A) An “American Bar Association Approved Law School” is a law school fully or provisionally approved by the American Bar Association and deemed accredited by the Committee.
- (B) An “attorney applicant” is an applicant who is or has been admitted as an attorney to the practice of law in any jurisdiction.
- (C) The “Attorneys’ Examination” is the California Bar Examination for which attorney applicants may apply, provided they have been admitted to the active practice of law in a United States jurisdiction at least four years immediately prior to the first day of administration of the examination and have been in good standing during that period. The Attorneys’ Examination includes essay questions and performance tests of the General Bar Examination but not its multiple-choice questions.

¹ Business & Professions Code § 6046.

(D) A “California accredited law school” is a law school accredited by the Committee but not approved by the American Bar Association.

(E) The “California Bar Examination” is the examination administered by the Committee that an applicant must pass to be certified to the California Supreme Court as qualified for admission to practice law in California. The California Bar Examination includes the General Bar Examination and the Attorneys’ Examination.

(F) “The Committee” is the Committee of Bar Examiners of the State Bar of California or, unless otherwise indicated, a subcommittee of two or more of its members whom the Committee authorizes to act on its behalf.

(G) “Director of Admissions” or “Director, Admissions” means the Director of the State Bar Office of Admissions, or that person’s designee.

~~(F)~~(H) A “general applicant” is an applicant who has not been admitted as an attorney to the practice of law in any jurisdiction.

~~(G)~~(I) The “General Bar Examination” is the California Bar Examination required of every general applicant. The General Bar Examination consists of multiple-choice questions, essay questions, and performance tests.

~~(H)~~(J) The “First-Year Law Students’ Examination” is the examination ~~administered by the Committee~~ that an applicant must pass, unless otherwise exempt.² It includes questions on contracts, torts, and criminal law.

~~(I)~~(K) An “informal conference” is defined in Rule 4.45.

~~(J)~~(L) The “Office of Admissions” (“Admissions”) is the State Bar office authorized by the Board of Trustees and the Committee to administer examinations and otherwise act on ~~their~~its behalf.

~~(K)~~(M) “Receipt” of a document the State Bar or Committee sends an applicant is

(1) calculated from the date of mailing and is deemed to be five days from the date of mailing to a California address; ten days from the date of mailing to an address elsewhere in the United States; and twenty days from the date of mailing to an address outside the United States; or

(2) when the State Bar or Committee delivers a document physically by personal service or otherwise.

² Business & Professions Code § 6060(h).

(L)(N) “Receipt” of a document sent to the State Bar or Committee is when it is physically received at the Office of Admissions.

~~(M) “Senior Executive” means “Senior Executive, Admissions” or that person’s designee.~~

(N)(O) An “unaccredited law school” is a correspondence, distance-learning, or fixed-facility law school operating in California that the Committee registers but does not accredit.

~~(O)(P)~~ For purposes of calculating law study credit toward meeting the legal education requirements necessary to qualify to take the First-Year Law Students’ Examination and California Bar Examination, a “year” is defined as the law study successfully completed in the time between the same calendar dates for consecutive calendar years, minus one day.

Rule 4.3 adopted effective September 1, 2008; amended effective July 22, 2011; amended effective 2019.

Rule 4.4 Confidentiality

Applicant records are confidential unless required to be disclosed by law;³ required by the State Bar’s Executive Director, Chief Trial Counsel, or General Counsel to fulfill their responsibilities for regulation of the practice of law; or authorized by the applicant in writing for release to others.

Rule 4.4 adopted effective September 1, 2008; amended effective 2019.

Rule 4.5 Submissions

(A) A document filed with the State Bar or Committee pursuant to these rules must be completed according to instructions; verified or made under penalty of perjury;⁴ and submitted with any required fee.

(B) A document, which must be complete as defined by the instructions for filing, is deemed filed upon receipt.

(C) The information obtained by the State Bar as a result of the fingerprinting of an applicant is Fingerprints provided by applicants are used to establish identity of the applicant, to determine the moral character of the applicant, and to disclose criminal records of the applicant in California or elsewhere. Fingerprint records Any information obtained as a result of fingerprint submission isare confidential and for official use of the Committee and the State Bar.

³ Evidence Code § 1040, Business & Professions Code §§ 6044.5, 6060.2, 6060.25, 6086, and 6090.6.

⁴ Code of Civil Procedure § 2015.5.

- (D) Information on an examination application that is not required but submitted voluntarily, including ethnic survey and identification information furnished with applications to take the California Bar Examination, is separated from the applications at initial processing and may not be associated with applicants, their files, or their examination answers during grading unless there is reasonable doubt about the identity of a person taking an examination and the State Bar Committee requires the information to verify identity.

Rule 4.5 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective 2019.

Rule 4.6 Investigations and hearings

In conducting an investigation or hearing, the Committee or the State Bar Court may receive evidence; administer oaths and affirmations; and compel by subpoena the attendance of witnesses and the production of documents.

Rule 4.6 adopted effective September 1, 2008; amended effective 2019.

Rule 4.7 Statistics

The State Bar Committee may publish statistics for each examination in accordance with its policies.

Rule 4.7 adopted effective September 1, 2008; amended effective 2019.

Rule 4.8 Extensions of time

The time limits for State Bar or Committee actions specified in these rules are norms for processing. The time limits are not jurisdictional and the State Bar or Committee may extend them for good cause.

Rule 4.8 adopted effective September 1, 2008; amended effective 2019.

Rule 4.9 Review by Supreme Court

An applicant refused certification to the Supreme Court of California for admission to practice law in California may have the action of the Committee reviewed by the Supreme Court of California in accordance with its procedures.

Rule 4.9 adopted effective September 1, 2008.

Rule 4.10 Fees

Applicants shall pay reasonable fees. The Committee may set reasonable fees, subject to approval of fixed by the Board of Trustees, for ~~its~~ services such as application filing, reports, copying documents and providing letters of verification.

Rule 4.10 adopted effective November 14, 2009; amended effective January 1, 2012.

Chapter 2. Overview Of Admission Requirements

Rule 4.15 Certification to California Supreme Court

To be eligible for certification to the California Supreme Court for admission to the practice of law, an applicant for admission must:

- (A) be at least eighteen years of age;
- (B) file an Application for Admission with the State Bar Committee;
- (C) meet the requirements of these rules regarding education or admission as an attorney in another jurisdiction, determination of moral character, and examinations;
- (D) be in compliance with California court-ordered child or family support obligations pursuant to Family Code § 17520;
- (E) be in compliance with tax obligations pursuant to Business and Professions Code section 494.5;
- (F) until admitted to the practice of law, notify the State Bar Committee within thirty days of any change in information provided on an application; and
- (G) otherwise meet statutory criteria for certification to the Supreme Court.⁵

Rule 4.15 adopted effective September 1, 2008; amended effective January 17, 2014.

Rule 4.16 Application for Admission

- (A) An Application for Admission consists of an Application for Registration, an Application for Determination of Moral Character, and an application for any required examination. Each application must be submitted with the required documentation and the fees set forth in the Schedule of Charges and Deadlines. The State Bar Committee determines when an application is complete.
- (B) The Application for Registration must be approved, before any other application is transmitted to the Committee submitted. The applicant is required by law either to provide ~~the Committee with~~ a Social Security Number⁶ on the application or to

⁵ Business & Professions Code § 6060.

⁶ Business & Professions Code § 30, Family Code § 17520.

request an exemption because of ineligibility for a Social Security Number.⁷ Registration is deemed abandoned if all required documentation and fees have not been received within sixty days of submittal. No refund is issued for an abandoned registration.

- (C) After approval of the Application for Registration, an applicant for admission may submit an Application for Determination of Moral Character, an application for any examination as required by these rules and any other document or petition permitted by these rules.

Rule 4.16 adopted effective September 1, 2008; amended effective November 14, 2009.

Rule 4.17 Admission certification and time limit

- (A) No later than five years from the last day of administration of the California Bar Examination the applicant passes,
 - (1) an applicant must meet all requirements for admission for certification —by the Committee to the California Supreme Court; and
 - (2) upon receipt of an order from the Court, take the attorney's oath and meet State Bar registration requirements to be eligible to practice law in California.
- (B) The ~~State Bar~~Committee may extend this five-year limit for good cause shown by clear and convincing evidence in a particular case but not for an applicant's negligence or the result of an applicant having received a negative moral character determination.
- (C) An applicant may request a review by the Committee of the State Bar's decision within 30 days of service of the notice of decision.

Rule 4.17 adopted effective September 1, 2008; amended effective November 14, 2009.

Chapter 3. Required Education

Rule 4.25 General education

Before beginning the study of law, a general applicant must have completed at least two years of college work or demonstrated equivalent intellectual achievement, which must be certified by the law school the applicant is attending upon request by the Committee.

- (A) "Two years of college work" means a minimum of sixty semester or ninety quarter units of college credit

⁷ Business & Professions Code § 6060.6.

- (1) equivalent to at least half that required for a bachelor's degree from a college or university that has degree-granting authority from the state in which it is located; and
 - (2) completed with a grade average adequate for graduation.
- (B) "Demonstrated equivalent intellectual achievement" means achieving acceptable scores on Committee-specified examinations prior to beginning the study of law.

Rule 4.25 adopted effective September 1, 2008.

Rule 4.26 Legal education

General applicants for the California Bar Examination must

- (A) have received a juris doctor (J.D.) or bachelor of laws (LL.B) degree from a law school approved by the American Bar Association or accredited by the Committee; or
- (B) demonstrate that in accordance with these rules and the requirements of Business & Professions Code §6060(e)(2) they have
 - (1) studied law diligently and in good faith for at least four years in a law school registered with the Committee; in a law office; in a judge's chambers; or by some combination of these methods; or
 - (2) met the requirements of these rules for legal education in a foreign state or country; and
- (C) have passed or established exemption from the First-Year Law Students' Examination.

Rule 4.26 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.27 Study in a fixed-facility unaccredited law school

To receive credit for one year of study in a fixed-facility unaccredited law school registered with the Committee, a student must receive passing grades in courses requiring classroom attendance by its students for a minimum of 270 hours a year.

Rule 4.27 adopted effective September 1, 2008.

Rule 4.28 Study by correspondence or distance learning

- (A) To receive credit for one year of study by correspondence or distance learning in an unaccredited law school registered with the Committee, a student must

receive passing grades in courses requiring at least 864 hours of preparation and study over no fewer than forty-eight and no more than fifty-two consecutive weeks in one year evidenced by a transcript that indicates the date each course began and ended.

- (B) To receive credit for one-half year of study by correspondence or distance learning in an unaccredited law school registered with the Committee, a student must receive passing grades in courses requiring at least 432 hours of preparation and study over no fewer than twenty-four and no more than twenty-six consecutive weeks, evidenced by a transcript that indicates the date each course began and ended.
- (C) To receive credit, a student studying by correspondence or distance learning may not begin a subsequent year of study prior to completion of one year of study as defined in rule 4.3(P) of these rules.

Rule 4.28 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.29 Study in a law office or judge's chambers

- (A) A person who intends to comply with the legal education requirements of these rules by study in a law office or judge's chambers must
 - (1) submit the required form with the fee set forth in the Schedule of Charges and Deadlines within thirty days of beginning study;
 - (2) submit semi-annual reports, as required by section (B)(5) below on the Committee's form with the fee set forth in the Schedule of Charges and Deadlines within thirty days of completion of each six-month period; and
 - (3) have studied law in a law office or judge's chambers during regular business hours for at least eighteen hours each week for a minimum of forty-eight weeks to receive credit for one year of study or for at least eighteen hours a week for a minimum of twenty-four weeks to receive credit for one-half year of study.
- (B) The attorney or judge with whom the applicant is studying must
 - (1) be admitted to the active practice of law in California and be in good standing for a minimum of five years;
 - (2) provide the Committee within thirty days of the applicant's beginning study an outline of a proposed course of instruction that he or she will personally supervise;
 - (3) personally supervise the applicant at least five hours a week;

- (4) examine the applicant at least once a month on study completed the previous month;
- (5) report to the Committee every six months on the Committee's form the number of hours the applicant studied each week during business hours in the law office or chambers; the number of hours devoted to supervision; specific information on the books and other materials studied, such as chapter names, page numbers, and the like the name of any other applicant supervised and any other information the Committee may require; and
- (6) not personally supervise more than two applicants simultaneously.

Rule 4.29 adopted effective September 1, 2008; amended effective November 14, 2009.

Rule 4.30 Legal education in a foreign state or country

Persons who have studied law in a law school in a foreign state or country may qualify as general applicants provided that they

- (A) have a first degree in law, acceptable to the Committee, from a law school in the foreign state or country and have completed a year of legal education at an American Bar Association Approved Law School or a California accredited law school in areas of law prescribed by the Committee; or
- (B) have a legal education from a law school located in a foreign state or country without a first degree in law, acceptable to the Committee, and
 - (1) have met the general education requirements;
 - (2) have studied law as permitted by these rules in a law school, in a law office or judge's chambers, or by any combination of these methods (up to one year of legal education credit may be awarded for foreign law study completed); and
 - (3) have passed the First-Year Law Students' Examination in accordance with these rules and Committee policies.

Rule 4.30 adopted effective September 1, 2008.

Rule 4.31 Credit for law study after passing the First-Year Law Students' Examination

An applicant who is required to pass the First-Year Law Students' Examination will not receive credit for any law study until the applicant passes the examination. An applicant who passes the examination within three consecutive administrations of first becoming eligible to take the examination, will receive credit for all law study completed to the date of the administration of the examination passed, subject to any restrictions otherwise

covered by these rules. An applicant who does not pass the examination within three consecutive administrations of first becoming eligible to take the examination but who subsequently passes the examination will receive credit for his or her first year of law study only.

Rule 4.31 adopted effective November 14, 2009.

Rule 4.32 Repeated courses

The Committee does not recognize credit for repetition of a course or substantially the same course.

Rule 4.32 adopted as Rule 4.31 effective September 1, 2008; renumbered as Rule 4.32 effective November 14, 2009.

Rule 4.33 Evaluation of study completed or contemplated

An applicant may request that the Committee determine whether general or legal education contemplated or completed by the applicant meets the eligibility requirements of these rules for beginning the study of law, the First-Year Law Students' Examination or the California Bar Examination. The request must be submitted on the required form with certified transcripts and the fee set forth in the Schedule of Charges and Deadlines. A written response indicating whether or not the education is sufficient will be issued within sixty days of receipt of the request.

Rule 4.33 adopted as Rule 4.32 effective September 1, 2008; renumbered as rule 4.33 effective November 14, 2009.

Chapter 4. Moral Character Determination

Rule 4.40 Moral Character Determination

- (A) An applicant must be of good moral character as determined by the State Bar Committee. The applicant has the burden of establishing that he or she is of good moral character.
- (B) “Good moral character” includes but is not limited to qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights of others and the judicial process.

Rule 4.40 adopted effective September 1, 2008; amended effective 2019.

Rule 4.41 Application for Determination of Moral Character

- (A) An applicant must submit an Application for Determination of Moral Character with required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. An attorney who is suspended for disciplinary reasons or disbarred, has resigned with disciplinary charges pending or is otherwise not in good standing for disciplinary reasons in any jurisdiction may not submit an application.
- (B) An Application for Determination of Moral Character may be submitted any time after filing an Application for Registration but is deemed filed only when the application is complete.

Rule 4.41 adopted effective September 1, 2008; amended effective November 14, 2009; amended effective July 22, 2011; amended effective March 9, 2018.

Rule 4.42 Duty to update Application for Determination of Moral Character

Until admitted to practice law, an applicant who has submitted an Application for Determination of Moral Character has a continuing duty to promptly notify the Office of Admissions whenever information provided in the application has changed or there is new information relevant to the application. Failure to provide updated information within thirty days after the change or addition to the information originally submitted may be cause for suspension of a positive moral character determination.

Rule 4.42 adopted effective September 1, 2008; amended effective November 14, 2009.

Rule 4.43 Abandonment of Application for Determination of Moral Character

- (A) An Application for Determination of Moral Character is deemed abandoned and ineligible for a refund of fees if
 - (1) it is not complete within sixty days after being initiated; or
 - (2) it is complete but the applicant has failed to provide additional information requested by the State Bar Committee within ninety days of the request.
- (B) An applicant may request a review by the Committee of the State Bar's decision within 30 days of service of the notice of abandonment.
- ~~(B)-(C)~~ (C) A new Application for Determination of Moral Character must be submitted with the required fee if an application has been abandoned.

Rule 4.43 adopted effective September 1, 2008; amended effective 2019.

Rule 4.44 Withdrawal of Application for Determination of Moral Character

- (A) An applicant may withdraw an Application for Determination of Moral Character any time before being notified that the State Bar Committee is unable to make a determination without further inquiry and analysis.
- (B) An applicant may withdraw an application filed with the State Bar Court for a hearing on an adverse determination of moral character by filing a request for withdrawal with the Office of Chief Trial Counsel and forwarding a copy to the Office of Admissions Committee at its San Francisco office.

Rule 4.44 adopted effective September 1, 2008; previously amended effective November 18, 2016;
amended effective 2019.

Rule 4.45 Notice regarding status of Application for Determination of Moral Character

- (A) Within 180 days of receiving a completed Application for Determination of Moral Character, the State Bar Committee notifies an applicant that its determination of moral character is positive or that it requires further consideration. A positive determination is valid for thirty-six months.
- (B) While an Application for Determination of Moral Character remains pending, a status report is issued to the applicant at least every 120 days.
- (C) Within 120 days of receiving additional information it has requested, the State Bar Committee notifies the applicant that
 - (1) the applicant is determined to be of good moral character;

- (2) the applicant has not met the burden of establishing good moral character;
- (3) the application requires further consideration;
- (4) the applicant is invited to an informal conference ~~with the Committee~~; or
- (5) the applicant is advised to enter into an Agreement of Abeyance with the State Bar Committee.

Rule 4.45 adopted effective September 1, 2008; previously amended effective November 18, 2016; amended effective 2019.

Rule 4.46 Informal conference regarding moral character

- (A) The State Bar Committee may invite an applicant for a determination of moral character to an informal conference regarding the application. Acceptance of an invitation is not mandatory, and declining it entails no negative inference.
- ~~(B) An applicant notified of an adverse determination of moral character may request an informal conference with the Committee, provided the applicant has not previously declined the Committee's invitation to an informal conference. The request must be in writing and submitted to the Committee at its San Francisco office within thirty days of the date of the notice. Within sixty days of receiving a timely request, the Committee must schedule the informal conference, and within thirty days of the conference notify the applicant of its final determination. An adverse determination may be appealed in accordance with these rules.~~
- ~~(C)~~(B) The State Bar Committee may establish procedures for an informal conference and create a record of it by tape recording, video recording, or any other means. The applicant may attend the conference with counsel; make a written or oral statement; and present documentary evidence. Counsel is limited to observation and may not participate.

Rule 4.46 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective 2019.

Rule 4.47.1 Request for Review By the Committee of Adverse Determination

- (A) An applicant notified of an adverse determination of moral character may request a review by the Committee. The request must be submitted to the Office of Admissions within 30 days of the date of the notice of the State Bar's determination. The applicant may submit supplemental material with the request.
- (B) Within 60 days of receipt of the request for a review, the Committee will conduct a review of the record, which may include a review of the transcript or recording of the informal conference. The Committee may request additional information

from the applicant or from the State Bar. The Committee must notify the applicant of its final determination within 30 days of its decision.

Rule 4.47.1 adopted effective 2019.

Rule 4.47 Appeal of adverse determination of moral character issued by Committee

- (A) If the Committee issues ~~An applicant notified of~~ an adverse determination of moral character, an applicant may file a request for hearing on the determination with the State Bar Court in accordance with the Rules of Procedure of the State Bar on Moral Character Proceedings. The request must be filed with the fee set forth in the Schedule of Charges and Deadlines within sixty days of the date of service of the notice of adverse determination.
- (B) A copy of the request for hearing must be served on the Office of Admissions Committee and the Office of Chief Trial Counsel ~~at the San Francisco office of the State Bar~~. Upon receipt of service, the Committee must promptly transmit all files related to the application to the Office of Chief Trial Counsel.

Rule 4.47 adopted effective September 1, 2008; previously amended effective July 24, 2015; amended effective 2019.

Rule 4.48 Agreement of Abeyance

- (A) The State Bar Committee and an applicant may suspend processing of an Application for Determination of Moral Character by an Agreement of Abeyance
 - (1) when a court has ordered an applicant charged with a crime to be treated, rehabilitated, or otherwise diverted;
 - (2) when a court has suspended the sentence of an applicant convicted of a crime and placed the applicant on probation;
 - (3) when an applicant is actively seeking or obtaining treatment for chemical dependency or drug or alcohol addiction; or
 - (4) if the State Bar Committee and an applicant otherwise agree.
- (B) An Agreement of Abeyance must be in writing and specify the period and conditions of abeyance. A copy must be provided to the applicant.

Rule 4.48 adopted effective September 1, 2008; amended effective 2019.

Rule 4.49 New application following adverse determination of moral character

The State BarCommittee may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character two years from the date of the final determination or at some other time set by the State BarCommittee, for good cause shown, at the time of its adverse determination.

Rule 4.49 adopted effective September 1, 2008; amended effective July 24, 2015; amended effective 2019.

Rule 4.50 Suspension of positive determination of moral character

- (A) Before certifying an applicant for admission to the practice of law, the State BarCommittee may notify an applicant that it has suspended a positive determination of moral character if it receives information that reasonably calls the applicant's character into question. The notice must specify the grounds for the suspension.
- (B) The application of an applicant whose positive determination has been suspended is processed in accordance with Rule 4.45.

Rule 4.50 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective 2019.

Rule 4.51 Validity period of positive moral character determination

A positive determination of moral character is valid for thirty-six months. An applicant with a positive determination who has not been certified to practice law within this validity period must submit an Application for Extension of Determination of Moral Character.

Rule 4.51 adopted effective September 1, 2008.

Rule 4.52 Extension of positive moral character determination

(A) An applicant who has received a positive moral character determination may submit an Application for Extension of Determination of Moral Character. The application must be filed in the last six months of the initial thirty-six month validity period with the required fingerprints and the fee set forth in the Schedule of Charges and Deadlines. If the State BarCommittee makes a positive determination before the initial thirty-six months expires, the initial thirty-six months is extended an additional thirty-six months. If the State BarCommittee makes a positive determination after expiration of the initial thirty-six months, an extension of thirty-six months begins at the time of its determination.

(B) An applicant may request a review by the Committee of the State Bar's decision within 30 days of service of the notice of decision.

Rule 4.52 adopted effective September 1, 2008; amended effective 2019.

Chapter 5. Examinations

Rule 4.55 First-Year Law Students' Examination requirement

- (A) A general applicant intending to seek admission to practice law in California must take the First-Year Law Students' Examination unless the applicant
- (1) has satisfactorily completed
 - (a) at least two years of college work as defined by these rules and the Committee's guidelines; and
 - (b) the first-year course of instruction
 - (i) at a law school that was approved by the American Bar Association or accredited by the Committee when the study was begun or completed; and
 - (ii) the law school has advanced the person, whether or not on probation, to the second-year of instruction; or
 - (2) is exempt by reason of study in a foreign law school as provided by these rules.
- (B) An applicant who passes the First-Year Law Students' Examination will receive credit for
- (1) all law study completed upon passing the examination within three administrations of the examination after first becoming eligible to take it; or
 - (2) the first year of law study only upon passing the examination after more than three administrations of the examination after first becoming eligible to take it.

Rule 4.55 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.56 First-Year Law Students' Examination

The First-Year Law Students' Examination is given each year in June and October at test centers in California designated by the State Bar Committee. The State Bar develops the questions. Pursuant to the authority delegated to it by the Board of Trustees, tThe Committee determines the examination's format, scope, topics, content, questions, grading process, and passing score.

Rule 4.56 adopted effective September 1, 2008; amended effective July 22, 2011; amended effective 2019.

Rule 4.57 Exempt applicants taking First-Year Law Students' Examination

An applicant who is exempt from the First-Year Law Students' Examination may apply for and take the examination. Failing the examination does not affect the applicant's status under these rules.

Rule 4.57 adopted effective September 1, 2008.

Rule 4.58 Application for the First-Year Law Students' Examination

- (A) An application to take the First-Year Law Students' Examination in June must be submitted by April 1. An application to take the examination in October must be submitted by August 1. Applications received after these deadlines and by May 15 or September 15 are subject to a late fee. Applications are not accepted after those dates. Application fees and late fees are set forth in the Schedule of Charges and Deadlines. If a deadline falls on a non-business day, the deadline will be the next business day.
- (B) Different deadlines for initial filing and late fees apply to applicants who fail the First-Year Law Students' Examination and intend to take the next scheduled examination. These deadlines are set forth in the notice of examination results and are more than ten days from the date those results are released.
- (C) Applications that are unsigned or incomplete for any reason as of the final examination application filing deadline are deemed abandoned and ineligible for a refund of fees.
- (D) Applications for which eligibility documents have not been received by the date set forth in the Schedule of Charges and Deadlines are abandoned and ineligible for a refund of fees.

Rule 4.58 adopted effective September 1, 2008; amended effective November 14, 2009.

Rule 4.59 Multistate Professional Responsibility Examination

Every applicant must take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, and receive a passing score as determined by the Committee. The examination may be taken following completion of the first year of law study or later. The Committee must receive official notice of an MPRE passing score before an applicant is deemed to have passed the examination.

Rule 4.59 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.60 California Bar Examination

- (A) The California Bar Examination is given each year in February and July at test centers in California designated by the State Bar Committee. Pursuant to the authority delegated to it by the Board of Trustees, ~~t~~The Committee determines the examination's format, scope, topics, content, questions, and grading process, ~~and passing score.~~
- (B) The State Bar Committee provides the California Supreme Court a report on each administration of the examination as soon as practical.

Rule 4.60 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective 2019.

Rule 4.61 Applications for the California Bar Examination

- (A) Applications for the California Bar Examination are available March 1 for the July examination and October 1 for the February examination. To avoid imposition of a late fee, a ~~An~~ application must be submitted no later than April 1 for the July examination or November 1 for the February examination. Applications received after these deadlines and by June 1~~5~~ or January 1~~5~~ are subject to late fees. Applications are not accepted after those dates. Application fees and late fees are set forth in the Schedule of Charges and Deadlines. If a deadline falls on a non-business day, the deadline will be the next business day.
- (B) Different deadlines for initial filing and late fees apply to applicants who fail the California Bar Examination and intend to take the next scheduled examination. These deadlines are set forth in the notice of examination results and are a minimum of ten days from the date those results are released.
- (C) Applications are deemed abandoned and ineligible for a refund of fees if
 - (1) they are incomplete or unsigned by the final examination application filing deadline;
 - (2) the applicant has not provided additional information requested by the final eligibility deadline; or
 - (3) eligibility cannot be determined by the final eligibility deadline.

Rule 4.61 adopted effective September 1, 2008; amended effective November 14, 2009; amended effective 2019.

Rule 4.62 Access to examination answers and scores

- (A) Within sixty days of the release of examination results, examination answers to the written portions of the examination are returned to applicants for admission

who have failed the California Bar Examination or who have passed or failed the First-Year Law Students' Examination. This provision does not apply to the Multistate Professional Responsibility Examination or the multiple-choice portion of the First-Year Law Students' Examination and California Bar Examination.

- (B) Applicants who pass the California Bar Examination are not entitled to receive their examination answers or to see their scores.

Rule 4.62 adopted effective September 1, 2008.

Chapter 6. Conduct At Examinations

Rule 4.70 Conduct required at examinations

Applicants are expected to conduct themselves professionally at all times at an examination test center. Conduct that violates the security or administration of an examination may be reported to the State Bar Committee as a Chapter 6 Notice or, in extreme cases, may require dismissal from the examination test center. Unacceptable conduct may include, but is not limited to, having unauthorized items, writing or typing after time has been called, looking at another applicant's answers, talking when silence is required, or abusive behavior. A copy of the Chapter 6 Notice is provided to the applicant during or following an examination.

Rule 4.70 adopted effective September 1, 2008; amended effective July 22, 2011; amended effective 2019.

Rule 4.71 Reports of conduct violations

- (A) The State Bar ~~A subcommittee designated by the Committee~~ considers reports of the Chapter 6 Notices that have been issued to applicants during or following an administration of an examination ~~for~~ as soon as practicable and no later than the first Committee meeting following the examination.
- (B) If the State Bar Subcommittee affirms the Chapter 6 Notice, the applicant must be notified of its proposed sanction within thirty days. Sanctions may include assigning a score of zero for a question, a session, or an entire examination. An examination score may be held in abeyance pending resolution of the matter.
- (C) The State Bar Committee may establish guidelines for the processing of conduct violations. The State Bar Committee may establish specific sanctions for certain undisputed conduct violations, such as bringing an unauthorized item into the examination room. An applicant sanctioned for an undisputed conduct violation is not entitled to an administrative hearing.

Rule 4.71 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective 2019.

Rule 4.72 Request for an administrative hearing on conduct violation

- (A) An applicant notified of a conduct violation for which a specific sanction has not been established by examination rules or guidelines may file a ~~written~~ request for an administrative hearing ~~on the subcommittee's findings~~. The request must be filed within twenty days of receipt of the notice or the proposed sanction will take effect. For good cause shown by clear and convincing evidence the State Bar Committee may extend the filing deadline.
- ~~(B) To hear the request, the Senior Executive will designate a panel of three Committee members, one of whom is to serve as Chair. Panel members must not have served on the subcommittee that reviewed the report of conduct violation.~~
- ~~(C)~~ (B) Once an applicant has filed a request for an administrative hearing on a conduct violation, the State Bar Committee must schedule an administrative hearing within ninety days, or at a later time for good cause, and notify the applicant of the time and place of the hearing.

Rule 4.72 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.73 Procedure for an administrative hearing on conduct violation

- (A) The State Bar Committee may establish procedures for conducting administrative hearings on conduct violations. A record of a hearing can be established by tape recording, video recording, or any other means. The applicant may attend the administrative hearing with counsel; make a written or oral statement; and present documentary evidence. Applicant's counsel is limited to observation and may not participate.
- (B) The State Bar Committee has the burden of establishing by clear and convincing evidence that a violation occurred.
- (C) The State Bar panel must render Findings and Recommendations no later than thirty days after the administrative hearing, which must be served on the applicant and counsel present at the hearing ~~and provided to the Committee for consideration during its next regularly scheduled meeting~~. The State Bar panel may recommend the sanction originally proposed or any other action it deems appropriate. ~~The applicant may request review of the panel's determination within ten days of service.~~

Rule 4.73 adopted effective September 1, 2008; amended effective July 22, 2011.

Rule 4.74 Review of State Bar's Findings and Recommendations by Committee

(A) An applicant may request review by the Committee of the Findings and Recommendations within ten days of service. The Committee must consider the applicant's request, any record of the hearing, the Findings and Recommendations, and any supplemental material the applicant provides in accordance with Committee requirements during the Committee's next regularly scheduled meeting. The Committee may request additional information from the applicant or from the State Bar. ~~Neither the applicant nor applicant's counsel is permitted to attend.~~

~~(B) The Committee may on its own determine that the panel's Findings and Recommendations should be reviewed.~~

~~(C)-(B)~~ The Committee may adopt the State Bar's Findings and Recommendations ~~of the hearing panel~~ or take any other action it deems appropriate.

~~(D)-(C)~~ The Committee will notify the applicant within ten days of its determination.

~~(E)-(D)~~ If the applicant does not request review of the State Bar's Findings and Recommendations ~~of the panel~~ within ten days of service ~~and the Committee does not seek review~~, the State Bar's panel's Findings and Recommendations become the decision of the Committee.

Rule 4.74 adopted effective September 1, 2008; amended effective July 22, 2011.

Chapter 7. Testing Accommodations

Rule 4.80 Eligibility for testing accommodations

Applicants with disabilities are granted reasonable testing accommodations provided that they are capable of demonstrating that they are otherwise eligible to take an examination and, in accordance with these rules, they

- (A) have submitted an approved Application for Registration;
- (B) submit a petition for testing accommodations on the State Bar's Committee's forms with the required documentation;
- (C) establish to the satisfaction of the State Bar Committee the existence of a disability that prevents them from taking an examination under standard testing conditions; that testing accommodations are necessary to address the functional limitations related to their disabilities; and the testing accommodations sought are reasonable and appropriate for their disabilities; and,
- (D) separately apply for the examination for which testing accommodations are requested.

Rule 4.80 adopted effective September 1, 2008; previously amended effective November 14, 2009;
amended effective 2019.

Rule 4.81 Testing accommodations in general

- (A) Petitions for testing accommodations are processed on a case-by-case basis.
- (B) The State Bar Committee makes its best effort to process petitions for testing accommodations expeditiously but does not process petitions that are incomplete.
- (C) Time limits in testing accommodations rules are solely to expedite the processing of petitions and are not jurisdictional. The State Bar Committee may extend them for good cause.
- (D) An examination application fee is not refunded if a request for testing accommodations is denied.

Rule 4.81 adopted effective September 1, 2008; amended effective 2019.

Rule 4.82 Definitions

These definitions apply to the rules on and petitions for testing accommodations.

- (A) A “disability” is a physical or mental impairment that limits one or more of an applicant’s major life activities, and limits an applicant’s ability to demonstrate under standard testing conditions that the applicant possesses the knowledge, skills, and abilities tested on an examination.
- (B) A “physical impairment” is a physiological disorder or condition or an anatomical loss affecting one or more of the body’s systems.
- (C) A “mental impairment” is a mental or psychological disorder such as organic brain syndrome, emotional or mental illness, attention deficit/hyperactivity disorder, or a specific learning disability.
- (D) A “reasonable testing accommodation” is an adjustment to or modification of standard testing conditions that addresses the functional limitations related to an applicant’s disability by modifications to rules, policies, or practices; removal of architectural, communication, or transportation barriers; or provision of auxiliary aids and services, provided that they do not
 - (1) compromise the security or validity of an examination or the integrity or of the examination process;
 - (2) impose an undue burden on the State Bar Committee; or

- (3) fundamentally alter the nature of an examination or the Committee's ability to assess through the examination whether the applicant
 - (a) possesses the knowledge, skills, and abilities tested on an examination; and
 - (b) meets the essential eligibility requirements for admission.

| Rule 4.82 adopted effective September 1, 2008; amended effective 2019.

Rule 4.83 Guidelines for testing accommodations

- | (A) The State Bar Committee publishes guidelines for documenting the need for testing accommodations based on learning disabilities and attention deficit/hyperactivity disorder, including testing required to establish the existence of the disability and the reasonableness of the accommodations requested.
- | (B) The State Bar Committee may publish guidelines for other disabilities accommodated on past examinations.

| Rule 4.83 adopted effective September 1, 2008; amended effective 2019.

Rule 4.84 When to file a petition for testing accommodations

- (A) A Petition For Testing Accommodations is not an application for a bar examination. Filing one does not constitute filing the other or initiate its processing. An applicant must separately apply for an examination.
- (B) An applicant is encouraged to file a Petition For Testing Accommodations as far in advance as practicable. To allow sufficient processing time, general applicants are encouraged to submit their petitions at least by the beginning of their last year of law study and attorney applicants no later than six months prior to the examination they wish to take. If an applicant waits until the final examination application deadline for a particular examination to petition for testing accommodations, it is possible that processing will not be completed or the applicant will not be able to complete all required or available procedures prior to administration of the examination.
- (C) A Petition For Testing Accommodations must be complete and receipt must be no later than
 - | (1) January 15 for the February California Bar Examination;
 - | (2) June 15 for the July California Bar Examination;
 - (3) May 15 for the June First-Year Law Students' Examination; or

(4) September 15 for the October First-Year Law Students' Examination.

If a deadline falls on a non-business day, the deadline will be the next business day. Deadlines are not extended or waived for any reason except as permitted in Rule 4.87.

- (D) Depending on the nature of a disability and the date on which a petition is filed, the State BarCommittee may determine that the changing nature of a disability requires that the applicant file a new petition nearer the examination date or that a decision regarding the petition be deferred.

Rule 4.84 adopted effective September 1, 2008; amended effective November 14, 2009; previously amended effective July 22, 2011; amended effective 2019.

Rule 4.85 Initial Petition For Testing Accommodations

- (A) An applicant with a qualified disability seeking testing accommodations must file a Petition for Testing Accommodations on the State Bar'sCommittee's form.
- (B) In addition to the Petition for Testing Accommodations, a qualified applicant seeking testing accommodations must also provide with the petition the specific specialist verification forms the State BarCommittee determines are appropriate to verify applicants' disabilities.
- (C) If a law school has provided testing accommodations, a qualified applicant must submit the petition with the designated State BarCommittee form, completed by a law school official or legal education supervisor.
- (D) If another state has provided accommodations for its bar examination, a qualified applicant must submit the petition with the designated State BarCommittee form, completed by an official responsible for testing accommodations.
- (E) If another testing agency has provided accommodations for its examination, a qualified applicant may be required to submit the petition with a copy of the accommodations notice.
- (F) A Petition for Testing Accommodations is considered complete only upon receipt of all required forms that have been completed according to instructions. A petition that is incomplete by a final examination application deadline is not processed for that examination.

Rule 4.85 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective 2019.

Rule 4.86 Subsequent petitions for testing accommodations

- (A) Testing accommodations are not automatically extended upon failure of an examination but must be requested for a subsequent examination any time before the examination application deadline.
- (B) An applicant who is permanently disabled may petition for the same accommodations rather than submit an entirely new petition. A subsequent petition must be made in accordance with State Bar's Committee requirements.
- (C) An applicant who has a temporary disability or who seeks different accommodations than those previously granted must file a new Petition for Testing Accommodations by the application final filing deadline if filed in connection with a particular administration of an examination.

Rule 4.86 adopted effective September 1, 2008; previously amended effective November 14, 2009; amended effective 2019.

Rule 4.87 Emergency petitions for testing accommodations

An applicant who becomes disabled after a final examination application filing deadline may file a Petition for Testing Accommodations, which must include the forms required by Rule 4.85, with a request that it be considered as an emergency petition.

Documentation explaining the nature, date, and circumstances of the emergency must be filed with the petition. Receipt of the petition and supporting documentation must be at least ten days before the first day of the examination. This rule does not apply to disabilities that existed before the final deadline for an examination application, whether or not they were diagnosed or a visit to a treating professional could be arranged.

Rule 4.87 adopted effective September 1, 2008.

Rule 4.88 State Bar Committee response to Petition For Testing Accommodations

- (A) An applicant who has filed a Petition For Testing Accommodations in accordance with these rules is notified in writing within thirty days of receipt when additional information is required, and within sixty days when the petition is granted, granted with modifications, denied, or action is pending.
- (B) If a complete petition is filed at least six months before the examination for which testing accommodations are sought, the applicant may expect a final determination at least a month before the examination.
- (C) With the consent of the petitioner, the State Bar Senior Executive or a consultant may confer with a specialist who has treated the petitioner.
- (D) A notice of denial of a Petition For Testing Accommodations or a modified grant ~~is sent by certified mail. The notice~~ states the reasons for the denial or modifications, and advises the petitioner of any right to appeal. The notice may include an excerpt of a consultant's evaluation.

Rule 4.88 adopted effective September 1, 2008; previously amended effective July 22, 2011; amended effective 2019.

Rule 4.89 Applicant response to proposed modification or request for information

An applicant has thirty days to respond to a request for additional information unless an examination schedule requires a shorter time. If the applicant fails to make a timely response, the request is processed on the basis of information submitted.

Rule 4.89 adopted effective September 1, 2008.

Rule 4.90 Committee review of denied or modified petition

- (A) An applicant notified that a Petition For Testing Accommodations has been denied or granted with modifications may request a review by appeal the decision to the Committee. The requestappeal must be submitted within ten days of the date of the denial or modified grant or some other reasonable period established by the Committee.
- (B) Requests for reviewAppeals filed in connection with a particular administration of an examination must be filed no later than the first business day of the month in which the examination is to be administered. RequestsAppeals received after that date will be considered in connection with future administration of the examination.
- (C) After reviewing the request for reviewappeal and supporting documentation, the Director of AdmissionsSenior Executive may withdraw the prior decision and grant the accommodations requested.
- (D) If the Director of AdmissionsSenior Executive does not grant the requestan appeal, the Committee must consider it as soon as practicable. The review must be based on the original petition and supporting documentation provided by the applicantpetitioner and the Director of AdmissionsSenior Executive. Oral argument is not permitted. The review must be conducted in closed session either at a regular meeting or one specially convened by teleconference. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews. If a subcommittee has been assigned to consider the appeal, the entire Committee must consider it upon the request of any member of the subcommittee.

Rule 4.90 adopted effective September 1, 2008.

Rule 4.91 Confidentiality of Petitions for Testing Accommodations

Petitions for Testing Accommodations, documentation submitted in support and evaluations of requests are confidential.

Rule 4.91 adopted effective September 1, 2008.

Rule 4.92 False or misleading information in Petition For Testing Accommodations

False or misleading information in a Petition For Testing Accommodations is considered in determining an applicant's moral character and may result in a negative determination of moral character.

Rule 4.92 adopted effective September 1, 2008.

TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007

DIVISION 4. CONSUMERS

Chapter 2. Fee Arbitration

Article 1. General Provisions

Rule 3.500 Scope

- (A) As required by statute, the Board of Trustees of the State Bar has adopted these rules for arbitration of disputes regarding attorney fees.¹
- (B) In these rules, unless otherwise indicated
- (1) “award” means the decision of the arbitrator or arbitrators in a fee arbitration hearing;
 - (2) “client” means the person who directly or through an authorized representative obtains an attorney’s legal services;
 - (3) “non-client” means a person who is not the client of an attorney but who may be liable for, or entitled to a refund of, the attorney’s fees; references to “client” also apply to “non-client”;
 - (4) “declaration” means a document that is based on personal knowledge and signed under penalty of perjury and otherwise complies with the requirements of Code of Civil Procedure section 2015.5;
 - (5) “fees” means attorney fees, costs, or both;
 - (6) “hearing” means a fee arbitration hearing conducted by the State Bar;
 - (7) “lay arbitrator” means a non-attorney who has not been admitted to practice law in any jurisdiction; who has never worked regularly for a court or a law practice of any kind as a paralegal, law clerk, or in any other capacity; or who has never attended law school;
 - (8) “presiding arbitrator” is the arbitrator to supervise the arbitrators in the State Bar Fee Arbitration program and to decide the matters indicated by these rules or the designee of the presiding arbitrator;
 - (9) “State Bar” means the Mandatory State Bar Fee Arbitration program;

¹ Business & Professions Code §§ 6010, 6200-6206.

- (10) “trial” after non-binding arbitration means either an action in the court having jurisdiction over the amount in controversy or arbitration pursuant to the parties’ pre-existing arbitration agreement.
- (C) Unless otherwise provided by rule or law, the presiding arbitrator may delegate his or her duties.

Rule 3.500 adopted effective July 1, 2013.

Rule 3.501 Right to arbitration of fee disputes

- (A) California law entitles a client to arbitration of a dispute regarding an attorney’s fees for legal services. If initiated by a client, fee arbitration is mandatory for an attorney.² Fee arbitration is voluntary for a client unless the parties have agreed in writing to submit their fee disputes to mandatory fee arbitration.³
- (B) An attorney must provide the mandatory State Bar Notice of Client’s Right to Fee Arbitration form before or at the time of
 - (1) service of summons in a lawsuit against the client for fees; or
 - (2) commencing any other proceeding against the client for fees under a contract that provides for an alternative to mandatory fee arbitration.⁴
- (C) Failure to provide the notice is grounds for dismissal of the lawsuit or other proceeding.⁵
- (D) Where the existence of an attorney-client relationship is in dispute, the parties may stipulate to submit the issue for determination by the State Bar.

Rule 3.501 adopted effective July 1, 2013.

Rule 3.502 Waiver of right to arbitration

- (A) A client’s right to request or maintain fee arbitration is waived⁶ if
 - (1) a complete State Bar Request for Arbitration has not been postmarked or received by the State Bar within thirty days of the client’s receipt of the State Bar Notice of Client’s Right to Fee Arbitration;⁷

² Business & Professions Code § 6201.

³ Business & Professions Code § 6200(c).

⁴ Business & Professions Code § 6201(a).

⁵ Business & Professions Code § 6201(a).

⁶ Business & Professions Code § 6201.

⁷ Business & Professions Code § 6201(a).

- (2) the client commences a legal action or files a pleading seeking either of the following:
 - (a) judicial resolution of a fee dispute subject to arbitration; or
 - (b) affirmative relief against an attorney for alleged malpractice or professional misconduct; or
 - (3) the client receives a State Bar Notice of Client's Right to Fee Arbitration but does either of the following before submitting a State Bar Request for Arbitration:
 - (a) answers or otherwise responds to a complaint filed in court by the attorney; or
 - (b) files a response in another proceeding regarding fees initiated by the attorney.
- (B) If the fee dispute is transferred to a different fee arbitration program after the Request for Arbitration is filed, the date that determines whether the request was made by the thirty-day deadline is one of the following:
- (1) the date of the postmark of the Request for Arbitration;
 - (2) the date the request was received by the State Bar; or
 - (3) the date ordered by the presiding arbitrator.

Rule 3.502 adopted effective July 1, 2013.

Rule 3.503 Exclusions

These rules do not apply to⁸

- (A) claims for fees that are determinable by statute or court order;
- (B) claims made by a party requesting arbitration who is not liable for the fees or entitled to a refund;
- (C) claims for damages or other affirmative relief based on alleged malpractice or professional misconduct;

⁸ Business & Professions Code § 6200(b).

- (D) claims for fees where services were not rendered in California in any material part by an attorney who maintains no office in California, whether the attorney is admitted in California or only in another jurisdiction;⁹
- (E) claims for fees where the client has assigned the claim; or
- (F) claims between attorneys for division of fees.

Rule 3.503 adopted effective July 1, 2013.

Rule 3. 504 Representation

A party to arbitration may be represented by an attorney at his or her expense.

Rule 3.504 adopted effective July 1, 2013.

Rule 3.505 Original jurisdiction

- (A) Fee arbitration is conducted by a bar association in the county where the legal services giving rise to the fees in dispute were substantially performed or in the county where at least one attorney involved in the dispute had an office at the time the services were rendered.
- (B) Fee arbitration may be initiated and conducted by the State Bar if
 - (1) no local bar association program has jurisdiction;
 - (2) a party submits a State Bar Request for Arbitration that explains in a declaration why the party cannot obtain a fair hearing before the local bar association; or
 - (3) the local bar association that would normally arbitrate the matter demonstrates to the satisfaction of the State Bar that it has no jurisdiction or is otherwise unable to arbitrate the matter.
- (C) The State Bar will waive original jurisdiction if a local bar association is willing to accept it and the parties consent in writing to jurisdiction of the local bar association.

Rule 3.505 adopted effective July 1, 2013.

Rule 3.506 Removal jurisdiction

- (A) Arbitration within the jurisdiction of a local program may be removed to the State Bar when a party seeking removal establishes in a declaration under penalty of

⁹ Business & Professions Code § 6200(b)(1).

perjury a factual basis for removal and the presiding arbitrator determines there is good cause for the State Bar to arbitrate the dispute.

- (B) The State Bar serves notice of a request for State Bar jurisdiction on any other party identified in the request and on the local bar association that has jurisdiction. A written reply to the notice may be submitted to the State Bar. The reply must be received at the State Bar within fifteen days of service of the request.
- (C) The presiding arbitrator must deny a request for removal of a fee dispute within the jurisdiction of a local program if
 - (1) another party or the local program would be prejudiced by removal and such prejudice outweighs an allegation of inability to obtain a fair hearing;
 - (2) during the local arbitration proceedings the party requesting removal has acted in a manner inconsistent with the allegation of inability to obtain a fair hearing; or
 - (3) the party requesting removal has waived any claim of inability to obtain a fair hearing.
- (D) A party requesting removal of jurisdiction must provide any additional information the State Bar requires by the deadline it specifies.
- (E) The presiding arbitrator's decision regarding a request for removal is final.

Rule 3.506 adopted effective July 1, 2013.

Rule 3.507 Venue

- (A) State Bar arbitration of a fee dispute is heard in the county where the legal services giving rise to the fees in dispute were substantially performed or in the county where at least one attorney involved in the dispute had an office at the time the services were rendered. For good cause, a request for change of venue from the county of original jurisdiction¹⁰ may be submitted by
 - (1) a client no later than fifteen days after filing a Request for State Bar Arbitration; or
 - (2) an attorney no later than fifteen days after being served with a copy of a Request for Arbitration.
- (B) A party requesting a change of venue must provide any additional information the State Bar requires by the deadline it specifies.

¹⁰ Rule 3.505(A).

- (C) The presiding arbitrator may for good cause grant or deny the request. The decision is final.

Rule 3.507 adopted effective July 1, 2013.

Rule 3.508 Non-binding and binding arbitration

- (A) Fee arbitration is non-binding unless every party agrees in writing to binding arbitration. The written agreement must be made after the dispute arises and before the taking of evidence at the arbitration hearing.¹¹
- (B) A non-binding fee arbitration award becomes final and binding unless within thirty days of service of the award a party requests a trial.¹²
- (C) A party who initiates a request for binding arbitration may submit a written election for non-binding arbitration instead if the respondent
 - (1) has not replied;
 - (2) has not agreed to binding arbitration in the reply; or
 - (3) has replied and agreed to binding arbitration, but sought to materially increase the amount in dispute, provided the election is sent to the State Bar within ten days of receipt of the reply.
- (D) Parties who have agreed in writing to binding arbitration may change their election to non-binding arbitration, provided they all agree in writing before the taking of evidence.

Rule 3.508 adopted effective July 1, 2013.

Rule 3.509 Consolidation

- (A) A party may request consolidation of two or more arbitration matters for hearing. The request must be in writing. The State Bar will serve a copy of the request on the other parties. A written reply to the request must be submitted to the State Bar within fifteen days of service. The decision of the presiding arbitrator regarding a request for consolidation is final.
- (B) If an attorney is in arbitration with a non-client and the client then files a Request for Arbitration of the same dispute, the client is automatically joined to the arbitration and the matters are consolidated absent a showing of good cause.

¹¹ Business & Professions Code § 6204(a).

¹² Business & Professions Code § 6203(b).

- (C) Consolidation does not entitle a party to a refund or reduction of filing fees.

Rule 3.509 adopted effective July 1, 2013.

Rule 3.510 Withdrawal; dismissal

- (A) A client who has requested arbitration may withdraw from arbitration
- (1) with the written consent of all parties if they have contractually agreed in writing to State Bar arbitration;
 - (2) with the written consent of all parties if the arbitration is binding and the matter has not been settled; or
 - (3) in all other cases, without the consent of other parties if withdrawal occurs before the taking of evidence.
- (B) Arbitration requested by an attorney may be dismissed only upon written agreement of each party.
- (C) The State Bar or sole arbitrator or panel chair appointed by the State Bar must dismiss arbitration without prejudice when the parties confirm that the dispute has been settled.

Rule 3.510 adopted effective July 1, 2013.

Rule 3.511 Stay of proceeding¹³

- (A) If an attorney or an attorney's assignee initiates a legal proceeding in a court or other forum to collect fees that are otherwise subject to arbitration, the proceeding is automatically stayed by filing a State Bar Request for Arbitration. The court or other forum must immediately be notified of the request, on an appropriate form if applicable, and be provided with a copy of the request by
- (1) the party requesting arbitration; or
 - (2) the plaintiff in a legal proceeding in which the party requesting arbitration has not appeared or is not subject to jurisdiction of the court or other forum.¹⁴
- (B) Upon request, the State Bar may file the Judicial Council Notice of Stay of Proceedings form or provide a copy of the form to a party so that party may complete and file the form.

¹³ Business and Professions Code § 6201(b)-(d).

¹⁴ Rule of Court 3.650.

Rule 3.511 adopted effective July 1, 2013.

Rule 3.512 Confidentiality

- (A) A request for arbitration, a reply, a State Bar file, an exhibit, an award, and any other record of an arbitration proceeding are confidential and may not be disclosed by the State Bar unless disclosure is required by court order.
- (B) The award is confidential except in a judicial challenge to, confirmation of, or enforcement of an award.
- (C) Referral of an attorney for possible disciplinary investigation because of conduct disclosed in an arbitration proceeding does not violate the confidentiality required by these rules.¹⁵
- (D) Arbitration between an attorney and non-client does not abrogate an attorney's responsibility to exercise independent professional judgment on behalf of a client or to protect the client's confidential information,¹⁶ unless the law requires it or the client consents to allow the disclosure of confidential information for the purposes of the proceeding.
- (E) A party's statement of financial status is confidential and is not provided to an opposing party.

Rule 3.512 adopted effective July 1, 2013.

Rule 3.513 Service; receipt; dates

- (A) Unless these rules provide otherwise, service is by personal delivery or by mail pursuant to Code of Civil Procedure section 1013(a). If a party is represented by counsel, service is required only upon that party's counsel, except for service of an award, which is served on the party as well as on counsel.
- (B) Service by mail is complete at the time of deposit in the United States mail or in a business facility used to collect and process correspondence for mailing with the United States Postal Service. The time for performing any act commences on the date service is complete and shall not be extended by reason of service by mail.
- (C) A client who is a party to an arbitration is served at the latest address provided to the State Bar. If a client fails to advise the State Bar of his or her current address, the State Bar may close a client request for arbitration or enforcement thirty days after learning that the address is not current.

¹⁵ Rule 3.546.

¹⁶ Business & Professions Code § 6068(e); Rule of Professional Conduct 3-100.

- (D) An attorney who is a party to an arbitration or who represents a party in an arbitration is served at the attorney's address of record with the State Bar.¹⁷
- (E) A filing or other communication submitted to the State Bar electronically or by facsimile is deemed to be received on the date of receipt of the transmission only when the State Bar receives the original within five days of the electronic or facsimile submission.

Rule 3.513 adopted effective July 1, 2013.

Rule 3.514 Effect of time requirements

The failure of the State Bar or a sole arbitrator or panel appointed by the State Bar to comply with a time requirement of these rules does not by itself deprive the State Bar of jurisdiction, warrant dismissal of an arbitration, or provide grounds for invalidation or modification of an award.

Rule 3.514 adopted effective July 1, 2013.

Article 2. State Bar Fee Arbitration Proceedings and Award

Rule 3.530 Request for Arbitration

- (A) When the State Bar has jurisdiction or accepts it in accordance with these rules, a Request for Arbitration may be filed by
 - (1) a client; or
 - (2) an attorney claiming entitlement to fees from a client or a non-client.
- (B) If an attorney requests arbitration, the arbitration may proceed only if the client consents in writing on the approved form within thirty days of service of the request. Client consent is not required if the client has previously consented in writing to mandatory fee arbitration, or the request is for removal of arbitration initiated by the client.¹⁸
- (C) A client is entitled to appointment of an attorney arbitrator whose area of practice is civil law if the fee dispute relates to civil law, or criminal law if the dispute relates to criminal law.¹⁹ A client must make the election in the Request for Arbitration or a reply to a request.

¹⁷ Rule 2.3.

¹⁸ Rule 3.506.

¹⁹ Business & Professions Code § 6200(e).

- (D) The State Bar must serve a notice of a Request for Arbitration and any supporting documentation on
- (1) any attorney identified in the Request for Arbitration as a respondent, together with the Notice of Attorney Responsibility;
 - (2) a client if a request submitted by a non-client has not been signed by the client; and
 - (3) a client if an attorney has requested fee arbitration and the client has consented.
- (E) A client's Request for Arbitration must be postmarked or received no later than thirty days from the date the client received the Notice of Client's Right to Fee Arbitration.
- (F) A Request for Arbitration may be amended up to fifteen days after its receipt by the State Bar. The State Bar may subsequently request clarification that requires amendment of the request. Later amendment by a party may be made only with the permission of the presiding arbitrator, or the sole arbitrator or panel chair if assigned. If an amendment increases the amount in dispute, the State Bar may request a corresponding increase in the filing fee from the requesting party.

Rule 3.530 adopted effective July 1, 2013.

Rule 3.531 Reply to Request for Arbitration

A respondent party may submit a reply to a Request for Arbitration to the State Bar within thirty days of service of the request.

Rule 3.531 adopted effective July 1, 2013.

Rule 3.532 Disputes below threshold minimum

If the amount in dispute is less than the minimum amount set forth in the Schedule of Charges and Deadlines, the party requesting arbitration and any party replying to the request must each submit a complete written statement, with all supporting documents, of the reasons for the dispute. The presiding arbitrator may then require any party to submit additional information within thirty days of receipt of the reply or the deadline for its receipt. The parties are not entitled to a hearing.

Rule 3.532 adopted effective July 1, 2013.

Rule 3.533 Denial of Request for Arbitration; reconsideration

If the State Bar believes that a Request for Arbitration is time barred or does not otherwise meet statutory requirements,²⁰ it must notify the parties and provide them an opportunity to submit additional written evidence in support of State Bar jurisdiction, or provide the initiating party an opportunity to submit new evidence in a written request for reconsideration. A request for reconsideration must be submitted within fifteen days of service of the notice. The request is decided by the presiding arbitrator, whose decision is final.

Rule 3.533 adopted effective July 1, 2013.

Rule 3.534 Fees; refund

- (A) The party requesting arbitration must submit the filing fee set forth in the Schedule of Charges and Deadlines with the Request for Arbitration or when the State Bar accepts removal of jurisdiction in accordance with these rules.²¹
- (B) Joining a party does not increase the filing fee.
- (C) If arbitration is settled or dismissed before the Request for Arbitration is served, the entire filing fee is refunded. If the arbitration is settled or dismissed after the request has been served, the State Bar retains some or all of the fee as set forth in the Schedule of Charges and Deadlines.
- (D) An award may include an allocation of all or part of a filing fee among the parties.
- (E) The filing fee is the only administrative fee that may be charged for arbitration. The hearing room must be provided without charge.
- (F) Each party is responsible for its own costs, such as those for interpreters and expert witnesses.

Rule 3.534 adopted effective July 1, 2013.

Rule 3.535 Waiver of filing fee

- (A) A Request for Waiver of Arbitration Filing Fee may be submitted by the party requesting arbitration. The State Bar may require that the request submitted by a party be supported by a statement of financial status.
- (B) A Request for Waiver of Arbitration Filing Fee may be granted, in whole or in part, or denied for good cause. The decision is final.

Rule 3.535 adopted effective July 1, 2013.

²⁰ Business & Professions Code §§ 6200-6206.

²¹ Rule 3.506.

Rule 3.536 Arbitrators

- (A) Except for disputes below a threshold minimum,²² arbitration must be conducted by a sole attorney arbitrator or by a panel of three arbitrators appointed by the State Bar. A panel of three arbitrators must be chaired by an attorney arbitrator and include a lay arbitrator. A retired judge serving as an arbitrator must be an active member of the State Bar.
- (B) Whether the State Bar assigns a sole arbitrator or a panel of three arbitrators is determined by the amount in dispute that is set forth in the Schedule of Charges and Deadlines. If a three-member panel is assigned, the parties may stipulate to proceed with a sole attorney arbitrator conducting the arbitration. If the amount in dispute is less than the threshold minimum amount set forth in the schedule, the presiding arbitrator decides the arbitration in accordance with these rules.²³
- (C) An attorney arbitrator must be a civil or criminal practitioner if a client has elected such an appointment in the request and the dispute involves the same area of law.²⁴
- (D) A Notice of Appointment of Arbitrator must be served
 - (1) within sixty days of receipt of a reply to the Request for Arbitration;
 - (2) within sixty days of the passage of the reply deadline if no reply was received; or
 - (3) in either case as soon as reasonably possible after the receipt of the reply or the reply deadline.
- (E) No compensation will be paid to arbitrators for services other than for formal hearings extending beyond four hours. Compensation is hourly at the rate set forth in the Schedule of Charges and Deadlines and is paid equally by the parties. Any dispute regarding compensation is decided by the presiding arbitrator, whose decision is final.

Rule 3.536 adopted effective July 1, 2013.

Rule 3.537 Disqualification or discharge of arbitrators

- (A) A party may disqualify one arbitrator without cause. A party is entitled to unlimited challenges of an arbitrator for cause. The State Bar must be notified of the disqualification within fifteen days of serving the Notice of Arbitrator Assignment.

²² Rule 3.532.

²³ Rule 3.532.

²⁴ Rule 3.530(C).

- (B) An arbitrator who believes he or she cannot render a fair and impartial decision or who believes there is an appearance that he or she cannot render a fair and impartial decision must disqualify himself or herself or accede to a party's challenge for cause. If the arbitrator believes there are insufficient grounds to accede to a challenge for cause, the presiding arbitrator decides the challenge. The decision is final.
- (C) ~~The Neither a~~ presiding arbitrator; ~~nor an~~ assistant presiding arbitrator; ~~or a member of the Committee on Mandatory Fee Arbitration~~ may ~~not~~ represent a party in a State Bar fee arbitration while serving in these roles.
- (D) An arbitrator vacancy due to disqualification or inability to serve must be filled by the State Bar. If a panel member fails to appear at a hearing, the parties may stipulate in writing that the hearing may proceed with a single attorney arbitrator. In no event may arbitration proceed with only two arbitrators or a single non-attorney arbitrator.
- (E) The presiding arbitrator may discharge an arbitrator or panel of arbitrators for unreasonable delay or for other good cause.

Rule 3.537 adopted effective July 1, 2013.

Rule 3.538 Contact with arbitrator

A party or a person acting on a party's behalf may communicate with an arbitrator only

- (A) in writing with a copy submitted to the State Bar and all other parties or their counsel;
- (B) to schedule a hearing;
- (C) at a hearing; or
- (D) in an emergency.

Rule 3.538 adopted effective July 1, 2013.

Rule 3.539 Scheduling hearing

- (A) After service of the Notice of Assignment, the hearing will be scheduled
 - (1) within forty-five days if a sole arbitrator has been assigned; or
 - (2) within ninety days if a panel has been assigned.

- (B) Within fifteen days of assignment and at least fifteen days before the hearing, the sole arbitrator or panel chair will serve a Notice of Hearing on each party and the State Bar. Appearance at the hearing waives any claim of defective service of the notice.
- (C) The date of a scheduled hearing will be extended by fifteen days from the date a new arbitrator is assigned to replace an arbitrator who has been removed because of disqualification or challenge.²⁵
- (D) Upon stipulation or application to the assigned sole arbitrator or panel chair, the sole arbitrator or panel chair may continue a matter for good cause shown. A continuance of more than thirty days must be approved by the presiding arbitrator.

Rule 3.539 adopted effective July 1, 2013.

Rule 3.540 Preparation for hearing

- (A) Discovery is not permitted except as provided by this rule.
- (B) Nothing in these rules deprives a client of the right to inspect and obtain the client's file kept by the attorney. This provision does not apply to a non-client.
- (C) Before a hearing the parties
 - (1) are encouraged to agree to issues not in dispute and to voluntarily exchange documents;
 - (2) may be required by the sole arbitrator or panel chair to clarify issues, submit additional documentation, or exchange documents, and the sole arbitrator or panel may decline to admit into evidence any document a party was required to exchange but did not; and
 - (3) may request issuance of a subpoena in accordance with these rules.
- (D) A party seeking to have a subpoena issued must submit to the State Bar a completed but unsigned subpoena form approved by the State Bar, with proof of service on all parties. Upon a showing of good cause, the presiding arbitrator, or panel chair if appointed, may issue a signed subpoena. The requesting party is responsible for service of the subpoena and any witness fees.
- (E) At least ten days before the hearing a party may submit a written request that the sole arbitrator or panel chair permit the party to

²⁵ Rule 3.536.

- (1) waive personal appearance and submit testimony and exhibits by declaration under penalty of perjury;
 - (2) appear by telephone; or
 - (3) designate an attorney or non-attorney representative because of inability to attend the hearing.
- (F) The personal representative of a deceased party or the guardian or conservator of an incompetent party may represent the party.

Rule 3.540 adopted effective July 1, 2013.

Rule 3.541 Hearing

- (A) Any relevant evidence is admissible at a hearing if it is of the sort responsible persons customarily rely on in the conduct of serious affairs, regardless of any common law or statutory rule to the contrary.
- (B) Evidence relating to claims of malpractice or professional misconduct is admissible only to the extent it affects the fees to which the attorney is entitled.
- (C) Testimony may be given under oath or affirmation administered by the assigned sole arbitrator or panel chair.
- (D) The order of proof is determined by the sole arbitrator or panel chair.
- (E) Upon a party's request, the sole arbitrator or panel chair may permit
 - (1) a client to be accompanied by another person;
 - (2) a client to be assisted by an interpreter at the client's expense;
 - (3) the attendance of other persons; and
 - (4) the attendance of witnesses during the hearing, absent the objection of a party.
- (F) A hearing is closed to the public; recording of any kind is prohibited; and any participant or attendee is bound by the confidentiality requirements of these rules.²⁶

Rule 3.541 adopted effective July 1, 2013.

Rule 3.542 Arbitration without a hearing

²⁶ Rule 3.512.

The parties may stipulate that the sole arbitrator or panel decide all matters without a hearing and base the decision on the request, the reply, and any other written material submitted by a party, which must be filed with the sole arbitrator or the panel and served on all other parties by the date ordered.

Rule 3.542 adopted effective July 1, 2013.

Rule 3.543 Failure to respond or participate

- (A) If a party required to participate in arbitration fails to do so, the arbitration may proceed as scheduled and an award will be made based on the evidence presented. The award may include findings regarding the willfulness of a party's failure to appear at the hearing.
- (B) A party who willfully fails to appear at a hearing is not entitled to request a trial after non-binding arbitration. That party has the burden of proving the non-appearance was not willful. The determination of willfulness is made by the court.²⁷

Rule 3.543 adopted effective July 1, 2013.

Rule 3.544 Award form and content; approval

- (A) Following the hearing, the original of the signed award will be submitted to the State Bar by
 - (1) a sole arbitrator within fifteen days; or
 - (2) a panel chair within twenty-five days.
- (B) The award must be in writing on the State Bar Arbitration Award form and
 - (1) be signed by the sole arbitrator or at least two concurring panel members and include a dissent, if any, signed by the dissenting panel member;
 - (2) determine all questions submitted to the panel that are necessary to resolve the controversy;
 - (3) indicate whether it is binding or non-binding; and
 - (4) identify all responsible attorneys.
- (C) The award may

²⁷ Business & Professions Code § 6204(a).

- (1) include relevant findings of fact;
 - (2) state the circumstances regarding the willfulness of any party's non-appearance;
 - (3) be a stipulated award that incorporates by reference a written settlement agreement reached by the parties before or after assignment of a sole arbitrator or panel;
 - (4) include a refund of unearned fees paid to an attorney; and
 - (5) allocate the filing fee.
- (D) The award may not
- (1) include any other fees, such as attorney fees for the arbitration, notwithstanding an agreement between the parties; or
 - (2) include damages, offset, or any other affirmative relief for malpractice or professional misconduct.
- (E) An award may be made in favor of a party who fails to appear at a hearing if the evidence so warrants, but may not be made against the absent party solely because of the absence. If only one party appears at the hearing, an award may be made; the party who is present must submit any evidence the sole arbitrator or panel chair requires to support the award. If no party appears or waiver of personal appearance has not been approved, the sole arbitrator or panel may issue an award based on the evidence submitted.
- (F) An award is not final until the State Bar approves it for procedural compliance. The State Bar serves each party with an approved award and the Notice of Rights After Arbitration.
- (G) When an award is issued in a binding arbitration, there can be no trial on the issue of fees, but for reasons set forth in statute²⁸ a trial court may correct,²⁹ vacate,³⁰ or confirm³¹ a binding award.

Rule 3.544 adopted effective July 1, 2013.

Rule 3.545 Correction or amendment of award

²⁸ Code of Civil Procedure §§ 1285-1287.6.

²⁹ Code of Civil Procedure § 1286.8.

³⁰ Code of Civil Procedure § 1286.2.

³¹ Code of Civil Procedure § 1286.

- (A) An award may be corrected or amended by the sole arbitrator or at least two concurring members of a panel. Correction is permitted only for an evident mistake in calculation or a description of a person, thing, or property, or for a defect of form not affecting the merits of the dispute.³² Amendment is permitted when an award is inadvertently incomplete and amendment does not substantially prejudice the legitimate interests of a party. Unless requested by the arbitrator, no additional testimony or documentary evidence may be submitted.
- (1) Any party may submit a written request that the State Bar correct an award. The requesting party must submit the request to the State Bar with proof of service and serve a copy on each party within ten days after service of the award. The State Bar must serve a copy of the request on each party. Any correction will be made by the sole arbitrator or panel chair within thirty days of service of the award.
 - (2) A written request to correct an award does not extend the thirty-day deadline to request a trial or arbitration after a non-binding award has been issued.
 - (3) Any party may submit a written request that the State Bar amend an award. The requesting party must submit the request with proof of service and serve a copy on any other party at any time prior to judicial confirmation of the award.
- (B) Any party may submit to the State Bar a written objection to a request for correction or amendment.
- (C) The State Bar must serve all parties with a corrected or amended award or denial of a request for correction or amendment.

Rule 3.545 adopted effective July 1, 2013.

Rule 3.546 Referral to Office of Chief Trial Counsel

The State Bar or a sole arbitrator or panel appointed by the State Bar may refer an attorney to the State Bar Office of Chief Trial Counsel for possible disciplinary investigation because of conduct disclosed in an arbitration proceeding. Such a disclosure does not violate the confidentiality that otherwise applies to the proceeding.

Rule 3.546 adopted effective July 1, 2013.

Article 3. Enforcement

Rule 3.560 Enforcement authority

³² Code of Civil Procedure § 1286.6.

Upon request, the State Bar may assist in enforcing a final and binding arbitration award, judgment, stipulated award, or mediation settlement requiring the attorney to refund fees previously paid to the attorney if the attorney has not timely complied with the terms of the final and binding arbitration award, judgment, stipulated award, or mediation settlement.

Rule 3.560 adopted effective July 1, 2013.

Rule 3.561 Request for State Bar Enforcement

- (A) A client may submit a written request for enforcement no earlier than 100 days and no later than four years from the date of service of a final and binding arbitration award, judgment, stipulated award, or mediation settlement.³³ The request must be in writing on the State Bar Request for Enforcement form.³⁴ The request may include any other party who was awarded or who is liable for a refund of attorney fees. An arbitration award is not enforceable by the State Bar if it refunds the client only some or all of the arbitration filing fee and does not include a refund of attorney's fees or costs.
- (B) Before submitting a Request for State Bar Enforcement, a client must make a reasonable effort to obtain payment, including at a minimum a written request to the attorney for payment. The State Bar may require proof of such an effort before accepting the request.
- (C) The State Bar must serve the Request for State Bar Enforcement on the attorney.
- (D) If a client has filed a petition in a civil court to confirm the arbitration award, the State Bar may proceed with enforcement proceedings or, with approval of the client, abate enforcement until the court enters a judgment confirming the award.

Rule 3.561 adopted effective July 1, 2013.

Rule 3.562 Attorney response to Request for State Bar Enforcement

- (A) Within thirty days of service of a Request for State Bar Enforcement, an attorney must³⁵
 - (1) provide the State Bar satisfactory proof of compliance;
 - (2) agree to a payment plan accepted by the State Bar or the client; or

³³ Business & Professions Code § 6203(d)(5).

³⁴ Rule 1.24.

³⁵ Business & Professions Code § 6203(d)(2).

- (3) establish inability to pay or lack of personal responsibility for payment in accordance with statutory requirements³⁶ and the provisions of this rule.
- (B) To establish inability to pay, an attorney must support a response to a Request for Enforcement with an Attorney's Statement of Financial Status. Any party may challenge the response, and the presiding arbitrator may then hold a hearing or require the parties to submit additional information.
- (C) To establish lack of personal responsibility for payment because of changed circumstances subsequent to arbitration, an attorney must state reasons for this belief in the response to the client request for State Bar enforcement. The response may name another attorney or other attorneys as responsible for payment. The State Bar must serve each attorney named in the response with the Request for Enforcement and a copy of the attorney's response. Any counter-response must be submitted within twenty days of service.
- (D) After considering the request, the response, and supporting documentation, the presiding arbitrator must issue a final order. The final order may
 - (1) require compliance;
 - (2) terminate or abate enforcement because the attorney is unable to comply; or
 - (3) find that another attorney is responsible for payment.

Rule 3.562 adopted effective July 1, 2013.

Rule 3.563 Payment plans

- (A) If the attorney proposes to comply with the arbitration award, judgment, or agreement by a payment plan, the State Bar promptly sends the proposed plan to the client.
- (B) The client may accept or reject a proposed payment plan. If the plan is rejected, the attorney must file a confidential Attorney's Statement of Financial Status with the State Bar so that the presiding arbitrator may
 - (1) determine that the plan is reasonable and approve it;
 - (2) reject the plan; or
 - (3) specify amendments that would make the plan acceptable.

³⁶ Business & Professions Code § 6203(d)(2).

- (C) The State Bar monitors an approved payment plan for compliance. If the client informs the State Bar that the attorney has failed to comply with the plan, the presiding arbitrator must request that the State Bar Court place the attorney on involuntary inactive status,³⁷ unless the attorney provides proof that he or she
- (1) is unable to pay;
 - (2) has fully refunded the fees; or
 - (3) has received approval of a revised payment plan from the client or the State Bar.

Rule 3.563 adopted effective July 1, 2013.

Rule 3.564 Administrative penalties; rescission or modification of penalties

- (A) Prior to the filing a motion in State Bar Court to enroll an attorney as involuntarily inactive the presiding arbitrator may impose administrative penalties³⁸ on an attorney who fails to
- (1) comply with a final and binding arbitration award, judgment, stipulated award, or mediation settlement that includes a refund of fees paid to the attorney;
 - (2) submit a written response to a Client Request for Enforcement of an Arbitration Award; or
 - (3) cooperate with the State Bar after an initial response to a Request for Enforcement.
- (B) An order for administrative penalties may not exceed twenty percent of the amount awarded or \$1,000, whichever is greater. Such an order is final. Unpaid penalties are added to the annual membership fees for the next calendar year.³⁹
- (C) In response to the attorney's written request, the presiding arbitrator may modify or rescind an order for administrative penalties if all of the following conditions are met:
- (1) the attorney agrees to comply with the award;
 - (2) the attorney was not served the order for administrative penalties; and

³⁷ Rule 3.565.

³⁸ See also Rule 3.565.

³⁹ Business & Professions Code § 6203(d)(3).

- (3) the attorney satisfactorily establishes in a declaration under penalty of perjury that he or she promptly submitted a request that warranted modification or rescission of the penalties.
- (D) Before deciding an attorney's request to modify or rescind an order for administrative penalties, the presiding arbitrator may require the attorney to submit additional information or declarations under penalty of perjury within a specified time. Failure to comply is grounds for dismissal of the request.
- (E) The presiding arbitrator may rescind or modify an order imposing administrative penalties, but not if a request was made more than thirty days after service of the order because the attorney failed to maintain a current membership address with the State Bar.
- (F) The presiding arbitrator's decision to rescind or modify an order imposing penalties is final.

Rule 3.564 adopted effective July 1, 2013.

Rule 3.565 Inactive enrollment for noncompliance

The presiding arbitrator may move the State Bar Court to enroll an attorney involuntarily inactive⁴⁰ for failure to

- (A) refund client fees as required by a final and binding arbitration award, judgment, stipulated award, or mediation settlement;
- (B) agree to or comply with a payment plan;
- (C) prove an inability to comply with the terms of a final and binding arbitration award, judgment, stipulated award, or mediation settlement; or
- (D) prove lack of personal responsibility for compliance with the terms of a final and binding arbitration award, judgment, stipulated award, or mediation settlement.

Rule 3.565 adopted effective July 1, 2013.

Rule 3.566 Termination of enforcement

State Bar enforcement concludes upon submission of satisfactory proof of compliance with the arbitration award, judgment, stipulated award, or mediation settlement. The State Bar will notify the parties that its enforcement efforts have ended.

Rule 3.566 adopted effective July 1, 2013.

⁴⁰ Business & Professions Code §§ 6203(d)(1), 6006, and 6125 et seq.

TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007

DIVISION 4. CONSUMERS

Chapter 1. Client Security Fund

Article 1. In general

Rule 3.420 Client Security Fund

- (A) Pursuant to statute the Board of Trustees of the State Bar of California has established a Client Security Fund (“Fund”) that may reimburse individuals who have suffered a loss of money or property because of the dishonest conduct of an attorney.¹ For the purposes of these rules, an attorney is a current or former ~~member~~ licensee of the State Bar of California, a Foreign Legal Consultant registered with the State Bar, or an attorney registered with the State Bar under the Multijurisdictional Practice Program.
- (B) Applications for reimbursement must meet the requirements of these rules, and payments from the Fund are solely within the discretion of the State Bar.
- (C) No person or entity has a right to reimbursement, and no person or entity, including a creditor or third-party beneficiary, has any right in the Fund.

Rule 3.420 adopted effective January 1, 2010; amended effective January 1, 2012; amended effective March 2, 2012.

Rule 3.421 Client Security Fund Commission

- (A) To administer the Client Security Fund, the Board of Trustees of the State Bar of California has established a Client Security Fund Commission (“Commission”) to which it appoints ~~seven~~ five members who serve at its pleasure or until the expiration of a term set by the Board. ~~Four~~ Three members at most may be present or former ~~members~~ licensees of the State Bar or admitted to practice before any court in the United States. The Commission has sole and final authority to determine whether to grant an application for reimbursement from the Client Security Fund and the extent and manner of any payment.
- (B) The vote of a majority of the commissioners present and voting at a Commission meeting constitutes the action of the Commission, unless the Commission or its chair has authorized a vote by poll, in which case a majority vote of commissioners then in office constitutes its action.

¹ Business & Professions Code § 6140.5.

- (C) ~~The State Bar must provide the Commission with a staff headed by a Director who serves as counsel to the Commission by representing its interests and those of the Fund.~~ The ~~Director~~ Manager of the Office of the Client Security Fund and any other staff who serve as counsel (collectively “Fund Counsel”) must be active ~~members~~ licensees of the State Bar ~~and represent the interests of the Commission and those of the Fund.~~ In these rules, ~~Director~~ Manager may also mean the ~~Director’s~~ Manager’s designee.
- (D) The reasonable expenses of the Commission and its staff may be charged to the Fund. These expenses include staff salaries and Fund-related costs of administration and litigation.

Rule 3.421 adopted effective January 1, 2010; amended effective January 1, 2012.

Article 2. Requirements for reimbursement; limitations and exclusions

Rule 3.430 General requirements for reimbursement

- (A) To qualify for reimbursement, an applicant must establish a loss of money or property that was received by an active attorney who was acting as an attorney or in a fiduciary capacity customary to the practice of law, for instance as an administrator, executor, trustee of an express trust, guardian, or conservator.
- (B) The loss must have been caused by dishonest conduct as defined in these rules.²
- (C) The attorney must have a status that meets the requirements of these rules.³
- (D) Even if an application meets these requirements, the Commission and/or Fund Counsel ~~have~~ has ~~the sole~~ discretion to deny or limit reimbursement. No person or entity has a right to reimbursement.⁴

Rule 3.430 adopted effective January 1, 2010.

Rule 3.431 Dishonest conduct

“Dishonest conduct” refers to any of the following:

- (A) Theft or embezzlement of money, the wrongful taking or conversion of money or property, or a comparable act.
- (B) Failure to refund unearned fees received in advance for services when the attorney performed an insignificant portion of the services or none at all. Such a

² See Rule 3.431.

³ See Rule 3.432.

⁴ Rule 3.420(C).

failure constitutes a wrongful taking or conversion. All other instances of an attorney's failure to return an unearned fee or the disputed portion of a fee are outside the scope of this provision and not reimbursable under these rules.

- (C) Borrowing money from a client without the intention or reasonable ability, present or prospective, of repaying it.
- (D) Obtaining money or property from a client for an investment that was not in fact made. Failure of an investment to perform as represented to or anticipated by a client is not dishonest conduct under these rules.
- (E) An act of intentional dishonesty or deceit that proximately leads to the loss of money or property.

Rule 3.431 adopted effective January 1, 2010.

Rule 3.432 Required status of attorney

- (A) To qualify for reimbursement, an application must establish that the attorney whose dishonest conduct is alleged has
 - (1) been disbarred, disciplined, or voluntarily resigned from the State Bar;
 - (2) died or been adjudicated mentally incompetent; or
 - (3) because of the dishonest conduct become a judgment debtor of the applicant in a contested proceeding or been convicted of a crime.
- (B) The Commission or Fund Counsel may waive provision (A) of this rule: pursuant to guidelines set by the Commission.

Rule 3.432 adopted effective January 1, 2010.

Rule 3.433 Excluded applicants

An applicant is excluded from receiving reimbursement from the Fund who

- (A) is or was related to the attorney as a spouse or domestic partner;
- (B) has a family relationship with the attorney, including one by adoption, as child, parent, grandchild, grandparent, or sibling;
- (C) lives or lived with the attorney;
- (D) has or had a business or other relationship with the attorney as an associate, partner, employee, or employer;

- (E) is or was an insurer, surety, or bonding entity seeking reimbursement for a payment made under a contract or bond covering the dishonest conduct;
- (F) is or was a business entity controlled
 - (1) by the attorney; or
 - (2) by someone with whom the attorney has a personal or business relationship as defined by this rule;
- (G) is or was an assignee, lienholder, or creditor of the attorney or the person who incurred the loss; or
- (H) is a government entity or agency.

Rule 3.433 adopted effective January 1, 2010.

Rule 3.434 Reimbursement limitations and exclusions

- (A) For losses occurring on or after January 1, 2009, the maximum allowable reimbursement is \$100,000, and cumulative reimbursements to an applicant may not exceed \$100,000 with respect to any individual attorney. For losses occurring before January 1, 2009, the maximum allowable reimbursement is \$50,000, and cumulative reimbursements to an applicant may not exceed \$50,000 with respect to any individual attorney.
- (B) The Fund may not reimburse
 - (1) interest or a consequential loss;
 - (2) a loss covered by any indemnity, such as insurance, fidelity guarantee, or bond, unless the indemnifier has a cause of action against the applicant for recovery of a payment made for the loss;
 - (3) attorney fees and other costs paid to recover a reimbursable loss, unless the applicant submits clear and convincing proof that the payments were reasonable and they reduced the amount otherwise reimbursable; or
 - (4) a loss from a loan or investment, unless it meets the requirements of Rule 3.436.
- (C) A reimbursable loss of non-monetary property is its fair market value at the time of loss.

Rule 3.434 adopted effective January 1, 2010.

Rule 3.435 Factors that may limit reimbursement

To fulfill the purposes of the Fund, the Commission and/or Fund Counsel may deny reimbursement in whole or in part for any reason, including, but not limited to, of the following reasons:

- (A) the attorney and applicant participated or intended to participate in illegal or tortious conduct related to the subject matter of the application;
- (B) the applicant failed to act reasonably to protect against the loss, considering the circumstances of the transaction, the past dealings with the attorney, and differences in their education and business sophistication;
- (C) the nature of the applicant's loss, its amount, or the financial or administrative circumstances of the Fund require that reimbursement be limited or denied; or
- (D) the applicant is a fictitious person.

Rule 3.435 adopted effective January 1, 2010.

Rule 3.436 Attorney-client relationship required to reimburse loan or investment loss

- (A) A loss resulting from a transaction proposed by an attorney as a loan or investment with or through the attorney is not reimbursable unless
 - (1) it arose out of and in the course of the attorney-client relationship; and
 - (2) it could not have occurred but for the relationship.
- (B) To determine whether a loan or investment meets the requirements of this rule, the Commission and/or Fund Counsel may consider the following factors:
 - (1) whether authority to practice law in California was required for a principal part of the transaction;
 - (2) whether the attorney initiated the transaction;
 - (3) the professional and business reputation of the attorney;
 - (4) the amount charged for legal services or as a finder's fee;
 - (5) the number of prior transactions between the applicant, the attorney, or other attorneys or entities;
 - (6) the relative bargaining power, education, and business sophistication of the attorney and applicant;

- (7) whether normal prudence of the applicant was unduly affected by the attorney-client relationship;
- (8) whether the attorney-client relationship allowed the attorney to learn about the applicant's financial affairs or prospects; and
- (9) whether the attorney failed to fully make the disclosures required by the Rules of Professional Conduct, including those regarding his or her financial condition and intended use of the applicant's money or property.

Rule 3.436 adopted effective January 1, 2010.

Article 3. Applications and action on applications

Rule 3.440 Application for reimbursement

- (A) An applicant seeking reimbursement from the Fund must submit a Client Security Fund Application for Reimbursement. The application contains the following statement: **"IMPORTANT NOTICE.** The State Bar of California has no legal responsibility for the acts of individual attorneys. Payments from the Client Security Fund are solely within the discretion of the State Bar. By applying to the Client Security Fund, the applicant acknowledges that he or she may be giving up the right to pursue a civil action for the same recovery against a third party."
- (B) The application must identify the applicant and the attorney allegedly responsible for the reimbursable loss and set forth a general statement of facts regarding the loss, including its amount, when it was incurred, when it was discovered, and the extent to which it is or has been covered by insurance, fidelity guarantee, bond, or similar indemnity.
- (C) The application requires the applicant to acknowledge that he or she has read these rules and agrees to be bound by them; to provide a current address and to promptly notify the State Bar of a change in this address; to sign a subrogation and assignment agreement; and to cooperate with the State Bar in its review of the application or in any related disciplinary proceeding or civil action the State Bar brings pursuant to the subrogation and assignment agreement.
- (D) The application must be completed in accordance with instructions and executed under penalty of perjury.
- (E) An application for reimbursement must be filed no more than four years after the loss was discovered or through reasonable diligence should have been discovered.
- (F) An applicant may apply to the Fund without exhausting other remedies.

- (G) An applicant need not be represented by a lawyer. If an applicant is represented by a lawyer, the lawyer is encouraged to provide his or her services pro bono publico to maximize the benefits available to the applicant. A lawyer may, however, represent an applicant for a reasonable attorney fee.

Rule 3.440 adopted effective January 1, 2010.

Rule 3.441 Review of applications

- (A) The Fund may investigate an application as it deems appropriate.
- (B) Upon due consideration of an application, Fund ~~C~~counsel may close it without prejudice, issue a Notice of Intention to Pay,⁵ or issue a submit it to the Commission for Tentative Decision on behalf of the Commission. If Fund Counsel intends to issue a Tentative Decision, counsel may postpone doing so until the conclusion of any related disciplinary proceeding either pending or contemplated.
- (C) In considering applications for reimbursement, the Commission may require further investigation; require submission of declarations under penalty of perjury;⁶ ~~appoint a panel to recommend a Tentative Decision; issue a Tentative Decision;~~ conduct hearings at which it receives evidence; administer oaths and affirmations; and compel by subpoena the attendance of witnesses and the production of books, papers and documents. A party who refuses to obey a subpoena is subject to the contempt procedures of Rule ~~187~~ 5.70 of the Rules of Procedure of the State Bar. ~~If the Commission decides to issue a Tentative Decision, it may postpone doing so until the conclusion of any related disciplinary action or court proceeding either pending or contemplated.~~
- (D) The ~~Commission~~ Fund may consolidate applications related to one or more respondents when no substantial rights are prejudiced.
- (E) When an application involves more than one respondent, the ~~Commission~~ Fund may consider each respondent as the subject of a separate application if no substantial rights are prejudiced.
- (F) In the interest of justice and for good cause, Fund Counsel, under guidelines set by the Commission, may waive a requirement of these rules that bars reimbursement of an application otherwise qualified for reimbursement.
- (G) An application filed by a husband and wife is deemed to be two separate applications, unless the loss occurred before January 1, 2009. For such a loss, the application is deemed to be a single application.

⁵ See Rule 3.442.

⁶ Code of Civil Procedure § 2015.5.

- (H) The applicant and respondent must supply relevant evidence under oath to support allegations or objections based on fact. Proceedings on such evidence need not be conducted according to technical rules applicable to evidence and witnesses. Any relevant evidence is admissible if of the sort that responsible persons customarily rely on in the conduct of serious affairs, even if such evidence might be inadmissible in a civil action.
- (I) A decision to reimburse a loss must be based on a preponderance of the evidence.
- (J) Testimony presented to the Commission or a fact-finding panel it appoints may be recorded and transcribed in whole or in part as directed by the Commission.

Rule 3.441 adopted effective January 1, 2010.

Rule 3.442 Notice of Intention to Pay

- (A) A Notice of Intention to Pay advises an attorney of the allegations made by an applicant and an intention to reimburse the applicant in a stated amount. In compliance with standards set by the Commission, the ~~Director~~ Manager may issue the notice provided an applicant has
 - (1) submitted a complete application in accordance with instructions;
 - (2) submitted documentation sufficient to confirming confirm the amount of the loss;
 - (3) provided sufficient evidence of eligibility for reimbursement as required by these rules; and
 - (4) filed a ~~discipline~~ complaint against the attorney with the State Bar's Office of Chief Trial Counsel, unless the ~~Director~~ Manager waives this requirement.
- (B) For applications requesting \$5,000.00 or less, prima facie evidence is sufficient to establish eligibility for reimbursement under this rule.
- (C) The attorney must be served with a Notice of Intention to Pay in accordance with Rule 3.445.
- (D) The attorney has thirty days from the date of service to submit a written objection to a Notice of Intention to Pay. If the attorney objects, the Fund will conduct further review in accordance with these rules. If the attorney does not object, the Fund may pay the applicant the reimbursement amount stated in the notice.

- (E) An applicant reimbursed pursuant to a Notice of Intention to Pay may object to the amount of payment by submitting a written objection under penalty of perjury within thirty days of the date on which reimbursement issues. Acceptance of the reimbursement does not waive the right to object. An objection requires further review in accordance with these rules.

~~(F) In issuing a Notice of Intention to Pay, the Director may waive Rule 3.432 (A).~~

Rule 3.442 adopted effective January 1, 2010.

Rule 3.443 Tentative Decisions

- (A) Tentative Decisions will be issued by Fund Counsel. A Tentative Decision must be in writing, include a statement of the findings or reasons on which the decision is based, and be served in accordance with Rule 3.445.
- (B) The parties have thirty days from the date of service to provide the Fund and the other party a written objection to the Tentative Decision. The objection must state the precise legal and/or factual grounds for the objection and be executed under penalty of perjury. The objection may include supporting documentation; a request for an oral hearing; or, in lieu of a request for an oral hearing, additional declarations executed under penalty of perjury.⁷
- (C) In lieu of granting an oral hearing, the Commission may require that any facts alleged in an objection to a Tentative Decision be supported by one or more declarations under penalty of perjury.⁸
- (D) Notwithstanding the provisions of Rule 3.421 (A), supra, if the Fund receives no timely written objections, a Tentative Decision issued by Fund Counsel may be deemed a Final Decision.

Rule 3.443 adopted effective January 1, 2010.

Rule 3.444 Final Decisions

- (A) In a matter where a timely written objection to a Tentative Decision is received, the Commission will issue a Final Decision ~~a~~After providing the parties an opportunity to submit objections, requests, or declarations in response to a Tentative Decision; requiring any additional investigation or conducting an oral hearing it deems necessary; and considering the record relevant to the application, ~~the Commission issues a Final Decision.~~
- (B) A Final Decision issued by the Commission

⁷ Code of Civil Procedure § 2015.5.

⁸ Code of Civil Procedure § 2015.5.

- (1) must be in writing;
 - (2) may direct or deny reimbursement with or without prejudice;
 - (3) may establish any conditions for reimbursement deemed appropriate; and
 - (4) must be served in accordance with Rule 3.445.
- (C) A Final Decision of the Commission constitutes the final action of the State Bar.

Rule 3.444 adopted effective January 1, 2010.

Rule 3.445 Service of decisions and Notice of Intention to Pay

- (A) Service of a Notice of Intention to Pay must be made by first-class mail to the attorney and any lawyer representing the attorney in connection with the application.
- (B) Service of a Tentative Decision ~~and~~ or a Final Decision must be made by first-class mail to the applicant,⁹ the attorney, and any lawyer representing either party in connection with the application.
- (C) A deceased attorney need not be served with a Tentative Decision or Final Decision. If a Tentative Decision is not served because the attorney is deceased, the time for objecting to the decision may be waived in writing by the applicant. Upon receipt of the waiver, the Tentative Decision may be deemed the Final Decision.
- (D) An attorney and a lawyer representing either an attorney or an applicant must be served at the address of record.

Rule 3.445 adopted effective January 1, 2010.

Article 4. Superior court review; repayment; collection

Rule 3.450 Superior court review

The Final Decision of the Commission to grant or deny reimbursement to an applicant may be reviewed in superior court pursuant to a request for review filed by the applicant or attorney in accordance with Code of Civil Procedure section 1094.5. The request must be filed no more than ninety days after the date the decision was served.

Rule 3.450 adopted effective January 1, 2010.

Rule 3.451 Repayment of reimbursement by attorney

⁹ Rule 3.440(C) requires an applicant to agree to promptly notify the State Bar of a change in address.

An attorney must repay the Fund for any reimbursement, with simple interest and an assessment of processing costs. The rate of interest, set forth in the Schedule of Charges and Deadlines, is adopted by the Board of Trustees upon the recommendation of the Commission and may not exceed the maximum legal rate. Processing costs are the estimated average processing costs for similar applications in the most recent calendar year for which data is available.¹⁰

Rule 3.451 adopted effective January 1, 2010; amended effective January 1, 2012.

Rule 3.452 Enforcement of State Bar rights

The Office of General Counsel of the State Bar is authorized to collect assignments made by applicants reimbursed by the Client Security Fund and to enforce the State Bar's rights as permitted by law. To effect collection of an assignment, General Counsel has discretion to disclose information about the application that would otherwise be confidential.

Rule 3.452 adopted effective January 1, 2010.

Article 5. Records

Rule 3.460 Records shared with Chief Trial Counsel

- (A) To assist with its investigation and consideration of an application, the Commission and its staff may access confidential records of the Office of Chief Trial Counsel regarding an attorney who is the subject of an application. The records remain confidential despite any such use.
- (B) The State Bar Office of Chief Trial Counsel may have access to any Commission records related to an investigation or prosecution.

Rule 3.460 adopted effective January 1, 2010.

Rule 3.461 Public access to records and proceedings

- (A) The following are confidential: applications for reimbursement from the Client Security Fund; hearings on applications; deliberations of the Commission; and any records created by staff with regard to an application or related investigation.
- (B) If disciplinary charges related to the application have been filed against the attorney, the public may have access to the application; oral hearings the Commission grants to an applicant and attorney; Tentative and Final Decisions; and briefs or pleadings filed by any party to a Commission proceeding; but not to records created by staff with regard to an application or related investigation.

¹⁰ See Business & Professions Code § 6140.5(d).

- (C) In the interest of public protection, the following information regarding a reimbursement is public record: the names of the applicant and respondent; the amount and date of the reimbursement; and whether ~~there are~~ disciplinary charges related to the application have been filed.
- (D) Copies of public records are available for the fee set forth in the Schedule of Charges and Deadlines.

Rule 3.461 adopted effective January 1, 2010.

Title 6. Governance

Adopted January 2019

Division 3. Conflicts of Interest

Chapter 1. Conflict of Interest Policy for State Bar Sub-Entities.

Rule 6.70. Sub-Entities Subject to Conflict of Interest Policy

The conflict of interest policy set forth in this chapter is applicable to the State Bar sub-entities listed below:

Committee of Bar Examiners (CBE)

California Board of Legal Specialization

Council on Access and Fairness (COAF)

Client Security Fund Commission (CSF)

Lawyer Assistance Program Oversight Committee (LAP)

Commission on Access to Justice (CAJ)

Legal Services Trust Fund Commission (LSTFC)

Committee on Professional Responsibility and Conduct (COPRAC)

Rule 6.71. Intent of Conflict of Interest Policy

The conflict of interest policy is intended to establish standards and procedures to assist sub-entity members in avoiding conflicts of interest that may interfere with the sub-entity's ability to discharge its duties without conflicts of interest or the appearance of conflicts of interest.

Rule 6.72 Financial Conflicts

Sub-entity members are disqualified from making, participating in the making of, or attempting to influence any decision of the sub-entity that has a reasonably foreseeable material effect on their financial interests.

Financial interests for purposes of this policy are defined by Government Code ~~Section~~ section 87103, and include income, gifts, and indirect or direct interests in business entities, investments, and real property.¹

Rule 6.73 Gifts

Financial interests include gifts as defined by ~~Section 87103 of the~~ Government Code section 87103.² A gift is a payment or other benefit that confers personal benefit where equal value is not provided in return.

- Exceptions include: gifts from close relatives, reciprocal exchanges on holidays, gifts returned unused or donated to charity, and devises or inheritances.
- Financial interests generally include gifts to spouses or dependent children.
- Gifts-As of January 2019, receipt of gifts totaling \$500 or more from a single source within 12 months prior to the decision in question results in disqualification with respect to that source. ~~-(See Footnote 2.)~~

Rule 6.74 Personal Conflicts

Sub-entity members are disqualified when they have a personal nonfinancial interest that prevents them from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions for their respective sub-entity.

The question whether a personal conflict exists is highly fact-specific. Examples of decisions in which a sub-entity member has a personal nonfinancial interest include decisions affecting friends, family, professional/business associates, or organizations or persons to which the sub-entity member owes fiduciary duties or in which they otherwise have an interest, including but not limited to organizations for which the sub-entity member serves as a board member or manager.

Rule 6.75 Disclosure of Conflict

¹ As of January 2019, under Government Code section 87103, a financial interest is any source of income that is received or promised to the sub-entity member and totals more than \$500 in the 12 months prior to the decision in question.

² ~~Government Code section 87103(e) incorporates the California Fair Political Practices Commission's definition/valuation of gifts. As of January 2019, the gift limit is \$500.~~

A sub-entity member required to disqualify himself or herself because of a conflict of interest should initially disclose the conflict to the sub-entity's chairperson and shall:

- (1) Immediately disclose to the sub-entity the fact that he or she has a disqualifying financial or personal interest;
- (2) Withdraw from any participation in the matter;
- (3) Refrain from attempting to influence another sub-entity member; and
- (4) Refrain from voting.

It is sufficient for the purpose of this provision that the member indicate only that he or she has a disqualifying financial or personal interest.

Rule 6.76 Appearance of Conflict

Even where the specific criteria set forth in this policy are not met and a true conflict of interest does not exist, sub-entity members should be sensitive to the appearance of conflict, and should carefully consider whether to participate in a decision-making process in which there may be an appearance of conflict.

Rule 6.77 Mandatory Resignation from Sub-Entity or Elimination of Conflict

If, during any three-month period, a sub-entity member is disqualified under Rule 6.72 or Rule 6.74 from participating in more than 25 percent of the sub-entity's votes, including the votes of any sub-committee on which the sub-entity member sits, the sub-entity member must either eliminate the conflict(s) causing disqualification (for example, through divestment of a financial interest) or resign from membership of the sub-entity.