



The State Bar of California

OPEN SESSION

AGENDA ITEM

BLUE RIBBON COMMISSION ON THE FUTURE OF THE CALIFORNIA BAR EXAM

DATE: April 26, 2023

TO: Members, Blue Ribbon Commission

FROM: Leah Wilson, Executive Director
Donna Hershkowitz, Chief of Programs & Legislative Director
Audrey Ching, Admissions Director
Amy C Nuñez, Assistant Director

SUBJECT: Public Comment Period Conclusion and Recommended Next Steps

EXECUTIVE SUMMARY

The recommendations of the Blue Ribbon Commission on the Future of the California Bar Exam (BRC) were issued for public comment on March 10, 2023; the comment period closed on April 10, 2023.

Over 1,400 comments were received from 867 individuals.

To help the Commission consider the comments, staff has reviewed and synthesized them in the related “Power BI” dashboard linked to in this item.

This agenda item makes recommendations for the Commission’s consideration related to the overarching themes found in the comments. Staff recommends that the Commission discuss the comments, make any clarifying motions, and amend the Commission’s original report dated March 7, 2023; the amended report will be submitted to the Board of Trustees for submission to the Supreme Court.

BACKGROUND

On October 26, 2020, the California Supreme Court adopted the charter for the Joint Supreme Court/State Bar Blue Ribbon Commission on the Future of the California Bar Exam. The BRC was

originally tasked with developing recommendations concerning changes to make to the California Bar Exam, and whether to adopt alternative pathways, additional testing, or tools to ensure minimum competence to practice law.

The California Supreme Court announced appointment of the members of the Blue Ribbon Commission (BRC) on April 27, 2021, and the commission met for the first time on July 6, 2021. The BRC met both in subcommittees and as a full committee 17 times through the end of 2022. In February, 2023, the BRC met to finalize the draft report and to send the report out for a 30-day public comment period

The recommendations of the Blue Ribbon Commission to the Board of Trustees and the California Supreme Court were as follows:

- to pursue a California-specific bar exam;
- to revise the requirements for licensed, out-of-state attorneys to be admitted to California without sitting for the California Bar Exam; and,
- to defer the decision to modify the admissions requirements for foreign attorneys and foreign-educated applicants until the new California Bar Exam has been implemented.

After months of presentations, discussion, and deliberation the Commission convened in February 2023 to discuss and approve the initial report draft on the recommendations on the future of the California bar exam, and whether to adopt an alternative licensing model that would assess minimum competence. On March 10, 2023, the report and recommendations were issued for public comment.

DISCUSSION

Staff has reviewed the 1,417 comments received during the 30-day public comment period; three central issues emerged from this review process:

- 1. The need for clarification about the meaning of a “California-specific” exam.** Several comments imply a “California-specific” would not test federal law. Staff suggests expanding on the description of what a California-specific exam means to clarify that the exam will include federal law. Today, the written portion of the California Bar Exam tests on legal theories and principles of general application. For the subjects of Civil Procedure and Evidence, the scope includes the Federal Rules of Civil Procedure and the Federal Rules of Evidence, in addition to the California Code of Civil Procedure and the California Evidence Code. The Commission’s recommendation to create a “California-specific exam” was to move away from national content supplied by the National Conference of Bar Examiners (NCBE), not to forgo testing federal law.
- 2. The need for clarification regarding the reciprocity recommendation.** Some of the comments questioned whether the Commission recommended comity versus

reciprocity. Jurisdictions with reciprocity allow attorneys licensed in one state to become licensed in another state without sitting for a bar exam; reciprocity requires that both states offer the same privilege to one another's attorneys. Comity is similar to reciprocity, but it is one-way: a state allows attorneys to become licensed without having to sit for a bar exam, regardless of whether that privilege is extended to attorneys from their state. The public may want to know what the Commission's position is on whether California should be open to licensing attorneys from other states without having to sit and pass the bar exam, regardless of whether that jurisdiction grants California attorneys the same privilege.

The Commission's recommendation to "revise the requirements for licensed, out-of-state attorneys to be admitted to California without sitting for the California Bar Exam" and that "in establishing the requirements, the Supreme Court explores the minimum number of years of recent practice in another state to establish minimum competence, along with a demonstration of ethical and competent practice" was not explicit in describing whether this revision was a recommendation for reciprocity or comity.

Embedded within the policy determination of reciprocity versus comity is a consideration of how non-ABA law school graduates would fare in other states if reciprocity or comity is established. Nearly all jurisdictions in the U.S. and its territories require applicants for licensure to have a Juris Doctor (JD) from an ABA-approved law school; graduates from California-accredited and registered law schools are not eligible to sit for the bar exam in these jurisdictions. Most states are unlikely to recognize California's non-ABA graduates.¹

The majority of law school graduates in California receive their JDs from ABA law schools. Between 2000 and 2021, approximately 87.7 percent of first-time bar exam takers from California law schools hailed from ABA law schools, while only 8.7 percent graduated from California-accredited law schools and 3.5 percent from California-registered law schools. Recommending that all California law school types be accepted by other jurisdictions for reciprocity jeopardizes this privilege for most law school graduates in California.

Staff recommends that the Commission clarify its recommendation to reflect the principle of reciprocity or comity.

3. Concerns about the elimination of ethics and professional responsibility from the future CA bar exam warrant reconsideration of this topic. When the Commission adopted the California Attorney Practice Analysis (CAPA) recommendations, discussion was dedicated to how professional ethics would be tested if the subject area did not get recommended for the future CA bar exam.

¹ Currently, the following states extend comity and reciprocity to licensees graduating from non-ABA law schools: Connecticut, District of Columbia, Iowa, Maryland, Massachusetts, New Hampshire, New Mexico, North Carolina, Texas, Vermont, Washington, West Virginia, and Wisconsin.

Commissioners that served as members of the CAPA Working Group explained that, while the working group acknowledged that ethics and professional duties to clients are foundational, the need for newer attorneys to be competent in the area of ethics could be better addressed outside of the bar exam format. Currently, all State Bar applicants are required to receive a passing score of 86 or above on the Multistate Professional Responsibility Exam (MPRE) prior to licensure, the second highest passing score in the country. State Bar applicants for admission are also required to have earned a passing grade in at least one course in ethics that addresses the model rules of professional conduct while in law school. Additionally, all new attorneys are required to take ten hours of mandatory new attorney training, which includes a four-hour module on ethics.

Although this rationale was outlined in the CAPA report, a significant number of comments were submitted suggesting that, in this climate, ethics is not an appropriate subject to remove from the bar exam. Staff agrees that public perception about the legal profession, especially in light of high-profile bad actors in California, may not be served by removing ethics as a possible bar exam topic at this time. The Commission is thus asked to revisit the question of whether or not professional responsibility should be a subject area on the future California bar exam.

FISCAL/PERSONNEL IMPACT

None

RECOMMENDATIONS

After reviewing public comments on the Blue Ribbon Commission draft report, staff has several recommendations for the Commission:

First, staff recommends that the Commission explicitly state that the future California bar exam will cover both Federal and California rules and codes in the Civil Procedure and Evidence subject areas.

Second, staff recommends that the Commission articulate whether its recommendation is for the Supreme Court to pursue reciprocity or comity with other states.

Lastly, staff recommends that professional responsibility be added to the subject areas to be tested on the future California bar exam.

PROPOSED MOTIONS

Should the Blue Ribbon Commission agree with the staff recommendation, the following motions should be made:

MOVE, that the Blue Ribbon Commission recommends that the future California bar exam will include Federal and California rules and codes in the Civil Procedure and Evidence subject areas;

FURTHER MOVE, that the Blue Ribbon Commission recommends keeping the current scope for the subject area, Professional Responsibility, on the future California bar exam.

ALTERNATIVE MOTIONS

Following Blue Ribbon Commission discussion, one of the following motions should be made:

MOVE, that the Blue Ribbon Commission recommends that California adopt reciprocity and that the privilege to be admitted without an examination is extended to attorneys that have graduated from **all** law school types;

OR

MOVE, that the Blue Ribbon recommends that California adopt comity and that the privilege to be admitted without an examination is extended to attorneys to attorneys that have graduated from **all** law school types.