



The State Bar *of California*

OPEN SESSION AGENDA ITEM 704 JULY 2020

DATE: July 16, 2020

TO: Members, Board of Trustees

FROM: Lisa Chavez, Director, Office of Research and Institutional Accountability

SUBJECT: Supreme Court/State Bar Blue Ribbon Commission on the Future of the Bar Examination - Approval of Proposed Charter and Composition

EXECUTIVE SUMMARY

Following consultation with the Supreme Court, the Board of Trustees directed staff to establish a joint Supreme Court/State Bar Blue Ribbon Commission on the Future of the California Bar Exam. The commission will review the results of the California Attorney Practice Analysis and recommendations raised by its working group, the results of the 2020 National Conference of Bar Examiners practice analysis, and additional recent studies conducted on the bar exam, for the purpose of developing recommendations for the California Supreme Court and the State Bar of California regarding the bar exam. This agenda item proposes a charge that will guide the commission's work and recommends categories of stakeholders from which commission members will be drawn.

BACKGROUND

On May 14, 2020, State Bar staff presented a report to the Board of Trustees summarizing the findings of four studies of the California Bar Exam (CBX): (1) the report of the California Attorney Practice Analysis (CAPA) Working Group; (2) the Differential Item Functioning Analysis Report; (3) the Review of the California Bar Examination Administration and Related Components; and (4) A Report on the Phased Grading of the California Bar Examination. The report to the Board also contained proposals for addressing the short- and long-term recommendations contained within these studies.

The Board of Trustees directed the Committee of Bar Examiners to review and address items related to short term recommendations including: (1) reviewing bar exam grading policies,

grader eligibility criteria and compensation, grading rubrics, and cheating policy; and (2) working with the Council on Access and Fairness to develop guidelines surrounding minimizing the risk of differential item functioning; and adopting a definition of an entry-level attorney.

The Board of Trustees also directed State Bar staff to establish, in partnership with the California Supreme Court, a Blue Ribbon Commission on the Future of the California Bar Exam that would consider recommendations related to the exam's content and format that require a longer-term, deliberative planning process, particularly as they relate to the CAPA Working Group's recommendations.

DISCUSSION

In 2018, the Board of Trustees of the State Bar of California created the California Attorney Practice Analysis Working Group to convene specialists in the field of psychometrics and practice analysis to document the current practice of law in California, and more specifically to understand the knowledge, skills, and abilities needed by entry level attorneys in California to practice law ethically and competently. The study collected data on attorney practices along two principal dimensions: what attorneys do as reflected in daily tasks, and what knowledge attorneys use to perform those tasks. The results provided information necessary to evaluate the link between the California Bar Exam's content and current legal practice, and created a blueprint—an outline of content coverage across legal topics and job responsibilities—for the future selection of bar exam topics and question items. The CAPA Working Group evaluated the findings, applied their professional judgment, and recommended that the bar exam test eight legal topics and six skills. In addition, the CAPA Working Group recommended that a number of topics be eliminated from the CBX but tested elsewhere.

The recommended legal topics include:

- | | |
|------------------------------------|------------------------------|
| ○ Administrative Law and Procedure | ○ Criminal Law and Procedure |
| ○ Civil Procedure | ○ Evidence |
| ○ Constitutional Law | ○ Real Property |
| ○ Contracts | ○ Torts |

The recommended skills include:

- | | |
|-------------------------------------|-----------------------------------------|
| ○ Drafting and Writing | ○ Counsel/Advice |
| ○ Research and Investigation | ○ Litigation |
| ○ Issue-spotting and Fact-gathering | ○ Communication and Client Relationship |

The CAPA Working Group concluded its work in 2020 with a report to the Board of Trustees.¹ Their work coincided with a national practice analysis conducted by the National Conference of Bar Examiners (NCBE) whose forthcoming final report will include recommendations regarding

¹ The CAPA Working Group's final report [The Practice of Law in California: Findings from the California Attorney Practice Analysis and Implications for the California Bar Exam](#) is available online.

content and format of various component tests of the Uniform Bar Exam (UBE). Currently there are 39 UBE jurisdictions across the country.

The Commission's Charter

The commission will review the California Attorney Practice Analysis and the working groups' recommendations as well as the results of the 2020 National Conference of Bar Examiners practice analysis and its recommendations for UBE content and format. In addition, the commission will examine recent studies on the CBX including those presented to the Board of Trustees in May 2020 as described above, as well as data on the pass rates of applicants of color. In so doing, the commission will develop recommendations for the Supreme Court and the State Bar addressing the following questions:

Should California adopt the UBE? The commission will advise as to whether there is sufficient alignment in the knowledge, skills, and abilities to be tested by the UBE with the knowledge, skills, and abilities required of entry level California attorneys to argue in favor of its adoption by California. If the commission recommends the adoption of the UBE, the commission will also explore whether there should be supplementary content and skills tested or trained to meet specific California needs, and if so, modalities for that testing or training.

Should California revise the CBX? If the commission does not recommend adopting the UBE, the commission will explore and recommend revisions to the current CBX addressing:

- **Legal topics and skills to be tested:** The commission will recommend legal topics and skills to be tested on the bar exam and also provide specifications for supplementary testing or training for topics not recommended for inclusion on the exam itself.
- **Testing format:** In light of the legal topics and skills to be tested, the commission will determine the testing format and design of the exam.
- **Passing score:** The commission will review the appropriateness of the current bar exam pass line and whether it should be changed.

Commission Appointments

The Blue Ribbon Commission will consist of 16 members appointed by the California Supreme Court. Members will represent key institutional entities, attorney practice sectors and settings, and reflect the state's demographic and geographic diversity. At least two members shall have been admitted to practice law in California within three years from the date of their appointment. Below are the categories from which nominations will be sought:

- Former members of the CAPA Working Group (2)
- Committee of Bar Examiners (2)
- NCBE Testing Task Force (1)
- Council on Access and Fairness (2)
- California Lawyers Association (2, at least one whom shall be a lawyer who took the bar exam within the past 3 years)
- Law School Deans (2)

- Judges (active or retired) (2)
- California Department of Consumer Affairs (1)
- Current State Bar Board of Trustees (1)
- National expert on examination development or grading (1)

The commission will be staffed by the State Bar and include liaisons from the Supreme Court and may include liaisons from the Legislature. A report from the California Department of Consumer Affairs, titled "Review of the California Bar Examination Administration," recommended that constituents such as board members, deans, and educators be discouraged from participating in exam development related activities. The commission's charge as outlined above is related to exam development in the broadest sense, but not specific to a particular exam or set of questions, and thus staff believes appointment of representatives in these categories is appropriate, and in fact, essential.

FISCAL/PERSONNEL IMPACT

In addition to personnel costs for staffing the commission and expenses for meetings, it is anticipated that expenses will be incurred to hire a consultant to conduct research as needed.

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

Objective: n. Conduct a California specific job analysis to determine the knowledge, skills, and abilities for entry level attorneys. Upon completion, conduct a new content validation study.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees adopts the charter for the new Blue Ribbon Commission on the Future of the Bar Exam, as set forth in Attachment A, and directs staff to finalize the Charter in consultation with the Supreme Court; and it is

FURTHER RESOLVED, that upon finalization of the Charter, the Board of Trustees directs State Bar staff to solicit nominations for the Blue Ribbon Commission to be appointed by the Supreme Court from the categories of stakeholders listed in Attachment A; and it is

FURTHER RESOLVED, that the Commission will begin its work in the fall of 2020 and present a final report on its findings and recommendations no later than June 30, 2022, with periodic status updates to be provided to the State Bar Board of Trustees.

ATTACHMENT(S) LIST

- A.** Blue Ribbon Commission on the Future of the Bar Examination: Proposed Charter and Composition

**Blue Ribbon Commission on the Future of the Bar Examination:
Proposed Charter and Composition**

Purpose

In 2018, the Board of Trustees of the State Bar of California created the California Attorney Practice Analysis (CAPA) Working Group to convene specialists in the field of psychometrics and practice analysis to document the current practice of law in California, and more specifically to understand the knowledge, skills, and abilities needed by entry level attorneys in California to practice law ethically and competently. The study collected data on attorney practices along two principle dimensions: what attorneys do as reflected in daily tasks and what knowledge attorneys use to perform those tasks. The results provided information necessary to evaluate the link between the California Bar Examination's content and current legal practice, and created a blueprint—an outline of content coverage across legal topics and job responsibilities—for the future selection of bar exam topics and question items. The CAPA Working Group evaluated the findings, applied their professional judgment, and recommended that the bar exam test eight legal topics and six skills. The CAPA Working Group concluded its work in 2020 with a report to the Board of Trustees. Their work coincided with a national practice analysis conducted by the National Conference of Bar Examiners (NCBE) whose forthcoming final report will include recommendations regarding content and format of the Uniform Bar Exam (UBE).

To evaluate the recommendations raised by the CAPA Working Group as well as additional policy questions regarding the bar exam's format and pass score, following consultation with the Supreme Court, the Board of Trustees directed staff to establish a joint Supreme Court/State Bar Blue Ribbon Commission on the Future of the California Bar Exam.

Commission Charter

The Joint Supreme Court/State Bar Blue Ribbon Commission on the Future of the California Bar Exam is charged with developing recommendations concerning whether and what changes to make to the California Bar Exam, and whether to adopt additional testing or tools to ensure minimum competence to practice law. In so doing, the commission will review the results of the California Attorney Practice Analysis and the CAPA Working Group's recommendations; the results of the 2020 National Conference of Bar Examiners practice analysis and its recommendations for the Uniform Bar Exam (UBE) content and format; and the results of additional recent studies on the California Bar Exam conducted the State Bar, including data

examining the pass rates of applicants of color. While its work will be grounded in these studies' empirical findings, the commission shall explore other issues to ensure that the exam is an effective tool for determining whether applicants are prepared to practice law ethically and competently at a level appropriate for an entry-level attorney.

In particular, the commission will develop recommendations for the California Supreme Court and the State Bar of California regarding:

1. Whether there is sufficient alignment in the knowledge, skills, and abilities to be tested by the UBE with the knowledge, skills, and abilities required of entry level California attorneys to argue in favor of its adoption by California.
2. If adoption of the UBE is recommended, whether there should be supplementary content and skills tested or trained on to meet specific California needs, and if so, modalities for that testing or training.
3. Revisions to the California Bar Exam if the UBE is not recommended for adoption, addressing:
 - **Legal topics and skills to be tested:** The commission will recommend legal topics and skills to be tested on the bar exam and also provide specifications for supplementary testing or training for topics not recommended for inclusion on the exam itself.
 - **Testing format:** In light of the legal topics and skills to be tested, the Commission will determine the testing format and design of the exam.
 - **Passing score:** The commission will review the appropriateness of the current bar exam pass line and whether it should be changed.

Commission Composition

Nominations for the Blue Ribbon Commission will be appointed by the Supreme Court.

Members will be drawn from the following categories of stakeholders:

- Former members of the CAPA Working Group (2)
- Committee of Bar Examiners (2)
- NCBE Testing Task Force (1)
- Council on Access and Fairness (2)
- California Lawyers Association (2, at least one whom shall be a lawyer who took the bar exam within the past 3 years)
- Law School Deans (2)
- Judges (active or retired) (2)
- California Department of Consumer Affairs (1)
- Current State Bar Board of Trustees (1)
- National expert on examination development or grading (1)

Members will reflect the state's demographic and geographic diversity and diversity in attorney practice sector and settings.