



The State Bar of California

AGENDA ITEM

MAY 10 – Tuesday, April 14, 2020, Open Session Minutes

Regular Meeting of the Board of Trustees

The State Bar of California
Teleconference via Zoom

Tuesday, April 14, 2020
11:00 a.m.

Time meeting commenced: 11:04 a.m. [The Board convened in Closed Session at 11:56 a.m., adjourned Closed Session at 1:44 p.m., and reconvened in Open Session at 1:48 p.m.]

Time meeting adjourned: 1:51 p.m.

Chair: Alan Steinbrecher

Acting Secretary: Dag MacLeod

Members present: Mark Broughton, Hailyn Chen, José Cisneros, Juan De La Cruz, Sonia Delen, Ruben Duran, Chris Iglesias, Renée LaBran, Debbie Manning, Joshua Perttula, Sean SeLegue, Brandon Stallings

Members joined in progress: n/a

Members absent: n/a

Chair's Report:

At the outset of the meeting, the Chair provided the following background:

The Committee of Bar Examiners took extensive public comment on the subject of the bar exam at their meeting on March 30, 2020; received written comment after the meeting; and considered additional written comment for its April 10, 2020, meeting. All of the input informed and shaped the Committee of Bar Examiners' discussion. For today's meeting, the Board invited the submission of written comment. Twenty-four individuals submitted written comment and a petition was also received on behalf of 1,300 law students, professors, and licensed attorneys.

All of the input was shared with the Board and will be considered as part of the Board's deliberations. The Chair explained that although the public notice of the meeting indicated that no oral public comment would be taken, it was subsequently decided that the Board will entertain limited oral public comment as time allows. Balancing the urgency and importance of the issue to provide public comment and the Board's need for adequate time to deliberate, the Chair limited individual comment to two minutes.

Public Comment:

Stephano Medina: Mr. Medina spoke from the perspective of the certified clerk program that many provisional licensing programs are based on. According to Mr. Medina, provisional license proposals were not designed for emergencies requiring graduates to enter into the practice of law with a basic level of competency, but rather as an educational program designed to provide close attorney supervision. Mr. Medina asserted that the onerous attorney supervision requirements associate with provisional licensing are justified because the exam is merely postponed. In this environment, claims Mr. Medina, it would be irresponsible to consider a new exam date in 2020, or even 2021. Mr. Medina believes that there is no reason to insist on an exam requirement when many other options are available, such as the pro bono program being considered in Pennsylvania or the program being considered in New York that would eliminate the exam requirement after a period of time in practice. Mr. Medina believes that the most responsible decision is to license graduates to practice law with the broadest possible discretion, giving clarity and certainty to graduates and employers alike; and then spend time carefully developing the competency requirements.

Pilares Contrias: Ms. Contrias spoke on behalf of a coalition of 1,400 students, law professors, recent alumni, and practitioners advocating for diploma privilege. The coalition disagrees with Utah's proposal to the extent it benefits only a small percentage of graduating third-year law students and leaves out individuals who have taken time off between school and practice. The coalition also disagrees with provisional licensing adopted by east coast states as disruptive to legal careers and the public good. Ms. Contrias urged the Board to question why a robust consideration of diploma privilege is lacking in most conversations regarding alternatives to the bar exam. The coalition maintains a steadfast commitment to diploma privilege, but asserts that there are numerous opportunities to be creative, (i.e., a Utah program similar in method but wider in scope to cover more of California's graduates), or a provisional licensing scheme that drops the exam requirement in lieu of some form of supervised practice.

Donna Saadati-Soto: Ms. Saadati-Soto, a third-year law student at Harvard Law School seeking admission to practice in California, discussed Utah's pathway to licensing (diploma privilege plus), which does not include an examination requirement but requires the completion of 360 hours of supervised practice by the end of 2020. Ms. Saadati-Soto believes the Utah model will not work for California because Utah defines recent graduates as members of the class of 2019 or 2020 whereas California is a larger state with different needs; 360 hours of supervised practice is too much to complete by December 2020; and the Utah threshold for diploma privilege is set at law schools with first-time passage rate of 86 percent. According to Ms. Saadati-Solo, only two California law schools, Berkeley Law School and Stanford Law School,

would meet this threshold. Ms. Saadati-Soto stated that if California were to adopt the Utah model, it would need to rethink the threshold.

Jake Pilliard: Mr. Pilliard, a third-year law student at the University of the Pacific McGeorge School of Law graduating in May, stated that the best time to take the bar exam is right after law school. According to Mr. Pilliard, postponing the exam or granting a temporary diploma privilege, as in New Jersey, will make it impossible for law students to move on with their lives as they have debts, families, jobs. Mr. Pilliard believes that forcing the class of 2020 to return at some unknown date to take the bar exam puts everything at risk, creating uncertainty for employers and families. Also Mr. Pilliard expressed concern that a delay in the bar exam will result in twice as many people taking the exam, creating big problems logistically. Mr. Pilliard stated that California can lead the nation; bankruptcies and landlord tenant disputes are around the corner and additional lawyers will be needed. Mr. Pilliard acknowledged there will be opposition, but urged the Board to grant diploma privilege.

Bristol Scott: Ms. Scott, a graduating fourth-year part-time law student at the University of San Diego School of Law and the sole income provider for her family working full-time as a patent professional at a large law firm, advocated for diploma privilege. Ms. Scott requested that the State Bar act quickly so she can decide whether to invest in a bar exam preparation course or reserve those funds to support their family in the event of a layoff or further pay cuts.

Jennifer Marcy: Ms. Marcy requested that the Board review the recent National Conference of Bar Examiners (NCBE) white paper.

Martin Pritikin: Mr. Pritikin, Dean of Concord Law School, believes that remote proctoring of the bar exam is the only reliable way to avoid future postponement or rescheduling, even if not feasible for July because of the need to work with NCBE on the MBE, to invest in ensuring the long-term security and reliability of the exam administrations. Also, referring to the American Bar Association's (ABA) support for diploma privilege for ABA accredited law school graduates, the dean urged that, in the event the Board adopts alternatives to a bar exam, whether it be diploma privilege or provisional licensing, that these opportunities be made available to graduates of California accredited and unaccredited registered law schools.

Unidentified Person: This person commented on jurisdictions that will provide provisional licenses for graduates from ABA accredited law schools, urging the Board to apply its decision to graduates from both ABA accredited and non-ABA accredited law schools. This person stated that a decision that applies only to ABA accredited law schools would hurt students who cannot afford to attend a bigger school, but work just as hard.

Gill: Gill, an attorney, discussed the logistical hurdles in administering the bar exam in a socially distanced manner. Gill proposed that the exam be administered with social distancing—at law schools for their graduates, and at testing centers for other test takers. Gill suggested administering the bar exam in September if more time is needed for planning.

Natalie Rodriguez: Ms. Rodriguez, the Assistant Dean for Academic Success at Southwestern Law School, requested that, if the State Bar moves forward with the exam in July or the fall, the State Bar create an exam that can be administered virtually. Dean Rodriguez believes it is a bad idea to postpone the exam to the fall, only to face the possibility of having to postpone it again. Dean Rodriguez stated that another alternative would be to administer a written-only examination virtually given the bigger risk in administering the MBE virtually. Dean Rodriguez commented that law schools were able to transition to a virtual learning and examination environment, acknowledging that while not easy, it was doable.

James Aguirre: Mr. Aguirre, an attorney and former member of the State Bar Board of Governors, expressed concern that any alternative to the bar exam have the same validity and strength of certification as a normal exam. Mr. Aguirre stated that the alternative need not be a traditional exam, but the opportunities created by the Board should be extended to anyone eligible to sit for an exam.

Hani Habbas: Mr. Habbas, a third-year law student graduating in May, questioned whether testing could be administered with social distancing and whether it would be less costly or more logistically feasible to monitor individuals granted a diploma privilege rather than reschedule the exam. Mr. Habbas also questioned whether, if there is a diploma privilege, law schools would be liable for malpractice, and asked the Board to keep in mind that the interests of law schools may not be in line with the majority of individuals seeking diploma privilege. Mr. Habbas asserted that there are some law schools accepting students for profit and those law schools should accept that risk.

K. Stackalis: Ms. Stackalis does not mind taking the exam in July, but supports an apprenticeship in lieu of bar exam option. Ms. Stackalis states she has learned more on the job than anywhere else; not working in order to take the exam would not be Ms. Stackalis's first choice.

Ryan Drossel: Mr. Drossel, a third-year law student at Loyola Law School and intern for a landlord-tenant firm inundated with requests for services needed by the public, requested that the Board adopt diploma privilege because any other option is gambling on the students' and the public's future. Mr. Drossel stated that requiring students to study for a test that is unlikely to be administered in September or December is too great a risk.

Rebekah Merrill-Callaway: Ms. Merrill-Callaway, an evening student at Southwestern Law School graduating in May and a senior paralegal at the Los Angeles County Public Defender Office since 2014, supports emergency diploma privilege plus as the alternative method of licensing new attorneys. Ms. Merrill-Callaway stated that their family is now in a financially precarious position; Ms. Merrill-Callaway's income is the only income getting the family through. Ms. Merrill-Callaway said that the prospect of not having the opportunity to become

an attorney is devastating both financially and emotionally as there will be no ability to make more money to pay off law school loans. Ms. Merrill-Calloway stated that reliance on an exam slated for some date in the future is unrealistic as there is no guarantee when that will happen and it could be one or two years out depending on how the pandemic unfolds. With the diploma privilege plus option, the State Bar will have the time to create alternative requirements that must be met by graduates to establish minimal competency.

Robbie Munoz: Mr. Munoz, a third-year law student at Chapman University School of Law, expressed concern about the health and safety risks of rescheduling the bar exam given lack of knowledge about the spread of the disease or how it will manifest throughout society moving forward. Mr. Munoz urged the Board to think about the larger picture and the health and well-being of graduates and their families.

Bennett: Ms. Bennett, an international attorney, urged the Board to keep the interests of international attorney applicants in mind and allow them to take the bar exam.

Brian Litzinger: Mr. Litzinger, an attorney in Colorado seeking to take the California bar exam, requested that the Board consider granting reciprocity to students or graduates of other law schools who are attorneys in other states.

Jasjaap Sidhu: Mr. Sidhu supports colleagues in their push for diploma privilege plus, but echoed the call for a remote bar exam and urged the Board to consider administering the bar exam remotely in July or September, pointing out a similar plan in Massachusetts to administer the examination remotely should the scheduled date in September not be available due to public health concerns. Mr. Sidhu urged the Board to figure out a way to ensure that the current uncertainty concerning the bar exam does not extend beyond July or September, so that upcoming graduates can move on with their careers.

Miosotti Tenecora: Ms. Tenecora, a May 2019 Boston University School of Law graduate, current immigration law fellow, and unsuccessful taker of the July 2019 bar exam, urged the Board to consider a perspective different from the perspective of the 2020 graduates. Ms. Tenecora stated that there are people like Ms. Tenecora who are registered for the July Bar Exam and willing to take it.

Kianna Katan: Ms. Katan, a graduating third-year law student at UC Davis School of Law, spoke on behalf of those with the coronavirus to advocate for diploma privilege because it would allow people to work from home rather than have to sit for an exam where there is a possibility the virus could spread. Ms. Katan urged the Board to consider the health and safety of the students first.

End of Public Comment

The Chair announced that Trustee Brandon Stallings recused himself, and will not take part in Closed Session. After this announcement, the Board convened in Closed Session *pursuant to Government Code section 11126(c)(1) and Business and Professions Code section 6026.7(c)(3)* to consider the following item:

7000 MISCELLANEOUS

7001 Consideration of Options for Preparation and Administration of the June 2020 First-Year Law Students' Examination and July 2020 California Bar Exam

Upon conclusion of the Closed Session, the Chair reconvened the meeting in Open Session to report on the action taken by the Board during Closed Session and to adjourn the meeting. The Chair reported that the Board of Trustees will recommend two options to the Supreme Court regarding administration of the June 2020 First-Year Law Students' Examination (FYLSX) and July 2020 California Bar Exam (CBX). Under the first option, the State Bar would conduct the FYLSX online in June as scheduled; postpone the July 2020 CBX to September 9–10, 2020; and postpone the October FYLSX to November. Under the second option, the State Bar would cancel both the June 2020 FYLSX and the July 2020 CBX; and postpone the October 2020 FYLSX to November. The Board also will recommend a further option, to be considered in combination with either of the above two options, which is to convene a working group to study a provisional certification program for eligible individuals. The Board directed staff to work with the Board Chair, Vice-Chair, and Admissions Liaison to draft and transmit the recommendations by letter to the Supreme Court.

ADJOURNED