



The State Bar of California

Blue Ribbon Commission on the Future of the California Bar Exam Teleconference

Open Session Minutes
Thursday, November 3, 2022
10:02 a.m.– 1:34 p.m.

Time Meeting Commenced: The Blue Ribbon Commission meeting commenced in open session at 10:02 a.m.

Time Meeting Adjourned: 1:34 p.m.

Chair: Joshua Perttula

Committee Coordinator: Devan McFarland

Members Present: Chair Joshua Perttula, Susan Bakhshian, Alex Chan, Charles Duggan, Jeremy M. Evans, Ryan Harrison, Dr. James Henderson, Esther Lin, Tracy Montez, Judge Glen Reiser, Natalie Rodriguez, Kristin L. Rosi, Emily L. Scivoletto, Karen Silverman, Mai Linh Spencer, and Amy Williams

Members Absent: David Boyd and Jackie Gardina

OPEN SESSION

Call to Order

The Blue Ribbon Commission was called to order by Chair Perttula.

Roll Call

Roll call was taken and a quorum was established.

I. Chair's Remarks

A. Call for Public Comment

Chair Perttula called for public comment, inquiring as to whether there were person(s) who wished to comment on any agenda item. The following comments were provided to the commission:

1. Ray Hayden

- Ray Hayden informs the Blue Ribbon Commission that IALES and the NCBE have both determined that the current bar exam is invalid, specifically the MBE portion of the exam. Ray Hayden suggests that the Blue Ribbon Commission continue pushing for the non-exam pathway and thanks the Blue Ribbon Commission for their efforts thus far.

2. Carolyn Shining

- Carolyn Shining suggests that the proposals for a non-exam pathway create a dangerous risk, not just to the members and consumers of California, but to the very people the Blue Ribbon Commission seeks to become licensed attorneys. Not being able to understand the various interplay between all the areas of law in California make those individuals subject to future discipline. Carolyn Shining asks the Blue Ribbon Commission to do additional studies on non-exam pathways before moving forward at this time.

3. Reann Pacheco, Legal Aid Association of California

- Reann Pacheco, speaking on behalf of the LAAC, is deeply concerned and disappointed in the Blue Ribbon Commission's recent decision making to not approve a non-exam pathway and the lack of legal aid representation in this committee overall. Reann Pacheco asks the committee to allow California to merely explore the non-exam pathway, to listen to the dozens of experts who have come to this committee to demonstrate the success and need for a non-exam pathway, and not let a year's worth of work go to waste.

4. Lucas Wright, Legal Services Funders Network

- Lucas Wright suggests that Jeremy Evans, current member of the Blue Ribbon Commission, is using his position to bias his audience against an alternative pathway to licensure. Lucas Wright suggests to the Blue Ribbon Commission that there are cultural and physical biases associated with the multi-day, closed book examination administered only twice a year. Lucas Wright alludes to robust public comment confirming that the California Provisionally Licensed Lawyer program has been a great training experience for new attorneys, increases access to justice, and has not resulted in any disciplinary issues.

5. Jennifer Fair, Legal Aid Services Funders Network

- Jennifer Fair states that the Blue Ribbon Commission has yet to make any formal recommendations, and has never suggested that an alternative pathway must be exam free. Jennifer Fair suggests that it has been well documented that the experience of individual exam takers varies greatly depending on factors including where you take the exam, who the proctors are, if an examinee's request for an accommodation is granted, and the fact that essay portions of the exam are graded by hundreds of different readers.

6. Nikia Schultz, Legal Aid Services Funders Network

- Nikia Schultz informs the Blue Ribbon Commission that many jurisdictions have shared that they feel the public is more protected as new attorneys receive significant supervision and training post law

school. Nikia Schultz suggests that the claims regarding the alternative pathway could potentially open the door to supervision by unqualified and potentially unscrupulous law firms and lawyers are entirely false. This argument fails to acknowledge that these programs, including California's PLL program, have not experienced any significant inequitable access to supervisors or harassment. Furthermore, State Bar Staff has addressed these concerns by identifying the potential to require standardized training of supervisors, minimum compensation requirements, ongoing monitoring of pathway participants, and a matching program that would ensure access to supervisors for pathway positions.

7. Jessica Juarez, Legal Aid Services Funders Network

- Jessica Juarez highlights that many presenters and members of the Blue Ribbon Commission express a belief that there will be ample supervisors available especially for licensure applicants who want to work in public interest law around positions in small rural practices and legal deserts. Jessica Juarez, a woman of color, states that the PLL program has truly given her opportunities and experiences working with a supervised attorney that she would not have received otherwise. Jessica Suarez urges the Blue Ribbon Commission to move forward with an alternative pathway to licensure.

8. Tyrine Aman, Provisionally Licensed Lawyer

- Tyrine Aman states that the current California Bar Examination purports to test an applicant's minimum competence to practice law and an applicant's ability to address issues in a lawyer like manner. Tyrine Aman suggests to the Blue Ribbon Commission that they should strongly consider allowing current provisionally licensee holders an untraditional pathway to licensure. Tyrine Aman hopes the Commission acknowledges that two successful years of practice as a provisionally licensed lawyer better test an applicant's minimum competence to practice law in comparison to a two-day exam.

9. Claire Solot, Legal Aid Services Funders Network

- Claire Solot suggests to the Blue Ribbon Commission that they pursue other potential reforms to the bar exam itself instead of exploring an alternative pathway and eliminating the bar exam entirely. Clair Solot recommends that the Blue Ribbon Commission an exam component, such as the Ontario program, which requires applicants to take a three to four hour multiple choice open book test as part of the requirement for licensure. Ms. Solot suggests than an alternative pathway would increase access to justice, increase diversity in the legal profession, and allow California to join other jurisdictions that have recognized this.

B. Approval of Revised October 13, 2022, Blue Ribbon Commission Open Session Meeting Minutes.

Moved by Rosi, seconded by Rodriguez.

Ayes – (13) Bakhshian, Chan, Duggan, Evans, Harrison, Henderson, Montez, Reiser, Rodriguez, Rosi, Scivoletto, Silverman, Williams

Noes – (0)

Abstain – (0)

Absent – (4) Boyd, Gardina, Lin, Spencer

Minutes adopted.

II. Business

A. Discussion and Recommendation of Pathways to Licensure for Out-of-State Law School Applicants, Out-of-State Attorneys, Foreign Attorneys, and Foreign-Educated Applicants.

RESOLVED, that the Blue Ribbon Commission recommends that the Supreme Court revise the requirements for licensed, out-of-state attorneys to be admitted to California without sitting for the California Bar Exam. The BRC recommends that in establishing the requirements, the Supreme Court explore the minimum number of years of recent practice in another state to establish minimum competence, along with a demonstration of ethical and competent practice.

Moved by Rosi, seconded by Rodriguez.

Ayes – (10) Bakhshian, Chan, Harrison, Henderson, Montez, Reiser, Rodriguez, Rosi, Silverman, Spencer

Noes – (1) Scivoletto

Abstain – (0)

Absent – (6) Boyd, Duggan, Evans, Gardina, Lin, Williams

Motion carries.

RESOLVED, that the Blue Ribbon Commission recommends that the Supreme Court defer the decision to modify the admissions requirements for foreign attorneys and foreign-educated applicants until the new California bar exam has been implemented.

Moved by Scivoletto, seconded by Rosi.

Ayes – (1) Bakhshian, Chan, Harrison, Henderson, Lin, Montez, Reiser, Rodriguez, Rosi, Scivoletto, Silverman, Spencer

Noes – (1) Evans

Abstain – (0)

Absent – (4) Boyd, Duggan, Gardina, Williams

Motion carries.

B. Discussion and Recommendation for a California Non-Exam Pathway to Licensure Framework.

Discussion only.

C. Finalization of Recommendations related to an Exam Pathway.

RESOLVED, that if the Supreme Court adopts the Blue Ribbon Commission’s recommendation to develop a California-specific exam, the State Bar of California, in consultation with subject matter experts in exam development and other specialists, shall be tasked to design an exam. The design shall be consistent with the guiding principles adopted by the Blue Ribbon Commission, including crafting an exam that is fair, equitable, and minimizes disparate performance impacts based on race, gender, ethnicity, disability, and other immutable characteristics.

Moved by Scivoletto, seconded by Bakhshian.

Ayes – (12) Bakhshian, Chan, Evans, Harrison, Henderson, Lin, Reiser, Rodriguez, Rosi, Scivoletto, Silverman, Spencer

Noes – (0)

Abstain – (0)

Absent – (5) Boyd, Duggan, Gardina, Montez, Williams

Motion carries.

ADJOURN