

TO: Committee of Bar Examiners

FROM: Paul Kramer, Committee Chair  
Dr. Michael Cao, Committee Vice Chair

DATE: December 2, 2022

SUBJECT: Committee Planning Session Discussion Outline

### **EXECUTIVE SUMMARY**

This memo complements the Bar Staff's slide presentation. Our purpose is to provoke a deeper review and discussion of the Committee of Bar Examiners' roles and responsibilities, Committee expectations of its officers, subcommittee chairs, and individual members and preferred meeting practices. To jump start the discussions, we pose a series of questions below. We propose to prepare a report of the Committee's conclusions for review and adoption during the January 2023 Committee meeting.

### **BACKGROUND**

The duties, workload, and information provided to the Committee have changed over recent years. For example:

We no longer receive monthly summaries of the Admissions Fund income and expenses or make recommendations regarding the Admissions Fund budget and fees for Admissions services (Bar Exams, Moral Character, law school regulation, etc.). For calendar 2022, expenses are projected to exceed revenues by \$8 million.

We no longer participate in moral character applicant conferences. Instead, we consider appeals of adverse moral character decisions based on the written record and a recording of the staff-conducted conferences.

By the end of this Committee year, we will no longer consider testing accommodations appeals. Staff decisions will be final, appealable only to the Supreme Court.

One of the justifications for these and other changes has been that Committee members' time will be freed to focus on policy making.

Recent planning sessions have consisted of a review of ongoing goals and work plans, but we've not discussed the broader context of our portfolio and its relationship to the goals of the State Bar, our stakeholders and the legal profession. We've been reactive, responding to issues as they are presented to us, rather than proactive, asking ourselves what we should be focusing upon. Today we aim to ask those questions, to break down and rebuild our understandings from the ground up.

We've never spoken about the expectations Committee members have for themselves, the Chair/Vice Chair, subcommittee leaders, and staff. This is also a good time to address whether some changes to the conduct of our meetings, such as the order of agenda items, are in order. Rather than simply impose changes by Chair's prerogative, we seek the Committee's input and agreement, hoping to develop new habits that survive our terms. Consistency is important in the application of our standards to testing accommodation and moral character determinations; it is no less useful in preparing for and conducting our meetings.

To facilitate our recollection of the conclusions we reach and to transfer that information to future Committee members, we propose to prepare a summary document which we will bring back for Committee approval in January.

## **DISCUSSION**

The questions and thoughts below come primarily from the Chair and Vice-Chair, supplemented by the Committee members who participated in one-on-one interviews with the Chair, and staff. Any recommendations stated or implied below are simply that—recommendations for the Committee's consideration. The organization and focus are the product of our interests; to the extent a concern or interest of yours is not mentioned, please raise it during our discussion.

- 1) What are the Committee of Bar Examiners' roles and responsibilities? We've categorized them into the following four categories. (The subtopics and activities listed below are illustrative examples, not a complete list.)
  - a) Policymaking
    - i) Admissions rules and rule amendments
    - ii) Guidelines
    - iii) Commenting on other Bar programs that may affect our programs
  - b) Regulatory
    - i) Attorney admissions
    - ii) California Registered and Accredited law schools
    - iii) Testing accommodations
    - iv) Moral character determinations
    - v) Miscellaneous administrative appeals
  - c) Oversight
    - i) Review of staff testing accommodations and moral character determinations for consistency and compliance with legal standards
  - d) Outreach
    - i) Communications with law schools and law students
    - ii) Leah Wilson alluded to increased outreach to other constituencies as well as increasing public participation on the Committee. Further explanation is desired.
- 2) Committee Meeting practices

- a) New Public Comment policy and Rosenberg's Rules of Order. These are changes just adopted by the Board of Trustees. We will receive presentations/training about each later in our agenda and can defer our discussions until then.
  - i) Should we default to 3 minutes (instead of 2) per person unless the number of commenters requires reducing the allotted time?
  - ii) How can we make the written public comments we receive more accessible to the general public?
- b) How do we increase Committee member engagement?
- c) Should we modify the order of our agendas to place action items before informational reports (except where a report informs an action item)? Persons interested in a specific item would spend less time waiting for the item to be heard. It would also reduce the likelihood an item is postponed because we lose a quorum near the end of a meeting day; informational reports could presumably be presented to those who remain and reviewed by those who had to leave via the meeting recording.
- d) Staff would like to combine the individual subcommittee goals into a single work plan for the Committee as a whole, still subdivided by subcommittee, and to review the work plan two to three times a year rather than at every Committee meeting.
  - i) Or should we place possible review of the work plan on every agenda with the understanding that we will discuss it only when we have a specific question, concern, or proposed modification? That allows us to act when there is a need to do so, but does not consume much time when there is no such need. Without the placeholder on the agenda, we would have to wait until a future meeting.
- e) Meeting principles. We propose the following principles:
  - i) The Committee should receive timely reports about actions and potential actions of the Board of Trustees that may affect either the Admissions function or operations of the Committee, as well as any other information relevant either directly or as general background information regarding the Committee's regulatory, policymaking, oversight, and outreach functions. The goal being that the Committee is aware of external activities with sufficient time to consider and discuss any responses or input it desires to provide. Examples:
    - (1) Budget status
    - (2) Proposed fee adjustments
    - (3) Proposed strategic plan amendments
    - (4) Changes to meeting procedures
  - ii) Where the input of the Committee is solicited by external entities, for example, in the preparation of the Bar's Strategic Plan, the relevant questions should be placed on the Committee's agenda for discussion and formulation of a response. This is preferred to soliciting the input of the Committee officers between Committee meetings.
  - iii) Wherever feasible, issues of significant import or complexity should be presented and discussed at one meeting, with action scheduled for a subsequent meeting in

order to allow sufficient time for careful contemplation of the presentation and discussion and for staff to investigate and prepare responses to concerns or questions raised during the initial meeting.

(1) In general, but especially when it is necessary to both first present an item and obtain a decision at the same meeting, the background information, discussion, and recommendations should be set forth in written materials made available as far in advance of the meeting as possible, even before agenda materials are normally posted.

iv) The time allotted to presentation and discussion of an item should be enough to allow every member to understand the proposed action and have his or her questions answered.

(1) Do we try to fit too much into a meeting day? Should we have more two-day meetings as necessary?

v) In-person meetings are more effective than, and are preferred over, videoconference meetings. The Zoom recordings of our meetings are useful, however.

### 3) Roles of the Chair and Vice-Chair

#### a) Chair

- i) Regularly consult with staff about upcoming agendas and other matters that occur between meetings
- ii) Serve as the Committee's eyes and ears between meetings
- iii) Preside over Committee meetings

#### b) Vice-Chair

- i) Assist the Chair with agenda reviews
- ii) Sounding board
- iii) Get oriented and ready to serve as Chair next year
- iv) Prepare to survey members about their interests and make assignments to the next year's committees

### 4) Role of subcommittees and their Chairs/Vice-Chairs

#### a) topics germane to each subcommittee

- i) Educational Standards
- ii) Examinations
- iii) Moral Character
- iv) Operations & Management

b) Subcommittee members are to be best prepared to discuss their items on the agenda

c) Volunteers for moral character appeals and school inspections, come first, but not exclusively, from the associated subcommittee

- i) Or is the goal of consistent application of principles and rules best served by limiting such service to subcommittee members?

- d) Testing accommodations appeals between full Committee meetings are heard by the Examinations subcommittee (until amended rules remove the Committee from the appeal process)
- e) Subcommittee Chairs/Vice-Chairs
  - i) Review draft staff reports for clarity, consistency, inclusion of information necessary to fully inform our decision
  - ii) Present the subcommittee's agenda items to the full Committee
    - (1) This is a habit we've fallen into, but should it be expected of each subcommittee chair?
- 5) Representatives on External Commissions/Committees/Working Groups
  - a) Examples
    - i) Blue Ribbon Commission on the Future of the Bar Exam (BRC)
    - ii) Provisionally Licensed Lawyer (PLL) Working Group
    - iii) California Attorney Practice Analysis (CAPA) group
    - iv) California State Bar Accredited and Registered Schools (CSBARS)
  - b) Representatives should update and seek guidance from the full Committee as necessary; they represent the Committee as a whole, not their individual positions
- 6) Working with staff to prepare proposals, such as rule amendments, for presentation to the full Committee. The goal is to get the proposal and accompanying staff report in the best shape (clarity, consistency, inclusion of necessary information) to inform the Committee's review and decision, not to substitute one's judgement for the Committee's.
- 7) Issues not addressed above?

## **NEXT STEPS**

The Chair and Vice Chair will prepare a summary of the Committee's conclusions for consideration at the January meeting.