



The State Bar of California

OPEN SESSION AGENDA ITEM O-200 OCTOBER 2022 COMMITTEE OF BAR EXAMINERS

DATE: October 14, 2022

TO: Members, Committee of Bar Examiners

FROM: Alex Chan and Esther Lin, CBE Members and CBE Representatives on the Blue Ribbon Commission on the Future of the California Bar Exam

SUBJECT: Discussion of Blue Ribbon Commission on the Future of the Bar Exam Recommendations and Next Steps

EXECUTIVE SUMMARY

The Blue Ribbon Commission on the Future of the California Bar Exam (BRC) may conclude its efforts and make a recommendation to the California Supreme Court regarding changes to the California Bar Exam and an alternative pathway to licensure that does not require Bar Exam passage. This could occur at the next BRC meeting, scheduled for Wednesday, October 12, two days before the CBE meeting. As the CBE's representatives on the BRC, we offer the following information about the work of the BRC to date and discuss options available to the CBE to provide further input into the process.

BACKGROUND

Director of Admissions Amy Nunez prepared a slide show for presentation to the Council on Access and Fairness in late August, following the most recent BRC meeting. It is attached and we refer you to it for information about the BRC's process and decisions made to date.

Back in February 2022, the Subcommittee on Pathway to Licensure Through a Licensing Exam voted in favor of pursuing a CA-specific-exam reflecting CAPA recommendations by exploring issues (e.g. reciprocity, portability, and the like) and collecting data through special sessions related to exam administration considerations, while continuing to monitor the validation of

the NextGen exam. The Subcommittee on Pathway to Licensure Through a Non-Exam Alternative also voted in favor of developing a non-exam pathway that is based on two distinct tracks: (a) a short-term bridge, transition program, and (b) a long-term program that takes into account the pertinent psychometric requirements of validity and reliability.

On April 6, 2022, as to the exam pathway, if the California Supreme Court were to adopt it, the BRC voted in favor of pursuing a new modified exam that reflects CAPA recommendations, including adopting the following eight legal topics: Administrative Law and Procedure, Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts. The BRC also voted in favor of incorporating new skills in the new modified exam, including drafting and writing; research and investigation; issue-spotting and fact-gathering; counsel/advice; litigation; communication and client relationship; and negotiation and dispute resolution.

The BRC, however, has yet to come to a consensus regarding a non-exam pathway, if the California Supreme Court were to adopt one. At the last BRC meeting in August 2022, a motion on exploring a bar exam alternative for licensure did not pass but neither did a competing motion to not recommend an alternative to the Court. The possible aspects of a pathway are described in the attached slides but no consensus has formed on the details.

The BRC's next meeting is on October 12, two days before our CBE meeting. The posted agenda describes the following matters for BRC discussion and action:

- A. Discussion and Recommendation for a California Non-Exam Pathway to Licensure;
- B. Discussion and Recommendation of Pathways to Licensure for Out-of-State Law School Applicants, Out-of-State Attorneys, Foreign Attorneys, and Foreign-Educated Applicants; and
- C. Finalization of Recommendations related to an Exam Pathway.

As this was drafted, no materials were attached to the BRC agenda. When they are posted we will make them available to you and may revise this memo.

DISCUSSION

The CBE has expressed concerns about both the examination and alternative (non-exam) pathways. Regarding the modified exam, we think the business law related topic(s) should remain among those tested given the heavy focus of commercial and business transactions in the State of California.

Regarding the alternative pathway, many key details remain undefined. Of the key elements, a graded "capstone" work product would require the creation of a new regulatory and grading system. Also, there is no defined means by which to verify that the capstone is the applicant's own or original work. This issue is particularly pronounced for those applicants who work in a team or collaborative environment.

Also, no concrete plans have been discussed in relation to the quality of training and supervision, practice readiness, and compensation for applicants enrolled in this pathway. Nor are there any safeguards against exploitative working conditions as well as harassment and discrimination to protect the applicants. There are also significant concerns as to whether there will be enough qualified attorneys and law firms in California to supervise alternative pathway participant. Where there are too few qualified supervisors, this could lead to a denial of pathway access for the disadvantaged. The cost for such a program is also a serious concern. In the Canadian Province of Ontario, which has adopted a non-exam pathway called “articling,” each candidate pays a license fee of cdn\$4,710, which includes a cdn\$2,800 experiential training fee. How much each applicant enrolled in the non-exam pathway is expected to pay remains unknown.

At the next BRC meeting, the Commission will either adopt new recommendations or schedule another meeting to continue its discussions. We’re informed that any recommendations will be subject to public review and comment.

There is no opportunity for the CBE to instruct its representatives as to the CBE’s position on these issues before the BRC meeting. In anticipation of a further BRC meeting for which the CBE could provide instructions or a public comment window during which the CBE could file comments, this meeting is the proper time for it to discuss the BRC recommendations and take appropriate action, where necessary.

FISCAL/PERSONNEL IMPACT

None

RECOMMENDATIONS

Any CBE action would likely be either providing instruction to the CBE representatives (should the BRC not conclude its work before our meeting) or directing the preparation of public comments from the CBE to be reviewed at our December meeting and submitted during the public comment period. The results of the BRC meeting will inform that decision.

PROPOSED MOTION

To be determined

ATTACHMENT(S) LIST

A. Update on BRC for Council on Access & Fairness, August 26, 2022