



The State Bar of California

Committee of Bar Examiners Teleconference

Open Session Minutes
Friday, March 24, 2023
9:03 a.m. – 5:05 p.m.

Time Meeting Commenced:

The Committee of Bar Examiners meeting commenced in open session at 9:03 a.m. The Committee moved to closed session at 9:25 a.m. The Committee returned to open session at 10:04 a.m. The Committee moved to closed session at 2:33 p.m. The Committee returned to open session at 4:05 p.m.

Time Meeting Adjourned:

5:05 p.m.

Chair:

Paul A. Kramer

Committee Coordinator:

Devan McFarland

Members Present:

James A. Bolton, Ph.D., Michael Cao, M.D, Alex H. Chan [joined late], Robert S. Brody, James Efting, Kareem Gongora [joined late], Dolores Heisinger, Judge James Herman, Larry Kaplan, Alexander C. Lawrence, Jr., Bethany J. Peak [joined late], Ashley Silva-Guzman, Vincent Reyes, and David A. Torres

Members Absent:

Judge Amy Guerra, Esther P. Lin, and Dr. Don Ajené Wilcoxson

State Bar Executive Staff Present:

Leah Wilson and Donna Hershkowitz

OPEN SESSION

Call to Order

The Committee of Bar Examiners was called to order by Chair Kramer.

I. Chair's Time

A. Roll Call

Roll call was taken and a quorum was established.

B. Call for Public Comment

Chair Kramer 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 Committee:

1. Benjamin Kohn

Benjamin Kohn provided comment on the Testing Accommodations Rules Revisions and expressed the importance of including any necessary revisions to the proposal during the meeting rather than waiting for the final report to implement any changes. Benjamin Kohn also expressed their belief that the Testing Accommodations Rules Revisions do not include the aspects of the DOJ guidelines and the two-week staff commitment time.

2. Todd Hill

Todd Hill advised the Committee of the lawsuit they filed for a resolution related to an issue with their law school, the Peoples College of Law.

3. Claudia Center, Legal Director for Disability Rights Education & Defense Fund

Claudia Center expressed their concern that the Testing Accommodations Rules Revisions do not include a ready path to accommodations for applicants with disabilities.

4. Jackie Gardina, Dean and Chief Academic Officer, Colleges of Law

Jackie Gardina provided comment on the Blue Ribbon Commission on the Future of the Bar Exam Final Report and expressed support for reciprocity. Jackie Gardina also expressed hope for the Committee of Bar Examiners openness to allowing an exploration of an alternative pathway to licensure so that issues identified by the dissents could be addressed and considered.

C. Approval of January 27, 2023, Committee of Bar Examiners Public Meeting Minutes

RESOLVED, that the Committee of Bar Examiners approves and adopts the January 27, 2023, Committee of Bar Examiners public meeting minutes

Moved by Robert S. Brody, seconded by Vincent Reyes

Ayes – (13) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, James Efting, Kareem Gongora, Dolores Heisinger, Larry Kaplan, Alexander C. Lawrence, Jr., Paul A. Kramer, Ashley Silva-Guzman, Vincent Reyes, and David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (4) Judge Amy Guerra, Esther Lin, Bethany Peak, and Dr. Don Ajené Wilcoxson

Minutes adopted.

D. Discussion of Finalized Points of Consensus

Discussion only.

E. Approval of 2023 CBE Workplan

Presentation and discussion only.

II. Examinations

A. Action on Revisions to the Testing Accommodation Rules: Recommendation to Circulate for a Second Public Comment Period

RESOLVED, that the Committee of Bar Examiners recommends to the Board of Trustees to circulate the modified revisions to the Chapter 7 Rules of the State Bar, which give considerable weight to testing accommodations approved by colleges or law schools for timed exams, and a definition of a “individual assessment” added (as set forth in the updated version of Attachment F), for a 45-day public comment period.

Moved by Robert S. Brody, seconded by Vincent Reyes

Ayes – (12) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, James Efting, Dolores Heisinger, Larry Kaplan, Alexander C. Lawrence, Jr., Bethany Peak, Paul A. Kramer, Ashley Silva-Guzman, Vincent Reyes, and David A. Torres

Noes – (1) Kareem Gongora

Abstain – (0)

Recuse- (0)

Absent – (4) Alex H. Chan, Judge Amy Guerra, Esther Lin, and Dr. Don Ajené Wilcoxson

Motion passes.

RESOLVED, that the Committee of Bar Examiners directs staff to return to the committee after the rules have been implemented for two (2) full bar exam cycles to explore adjusting the timelines in the rules.

Moved by Robert S. Brody, seconded by Michael Cao, M.D

Ayes – (13) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, James Efting, Kareem Gongora, Dolores Heisinger, Larry Kaplan, Alexander C. Lawrence, Jr., Bethany Peak, Paul A. Kramer, Ashley Silva-Guzman, Vincent Reyes, and David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (4) Alex H. Chan, Judge Amy Guerra, Esther Lin, and Dr. Don Ajené Wilcoxson

Motion carries.

B. Discussion of Blue Ribbon Commission on the Future of the Bar Exam Report Recommendations

RESOLVED, that the Committee of Bar Examiners agrees with and joins in the dissenting opinion of Alex Chan.

Moved by David A. Torres, seconded by Robert S. Brody

Ayes – (11) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, James Efting, Dolores Heisinger, Larry Kaplan, Alexander C. Lawrence, Jr., Bethany Peak, Paul A. Kramer, Vincent Reyes, and David A. Torres

Noes – (2) Kareem Gongora, Ashley Silva-Guzman

Abstain – (0)

Recuse- (0)

Absent – (4) Alex H. Chan, Judge Amy Guerra, Esther Lin, and Dr. Don Ajené Wilcoxson

Motion carries.

C. Action on Revisions to the Grading Rules, Policy & Statute: Recommendation to Circulate State Bar Rule for Public Comment

RESOLVED, that the Committee amend its policy on the reconsideration of grades to remove the criteria of arithmetical errors from its policy, and to include a two-week deadline after the release of exam results for requesting reconsideration of exam grades.

RESOLVED that the Committee recommends to the Board of Trustees to circulate State Bar Rule 4.62, with “returned” changed to “made available” for a 45-day public comment period and include among the legislative priorities amending Bus. & Prof. Code § 6065 to clarify and align with current practice.

Moved by Robert S. Brody, seconded by Dolores Heisinger

Ayes – (12) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, James Efting, Kareem Gongora, Dolores Heisinger, Alexander C. Lawrence, Jr., Bethany Peak, Ashley Silva-Guzman Paul A. Kramer, Vincent Reyes, and David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (5) Alex H. Chan, Judge Amy Guerra, Larry Kaplan, Esther Lin, and Dr. Don Ajené Wilcoxson

Motion carries.

III. Operations and Management

A. Action on Revisions to the Admissions Rules Pertaining to Chapter 6 Conduct Violations and Exam Administration: Recommendation to Circulate for Public Comment

Item withdrawn.

B. Action on Rules Revisions Regarding Practical Training of Law Students and Law Office Study Programs: Recommendation to Adopt Following Return from Public Comment and Transmit to the Supreme Court

RESOLVED, that the Committee of Bar Examiners recommends that the Board of Trustees adopts the proposed rules regarding the Practical Training of Law Students program, set forth in Attachments A, B, and D;

RESOLVED, that the Committee of Bar Examiners recommends that the Board of Trustees adopts the proposed rules regarding the Law Office Study program, set forth in Attachments C and D;

RESOLVED, that the Committee of Bar Examiners recommends that the Board of Trustees direct staff to transmit the revised rules the Supreme Court for review and approval.

Moved by David A. Torres, seconded by Robert S. Brody

Ayes – (12) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, James Efting, Kareem Gongora, Dolores Heisinger, Alexander C. Lawrence, Jr., Bethany Peak, Ashley Silva-Guzman, Paul A. Kramer, Vincent Reyes, and David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (5) Alex H. Chan, Judge Amy Guerra, Larry Kaplan, Esther Lin, and Dr. Don Ajené Wilcoxson

Motion carries.

C. Discussion of Office of Admissions Budget and Fee Increases

RESOLVED, that the Committee of Bar Examiners recommends a break-even, tiered approach (noted as Committee of Bar Examiners Rec 2) when assessing fee increases. This recommendation is mindful of minimizing the burden on law student applicants. The Committee recommends that staff report back as they develop a long-term financial plan.

Moved by David A. Torres, seconded by Robert S. Brody

Ayes – (11) Robert S. Brody, Michael Cao, M.D, Kareem Gongora, Dolores Heisinger, Larry Kaplan, Alexander C. Lawrence, Jr., Bethany Peak, Ashley Silva-Guzman, Paul A. Kramer, Vincent Reyes, and David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (6) James A. Bolton, Ph.D., Alex H. Chan, James Efting, Judge Amy Guerra, Esther Lin, and Dr. Don Ajené Wilcoxson

Motion carries.

IV. Educational Standards

A. Administrative Updates from Accredited and Unaccredited Law Schools

Discussion only.

B. Action on Major Change: Voluntary Closure of Glendale University College of Law

Discussion only.

C. Review of Probation Progress Report – Peoples College of Law

RESOLVED, that the Committee of Bar Examiners receive and file the probationary reports filed by Peoples College of Law in January, February, and March 2023.

FURTHER RESOLVED, that in response to Peoples College of Law's March 2023 letter seeking information as to its compliance status and required actions, that staff transmit to the law school the annotated summary and restatement of the probationary order set forth in Attachments E (amended to be due, EOD, April 4).

FURTHER RESOLVED, that Committee direct the law school to take prompt action to establish full compliance and take the actions noted in Attachment E, as well as any other steps necessary to avoid noncompliance with any other Rule or Guideline, and to provide an update and documentation in its April 2023 progress report. If the law school cannot document compliance in a particular area, the law school must provide an explanation and detailed, documented timeline and action plan as to when compliance is expected to be achieved.

FURTHER RESOLVED, that Peoples College of Law must clearly and fully document compliance with Rule 4.241 and California Business and Professions Code section 6061 in its April 2023 progress report by providing evidence that the procedures set forth in California Business and Professions Code 6061 and Rule 4.241 were followed or that refunds were issued. Failure to do so will be taken as evidence of noncompliance and the Committee may move to terminate the law school's registration.

Moved by Robert S. Brody, seconded by Alexander C. Lawrence, Jr.

Ayes – (11) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, James Efting, Kareem Gongora, Dolores Heisinger, Bethany Peak, Ashley Silva- Guzman, Paul A. Kramer, Vincent Reyes, and David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (2) Larry Kaplan , Alexander C. Lawrence, Jr.,

Absent – (4) Alex H. Chan, Judge Amy Guerra, Esther Lin, and Dr. Don Ajené Wilcoxson

Motion carries.

V. Moral Character

A. Action on Recommendation to Adopt Changes to the Admissions Rules Pertaining to Moral Character: Return from Public Comment

RESOLVED, that the Committee of Bar Examiners recommends that the Board of Trustees adopt the rule revisions set forth in Attachments B and C and request approval of the rule changes by the Supreme Court.

Moved by Vincent Reyes, seconded by David A. Torres

Ayes – (13) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, James Efting, Kareem Gongora, Dolores Heisinger, Larry Kaplan, Alexander C. Lawrence, Jr., Bethany Peak, Ashley Silva- Guzman, Paul A. Kramer, Vincent Reyes, and David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (4) Alex H. Chan, Judge Amy Guerra, Esther Lin, and Dr. Don Ajené Wilcoxson

Motion carries.

B. Action on Revisions to Admission Rule 4.41: Recommendation to Circulate for Public Comment

RESOLVED, that the Committee of Bar Examiners recommends to the Board of Trustees to circulate the proposed rule set forth in Attachment A for a 60-day public comment period.

Moved by Dolores Heisinger, seconded by Vincent Reyes

Ayes – (13) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, James Efting, Kareem Gongora, Dolores Heisinger, Larry Kaplan, Alexander C. Lawrence, Jr., Ashley Silva- Guzman, Paul A. Kramer, Vincent Reyes, and David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (4) Judge Amy Guerra, Esther Lin, Bethany Peak, and Dr. Don Ajené Wilcoxson

Motion carries.

VI. Report from Director

A.

i. February 2023 California Bar Examination

Audrey Ching provided a presentation and oral report.

ii. June 2023 First Year Law Student’s Examination

Audrey Ching provided an oral report.

iii. July 2023 California Bar Examination

Audrey Ching provided an oral report.

iv. Bar Exam Features Experiment

Amy Nuñez provided an oral report.

v. Review Schedule for April 21 and June 23, 2023 Committee Meetings

Amy Nuñez provided a presentation and oral report.

vi. Provisional Licensure Program

Amy Nuñez provided an oral report.

vii. Recent Developments

Amy Nuñez provided an oral report.

CLOSED SESSION

I. CHAIR'S TIME

A. Report from Counsel (Caroline Holmes and Jean Krasilnikoff)

Report on Pending Litigation [Closed pursuant to Gov. Code §11126(e)(1)
In re Camper on Admissions, Cal. Supreme Court Petition, Case No. S278539
Flinders v. State Bar et al., Sixth Appellate District Ct. of Appeal, Case No. H050562; Ninth
Circuit Ct. of Appeals, Case No. 22-17014
Guinses v. State Bar, DFEH Case No. 202204-16740319
Jahn v. State Bar, DFEH Case No. 202103-12845809
Kohn v. State Bar et al., Ninth Circuit Ct. of Appeals, Case No. 20-17316
Mitchell v. State Bar et al., Cal. Supreme Court Petition, Case No. S278784
Moran v. State Bar, DFEH Case No. 202107-14091306
Pell v. Amy Nuñez, Ninth Cir. Ct. of Appeals, Case No. 23-55188
Piercy v. State Bar, DFEH Case No. 202202-16125312
Tuma v. State Bar, First District Ct. of Appeals., Case No. A161037
Tran v. State Bar, LA County Superior Ct., Case Nos. 22STCP01836; 22STCV16290
Threatened Litigation Concerning Bar Exam Testing Accommodation Requests

*Closed pursuant to Gov. Code §11126(e)(1) and Government Code 11126(c)(1)

B. Approval of January 27, 2023, Committee of Bar Examiners Closed Meeting Minutes

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(3)-(5) and Gov. Code §11126(c)(1)

II. Examinations

A. Action on Pending Testing Accommodation Appeals

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(3), and Gov. Code §11126(c)(1)

III. Operations and Management

A. Action on the March 2023 Operation & Management Appeals

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(3) and Gov. Code §11126(c)(1)

IV. Moral Character

A. Report and Discussion of Staff Moral Character Determinations

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(4)

B. Action on Moral Character Cases Pending Administrative Review

* Closed pursuant to Bus. & Prof. Code §6026.7(c)(4)

C. WITHDRAWN-Report on Status of State Bar Court Decisions

* Closed pursuant to Bus. & Prof. Code §6026.7(c)(4)

D. Report on Status of Pending Moral Character State Bar Court Cases

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(4)

OPEN SESSION

The committee returned to open session and reported that there is no action to report from closed session. No further discussion took place in open session.

ADJOURN