



# The State Bar of California

## Committee of Bar Examiners Orientation Items

- Criminal Offender Record Information (CORI) Training
- Admissions Overview
- Conflict of Interest
- Legal Authority Governing CBE
- Exam Development & Grading
- Legal Authority Governing Testing Accommodations
- Operations & Management
- Moral Character
- Law School Regulation



# The State Bar *of California*

## Criminal Offender Record Information (CORI)

### Committee of Bar Examiners Orientation

Suzanne Grandt, Attorney, Office of General Counsel



## Learning Objectives

At the end of this training, members will be able to:

- Describe the purpose of the Criminal Offender Record Information (CORI),
- Explain the State Bar's CORI policy,
- Identify the proper use of CORI,
- Follow the user requirements to be an authorized CORI user, and
- Explain how to disseminate, retain and destroy CORI.



## What is CORI?

Criminal Offender Record Information (CORI) contains criminal history information from state or local criminal justice agencies. Information may include, but are not limited to:

- Rap Sheets: arrest/conviction information, charging information, booking numbers, and disposition
- Name, date of birth, physical descriptions and photographs





## Department of Justice (DOJ) Responsibilities

- The California Department of Justice (DOJ), overseen by the California Attorney General, is responsible for regulating CORI.
- Agencies must be authorized by the DOJ to be able to use CORI, which includes dissemination, storage and destruction.





## Restricted Access to CORI

- DOJ regulations prohibit individuals with prior felony convictions from having access to CORI.
- Individuals with misdemeanor convictions, prior arrests, or fugitive warrants will be cleared by the DOJ, but it is within the State Bar's discretion to determine whether access to CORI is appropriate.





## CORI User Requirements

Fingerprinted and have a  
criminal history clearance  
from the DOJ  
(11 California Code  
Regulations § § 703 (d); 707  
(b))

Subject to FBI clearance, for  
those with access to out-of-  
state CORI

Sign appropriate DOJ  
authorization form

Complete CORI training



## CORI User Requirements

- The State Bar has entered into a Subsequent Arrest Notification (“SAN”) Contract for CORI users.
  - this will notify the State Bar of subsequent arrests and convictions
- At the end of CBE tenure, the State Bar will notify the DOJ immediately such that it will no longer receive SAN for the CBE member.





## State Bar Use of CORI

The State Bar:

- Is statutorily authorized to receive and use CORI for admissions, discipline and reinstatement purposes (Business & Professions Code § 6054), and
- Has applied and received approval as an authorized agency for receipt of CORI pursuant to California Penal Code 11105.



## State Bar CORI Policy

It is the State Bar's policy to ensure that employees and officers who have access to CORI:

1. Undergo a fingerprint background record clearance review through the DOJ, and
2. Complete training on the proper handling and storage of CORI.



# Handling CORI

This section of the training will focus on how to handle CORI.

Dissemination  
of CORI

Storage of  
CORI

Retention &  
Destruction of  
CORI



## Dissemination of CORI

CORI is confidential, including the fact that no CORI exists.

DOJ regulations strictly prohibit the unauthorized dissemination of CORI, with the following exceptions.

- May disclose statistical information, provided the identity of the offender is not disclosed.
- May disclose CORI to assist in the apprehension of a person wanted in connection with a crime.
- May disclose CORI in connection with a judicial or administrative proceeding.



## Dissemination of CORI

The State Bar must provide CORI to the individual licensee if the information is used as a basis for adverse licensing decision or certification decision.  
California Penal Code 11105(t)





## Storage of CORI

Store CORI files securely, in a non-portable storage unit, with access strictly limited to authorized persons.

Safeguard CORI at all times.

- Do not share CORI with individuals not authorized to view the information, including:
  - Support Staff
  - Associates/Partners, or
  - Office services (Kinko's, FedEx, etc.)





# Retention and Destruction of CORI

## Retention

- Do not share or release CORI to unauthorized person or entity
- Do not reproduce CORI for other use
- Printing of CORI should be limited
- Do not take CORI records off-site

## Destruction

- Individual employees or officers should not destroy or delete electronic CORI information from Odyssey – the State Bar will have its own process
- If CORI is printed, it must be confidentially shredded



## Consequences of Misuse

- Misuse of CORI is a misdemeanor. (Penal code § § 11142, 13303.)
- Misuse of public records is a felony. (California Government Code 6200.)
- Misuse of CORI may result in a civil action for invasion of privacy. (Civil code § 1798.53.)
- Noncompliance with CORI regulations may result in State Bar's loss of access to CORI.
- Violation of the State Bar's CORI policy and/or procedures may result in employment action, up to and including suspension or dismissal.





## Training Acknowledgement

By signing below, I acknowledge that I received CORI training and that I will abide by the policy and procedures explained in this training. I understand that if I have any questions that were not addressed in training or if I encounter any problems, I will notify my supervisor/manager or the Office of General Counsel.

Name	Date



# The State Bar *of California*

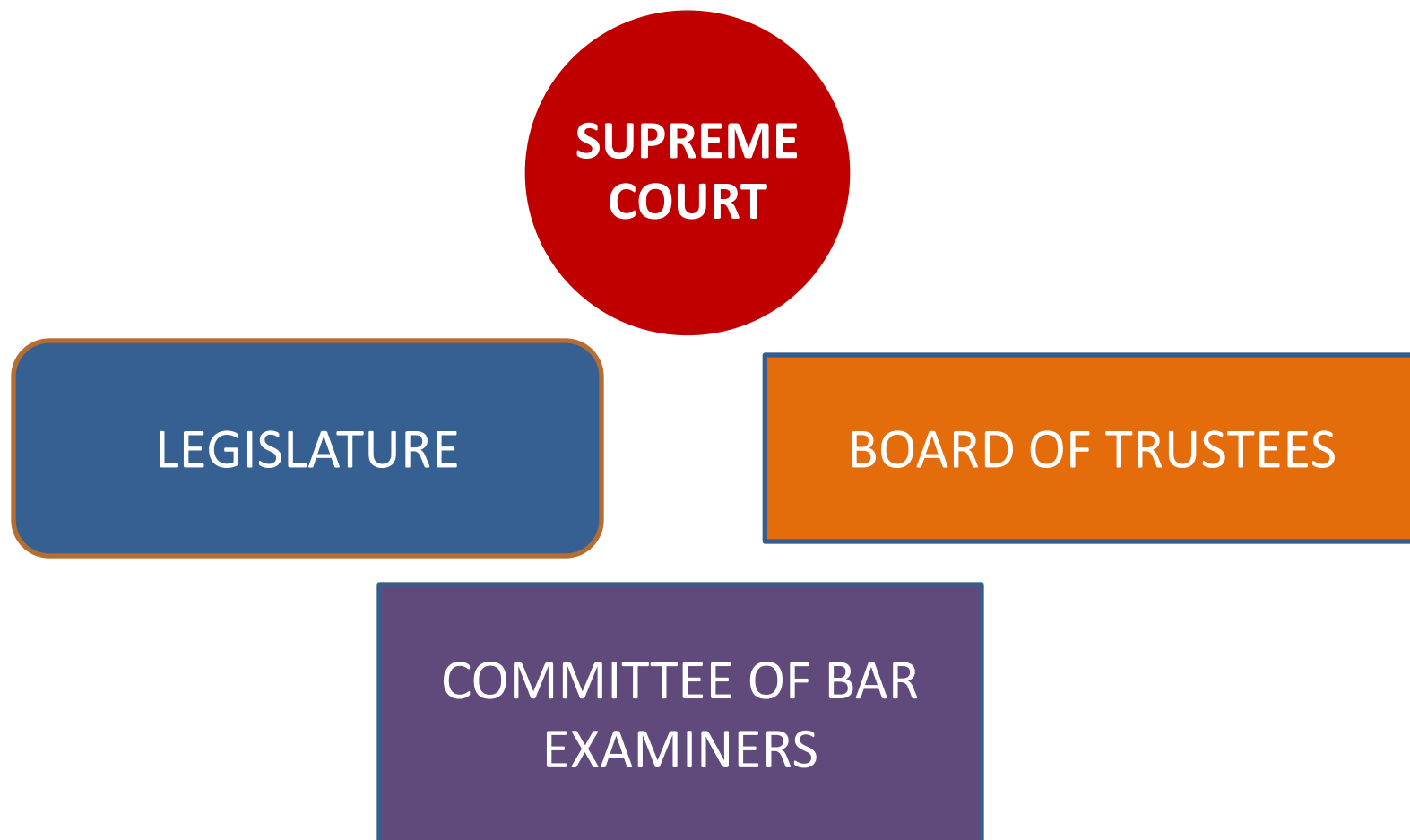
## Office of Admissions

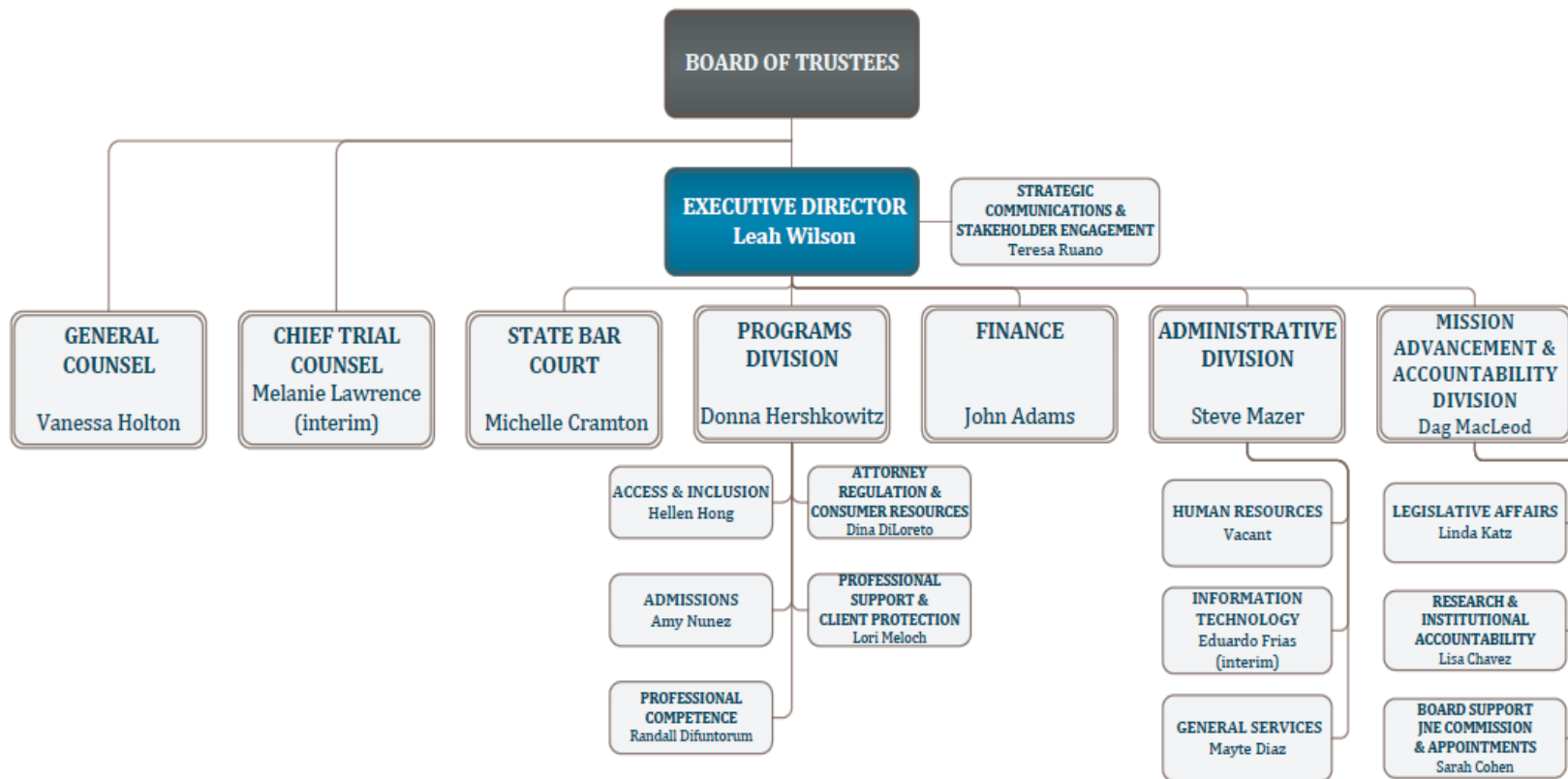
### Committee of Bar Examiners Orientation

Amy Carmen Nuñez, Director



# Entities Overseeing the Work of the Office of Admissions



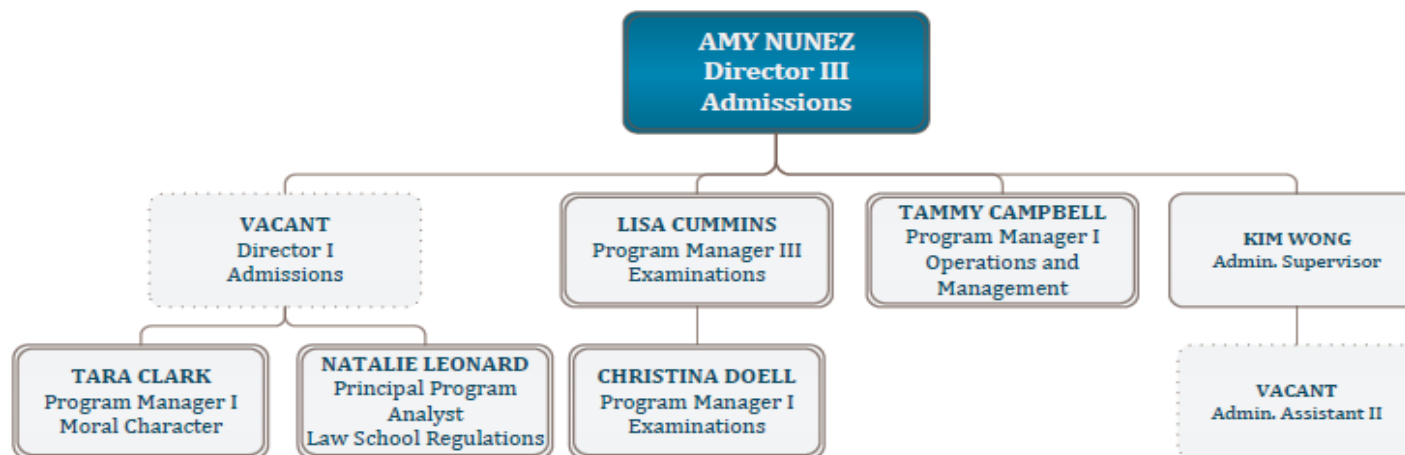




# The State Bar of California

October 11, 2019

## Office of Admissions





# Committee of Bar Examiners

- Consists of 19 Members
  - 10 Lawyers Appointed by Supreme Court
  - 9 Public Members
- Four Year Terms
- Four Committees
  - Educational Standards
  - Examinations
  - Operations & Management
  - Moral Character
- Law School Committees
  - Advisory Committee on California Accredited Law Schools Rules (RAC)
  - Law School Council



# The State Bar *of California*

## Conflict of Interest Statutes and Policies

Caroline Holmes, Assistant General Counsel



## CONFLICTS OF INTEREST

- Committee members are subject to various conflict of interest statutes and policies
  - CBE Conflict of Interest Guidelines
  - Conflict of Interest Code for Designated Employees of the State Bar of California
  - Rules of Procedure of the State Bar, Rule 3101
  - Business & Professions Code §§ 6036 – 6038
  - Portions of the Political Reform Act of 1974
- Violations can carry serious penalties:
  - Personal fines
  - Removal from the Committee
  - Disqualification from holding public office
  - Criminal sanctions





## CONFLICT OF INTEREST POLICIES

- Committee of Bar Examiners Conflict of Interest Guidelines
  - Adopted by CBE
  - Sets forth procedures for determining if recusal from matters before CBE is necessary
  - Restricts certain activities of former CBE members
- Conflict of Interest Code for Designated Employees of the State Bar of California
  - Adopted annually by the Board of Trustees
  - Covers enumerated subentity members, including CBE members



## IDENTIFYING POTENTIAL CONFLICTS

CBE members shall immediately disclose the following to the CBE Chair and Program Director III, Admissions (Amy Nunez):

- Significant family, professional, business, social, political, or other relationship, adversarial or allied, direct or indirect, with an applicant or petitioner
- Any type of current or past relationship with a law school or bar review course (other than as a graduate)

Source: CBE Conflict of Interest Guidelines



## DISCLOSURE

- Committee members must first disclose a conflict when it arises
- “A member required to disqualify himself or herself because of a conflict of interest shall:
  - (1) immediately disclose the interest;
  - (2) withdraw from any participation in the matter;
  - (3) refrain from attempting to influence another member; and
  - (4) refrain from voting.
- It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.”



## DISQUALIFICATION/RECUSAL RELATING TO A SPECIFIC APPLICANT

If, after consultation with the Chair and Program Director III, Admissions, there is a consensus that a past or present association or relationship with an applicant or petitioner could unduly influence a Committee member, or that there could be a *perceived conflict of interest*, the member must recuse himself or herself from all activities that may be associated with the following:

- the processing of an application or petition (e.g., leave the meeting room if a related issue is being discussed, refrain from attempting to influence other members' decisions regarding the applicant)



## DISQUALIFICATION/RECUSAL RELATING TO A SPECIFIC APPLICANT

- an applicant taking an examination administered by the Committee (e.g., the member must recuse himself or herself from all activities that may be associated with the development, administration and grading of the examination that the applicant is scheduled to take and must leave a meeting room if these matters are being discussed)

A committee member who has been disqualified from an activity is *not* precluded from providing information concerning an applicant in the form of providing information in a Confidential Questionnaire.



## PROHIBITED CONTACT WITH LAW SCHOOLS

While serving on the Committee, a member must refrain from personal contact with a law school regulated by the Committee, including accepting meals that are paid by the school

- Exception: meals scheduled in conjunction with a regular visitation to the school, a noticed meeting of a group of law school representatives or when making a presentation to the school on the Committee's activities.

Source: CBE Conflict of Interest Guidelines



## PROHIBITION ON REPRESENTATION

- CBE members shall not:
  - During term of office: represent a party in a matter which involves the regulatory jurisdiction of the State Bar and in which the party's interests are adverse or conflict with the State Bar's regulatory interests.
  - For 6 mos. following end of term: represent a party in a matter which involves the State Bar's regulatory jurisdiction and in which they had supervisory responsibility.
  - Thereafter: represent a party in a matter which involves the State Bar's regulatory jurisdiction and in which they personally and materially participated during their State Bar service, or which involves material confidential information to which they had access.



## RESTRICTION OF ACTIVITIES OF FORMER CBE MEMBERS

- For 12 months after expiration of their term, former CBE members must not:
  - Seek to perform or perform any business with the CBE for monetary gain; or
  - Act as an agent, attorney, or representative, for compensation, by making any appearance or communication before the CBE, State Bar employee, or State Bar Court, for the purpose of influencing official CBE or State Bar action.





## CONFLICT OF INTEREST CODE FOR DESIGNATED EMPLOYEES

- CBE members are deemed “designated employees” by the policy adopted annually by the BOT
- The Code disqualifies CBE members from participating in decisions with a reasonably foreseeable material financial effect on the member, the member’s family, or the member’s financial interests (investments, income sources, etc.)
- The Code requires CBE members to file Statements of Economic Interests (“Form 700s”), disclosing only those financial interests, if any, that result in disqualification under the Code
- The Code prohibits CBE members from accepting honorariums or certain gifts from sources upon which CBE decisions would have a reasonably foreseeable material financial effect



## DISQUALIFICATION UNDER THE CODE

- A CBE member must not make, participate in making, or attempt to influence any CBE decision that he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on:
  - The member or his immediate family
  - Any business entity or real property in which the member has an investment or interest worth \$2,000 or more
  - Any source of income, including gifts, aggregating more than \$500 over the previous 12 months (including community income)
  - Any business entity in which the member is a director, officer, partner, partner, trustee, employee, or manager



## PROHIBITION ON ACCEPTING CERTAIN GIFTS

- A CBE member may not accept an honorarium if the member would be required to disclose it on his or her Form 700 statement (i.e., the member knows or has reason to know that a decision before the CBE would have a reasonably foreseeable material financial effect on the source of the honorarium)
- A CBE member may not accept a gift or gifts valued at more than \$500 if the member would be required to disclose the gift on his or her Form 700 statement (i.e., the member knows or has reason to know that a decision before the CBE would have a reasonably foreseeable material financial effect on the source of the gift)
  - Certain exceptions apply (e.g., gifts from close relatives)



## FORM 700 REPORTING

- Form 700s must be filled out upon assuming office, annually thereafter (by April 1, covering the previous calendar year), and upon leaving office
  - You should have received or will receive forms and instructions from State Bar staff
- You need only report a financial interest (investments, real estate, income sources, business interests, etc.) if, during the reporting period, the financial interest was grounds for your disqualification from a CBE decision (i.e., you knew or had reason to know that the decision would have a reasonably foreseeable material financial effect on the financial interest)
  - Often, CBE members will simply report that they have nothing to report



## FORM 700 REPORTING

- Form 700s are subject to public information requests
  - You may choose to use the State Bar's contact information or your business contact information rather than your personal contact information



## CONTRACTS

- “[Covered individuals] shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” (Gov. Code §1090.)
- One conflict can disqualify the entire board. (*Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655.)



# The State Bar *of California*

## Legal Authorities Governing the Committee of Bar Examiners

Caroline Holmes, Assistant General Counsel



## THE CALIFORNIA SUPREME COURT

- **The Supreme Court of California has the inherent power to admit persons to practice law in California.**
  - The State Bar serves as the administrative arm of the Court for admissions matters and acts under the authority and at the direction of the Court.
  - The CBE, acting under authority delegated to it by the BOT, is authorized to administer the requirements for admission, examine applicants for admission, and certify to the Court for admission applicants who fulfill the admission requirements.

(Rule of Ct. 9.3; Bus. & Prof. Code § 6046; *In re Rose* (2000) 22 Cal.4th 430; *Obrien v. Jones* (2000) 23 Cal.4th 40, 48; *In re Attorney Discipline System* (1998) 19 Cal.4th 582.)





## THE CALIFORNIA SUPREME COURT

- The Supreme Court appoints 10 members to the CBE, each for a four-year term.
  - At least one must be a judicial officer of California.
  - The rest are licensed California attorneys.
  - At least one of the attorneys shall have been admitted to practice law within three years of their appointment.
- The Court may reappoint a member to serve no more than three additional full terms, and may fill any vacancy.
- The Court must make its appointments from a list of candidates nominated by the BOT pursuant to a procedure approved by the Court.

(Rule of Ct. 9.4; Bus. & Prof. Code § 6046.)



# THE CALIFORNIA SUPREME COURT

“All State Bar rules adopted by the State Bar Committee of Bar Examiners pertaining to the admission to practice law must be approved by the Board of Trustees and then submitted to the Supreme Court for its review and approval.”

(Rule of Ct. 9.5.)



## THE LEGISLATURE

- “The California Supreme Court has respected the exercise by the Legislature, under the police power, of a reasonable degree of regulation of the legal profession and practice of law in this state.” (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 585.)
- The Legislature created the State Bar, a public corporation, with the enactment of the State Bar Act of 1927 (codified at Bus. & prof. Code §§ 6000 *et seq.*)
  - Bus. & Prof. Code § 6046 allows the State Bar Board of Trustees to establish the Committee of Bar Examiners.



## THE LEGISLATURE

- Bus. & Prof. Code §§ 6066 and 6046.5 require that the CBE have 9 public members (in addition to the 10 members appointed by the Court) who have never been licensees of the State Bar or admitted to practice before any court in the United States, each for a four-year term.
  - Three shall be appointed by the Senate Rules Committee;
  - Three shall be appointed by the Speaker of the Assembly; and
  - Three shall be appointed by the Governor.
- The public members shall have the same rights, powers, and privileges as any attorney member except that such a member shall not participate in the drafting of questions submitted to applicants on the California bar examination.



## THE LEGISLATURE

- The State Bar is governed by the BOT, which is charged with the executive function of the State Bar and the enforcement of the State Bar Act.
- The BOT is empowered to formulate and declare rules and regulations necessary or expedient to carry out the Act.
- The BOT may establish the CBE, having the power to:
  - (1) Examine all applicants for admission;
  - (2) Administer the requirements for admission; and
  - (3) Certify to the Court for admission applicants meeting all admission requirements.

(Bus. & Prof. Code §§ 6010, 6025, 6030, 6046.)



## THE LEGISLATURE

- Subject to the approval of the BOT, the CBE may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications for admissions. (Bus. & Prof. Code § 6047.)
- On November 4, 1981, the BOT passed a resolution declaring that the CBE must comply with all BOT policies, including but not limited to contract, fiscal, and grant policies, and personnel-related policies.



## THE STATE BAR

- All State Bar Committees have only the powers, duties and authority delegated to them by the BOT and are subject to its supervision and control. The BOT reserves authority over all matters pertaining to the State Bar.
- Unless expressly authorized by the BOT or Rules of the State Bar, a Committee must not:
  - act or speak, or purport to act or speak, for the State Bar;
  - make any public communication on behalf of the State Bar; or
  - poll or put to the vote of all or a substantial number of licensees any matter on which the State Bar has acted or is empowered to act.

(State Bar Rules 6.20 and 6.21.)



# The State Bar *of California*

## Office of Admissions Examination Development and Grading

### Examination Development

- California Bar Examination
- First-Year Law Students' Examination

### Examination Grading

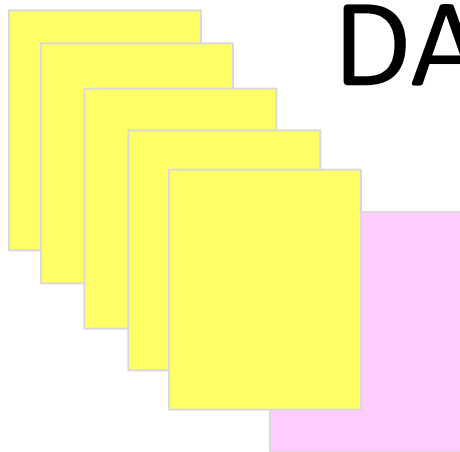
Lisa Cummins, Program Manager III, Examinations  
Christina Doell, Program Manager I, Examination Grading





# California Bar Exam

## DAY 1



5, One-Hour Essay Questions  
1, 90-Minute Performance Test

## DAY 2



200 Multiple-Choice Item  
Multistate Bar Examination  
(MBE) – proprietary to the  
National Conference of Bar  
Examiners (NCBE)



# Scope of Subjects Tested on the CA Bar Exam

- |                                  |                                  |
|----------------------------------|----------------------------------|
| 1. Business Associations         | 7. Evidence *                    |
| 2. Civil Procedure *             | 8. Professional Responsibility # |
| 3. Community Property            | 9. Real Property                 |
| 4. Constitutional Law            | 10. Remedies                     |
| 5. Contracts                     | 11. Torts                        |
| 6. Criminal Law and<br>Procedure | 12. Trusts                       |
|                                  | 13. Wills and Succession         |

\* Federal and California Rules/Code

# ABA and California Rules



# CA Bar Exam Essay Question and Performance Test (PT) Development

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graph LR; A[Question and PT Drafting] --> B[Question and PT Editing]; B --> C[Question and PT Pretesting]; C --> D[Question and PT Banking];
```

Question  
and PT  
Drafting

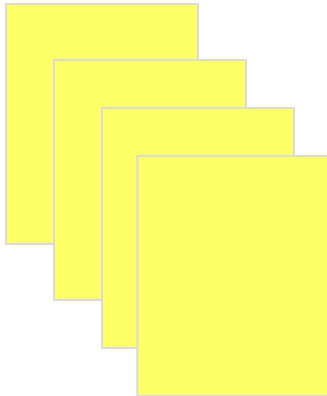
Question  
and PT  
Editing

Question  
and PT  
Pretesting

Question  
and PT  
Banking



# First-Year Law Students' Exam ("Baby Bar")



**AM-1**

4, One-Hour Essay Questions



**PM-2**

100 Multiple-Choice Item  
Examination  
(proprietary to the  
State Bar of California)



## **Scope of Subjects Tested on First-Year Law Students' Exam**

1. Contracts
2. Criminal Law
3. Torts



# First-Year Law Students' Exam Essay Question Development





## CA Bar Examination Grading

- Anonymity of Applicants – use of code numbers
- Logistics - return of materials from test centers and download from ExamSoft, assembly of answers
- Graders – active CA attorneys in Greater SF Bay Area; 6 separate grading groups of 12 each, one for each exam question; supervised by Examination Development & Grading (EDG) Team Member
- Pre-Grading Research
- Calibration – 3 calibration meetings
- Grading – 3 phases (First Read, Second Read, Resolution); 1440 scaled pts. to pass; 1390-1439 to Second Read; if any question has 10+ raw points discrepancy between reads, to Resolution
- First-Year Exam – 4 grading groups of 3 graders each, led by 1 EDG Team Member; only 2 phases of grading – First Read and Reappraisal



## Why it takes so long to grade the California Bar Examination

- Large number of applicants
  - ➔ approx. 9,500 in July
  - ➔ approx. 5,500 in February
- Volume of answer files to download and assemble
  - ➔ 6 answers x 9,500 = 57,000 (July)
  - ➔ 6 answers x 5,500 = 33,000 (February)
- In order to ensure calibration of graders, limit number of graders to 12 per grading group
- Three phases of grading





# CA Bar Exam Essay Question and Performance Test (PT) Development

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graph LR; A[Question and PT Drafting] --> B[Question and PT Editing]; B --> C[Question and PT Pretesting]; C --> D[Question and PT Banking];
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Question  
and PT  
Drafting

Question  
and PT  
Editing

Question  
and PT  
Pretesting

Question  
and PT  
Banking



# The State Bar *of California*

## Legal Authorities Governing Testing Accommodations

Overview of the Americans with Disabilities Act (“ADA”)

Caroline Holmes, Assistant General Counsel



## TITLE II OF THE ADA

- Title II of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.
- Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, regardless of whether these entities receive Federal financial assistance.

(42 U.S.C. §§ 12131, *et seq.*)



## TITLE II OF THE ADA

- “Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.” (42 U.S.C. § 12189.)
- The term “person” includes State and local government entities such as the State Bar, BOT, and CBE. (*D'Amico v. N.Y. State Bd. of Law Examiners* (W.D.N.Y. 1993) 813 F.Supp. 217, 221.)



## TITLE II – WHAT CONSTITUTES A DISABILITY?

- The term “disability” is defined as:
  - a physical or mental impairment that substantially limits one or more major life activities;
  - a record of such an impairment; or
  - being regarded as having such an impairment.
- The term “disability” is interpreted in favor of broad coverage of individuals.



## TITLE II – “SUBSTANTIALLY LIMITS”

- The term “substantially limits” is also construed broadly in favor of expansive coverage.
- Determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication or hearing aids.



## TITLE II – “MAJOR LIFE ACTIVITY”

- The term “major life activity” includes self-care, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working.
- It also includes major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.



## TITLE II REGULATIONS – “BEST ENSURE” STANDARD

Entities offering examinations must “assure that ... [t]he examination is selected and administered so as to **best ensure** that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual or speaking skills....”

(28 C.F.R. § 36.309.)





## TITLE II REGULATIONS – REASONABLE DOCUMENTATION

- Any request for documentation must be reasonable and limited to the need for the accommodation.
- When considering requests for accommodation, the entity should give considerable weight to documentation of past accommodations in similar testing situations.
- The entity should respond in a timely manner to requests accommodations to ensure equal opportunity for individuals with disabilities.

(28 C.F.R. § 36.309.)



## TITLE II REGULATIONS – FORM OF ACCOMMODATION

- Required modifications to an examination may include:
  - changes in the length of time permitted for completion of the examination;
  - adaptation of the manner in which the examination is given; and/or
  - appropriate auxiliary aids.
- UNLESS doing so would “**fundamentally alter** the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden.”

(28 C.F.R. § 36.309.)



## CASE LAW – *ENYART v. NCBE*

- An applicant with blindness was granted preliminary injunction to use JAWS (screen reader software) and ZoomText on the MBE portion of the Bar Exam.
- NCBE argued that the ADA only requires them to provide “reasonable accommodations,” and that their offered accommodations of a live reader, audio CD of the test questions, braille version of the test, and/or CCTC with a hardcopy version in large font were reasonable.



## CASE LAW – *ENYART v. NCBE*

- The Ninth Circuit deferred to the DOJ's interpretation of the ADA and held that the “**best ensure**” standard means test entities must administer the exam “so as to best ensure” that exam results accurately reflect aptitude rather than disabilities.
- “Because the accommodations provided by NCBE will not permit Enyart to take the exam without severe discomfort and disadvantage, she has demonstrated the test is not “accessible” to her, and that the accommodations [offered by NCBE] therefore are not ‘reasonable.’”



## CASE LAW – *ENYART v. NCBE*

“Assistive technology is not frozen in time: as technology advances, testing accommodations should advance as well.”

(*Enyart v. NCBE* (9th Cir. 2011) 630 F.3d 1153.)



## CASE LAW – *ELDER v. NCBE*

- An applicant with blindness who passed the Maryland Bar Exam with a live reader filed for an injunction for the use of JAWS on the California Bar Exam.
- Relying on *Enyart*, the United States District Court for the Northern District held that JAWS would “best ensure” that Elder’s performance on the California Bar Exam would accurately reflect his abilities rather than his visual impairment.

*(Elder v. NCBE* (N.D. Cal., Feb. 16, 2011, No. C-11-00199-SI) 2011 WL 672662.)



## CONSENT DECREE – *DFEH v. LSAC*

- In 2012, DFEH sued LSAC (the entity that administers the LSAT) alleging LSAC's process for considering TA requests violated the ADA by:
  - imposing onerous documentation requirements on applicants;
  - denying requests for reasonable accommodations; and
  - providing different and less desirable score reports to test takers who received additional test time.
- The DOJ intervened in the lawsuit, which expanded the case into a national class action suit.



## CONSENT DECREE – *DFEH v. LSAC*

- In 2014, LSAC entered into a consent decree requiring it to pay \$8.73 million and to adopt reforms to:
  - end its practice of “flagging” LSAT scores for test takers who received extended time;
  - streamline its review of accommodation requests by automatically granting accommodations that a candidate shows they previously received for a standardized exam (such as the SAT, ACT, or GED);
  - implement additional best practices as recommended by a panel of experts.

(*DFEH v. LSAC* (N.D.Cal., 2012) 896 F.Supp.2d 849.)





## CONSENT DECREE – *DFEH v. LSAC*

- LSAC filed an appeal against most of the Best Practices Panel Report, but the Court’s 2015 order upheld the Report.
- In March 2018, the Court granted DFEH’s motion for contempt, finding that LSAC had:
  - responded to accommodation requests with “50% emails” (*i.e.*, partial grants) in violation of the consent decree requirement that LSAC automatically grant previously approved accommodations;
  - failed to keep accurate internal records regarding whether requests were granted in full or denied; and
  - failed to provide DFEH with reasonable access to records.
- The order extended the nationwide settlement, set to expire on May 29, 2019, to May 29, 2020.



## CASE LAW – *Bibber v. Nat'l. Bd. Of Osteopathic Med. Examiners*

- Bibber requested extra testing time for licensing exam
  - Bibber had history of receiving accommodations from high school to medical school
  - However, Bibber took the GRE and MCAT without accommodations and received “average” scores
- Whether an impairment substantially limits performance in a major life activity must compare the individual’s abilities to those of **most people in the general population**, not to academic peer group or to other test-takers who are not representative of the general population.



## CASE LAW – *Bibber v. Nat'l. Bd. Of Osteopathic Med. Examiners*

The Court found that Bibber's dyslexia did not substantially limit her ability to read or process information as compared to the general population. Thus, she is not disabled under the ADA.

*(Bibber v. Nat'l. Bd. of Osteopathic Med. Examiners* (E.D. Pa. 2016) 2016 WL 1404157.)



## CASE LAW – *Black v. Nat’l. Bd. of Med. Examiners*

- The Court held that a medical student with ADHD was not entitled to additional time to take a Board examination.
  - ADHD did not substantially limit the student's ability to learn, to read, to remember, or to concentrate in comparison to the average person.
  - Black's record consistently revealed average or above-average performance without the accommodation of extra time.
- To qualify for an accommodation, a person must demonstrate that a disorder “substantially” limits her in comparison to “most people in the general population.”

*(Black v. Nat’l. Bd. of Med. Examiners (M.D. Fla. 2017) 281 F.Supp.3d 1247.)*



## PROHIBITION ON PROCEDURAL BARRIERS

“A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.”

(28 CFR 35.130(f).)



## CASE LAW – PROHIBITION ON PROCEDURAL BARRIERS

- School board's mandate that a student obtain insurance and extra vaccinations for their service animal was a "surcharge" for an accommodation prohibited by the ADA. (*Alboniga v. School Bd. of Broward Cnty.* (S.D. Fla 2015) 87 F.Supp.3d 1319.)
- \$6.00 biennial fee for disability parking placards was a "surcharge" for an accommodation prohibited by the ADA. (*Dare v. California* (9th Cir. 1999) 191 F.3d 1167.)



## Basic Timeline for Testing Accommodation for the California Bar Examination

Petition Filed	Decision Made	Applicant Appeals
<ul style="list-style-type: none"><li>• Applicant Request</li><li>• Appropriate Documentation</li><li>• Verifications</li></ul>	<ul style="list-style-type: none"><li>• Grant</li><li>• Deny</li><li>• Modified Grant</li></ul>	<ul style="list-style-type: none"><li>• Staff/Committee</li><li>• Grant</li><li>• Deny</li><li>• Modified Grant</li></ul>

- Examples of Accommodations Granted by the State Bar: Extra time; private or semi-private room; permission to dictate to a typist; special versions of the examination questions, *e.g.*, Braille, large print, or audio recording to use with Screen Reader or Speech-Recognition software.



# The State Bar *of California*

## Office of Admissions Operations and Management

### Overview of Eligibility and Examination Administration

Tammy Campbell, Program Manager





## **Areas of Responsibility**

### **1. Eligibility**

Registration   Exam Applications   Law Office Study

### **2. Special Admissions**

- Foreign Legal Consultants
- Registered In-House Counsel
- Registered Legal Aid Attorney
- Military Spouse Attorney's
- Pro Hac Vice
- Practical Training of Law Students
- Out-of-State Attorney Arbitration Council



## Legal Education Qualification

- JD Degree from an ABA-Approved or California-Accredited Law School
- 4 Years of Law Study from a recognized Unaccredited Law School, Law Office Study or Distant Learning Program
- Foreign-Educated Students who possess a 1<sup>st</sup> degree in law
- Attorney admitted in any state or country with proper documentation to confirm their admission to their jurisdiction



### 3. Examination Administration

- Processing of all fees collected
- Securing contracts for all test facilities
- Ordering of all exams, including the Multistate Bar Exam (MBE) from the National Conference of Bar Examiners
- Preparation of all exam materials and supplies
- Coordinating event set-up at each test center
- Shipment of all exams/supplies to test centers
- Proctor training
- Admissions Mailroom



# BAR EXAM ADMINISTRATION

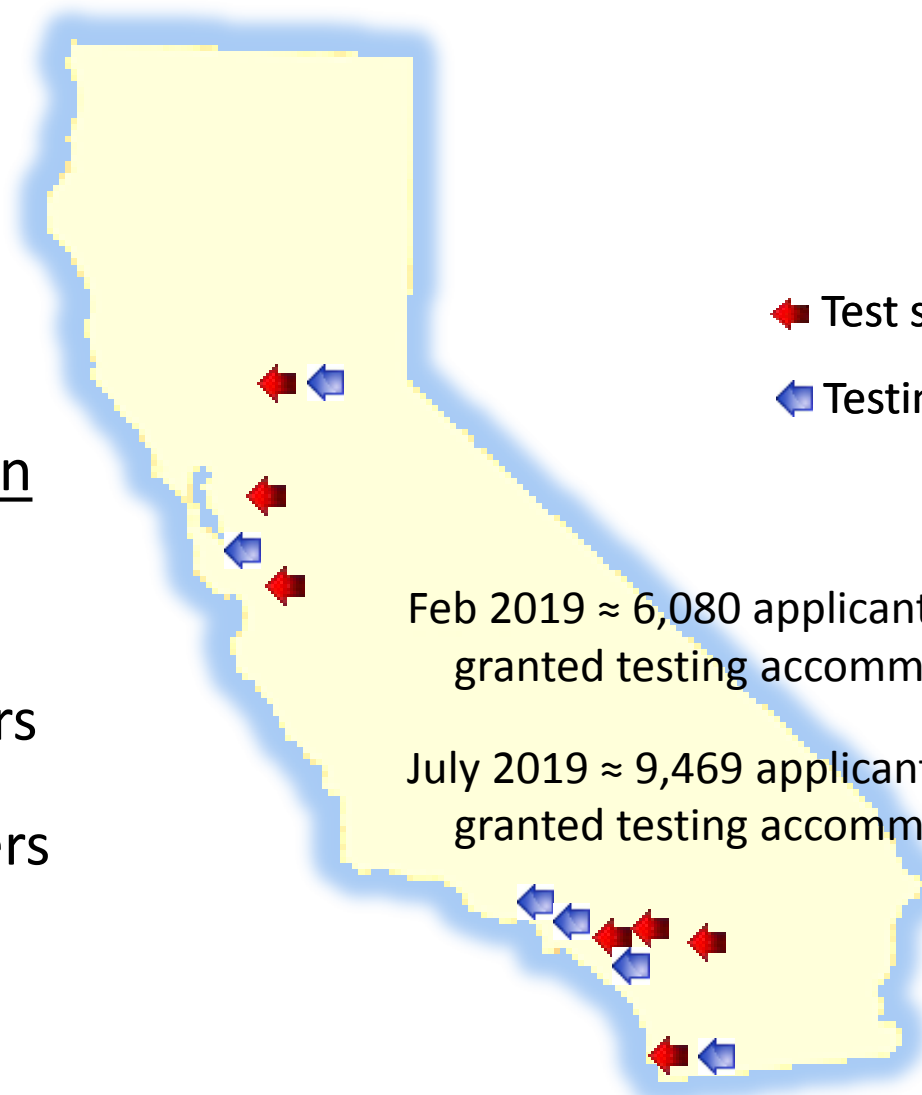
## Each Administration

- 10-12 Facilities
- 12-16 Test Centers
- 5-6 TA Test Centers

← Test sites  
← Testing Accommodations

Feb 2019 ~ 6,080 applicants; 449 applicants granted testing accommodations

July 2019 ~ 9,469 applicants; 637 applicants granted testing accommodations





## BAR EXAM ADMINISTRATION

- Examinations are taken on a laptop or written by hand
- Security is of utmost importance. This includes the test center as a whole, as well as the security of the exams themselves
- Items allowed at the test center are different during the MBE session compared to the CA portion of the exam



## Chapter 6 Notice of Violations

Chapter 6 of the Admissions Rules pertains to the conduct of applicants at the examination. 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 as a Chapter 6 Notice of Violation of Examination Rules or Policies. In extreme cases, it may require dismissal from the examination test center.



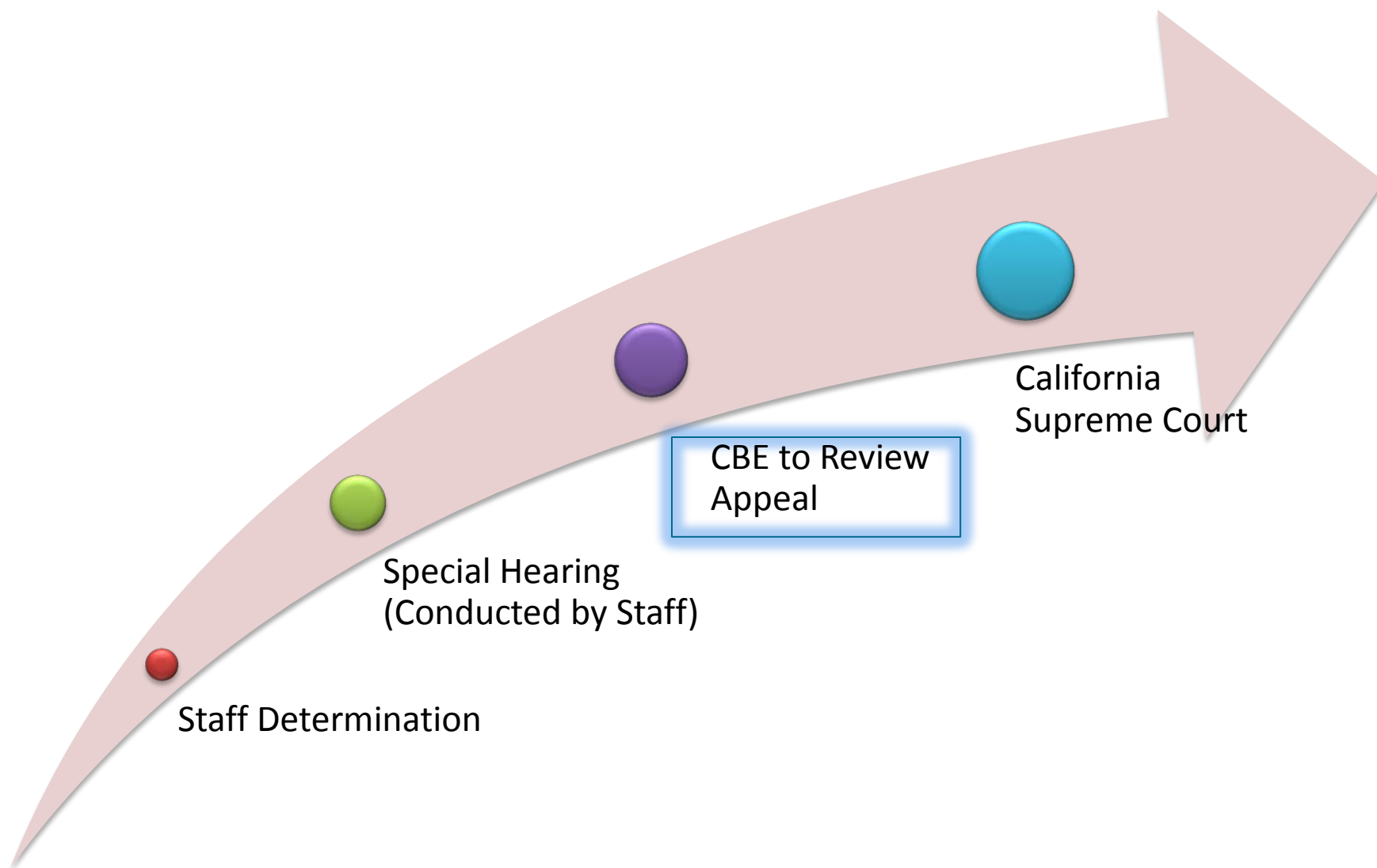
# Chapter 6 Notice of Violations

## Common Chapter 6 Violations

- Possession of a cell phone, or any other electronic or digital style device in the examination room
- Submitting examination answers that do not comply with examination instructions and rules
- Observed writing, typing, erasing, or marking after the instruction to “Stop Writing/Typing” is announced
- Other various reasons including cheat sheets/notes, petitioning for religious headwear after the final filing deadline, etc.



## Chapter 6 Notice Appeals Process







# The State Bar of California

## Office of Admissions Moral Character

### Overview of the Moral Character Determination Process

Tara Clark, Program Manager





# Moral Character Determinations

Committee of Bar Examiners

Moral Character: Program Manager,  
Staff Attorney, Program Supervisors,  
Investigators, Administrative Assistant

Pre-Processing: Program Supervisor,  
Program Assistants, Sr.  
Administrative Assistants



## Moral Character Definition

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.

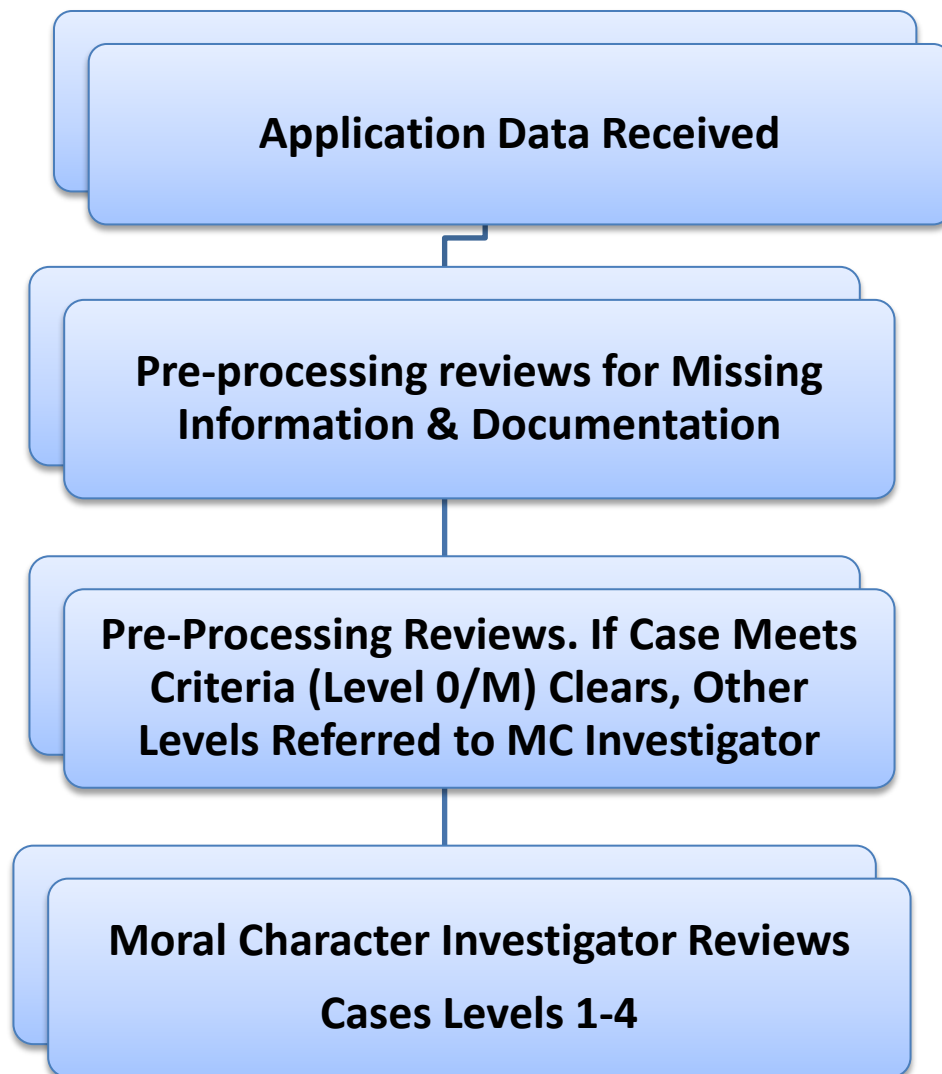


# Moral Character Application

- Education
- Residence History – past eight years
- Self-Employment/Employment History – since 18 years old
- Military Service
- Credentials and Licenses
- Complaints and Professional Discipline
- Civil and Administrative Proceedings
- Scholastic Discipline
- Convictions
- Bondedness, Discharge of Obligations & Indebtedness



# File Processing Flow Chart





# Moral Character Department





## Application Levels (Examples)

### Level One

- Juvenile Misdemeanors
- Vehicle Code Infractions
- Bankruptcy – No Obj.

### Level Two

- Misdemeanors
- Failure To Appear
- Job Terminations
- Minor College Infractions
- Complaint Against Attorney - Dismissed

### Level Three

- DUIs
- Military Discipline – Moral Turpitude
- Other Professional Discipline
- Fraud Accusations
- Major Undergrad. Discipline

### Level Four

- Felony Conviction
- Drug Sales
- 2+ DUIs w/in 5 years
- Law School Honor Code Violation
- Court Sanctions
- Bankruptcy w/adversary proceeding



# Substance Dependence or Abuse Patterns

## Commonly Disclosed Incidents

- DUI Convictions
- Drunk in Public Citations
- Minor in Possession of Alcohol
- Drug Convictions

## Resources

- Lawyers Assistance Program - **877-LAP-4HELP/877-527-4435** or [LAP@calbar.ca.gov](mailto:LAP@calbar.ca.gov). From the State Bar's website:

*The State Bar's Lawyer Assistance Program (LAP) is here to help. We help lawyers, State Bar applicants, and law students who are grappling with stress, anxiety, depression, substance abuse or concerns about their career.*

*We promise confidentiality – we release no information about your participation in the program without your knowledge or consent.*

***Participation is confidential as mandated by Business and Professions Code §6234.***

- The Other Bar, Alcoholics Anonymous, Narcotics Anonymous





# Moral Character Investigator Review

## Level 1/Minor Level 2

- Clearable

## Serious Levels 2/3

- Further Investigation
- Letters to Applicants/Others
- Investigator Clears Level 2 or Refers to Program Supervisor
- Program Supervisor May Refer to Program Manager

## Serious Levels 3/4

- Further Investigation
- Files Referred to Program Manager
- Clearable by Program Manager, or
- Referred for Informal Conference



## Decisions After An Informal Conference

### Positive Determination

- Valid for 3 years
- An extension application may be submitted before the positive determination has expired

### Re-Refer for Further Investigation

- Collect additional information requested by panel members
- OCTC Review

### Abeyance

- Examples - anger management, LAP, MCLE, Ethics School, CTA School
- If the applicant fails to complete the terms of abeyance, back to staff
- If the applicant successfully completes abeyance, the file is administratively cleared by staff or referred for another informal conference (if required)

### Negative Determination

- Standard denial is for 2 years
- Application may request an administrative review by the CBE
- Applicant may appeal the decision to State Bar Court Hearing Dept.
- Party who does not prevail may appeal to SBC Review Dept.
- Party who does not prevail may appeal to the CA Supreme Court



## Moral Character Appeals (De Novo Review)





## Current Initiatives

### Moral Character Working Group

- Third meeting scheduled for 10/23/2019 in San Francisco
- End products:
  - Revised Statement and Guidelines to replace Moral Character Statement and Factors
  - Moral Character mission statement – to be included in the Statement and Guidelines
  - Decisional Matrix to increase transparency and assist staff

### SB544

- Goes into effect on January 1, 2020
- Staff is currently reviewing and revising all of the following for compliance
  - Instructions, Applications, and Forms
  - Protocols and Protocols



# The State Bar of California

## Office of Admissions Law School Regulation

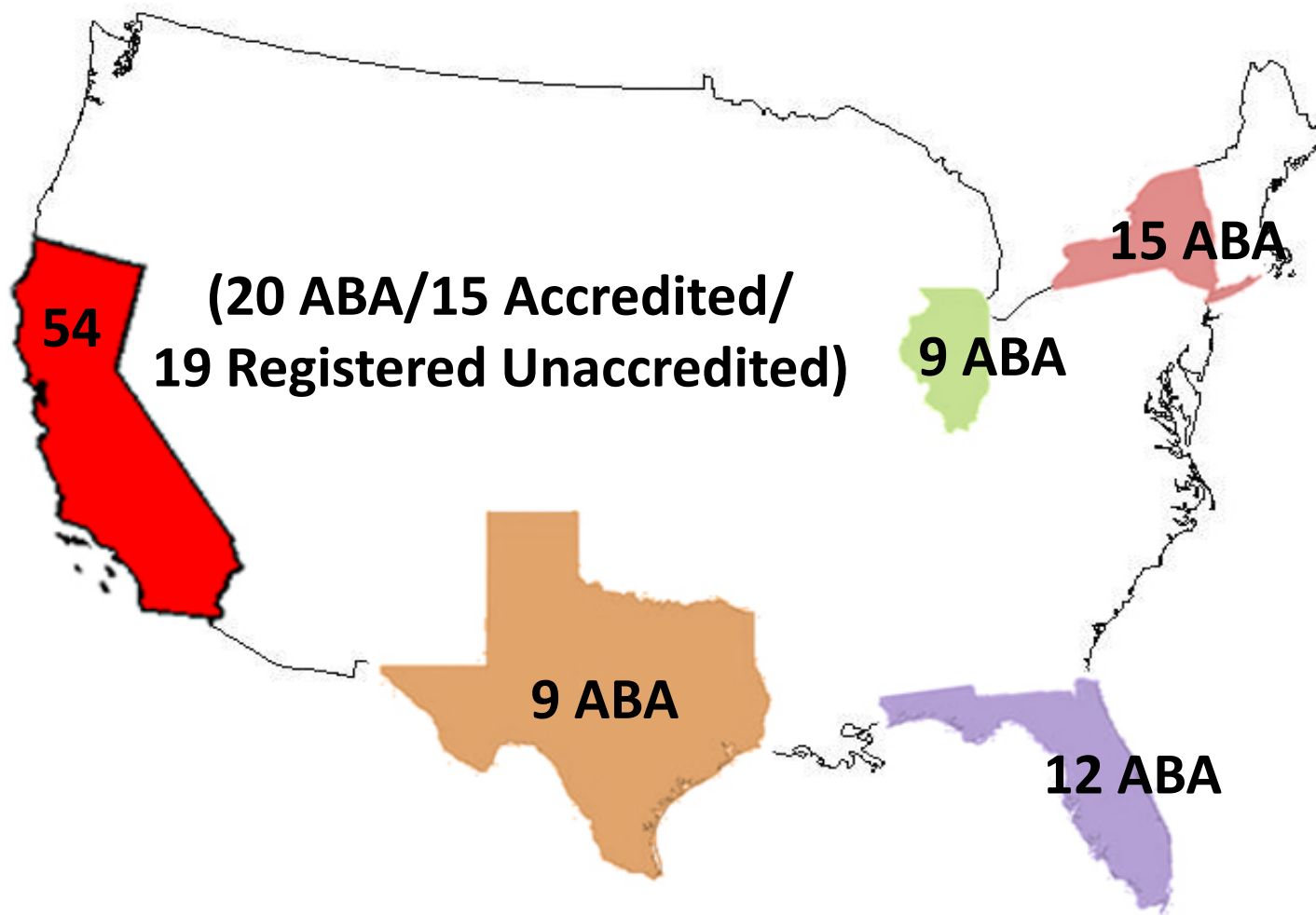
### Educational Standards - Accreditation & Registration

- Rules & Guidelines (Accredited & Registered)
- Inspections (Periodic, Interim, Accreditation & Registration)
- Annual Reports (Accredited & Registered)

Natalie Leonard, Principal Program Analyst



## U.S. Law School Comparison





# Accreditation Options in California Today

- **ABA Approved Schools (20)**
  - Approved and regulated by ABA Section of Legal Education and Admissions to the Bar
- **Committee of Bar Examiners Registered & Accredited Schools**
  - Registered, Unaccredited Schools (19)
    - Subject to the Committee's Rules and Guidelines for Registered Law Schools
    - Students must pass First Year Law Students' Exam
  - California Accredited Schools (15)
    - Subject to Committee's Rules and Guidelines for Accredited Law Schools
      - Minimum Bar Passage Enhanced Curriculum
  - Under Development: Deemed Accredited Status for Schools approved by Regional or National Accreditors



# Key Requirements for Registered, Unaccredited Schools

- **Five-Year Periodic Inspection**
  - State Bar Staff or Consultant, Dean from another law school, Committee Member
- **Annual Report (November 15)**
- **Disclosures**
  - **Student Pre-Enrollment Disclosures**
  - **California Business & Professions Code Section 6061.7(a) Disclosures (January)**
  - **Major Changes or Waivers as Needed**
- **Students must pass the First Year Law Students' Examination within 3 administrations in order to continue study – consumer protection measure**





## Key Requirements for Accredited Schools

- **Comply with Rules and Guidelines for Accredited Law Schools**
- **Five-Year Periodic Inspection**
  - Team includes State Bar, Committee, and Peer Deans
- **Annual Report (November 15)**
- **Disclosures**
  - **Student Pre-Enrollment Disclosures**
  - **California Business & Professions Code Section 6061.7(a) Disclosures on Website**
  - **Major Changes or Waivers as Needed**
- **School must maintain Minimum Cumulative 5-Year Bar Passage Rate of 40% or more**



## Law School Engagement Today

- **Law School Assembly**
  - All California Law Schools
- **Law School Council (LSC)**
  - 7 ABA Deans
- **Committee on State Bar Accredited and Registered Schools (CSBARS)**
  - 3 Deans, Accredited Law Schools, 2 Deans, Registered Law Schools, 2 Members Appointed by the Committee
- **E-Newsletter**

Published Quarterly (May, August, November, February)
- **Registrars' Meeting**
  - Not held in 2019 to allow for CAPA Bar Study Update Meeting



## Other Current Issues in Accreditation

- **Amendments to the Rules and Guidelines for Accredited Schools now allow accreditation of qualifying online J.D. Programs**
  - **Applications have started to arrive and will be presented to the Committee in future meetings**
- **Review of Current Rules/Guidelines in process**
  - **Project includes creation of a modified Deemed Accredited Status for law schools that are accredited by a regional or national accreditor**
  - **Project includes a review of Major Change Guidelines requested by the Committee of Bar Examiners**