



The State Bar of California

OPEN SESSION AMENDED AGENDA ITEM O-200 DECEMBER 2020 COMMITTEE OF BAR EXAMINERS

DATE: December 4, 2020

TO: Members, Committee of Bar Examiners

FROM: Lisa J. Cummins, Program Manager III, Examinations

SUBJECT: Consideration and Approval of Proposed Rule Revisions Regarding Testing Accommodations

EXECUTIVE SUMMARY

Rule 4.90 of the Rules of the State Bar sets forth the procedures for review by the Committee of Bar Examiners (Committee) of petitions for testing accommodations that are denied or partially granted by State Bar staff. This agenda item proposes revisions to the rule that would clarify and streamline existing review procedures. As currently worded, the rule is not sufficiently clear that the Committee's decision on review is final and will not be reconsidered prior to the administration of the examination for which the testing accommodations are sought. Further, the rule is not sufficiently clear that the Committee will review only those accommodations that have been *denied* by staff and the Director of Admissions—it will not reconsider any decision by staff or the Director of Admissions to grant accommodation(s). Finally, due to the high volume of requests for review customarily received on or near the deadline set forth in the rule, and the fact that the rule does not currently require that requests for review be received a certain minimum number of days prior to the examination, there is a proposal to amend the rule to require that all requests for review be received no later than 35 days before the first day of the examination. This amendment will ensure adequate time for processing and consideration by the Director of Admissions and the Committee, as necessary, prior to the examination. Note: This agenda item was originally publicly posted on November 30, 2020, but has been amended to reflect additional revisions received from one or more members of the Committee.

BACKGROUND

Applicants with disabilities may file a Petition for Testing Accommodations needed to take an examination administered by the Committee. A Petition for Testing Accommodations is granted when the applicant demonstrates they have a disability or disabilities that prevent them from taking an examination under standard testing conditions; the testing accommodation(s) requested are necessary to address the functional limitations related to their disability or disabilities; and the testing accommodations requested are reasonable and appropriate in light of their disability or disabilities. (Title 4, Division 1, Chapter 7, Rule 4.80(C) of the Rules of the State Bar of California.)

If an applicant needs testing accommodations for a particular administration of an examination, they are required to complete a Petition for Testing Accommodations that includes documentation sufficient to support their requested accommodation(s) prior to the administration of that examination. Petitions are evaluated by staff and the Committee's expert medical consultants on a case-by-case basis.

Rule 4.90 provides that when a Petition for Testing Accommodations has been denied or partially granted by staff, the applicant may request review of staff's decision by the Committee. The Committee has delegated to the Subcommittee on Examinations the authority to decide time-sensitive testing accommodation appeals in between regular meetings of the Committee. The rule, as currently written, states:

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 the Committee. The request 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 review 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. Requests received after that date will be considered in connection with future administration of the examination.
- (C) After reviewing the request for review and supporting documentation, the Director of Admissions may withdraw the prior decision and grant the accommodations requested.
- (D) If the Director of Admissions does not grant the request, the Committee must consider it as soon as practicable. The review must be based on the original petition and supporting documentation provided by the applicant and the Director of Admissions. Oral argument is not permitted. The review must be conducted in closed session either at a regular meeting or one specially convened. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.

This agenda item proposes revisions to Rule 4.90 that would clarify and streamline existing review procedures. The proposed revised rule is set forth in ATTACHMENT A, with the proposed revisions to the rule designated in redline.

DISCUSSION

Under Rule 4.90, if an applicant requests review by the Committee of staff's decision to deny or partially grant their Petition for Testing Accommodations, staff will evaluate the request for review and any supporting documentation submitted by the applicant and make a recommendation to the Director of Admissions as to whether to grant any of the accommodations that were initially denied by staff. The Director of Admissions then evaluates the request for review and any supporting documentation and issues a decision. If the Director decides to grant all of the accommodations requested to be reviewed, the applicant is notified via modified decision letter that all of the accommodations requested to be reviewed have been granted. If the Director decides to deny some or all of the accommodations requested to be reviewed, the denied accommodations requested to be reviewed are brought to the Committee for review as soon as practicable, without further action by the applicant.

The proposed revisions to Rule 4.90 are intended to clarify and streamline existing procedures used in the processing of testing accommodations appeals. As currently worded, the rule is not sufficiently clear that the Committee's decision on review is final and will not be reconsidered prior to the administration of the examination for which the testing accommodations are sought. As a result, some applicants have filed multiple requests for review in connection with the same administration of an examination. Multiple requests for review by the same applicant in connection with the same administration of an examination creates a burden on staff time and resources, and ultimately on the Committee's and Subcommittee's time and resources. This is especially true when such requests are filed at or near the final appeal filing deadline, just a few weeks before examination administration.

Staff has been unable to find any historical documentation that suggests the intention of the Committee in adopting Rule 4.90 was to allow the same applicant to repeatedly request review by the Committee of the Committee's own decision prior to a particular administration of an examination. Further, allowing multiple requests for review is inconsistent with the manner in which other requests for review by the Committee are handled, and with the common understanding of how administrative appeals are typically handled. By limiting the number of requests for review to one per examination administration, an applicant is encouraged to marshal all of their arguments and supporting documentation into their single request for review for the Committee's consideration. If the applicant is dissatisfied with the outcome of the Committee's review, the applicant has the ability to appeal to the California Supreme Court under Rule 4.9. The applicant also has the ability to file a new Petition for Testing Accommodations for a subsequent administration of the examination and seek review of the decision on that petition through the same procedures.

Additionally, Rule 4.90 is not sufficiently clear that the Committee will review only those accommodations that are *denied* by staff and the Director of Admissions—it will not reconsider any decision by staff or the Director of Admissions to grant accommodation(s). This revision will

ensure that applicants receive all accommodations granted by staff, the Director of Admissions, and the Committee, and will not be denied accommodation(s) previously granted if they seek review by the Committee.

Finally, due to the high volume of requests for review customarily received on or near the current deadline set forth in Rule 4.90, and the fact that the rule does not require that the request be received a certain number of days prior to the examination, there is a proposal to amend the rule to require that all requests for review be received no later than 35 days before the first day of the examination. This amendment will allow for sufficient time for processing and consideration by the Director of Admissions and the Committee, if the Director does not grant all of the accommodations initially denied by staff.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

Yes, amendments to Rule 4.90 as proposed in this agenda item.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - Core business operations

RECOMMENDATION

It is recommended that the proposed revisions to Rule 4.90 of the Rules of the State Bar be adopted by the Committee and recommended for adoption by the Board of Trustees following a period of public comment.

PROPOSED MOTION

Should the Committee of Bar Examiners agree with staff recommendation, the following motion would be appropriate:

MOVE that the proposed revisions to Rule 4.90 of the Rules of the State Bar, set forth in Attachment A hereto, be adopted and recommended for adoption by the Board of Trustees following a period of public comment.

ATTACHMENT LIST

- A.** The proposed revised Rule 4.90, with the proposed revisions to the rule designated in redline.

ATTACHMENT A

ADMISSIONS RULE 4.90 PROPOSED REVISIONS (REDLINE)

Rule 4.90 Committee review of denied or modified petition

- (A) An applicant notified that a Petition ~~F~~for Testing Accommodations has been denied or partially granted ~~with modifications~~ may request a review by the Committee of any or all of the accommodation(s) that were denied. The request must be submitted within ten days of the date of the denial or ~~modified~~ partial grant ~~or some other reasonable period established by the Committee~~.
- (B) Requests for review 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~~ 35 days before the first day on which the examination is to be administered. If a deadline falls on a non-business day, the deadline will be the next business day. ~~Requests received after that date will be considered in connection with future administration of the examination.~~
- (C) After reviewing the request for review and supporting documentation, the Director of Admissions may ~~withdraw~~ modify the prior decision and grant any or all of the accommodation(s) requested to be reviewed.
- (D) If the Director of Admissions does not grant all of the accommodations requested to be reviewed, the Committee must consider whether to grant the remaining denied accommodation(s) requested to be reviewed ~~it~~ as soon as practicable. The Committee's review ~~must be~~ is based on the ~~original petition and supporting~~ documentation provided by the applicant and the Director of Admissions in connection with the applicant's Petition for Testing Accommodations and request for review. Oral argument is not permitted. The review must be conducted in closed session either at a regular meeting or one specially convened. The Committee delegates decision making authority to the Examinations Subcommittee for all time-sensitive testing accommodation reviews.
- (E) The Committee's or Subcommittee's decision with respect to its review of a Petition for Testing Accommodations is final and is not subject to further review by the State Bar, the Committee, or Subcommittee. Requests for further review of the Committee's or Subcommittee's decision will be summarily denied without additional explanation.