

TO: Committee of Bar Examiners  
FROM: Paul Kramer, Committee Chair  
DATE: March 24, 2023  
SUBJECT: Proposed Comment on the Blue Ribbon Commission's Draft Report (O-201)

## **BACKGROUND**

The Blue Ribbon Commission on the Future of the California Bar Examination was charged with addressing various aspects of the examination process, including whether members of other jurisdictions' bars could be admitted the California Bar without taking either the General or Attorney's California Bar Exams. On that point the draft report identified two ways in which such admission has been accomplished in other jurisdictions: reciprocity, and comity. Reciprocity allows members from both jurisdictions to join each other's Bars without an additional examination (two-way). Comity is where one jurisdiction accepts members of another jurisdiction's Bars without similar benefits given to its members (one-way). While the draft report, at pages 26 - 29, explains the difference between the two, the Commission's recommendation is silent about a preferred method. In my view, fairness to California Bar members dictates that reciprocity is the proper choice. Otherwise, members of other bars could join our bar but our members would not be able to join their bars with the same ease.

The issue remains that our bar members who did not attend an ABA-Accredited law school may not meet other bars' educational requirements and therefore be ineligible to join those bars. Dean Jackie Gardina proposes, in a dissenting opinion to the draft report, that we use reciprocity as a lever to force other jurisdictions to change their educational standards to admit graduates of California Accredited and Registered schools. I would not go that far, simply that our members who meet another bar's standards be able to join that bar to the same extent that their members can join ours.

Alex Chan, one of our representatives on the Commission, submitted a dissenting opinion (page 49) to the draft report, joined in by our other representative, Esther Lin. His dissent makes the following points (I encourage you to read it in its entirety, at pages 49 – 56 of the draft report):

1. Using supervised practice as a bar exam alternative will likely be expensive. The Bar is not in a place to subsidize it, meaning that the financial burden will fall on the participants, with greater impacts on disadvantaged people and increasing barriers to entry into the legal profession.
2. There are important unresolved issues that were identified in the existing supervised practice examples the Commission examined, such as pay inequity, employment abuse, workplace harassment, and racial/gender discrimination.

3. Whether such a program can be scaled up to the capacity that would be needed in California. Without adequate capacity, issues of disparate impacts may be magnified. And what would adequate capacity cost?
4. Limiting participants to legal aid organizations, proposed to address some concerns about a more broadly applicable program, will not solve concerns expressed (#2) above.
5. A supervised practice program might serve as a substitute for the multistate portion of the Bar Exam. The multistate exam will be phased out soon and the bar is looking for something to replace it as a tool for scaling the essay portion of the exam. [Paul Kramer editorial comment: I have my doubts that it could perform that function but it may be worth investigating.]
6. More consultation with local and regional bar associations regarding exam alternatives is necessary. They represent the people who provide much of the supervision and evaluations that are critical to a supervised practice alternative.

Alex's dissent was footnoted as being his personal opinion and not that of the Committee of Bar Examiners. If the Committee agrees with his dissent, we can note our agreement in our comment.

#### **PROPOSED COMMENTS**

The discussion of an alternative means for attorneys from other jurisdictions to join the California Bar without taking an examination describes the two commonly used methods—reciprocity and comity. The Commission's recommendation, however, is silent as to which of those methods is recommended. The Committee of Bar Examiners recommends that the final report clarify which, if any, method the Commission recommends and further that the Commission select reciprocity to provide an equal ability for California Bar members to join the other jurisdiction's bar.

The Committee of Bar Examiners agrees with and joins in the dissenting opinion of Alex Chan.

#### **PROPOSED RESOLUTION**

The Committee of Bar Examiners approves and adopts the above proposed comments and directs staff to present them to the Blue Ribbon Commission.