



OPEN SESSION

AGENDA ITEM O-404

APRIL 2021

COMMITTEE OF BAR EXAMINERS

DATE: April 23, 2021

TO: Members, Committee of Bar Examiners

FROM: Natalie Leonard, Principal Program Analyst

SUBJECT: Action on the Calculation of the Minimum, Cumulative Bar Examination Passage Rate Under Guideline 12.1 Following the Creation of an Alternative Pathway to Licensure

EXECUTIVE SUMMARY

All accredited law schools are required to maintain a Minimum, Cumulative Bar Pass Rate (MPR) of 40 percent or more. (Rule 4.160(N), Guideline 12.1) Attached is a proposed amendment to the MPR calculation to address changes brought about by the creation of a Provisional Licensure Program (PLP) that includes an alternative pathway to licensure, as well as the rescheduling of the July bar exam to October 2020. (Attachment A)

BACKGROUND

Guideline 12.1 of the Guidelines for Accredited Law School Rules requires all law schools to maintain an MPR of 40 percent or more and defines how to calculate the MPR. Currently, the calculation is a fraction in which the numerator is the sum of all those who graduated during a specified five-year reporting period and passed a bar exam during that period, or passed the bar exam administered during the February following the reporting period if that exam was not more than ten administrations after the taker's graduation. The denominator is the total number of people who graduated during the reporting period and took at least one bar exam during the period.

The Committee initiated discussion of proposed amendments to this guideline at its March 2021 meeting. Staff identified two topics warranting further consideration: the effect of

rescheduling the July 2020 bar exam (within the reporting period) to October 2020 (outside the reporting period); and the creation of the PLP, including an alternative pathway to licensure for an eligible subset of applicants. The Committee considered the issues, but deferred action in order to refer the matter to the Committee on State Bar Accredited and Registered Schools (CSBARS) so that CSBARS could provide feedback for the Committee's consideration at today's meeting.

The PLP allows two options for supervised law practice through June 1, 2022. The first option is a temporary provisional license available to qualifying applicants who graduated between December 2019 and December 2020. The expanded PLP, launched in February 2021, created an alternative pathway to licensure for those who earned a 1390 in any phase of grading during a bar exam administered between July 2015 and February 2020 and who also successfully complete the requirements enumerated in Court Rule 9.49.1. Participants in the expanded PLP who satisfy all the requirements of the alternative pathway to licensure by June 1, 2022 can be admitted to the State Bar as fully licensed lawyers without taking a bar exam again. These two different options that are part of the PLP will be discussed separately below along with the other matters identified.

DISCUSSION

The Reporting Period for the MPR and the October 2020 Bar Exam

The MPR calculation evaluates the bar exam results of those who graduated from an accredited law school during a particular five-year reporting period and took at least one bar exam during that reporting period (or the following February bar exam in some cases). The reporting period for the 2021 MPR is from August 1, 2015 through July 31, 2020.

Because the October 2020 bar exam was intended to be administered in July 2020, which is within the 2021 MPR reporting period, and it was only rescheduled due to circumstances surrounding COVID-19, it is recommended that the bar exam results from that examination be included in the 2021 MPR reporting period. The attached recommendation reflects this proposed modification.

Adjusting the Numerator of the MPR to Address the Alternative Pathway to Licensure

The current MPR numerator includes all those who pass a bar exam outright, with a total scaled score of 1440 or greater on exams through the February 2020 exam or a total scaled score of 1390 or greater on the October 2020 bar exam and subsequent bar exams.

In March 2021, the California Supreme Court issued a declaratory amendment to Rule 9.49.1 of the California Rules of Court. The amendment states that those who satisfy all of the requirements of the alternative pathway to licensure listed in Rule 9.49.1(i)(4) and all other program requirements shall also be deemed to satisfy California Business and Professions Code section 6060(g), which requires passing the general bar exam given by the Committee as a condition of licensure.

The proposed guideline changes recommend that those who successfully complete the alternative pathway to licensure be included in the numerator (and denominator) of the MPR, consistent with Supreme Court guidance.

Some law school deans have suggested that the MPR calculation should include all those who achieved a 1390 on any phase of grading in the numerator, whether or not they have entered the PLP or completed the alternative pathway to licensure, but this does not comport with Supreme Court guidance. The Court has stated that the 1390 bar exam cut score implemented in October 2020 is not to be applied retroactively, and it further clarified the Court Rule to reflect California's position. (See [Letter from the Court to the State Bar Board of Trustees](#), 8/10/20)

Procedures for Categorizing Pathway Participants while Participating in the Pathway

The expanded PLP is open to those who earned a 1390 in any phase of grading on a bar exam administered between July 2015 and February 2020. If an applicant is accepted into the PLP with a qualifying prior exam score and completes all requirements successfully, they can be admitted to the State Bar without taking another bar exam.

If these individuals graduated from a California Accredited Law School during the 2021 MPR reporting period between August 1, 2015 and July 31, 2020, the current 2021 MPR calculation would include them in the MPR denominator while they are participating in the PLP and working toward completing the requirements of the alternative pathway to licensure. It may be appropriate, however, to exclude them from the calculation while they are in the PLP actively pursuing completion of the alternative pathway because these individuals do not have an incentive to take another bar exam while they are trying to meet the requirements of the expanded PLP. This is the option proposed in the attachment, which was described at the March 2021 Committee meeting as Option 2.

The Committee also considered a narrower hybrid option for the 2021 MPR calculation at its March meeting. This option would exclude only those who changed their behavior as a result of the creation of the PLP alternative pathway to licensure. Therefore, if an individual had been taking the bar exam, including the October 2020 bar exam, but did not take the February bar exam, possibly in anticipation of entering the alternative pathway to licensure, only then would they be excluded from the calculation. Based on the number of alternative pathway program participants, approximately sixty across all accredited law schools to date, the Committee would need to balance whether the complexity was warranted by any precision it would provide.

The Committee also considered a narrower hybrid option for the 2022 MPR calculation excluding individuals from the MPR calculation if they exited the alternative pathway without completing it subsequent to the administration of the February 2022 bar exam, but before the conclusion of the PLP on June 1, 2022. Because interested applicants must apply for the PLP program by May 31, 2021, however, and are likely to complete the program long before the June 1, 2022 deadline, this option is not recommended.

Returning Alternative Pathway Participants to the MPR Upon Completing or Exiting the Pathway

Once a PLL completes the alternative pathway to licensure, it is proposed that the individual would be added back into the MPR calculation in both the numerator and the denominator.

If a PLL pursuing the alternative pathway to licensure exits the program without completing it, they would again be included in the MPR calculation in the denominator because they would need to pass a future bar exam in order to pursue licensure. Upon passing a bar exam in the future, if the individual's graduation date was still within the reporting period, they would be included in the numerator.

Timing of Exit from the Pathway

While bar exam results are released on a specific date, the alternative pathway to licensure may be completed on any day. It may be reasonable, therefore, to include in the denominator those PLLs who satisfy the requirements of the alternative pathway to licensure by July 1 for that reporting year. This could balance the need for certainty in the completion in the publication date of the MPR with a reasonable opportunity for PLLs to complete the alternative pathway.

The Role of the Original Provisional Licensure Program Requiring Eventual Bar Exam Passage

No changes to the MPR calculation are recommended in response to the creation of the original PLP. That program offers those who graduated between December 2019 and December 2020 the opportunity to apply for a provisional license to practice law through June 1, 2022, but requires them to pass a bar exam and meet all other standard requirements for licensure in order to practice law after the PLP ends on June 1, 2022. This is the option proposed in the attachment, which was described at the March 2021 Committee meeting as Option 1.

The vast majority of these applicants have taken one or more bar exams. In fact, some participants have already exited the program after passing the October 2020 bar exam and more will likely exit the PLP after passing the February 2021 bar exam.

Therefore, no change to the MPR calculation is recommended regarding those PLLs participating in this part of the PLP.

Summarizing the Amendments

In summary, the changes as proposed in the attachment would have the following effects on the calculation of the MPR:

- October 2020 bar exam results would be included as if that bar exam had taken place during the reporting period for the 2021 MPR and any other future MPR for which the July 2020 results would have been included

- While a PLL who graduated during the reporting period is pursuing the alternative pathway to licensure, they will be excluded from the MPR calculation (both numerator and denominator) until they successfully complete the pathway requirements, or otherwise exit the PLP, or the program ends
- When a PLL who graduated during the reporting period successfully completes the alternative pathway requirements before the program ends and by the July 1 MPR reporting deadline, they will be included in that year's MPR calculation in both the numerator and denominator
- When a PLL who graduated during the reporting period exits the PLP without completing all requirements, or the program ends, by the July 1 reporting deadline for that year's MPR calculation, they will be included in the MPR's denominator

All of these changes will impact the calculation of the 2021 MPR.

By the time the 2022 MPR calculation is reported on July 1, 2022, the PLP will have concluded one month earlier, on June 1, 2022, unless extended by the Supreme Court. Those PLLs who completed the alternative pathway by June 1, 2022 will continue to be included in the numerator and denominator so long as they graduated during the reporting period. In fact, those who are pursuing the alternative pathway must apply by May 31, 2021, so it is possible that many will complete the requirements well before the PLP concludes. Those who did not complete the alternative pathway successfully by that date will be returned to the denominator of the calculation, and will need to pass a bar exam and become licensed in order to continue to practice law. Upon passing a bar exam, they will be added into the numerator, so long as their graduation date is still within the reporting period.

Therefore, the 2022 MPR calculation will continue to include in the numerator of the MPR those former PLLs who timely completed the alternative pathway to law and who have graduated within the reporting period. There will no longer be any PLLs in the pathway to exclude from the numerator or denominator, and all others will be included based on their bar exam results.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

Guideline for Accredited Law School Rules 12.1

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

It is recommended that the Committee of Bar Examiners adopt the amendments to Guideline 12.1 regarding the MPR calculation, set forth in Attachment A, to be applied effective with the calculation of the 2021 MPR.

PROPOSED MOTION

Should the Committee of Bar Examiners agree with staff recommendation, the following motion should be made:

MOVE, that the Committee of Bar Examiners adopts the proposed amendments to Guideline for Accredited Law Schools 12.1 regarding the calculation of the Minimum, Cumulative Bar Exam Pass Rate, set forth in Attachment A, effective immediately starting with the 2021 MPR calculation.

ATTACHMENT LIST

- A. Proposed Amendments to Guideline for Accredited Law School Rules 12.1

Proposed Amendments to Guideline for Accredited Law School Rules 12.1

Division 12. Minimum, Cumulative Bar Examination Pass Rate 12.1 Criteria for Determining Compliance with Accredited Law School Rule 4.160(N).

In evaluating the compliance of a law school with the accreditation standard set forth in Accredited Law School Rule 4.160(N), a law school must maintain a minimum, cumulative bar examination pass rate (MPR) of at least 40 percent for the most recent five-year reporting period. The rate will be calculated and reported annually to the Committee on or before July 1st of the year following each reporting period.

To calculate and report its MPR accurately, the law school must use the following reporting period and methodology: The “reporting period” covers the five most-recent twelve-month periods (August 1 through July 31) prior to the calendar year in which the MPR is reported to the Committee.

For purposes of MPR calculation, a “qualified taker for the reporting period” includes any student who both graduates from the law school during the reporting period, and takes any administration of the California Bar Exam (CBX) during the reporting period or the first February administration after the reporting period that was also no more than 10 administrations after the taker’s graduation. For the calculation of the MPR to be reported by July 1, 2021, the reporting period will also be deemed to include the administration of the October 2020 California Bar Examination. A student who does not meet both requirements is not a qualified taker for the purpose of the MPR report and is not to be included in the calculation of a law school’s MPR.

A law school’s MPR is to be calculated as a fraction that is the sum of all qualified takers for the reporting period who passed any administration of the CBX during the reporting period or the first February administration after the reporting period that was no more than 10 administrations after the taker’s graduation, plus the sum of all qualified takers who have satisfied the requirements for the alternative pathway to licensure set forth in California Rule of Court 9.49.1(i)(4) by the July 1 reporting deadline (the numerator); divided by the sum of all qualified takers for the reporting period who, whether they passed or failed, took any administration of the CBX during the reporting period or the first February administration after the reporting period that was also no more than 10 administrations after the taker’s graduation, minus the sum of all qualified takers who are provisionally licensed lawyers pursuing the alternative pathway to licensure set forth in California Rule of Court 9.49.1 and who have not yet completed or exited the program by the July 1 reporting deadline (the denominator), unless that program has concluded, with the resulting numeral being expressed as a percentage.