

TO: Committee of Bar Examiners

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

DATE: January 27, 2023

SUBJECT: Committee Planning Session Summary of Points of Consensus (O-101)

EXECUTIVE SUMMARY

This memo reports the points of general consensus among Committee members arising from the December 2, 2022 Committee Planning session. Our intent in reporting these points for ratification by the Committee is to create a record for reference by future new and returning Committee members to promote consistent practices and procedures over time.

BACKGROUND

The points of consensus below are a subset of a set of discussion points and questions we presented to the Committee of Bar Examiners by memo during the December 2 planning session (December 2, 2022, CBE agenda, item I. D.). We do not summarize the planning session discussions, only those points upon which consensus was reached and those about which additional discussion may be in order.

POINTS OF CONSENSUS

These points of consensus/agreement are not binding on this Committee or future Committees but rather are preferences which should be honored unless particular circumstances require another approach, or the Committee decides they should no longer apply.

- 1) Committee of Bar Examiners' roles and responsibilities. (This is an enhanced version of the incomplete list presented in December. It likely still needs additional enhancement.)
 - a) Policymaking
 - i) Recommending new rules and rule amendments regarding Regulatory and Oversight functions
 - ii) Adopting Guidelines to explain and expand upon the above rules
 - iii) Keeping abreast of new and best practices as they may be reflected in the activities of other similarly focused entities
 - iv) Commenting on other Bar programs that may affect our programs, including
 - (1) Budget
 - (2) Fees for Admissions programs and services
 - (3) Procedural rules and policies (i.e., public comment)
 - b) Regulatory
 - i) Attorney admissions

- (1) Qualification to take the Bar exam
 - (2) Bar exam questions selection
 - (3) Bar exam administration
 - (4) Testing accommodations
 - (5) Moral character determinations
- ii) Regulation of California Registered and Accredited law schools
- iii) 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) Other constituencies
- 2) Committee Meeting practices and principles
 - a) Consistent with the State Bar's Public Comment Policy, we will limit oral public comments to 3 minutes per speaker. That limit may be reduced to 2 minutes per speaker if the number of persons desiring to speak is such that they could not be accommodated in the space of 2 hours.
 - b) We will modify the order of our agendas to place action items before informational reports (except where a report informs our consideration of an action item). Persons interested in a specific item would spend less time waiting for the item to be heard. This 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.
 - c) We will combine what have been our individual subcommittee goals into a single work plan for the Committee as a whole, with the items still categorized by subcommittee. We will place 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 Committee time when there is no such need. Without the placeholder on the agenda, we would have to wait until a future meeting to make a change that we identify during the current meeting.
 - d) 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:
 - i) Budget status
 - ii) Proposed fee adjustments

- iii) Proposed strategic plan amendments
 - iv) Changes to meeting procedures
- e) 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.
- f) With regard to matters of significant import or complexity, such as rule additions and amendments, Committee members should feel free to request that action on the matter be postponed until a subsequent meeting in order to allow time for the member to consider the matter and for staff to investigate and prepare responses to concerns or questions raised during the initial meeting. Staff should schedule such matters with the possibility that a continuance of the Committee discussion will be necessary in mind.
- g) 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.
- h) In-person meetings are more effective than, and are preferred over, videoconference meetings. The Zoom recordings of our meetings are useful, however.
- 3) Expectations of the Chair and Vice-Chair
 - a) Chair
 - i) Anticipates informational and other needs to facilitate the Committee's full, informed discussion of the issues which come before it either at the behest of staff or the Committee
 - ii) Regularly consult with staff about upcoming agendas and other matters that occur between meetings
 - iii) Serve as the Committee's eyes and ears between meetings
 - iv) Preside over Committee meetings
 - v) The Chair works for the Committee, they have one vote like everyone else
 - b) Vice-Chair
 - i) Assist the Chair with agenda reviews
 - ii) Act as a sounding board
 - iii) Get oriented and ready to serve as Chair next year
 - iv) As the time to transition to Chair approaches, survey members about their interests and make assignments to the next year's committees. Not all member desires may be accommodated but it is best to ask.
- 4) Expectations of subcommittees and their Chairs/Vice-Chairs
 - a) Subcommittee members are to be best prepared to discuss their subcommittee's items on the agenda
 - b) Volunteers for school inspections, come first, but not exclusively, from the Educational Standards subcommittee
 - c) Volunteers for moral character appeals will come primarily from the Moral Character subcommittee. In addition, before participating on an appeals panel, the member must

become familiar with the Moral Character process, standards, and practices, by observation or other means.

- 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. This is optional and not required of any individual subcommittee chair.
- 5) Expectations of representatives appointed to external Commissions/Committees/Working Groups. Examples:
 - Blue Ribbon Commission on the Future of the Bar Exam (BRC)
 - Provisionally Licensed Lawyer (PLL) Working Group
 - California Attorney Practice Analysis (CAPA) group
 - California State Bar Accredited and Registered Schools (CSBARS)
- a) Representatives should update and seek guidance from the full Committee as necessary; they represent the Committee as a whole, not their individual positions
- 6) Expectations of members 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.

CANDIDATES FOR ADDITIONAL DISCUSSION

- 1) How can we make the written public comments we receive more accessible to the general public?
- 2) Is there more work to be done regarding how members desiring to conduct moral character appeals will be trained?

RECOMMENDATION

It is recommended that the Committee of Bar Examiners approve the Points of Consensus set forth above.

PROPOSED MOTION

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

MOVE, that the Committee approves and adopts the Points of Consensus set forth above for future reference.