



The State Bar of California

OPEN SESSION AGENDA ITEM O-101 MARCH 2022 COMMITTEE OF BAR EXAMINERS

DATE: March 18, 2022

TO: Members, Committee of Bar Examiners

FROM: Alexander Lawrence, Chair
Paul Kramer, Vice-Chair

SUBJECT: Review, Discuss, and Provide Direction Regarding Procedural Proposals That May Affect Committee of Bar Examiners Meetings

EXECUTIVE SUMMARY

Soon, on short notice, the Committee of Bar Examiners officers will be asked to comment on State Bar proposals for unifying procedures among the Board of Trustees and its subentities such as the Committee. Those proposals are expected to address agendas, the conduct of meetings, public comment, whether future meetings are conducted in person or remotely and other matters. If we wait until the proposals are finalized, we will not have time to schedule them on a Committee agenda and hear your thoughts before the response deadline. Below we report what we do know of the proposals and seek your guidance so that we are better prepared to represent the Committee's views. If the timing allows us to check back with the Committee after the proposals are finalized, we will do so.

BACKGROUND

We were preparing a Committee Public Comment Policy for consideration at our January 2022 meeting. In early January, we learned that the State Bar hired a consultant to review various procedural aspects of Bar trustee and subentity meetings, including public comment. We shelved our proposal in favor of reviewing and commenting on the consultant's recommendations.

On February 15, 2022, Bar Executive Director Leah Wilson, emailed the officers of Bar subentities to report that the meetings procedures review was in process. She also described other proposed changes that could affect the operation of sub-entities. Her email is attached as Attachment A. It indicates that the subentity officers will be given the opportunity to comment on the proposals via a survey.

Paul Kramer replied to Ms. Wilson asking whether there would be sufficient time after the proposals were finalized to schedule a discussion on a future CBE agenda. He offered as an alternative that we schedule it for this, our March meeting. Ms. Wilson suggested that we schedule it for March. We took this as a sign that the time to respond to the survey will be brief and that we would not have time to wait until the proposals are released to consult with the Committee.

DISCUSSION

In-person meetings.

It is proposed that no more than 2 meetings each year be in-person meetings, with the remainder conducted via Zoom. This would happen only if the waiver of the requirement to disclose our locations and make them open to the public remains in effect. Due to the pending sale of the San Francisco office building and relocation of the San Francisco staff to a smaller space, all in-person meetings would likely be held at the Los Angeles offices. Applied to the CBE, that would mean 2 in-person meetings and 5 Zoom meetings each year.

The Covid pandemic has forced Zoom meetings upon us for the past two years. We have not sensed significant sentiment in favor of continuing them once that need passes. This provides an opportunity for us to share our thoughts.

Among the competing factors around this question are:

In-person meetings facilitate building bonds and relationships that facilitate a smooth operating, cohesive working group. Multiple conversations can occur at once during breaks and subcommittee chairs can coordinate last-minute details with staff. Ms. Wilson recognizes the value of some in-person interaction and thinks that 2 in-person meetings per year will be sufficient.

Member engagement is enhanced and facilitated by in-person meetings. Zoom meetings allow easier public access by avoiding the time and expense of traveling to the meeting locale, and the archived recordings allow viewing the meeting at a later time. The technology provided in the Bar's board rooms didn't work as well, but perhaps it could be improved and the meeting simulcast (and archived) via Zoom. Zoom meetings reduce members' time commitment by avoiding travel and reduce lodging and travel expenses for the State Bar.

Meeting procedures, including public comment.

The best we can do is discuss our general values about how meetings are conducted, which then can be applied to the final proposals.

Public comment. We've included our draft public comment policy (Attachment B) for you to review. It was designed to provide a consistent approach from meeting to meeting, to encourage the submission of written comments in advance of the meeting, and to move comments from persons interested in some specific items to the time the Committee considers the items rather than hours earlier at the start of a meeting. If you decide that the policy makes sense, we can use it as a point of comparison for the consultant's proposal and comment accordingly.

Time-specific agenda items.

Currently, one cannot predict with certainty when an agenda item will be heard. Our agendas say "[a]ll times indicated and the order of business are approximate and subject to change." While we generally move through the agenda in the posted order, it is difficult even for the officers and staff to predict when an item will be taken up. A person interested in a specific item must dedicate the bulk of a day to attend or monitor the meeting or risk missing our consideration of the item. For the Committee, not committing to specific times allows moving through the agenda and avoids "down time" when all other business is completed but the time set for an item hasn't arrived.

For example, a law school dean waiting for a petition or inspection report to be heard needs to attend the meeting from nearly the beginning, sometimes into mid-afternoon, until the item is heard. Not setting a specific time, though, lets the Committee continue from one item to another without having to pause ("down time") until the designated time arrives.

Strategic Plan.

In January and February, the Board of Trustees devoted substantial portions of its meetings to consideration of a new five-year Strategic Plan. Adoption of a plan is targeted for the Board's March 25 meeting. We don't know if the final draft will be available prior to our meeting one week earlier, but if it is, we will provide an update during our discussion.

The CBE officers were briefly interviewed last year by the plan consultant. We're told that interview was the extent of the CBE's formal participation in the preparation of the plan. While a "high-level" planning document, the strategic plan nonetheless affects the CBE: the current (2017-2022) plan contains at least five "goals" related to both implementation of Appendix I and attorney admissions. Once the new plan is adopted the CBE will be required to conform its workplans to the plan's goals and implementation measures. We've identified the following themes and implementation measures in the most recent draft as relevant to the CBE's work and offer them for your information and discussion. The complete draft may be found as an attachment to the Board of Trustees' February 23, 2022 agenda:

Foundational statements

1. Public protection—"The State Bar's mission is rooted in protecting the public. The

strategic goals below reflect the organization’s vision for realizing that mission over the next five years.”

2. Diversity, equity, and inclusion—“As a foundational principle, the State bar is committed to advancing diversity, equity, and inclusion, with respect to both its own operations and the legal profession itself.”

Goals

3. Strengthen the attorney discipline system.
4. Enhance Access to and Inclusion in the Legal System
5. Support the Legal Profession with education and resources
6. Engage with Partners to “enhance public protection and restore the State Bar’s credibility, reputation, and impact.”

Implementation Measures

7. Enhance Access to and inclusion in the Legal System. Our existing “special admissions” programs are cited as a method to increase representation in the legal profession, as is the “law school to profession pipeline.” It was noted that diversity pipeline efforts have been narrowed to focus on law school education; previously efforts were directed as early as the primary school level up through law school.
 - a. Manage a fair and effective system for admission to the practice of law and increase the number of attorneys admitted through special admissions programs, including the multijurisdictional practice program.
 - b. Increase the bar exam pass rate.
 - c. Revise the Bar Exam to be more relevant to the practice of law, in alignment with the recommendations of the Blue-Ribbon Commission on the Future of the Bar Exam.
 - d. Promote retention and advancement in the legal profession through collaborative diversity pipeline programs with law schools that support aspiring attorneys in graduating from law school and passing the bar exam.
 - e. Conduct an equity focused analysis of the impact of the remote bar exam on pass rates.
 - f. Provide implicit bias trainings for Bar Exam proctors and graders to reduce bias.
 - g. Collaborate with legislative and other stakeholders to establish a law school student loan forgiveness program.
 - h. Collaborate with stakeholders and law schools to improve accreditation processes.
8. Supporting the Legal Profession
 - a. Continue the 2022 Law School Retention Study including tracking law school attrition data and promulgating common metrics.
 - b. Continue the Strategies and Stories initiative and consider expanding the program to serve first year law students.
9. Engaging Partners
 - a. Increase public trust and consumer awareness by demonstrating competence and transparency.

- b. Increase access to State Bar data and performance outcomes.
- c. Enhance visibility of and accessibility to State Bar meetings.

If the Committee desires, we can continue to follow the progress of the new plan and provide input and comments, either as a Committee or individually. We propose that the status of the plan become a regular portion of the agenda under the Chair's Time category.

Other Aspects.

We've picked out the above aspects for consideration. Committee members are encouraged to mention any others of interest to them.

FISCAL/PERSONNEL IMPACT

In-person meetings will incur travel cost for Committee members and staff. The exact dollar amount is contingent on when in-person meetings commence, on whether all in-person meetings will be held at the Los Angeles State Bar Office, on how many staff will be required at each meeting, and on where Committee members will be traveling to. For example, Committee members in Northern California may be able to meet in-person at the San Francisco State Bar Office for CBE meetings and Southern California-based CBE members could meet at the Los Angeles State Bar Office for CBE meetings.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

None

PROPOSED MOTION

None

ATTACHMENT(S) LIST

- A. Content of February 15, 2022 Email from Leah Wilson
- B. Draft Public Comment Policy

Content of February 15, 2022 email from Leah Wilson

Sent on behalf of Executive Director Leah Wilson

Hello!

First and foremost, a belated Happy New Year, and a heartfelt thank you for your service to the State Bar and the public we serve. I wanted to take this opportunity to provide a quick update on some things underway at the State Bar that will impact your work as subentity leaders. I welcome your feedback, suggestions, and questions.

BOARD UNDERGOING PROCESS TO DEVELOP NEW FIVE YEAR STRATEGIC PLAN

As many of you are aware, the State Bar's current Strategic Plan expires this year. The Board is currently engaged in a process that will culminate with the adoption of a new five-year plan. The plan may be adopted by the Board as early as March, or as late as May. While typically your efforts to develop updated subentity workplans would be well underway by this time of year, given the fact that those workplans need to track the plan, please "extend" your current workplans such that you can continue your work status quo pending the Board's deliberations. Once the Board adopts a new plan your staff liaisons will work with you to promptly begin the workplan revision/updating process.

REVIEW OF BOARD AND SUBENTITY ADMINISTRATIVE PROCESSES AND PROCEDURES UNDERWAY

At the behest of several new members of the Board of Trustees who have observed significant variances in how Board and Bar subentity meetings are staffed and administered—in areas including agenda formats, procedural rules (voting, recusals, etc.), operational processes (how public comment, both written and oral, is shared, timed, and allowed), and minutes—we have engaged a consultant to conduct a comprehensive review of these issues, broadly characterized as administrative processes, as they manifest across the Board and all State Bar subentities. The consultant has generated a number of recommendations but has not yet completed her review. When a comprehensive set of recommendations is finalized I will send them to you for review and discussion with your subentity staff liaisons; you will also be given an opportunity to weigh in formally via survey. Your feedback will be provided to the Board before any recommended changes are implemented.

FINALIZATION OF RETURN TO OFFICE POLICY

The State Bar is currently engaged in effects bargaining with SEIU 1000 regarding its plan to have staff return to the office for two days per week effective early April 2022. This policy was originally designed to be implemented in February, but implementation has been delayed by the Omicron variant. At this juncture it looks like staff will return to the office in June.

DEVELOPMENT OF A POLICY REGARDING RESUMPTION OF IN-PERSON BOARD AND SUBENTITY MEETINGS

As can be inferred from the note regarding return to office above, the Omicron variant caused any potentially planned in-person meetings of the Board or State Bar subentities in the early months of this year to be shelved; I have committed to staff that there will be no in-person meetings through the month of February.

Thereafter, and assuming that state law allows, I intend to implement a policy whereby each subentity can meet in person twice annually, at the discretion of the chair. All other meetings will be held via Zoom. I hope that this approach will strike the right balance between fostering collaboration and connection between volunteers and realizing the significant cost savings associated with a reduction in in-person meetings. Further, but no less important, the Zoom format has increased access to Board and subentity deliberations in new ways; this increased public access supports organizational goals around transparency and accountability and should be sustained to the greatest extent possible.

Your opinion regarding this approach to the resumption of in-person meetings will be formally sought via the survey referenced above.

FINALIZATION OF APPROACH TO COVID-19 VACCINATION AND TESTING POLICY

With respect to the resumption of in-person meetings, at its January 2022 meeting, the Board of Trustees resolved as follows:

RESOLVED, that the Board of Trustees adopts a policy requiring all members of the State Bar Board of Trustees, all members of State Bar subentities, and all invited guests to Board and subentity meetings, to provide proof of full COVID-19 vaccination subject to medical and religious exemptions allowed under the law.

The specific procedures of the policy will be developed and administered by State Bar staff. Staff, in consultation with the Board chair, will have the authority to make changes as necessary to reflect updated public health directives.

This approach for State Bar volunteers and invited guests to Board and subentity meetings mirrors the requirements that have been put in place for staff. The Board has yet to act on requirements for members of the public who attend Board or subentity meetings; further guidance from the state is being sought in this regard.

We will establish a process by which subentity members can submit proof of vaccination in the near term.

PLAN TO SELL THE STATE BAR'S BUILDING AT 180 HOWARD STREET

The Board voted to sell the State Bar's San Francisco headquarters in November 2021. The building is expected to be put on the market in the summer of this year. Given the planned sale, technology investments needed to support hybrid in-person/remote Board or State Bar subentity meeting participation have not been made at the San Francisco location. Further, the "replacement" Bay Area State Bar location is likely to be significantly downsized in comparison

to 180 Howard Street. As such, it is anticipated that the vast majority of in-person meetings of the Board and Bar subentities will be held at the State Bar's Los Angeles location.

Again, thank you for your service and please do reach out with any questions, comments, or concerns in advance of a formal survey on some of these topics that will be issued in the next several weeks.

Thank you,

Leah

Leah Wilson

Executive Director, Office of the Executive Director

Draft Public Comment Policy

This policy applies the State Bar's Public Comment Guidelines [<https://www.calbar.ca.gov/About-Us/Who-We-Are/Board-of-Trustees/Public-Comment-Guidelines>] to the conduct of Committee of Bar Examiners (the Committee) meetings.

Oral Public Comment In order to provide sufficient time for consideration of the matters on its agenda, the Committee will accept limited oral public comment at the beginning of the first day of its meeting, no more than 2 (3?) minutes per person and a total of no more than ____ minutes.

Written Public Comment In view of the limited time to make an oral comment, persons and entities interested in making comments on an issue within the general jurisdiction of the Committee or a specific item or items appearing on the agenda are encouraged to make those comments in writing. Please provide those comments no fewer than 3 days before the meeting to allow time for the Committee members to review them. Address the comments to the Committee Secretary at the postal or email addresses indicated on the posted agenda. Written comments may be sent at any time but those provided less than 3 days before a meeting may not be distributed to the Committee until after the meeting.

Comments relating to a matter on the agenda will be considered in connection with it. The Committee is prohibited from taking action on a matter that is not on the agenda but, in its discretion, may schedule it for discussion and/or action on a future agenda.

Directly Affected Entity comments A specific entity directly affected by proposed Committee actions may provide its comments at the time that the Committee considers an item rather than during the general public comment period at the beginning of a meeting. Such comments will be limited to two representatives and any additional representatives necessary to answer questions from the Committee. By way of example, in the case of a periodic inspection report for a law school regulated by the Committee, the law school may have two representatives provide comments on its behalf, after the staff report. Comments from the school's students and alumni, other schools, and members of the public must be made in writing prior to the meeting or during the oral comment period at the beginning of the meeting.

Special Matters For some matters where the Committee Chair, in his or her discretion, finds it would support a discussion of the matter, public comment may be taken at the time that the matter is discussed by the Committee. The posted agenda will specifically indicate that such comment will be accepted and describe any limitations as to the number and duration of comments. Such matters might include a major revision to Bar Rules or adoption of a significant policy.