



The State Bar of California

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TO: Members, Committee of Bar Examiners

FROM: Ashley Silva-Guzman, Committee of Bar Examiners
David Torres, Committee of Bar Examiners
Audrey Ching, Program Director, Office of Admissions
Donna Hershkowitz, Chief of Programs

Subject: Action on Eligibility Rules: Recommendation to Circulate Rules Revision for Public Comment; Recommendation to Adopt and to Repeal of Guidelines and Policies; and Recommendation to Adopt Legislative Proposals

EXECUTIVE SUMMARY

The State Bar has conducted a thorough review and evaluation of the rules, practices, guidelines, and procedures related to eligibility for admission and attorney licensure, as outlined in Chapters 1-3 and 5 of Title 4 of the Rules of the State Bar. These revisions are part of the State Bar's ongoing efforts to enhance the fairness and transparency of the eligibility determination process while also eliminating unnecessary barriers. Based on discussions with a working group of volunteers from the Committee of Bar Examiners this agenda item proposes revisions to bring transparency, consistency, and efficiency to the application and file review process.

The proposed changes aim to clarify and streamline the process in line with relevant laws and rules. This aim has also led to recommendations for statutory change where appropriate. The agenda item proposes that the committee recommend that the Board of Trustees circulate these rules for a 60-day public comment period, adopt the proposed statutory changes as legislative priorities, and adopt and repeal guidelines or policies as necessary to effectuate the changes proposed.

BACKGROUND

The Office of Admissions of the State Bar of California conducted a review of the statutes, rules, policies, guidelines, and practices governing eligibility to sit for the First Year Law Students' Exam, to sit for the bar exam, and to be certified to the Supreme Court for admission. Business and Professions Code¹ section 6060 outlines the requirements an applicant must meet in order to be certified and admitted to practice law in the Supreme Court, including age, good moral character, education, registration, and relevant examinations. This review process was initiated as part of a comprehensive review project with the objective of ensuring that all rules and procedures are clear and understandable for applicants, consistently applied by staff, and updated to reflect current best practices and legal requirements.

As part of the review process, staff have been carefully examining the existing rules and procedures to identify any areas that may create confusion or inconsistency. This includes a thorough analysis of questions received from applicants, common areas of misunderstanding or confusion amongst applicants, and applications from other jurisdictions. Staff have also been reviewing and revising existing forms that may or may not currently connect to rules and guidelines, and other information available on the State Bar's website to provide comprehensive guidance to applicants.

In addition, staff went back through historical Committee of Bar Examiners agenda items, minutes, and motions to compare the record to the existing rules, statute, staff procedure and the website. The thorough scouring resulted in some of the working group recommendations – a committee decision from 2003 to stay the number of attempts for the First-Year Law Students' Examination while an applicant is on active duty, for example, has been added as a legislative priority.

At the committee's December 2022 meeting, staff highlighted some initial thinking about eligibility rules that were ripe for revision and asked for the committee's input on other potential changes. Committee members Ashley Silva-Guzman and David Torres volunteered to work with staff on developing a proposal to be brought back to the Committee. The proposal before the committee today is the result of that effort. References in this agenda item to the "working group" are to these Committee members and the staff who worked with them.

The proposed changes to the procedures aim to eliminate outdated or duplicative information, provide clarity to applicants, and ensure that the rules are consistent with current legal requirements. These changes considered for adoption also seek to improve the overall effectiveness and fairness of the eligibility determination process for taking Office of Admissions exams or practicing law in California.

¹ All further statutory references are to this code unless otherwise noted.

DISCUSSION

Certification to the Supreme Court

The overview of the admission requirements in the State Bar Rules includes the steps needed to be eligible for certification to the California Supreme Court. In the deep dive comparing rules to practice and statute, the working group discovered that Family Code 17520, referenced in a State Bar rule related to certification to the California Supreme Court, allows for the issuance of a temporary license while in child support arrears. As this does not further the State Bar's public protection mission, nor is it practical for the Office of Admissions, the recommendation is to modify the Family Code section with a carve out for the State Bar.

Furthermore, **Rule 4.15** has been clarified to change "be in compliance with" to "not be identified on the certified list" of either child support arrears or tax delinquency. Since the compliance check requires removing individuals that appear on these lists from the motion sent to the Supreme Court, it is more transparent to clearly delineate that a certified list will be checked.

Legal Education

The State Bar Rules on legal education (**Rule 4.26**) required for the California Bar exam largely mirror the statute. An applicant can establish eligibility to take the bar exam by JD conferral from an American Bar Association (ABA) law school or one accredited by the committee. Another way forward for eligibility requires the applicant to demonstrate that they have "studied law diligently and in good faith for at least four years in a law school registered with the Committee; in a law office; in a judge's chambers; or by some combination of these methods."

The revisions recommended by the working group provide a standard for determining whether someone studied law *diligently and in good faith* at a registered law school (by completing the number of credits required each year), or in Law Office Study—requiring the supervising attorney or judge to attest that the applicant is demonstrating sufficient academic progress to continue to the next six-month study period.

A reference to an LLB, bachelor of laws, degree has been recommended for deletion from the rule and statute, since US law schools no longer grant this degree, but undergraduate institutions are conferring "bachelor of arts in law" degrees that could cause confusion.

First-Year Law Students' Examination

In the suggested revisions, additional language has been proposed by the working group to clarify **Rule 4.55**; that an applicant's "entire" first year of course of instruction was at ABA or Cal-accredited schools in order to be exempt from the exam. An addition from statute has also been added into this rule to establish an exemption from the exam when an applicant has passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence.

The statute currently references a pandemic-related addition of another attempt to take and pass the First-Year Law Students' Examination, however, the number of administrations that this exception applied to has since elapsed and should be deleted from the statute. Also, amendments are suggested to incorporate an approved committee motion from March 2003 to stay the number of times an applicant is eligible for taking and passing the First-Year Law Students' Exam when they are called to active military service.

Five-Year Expiration on Passing Bar Exam Score

Rule 4.17 requires an individual who has passed the bar exam to complete all other requirements for admission and get sworn into the bar within five-years of the last day of the exam on which they received a passing score. Rule 4.17 permits applicants to request an extension from the committee of that five-year period. In October 2022, following a 60-day public comment period, the committee approved a rule change to eliminate the five-year validity period. In accordance with rule 9.5 of the California Rules of Court, the proposed changes, upon adoption by the Board, were presented to the Supreme Court for approval. The Supreme Court denied the request to change the rule in this manner. Continuing to believe that the rule and its interpretation create a barrier to entry to the professions in circumstances in which the delay is justified, the working group proposes changes to the rule to allow for the applicant to show good cause for requesting an extension without having "clear and convincing evidence." Additionally, the working group proposes a new policy to help guide the committee's analysis of extension requests. The working group believes the policy is consistent with the perspective adopted by the committee when the committee sought to eliminate the five-year rule.

General Education

Rule 4.25 looks at the education required to begin law study. The working group recommends deletion of a reference to pre-legal certification, and instead propose a **4.25.5** that takes a December 2004 committee approved guideline set and incorporates pre-legal and legal education certification into the rules. There is also a proposed addition, from an approved March 2013 committee motion, that two years of graduate level coursework, which must be verified by a committee-approved evaluation service, be considered as meeting the two years of college work required by statute.

Another clarifying change included adds in a credit calculation for a six-month period of study, as the current rules only contemplate one year.

The definition of one year added to this section is simply relocated from rule 4.3(P). The committee had previously adopted a policy entitled "Policy of What Constitutes a Year for Purposes of Credit for Law Study and Exemption from the First-Year Law Students' Examination." Since that definition is already in the existing rules, the working group recommends repealing that policy. (See Attachment G)

Modifications to the statute to replace "examining committee" with "State Bar"—since law students register with the State Bar— are recommended as well as a rephrasing on how registering as a law student beyond 90 days would be permitted.

The statute has also been modified to reflect the allowed distance-learning (or remote) modalities.

Restarting the First Year of Legal Studies

In May 2004 the committee adopted a policy regarding how to treat students who wish to begin their first year of law studies over. That policy was amended in October 2007. (See Attachment C). The start over policy generally allows law students who attend certain approved law schools in California to restart their legal studies as first-year law students at the same or a different law school. However, they will not receive credit for any law study completed prior to starting over. This means that their previous law study will not count toward determining completion of a year of law study, qualification for or exemption from the First-Year Law Students' Examination, or eligibility to take the California Bar Examination. The reasons students may wish to start over include poor academic performance at a prior law school, or a desire to start a new set of eligible attempts to take and pass the First-Year Law Students' Examination. The working group discussed whether to continue this policy or whether, in the interest of consumer protection, the policy should be discontinued. The working group concluded that since schools are required to provide disclosures about bar passage rates, FYLSX pass rates, and other information that can help consumers decide if continuing to pursue their law studies is likely to help them achieve their goals, that students who wish to start over should continue to be provided the opportunity to do so. The language of the start over policy was incorporated in new Rule 4.28. Upon adoption of these rules, the existing policy will be repealed.

Rule 4.33, Evaluation of study completed or contemplated

In short, the rewrite tightens the requirements for applicants seeking to determine whether their completed or contemplated education meets the eligibility requirements for studying law in California and the manner in which they can request an evaluation from the Office of Admissions. This includes general education or legal education. Also, any proposed plan of study submitted after the initial evaluation must be accompanied by the specified fee and that is highlighted in the attached amendments to the Schedule of Charges and Deadlines.

Foreign Education and Foreign-Barred Applicants

In the discussions with the working group **Rule 4.30, Legal education in a foreign state or country**, was carved out for special analysis and review. California receives applications for the bar exam from around the world, and applicants come through the State Bar's admissions system with a varied array of circumstances and educational backgrounds. Over time, there have been committee guidelines and policies related to required legal education for foreign applicants (specifically, the **Guidelines for Foreign-Educated General Applicants with a First Degree in Law**, last revised and approved by the committee in June 2021, Attachment D) that are proposed to be folded into the rules themselves, with a slight modification that the courses can be acceptable via a non-degree seeking path as well as through completion of an LLM program.² Also, the proposal seeks to codify an committee policy adopted in April 2015 which

² These guidelines will come back to the committee for repeal following adoption of the rules

allows applicants with refugee status to petition the committee for a waiver of the documents required to register as a foreign educated law student and sit for the bar exam as a general applicant, or if they are licensed, as a foreign-licensed bar applicant.

Finally, staff in June 2013 proposed “Guidelines for Implementation of the Policy Regarding Eligibility of Foreign-Educated Attorneys for Registration as Attorney Applicants” — whereby foreign-educated attorney applicants would be asked to submit a Certificate of Admission or Certificate of Good Standing from the primary/highest professional bar admissions regulation/attorney licensing authority in their jurisdiction. The final guideline adopted by the committee at the time did not include the reference to the “primary/highest professional bar admissions regulation/attorney licensing authority in their jurisdiction.” However, because the committee did specify that the Office of Admissions determines whether the documentation is from the appropriate professional bar admission regulation/attorney licensing authority, staff has continued to find a foreign-barred applicant eligible to sit for the bar exam only if the applicant can practice without restrictions before the highest professional bar admission regulation or licensing authority. In order to fold this practice and guideline into the rules and for transparency on staff practice, **Rule 4.30.5 Requirements for Attorneys Licensed in a Foreign State or Country** has been recommended as a new rule.

Moreover, the proposal contains several technical amendments designed to update references that pre-date the creation of the Applicant Portal and the use, primarily, of electronic communication. Other clarifying amendments are proposed throughout – like defining “State Bar” or changing a reference to “grade average” to “grade point average.”

Upon adoption of the rules package, we will return with an agenda item seeking repeal of those CBE adopted policies and guidelines which have been incorporated in the rules, as well as those that are obsolete.

FISCAL/PERSONNEL IMPACT

The impact to these proposals would only be positive for the Office of Admissions, as there are associated additional fees proposed for work performed by staff on the Start Over Form and the Proposed Plan of Study.

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Title 4, Division 1, Chapter 1, Rules 4.3, 4.5, Chapter 2 Rules 4.15, 4.16, 4.17, Chapter 3 Rules 4.25, 4.25.5, 4.26, 4.27, 4.28, 4.29.5, 4.30, 4.30.5, 4.33, and Chapter 4 Rules 4.55 and 4.61

Schedule of Charges and Deadlines

RECOMMENDATIONS

It is recommended that the Committee of Bar Examiners request that the Board of Trustees circulate for a 60-day public comment period the rule changes to revise the rules related to

eligibility for the bar exam (including legal and pre-legal education), the first-year law students' exam and admission to practice in California, and the proposed changes to the Schedule of Charges and Deadlines in Attachment A.

It is further recommended that the Committee of Bar Examiners repeal the Committee of Bar Examiners' policy "*Policy of What Constitutes a Year for Purposes of Credit for Law Study and Exemption from the First-Year Law Students' Examination.*"

It is further recommended that the Committee of Bar Examiners adopt a policy giving reasonable parameters to request for extensions to Rule 4.17 following adoption of the rule changes after return from public comment.

Further, amendments to the Family Code 17520 and Business and Professions Code § 6060 are suggested for the Board of Trustees to adopt as legislative priorities.

PROPOSED MOTIONS

Should the Committee of Bar Examiners agree with these recommendations, the following motions would be appropriate:

MOVE, that the Committee of Bar Examiners recommend to the Board of Trustees to circulate the proposed rules and the proposed changes in the Schedule of Charges and Deadlines set forth in Attachment A for a 60-day public comment.

MOVE, that the Committee of Bar Examiners adopt the Policy Consideration of Requests for Extension of Time Pursuant to Rule 4.17(b) and (c), set forth in Attachment B.

MOVE, that the Committee of Bar Examiners recommend the Board of Trustees adopt as legislative priorities the Proposed Amendments to Family Code § 17520 and the Proposed Amendments to Business and Professions Code § 6060 set forth in Attachment E and F.

MOVE, that the Committee of Bar Examiners repeal the Committee of Bar Examiners' policy "*Policy of What Constitutes a Year for Purposes of Credit for Law Study and Exemption from the First-Year Law Students' Examination*" as set forth in Attachment G.

ATTACHMENT(S) LIST

- A.** Proposed Amendments to Eligibility Rules (Chapters 1-3 and 5 of the Rules of the State Bar) and Schedule of Charges and Deadlines, Title 4, Division 1 (Redline)
- B.** Proposed Policy for Consideration of Requests for Extension of Time Pursuant to Rule 4.17(b) and (c)
- C.** Committee Policy: Starting First-Year Law Studies Over

- D.** Committee Guideline: Guidelines for Foreign-Educated General Applicants with a First Degree in Law
- E.** Proposed Amendments to Family Code § 17520, (Redline)
- F.** Proposed Amendments to Business and Professions Code § 6060 (Redline)
- G.** Proposed for Repeal of Committee of Bar Examiners Policy: Policy of What Constitutes a Year for Purposes of Credit for Law Study and Exemption from the First-Year Law Students' Examination (Redline)