



The State Bar *of California*

OPEN SESSION

AGENDA ITEM III.A

JUNE 2023

COMMITTEE OF BAR EXAMINERS

DATE: June 23, 2023

TO: Members, Committee of Bar Examiners

FROM: Tammy Campbell, Program Manager, Office of Admissions
James Efting, Committee of Bar Examiners
David Torres, Committee of Bar Examiners

SUBJECT: Discussion and Action on the Refund of Fees Policy for Examinations

EXECUTIVE SUMMARY

The Office of Admissions started conducting a review of Admissions rules, policies, and guidelines in 2022 to ensure the information is still relevant, clear, concise and does not pose any unnecessary barriers for applicants wishing to be admitted to the State Bar. The material was also reviewed with an eye on ensuring public protection, to provide clarity for applicants and for consistency when staff apply these rules and policies.

Division 1 of Title 4 of the Rules of the State Bar defines the requirements for admission to practice law in California. The areas of the Admissions Rules that govern Exam Administration include Chapter 5 for Examinations and Chapter 6 for Conduct Violations. Business & Professions Code section 6060.3 also contains language governing exam administration.¹

The Refund of Fees Policy is based on rules that are included in Chapter 5 of the Admissions Rules, as well as statute that is included in Business & Professions Code section 6060.3 that govern exam administration. This agenda item recommends that the Committee of Bar Examiners approve the language for the new Rejected Fees Policy for Examinations. The agenda item further recommends proposed changes to the Refund of Fees Policy and based on the action taken by the committee, staff will make the changes to the policy and present it for confirmation at the August meeting.

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

BACKGROUND

A working group consisting of volunteer Committee of Bar Examiners (committee) members, James Efting and David Torres was formed to examine with staff the current rules, policies, and guidelines pertaining to Exam Administration. Subsequent references to the working group in this agenda item refer to this effort. This agenda item focuses on the Refund of Fees policy.

California Bar Examination

Section 6060.3 sets forth that the bar exam is given in February and July every year and identifies the filing deadlines, late filing deadlines, and the late filing fees. The section also provides general information about the application fees, including late fees, and circumstances that require refunds (namely death or serious illness of the applicant or an immediate family member).

State Bar Rule 4.60 similarly identifies the timing of the exams, and Rule 4.61 mirrors statute in terms of the late filing deadlines. The amount of the late filing fees, matching the statutory provisions, are found in the *Schedule of Charges and Deadlines*.

Rule 4.61(A) also sets the date the applications open as October 1 for the February exam, and March 1 for the July exam. The final filing deadlines were revised in 2019 to change the final filing deadline consistent with a statutory change that was recommended by the committee and adopted by the Legislature.

Rule 4.61(B) is consistent with statute which specifies that an applicant who was unsuccessful on the most recent examination will be allowed 10 business days from the date of the results to timely file an application to take the next scheduled examination.

First-Year Law Students' Examination

Section 6060(h)(2)(B) provides that the First-Year Law Students' Examination (FYLSX) "shall be administered twice a year at reasonable intervals."

State Bar Rule 4.56 identifies the months of administration as June and October.

There is no statute that specifies when the application opens, deadlines for timely or final filing, late fees, or withdrawal deadlines for both first-time examinees and immediate repeaters. The fees for the examination are set forth by in *Schedule of Charges and Deadlines*. While there is no statute specifying specific deadlines for the FYLSX, staff have used the Bar Exam timeframes for application opening, timely filing, final filing deadline, and withdrawal deadlines as a guide.

DISCUSSION

CBX and FYLSX Attendance and Refund of Application

In June 2017, the committee considered charging a fee for applicants who withdrew from an exam after the deadline or failed to attend without withdrawing—otherwise referred to as “no-shows”. Although such individuals are not entitled to refunds of their application fee, staff articulated additional burdens or challenges attributable to no shows (averaging between 300 and 600 applicants for each administration). Although the committee discussed the fee, there was no motion to move the fee forward. The working group explored the issue to determine whether they thought a change was appropriate, ultimately concluding that a no-show fee was not necessary.

Withdrawal of Exam Applications

The current Refund of Fees Policy provides that applicants who withdraw are eligible for a refund of either 60 percent or 30 percent of the exam fee and late fees paid, depending on the proximity of the withdrawal to the exam date. The amount of the refund was calculated without reference to the bank fees for processing credit card payments. Section 6060.3 specifies refund procedures for situations involving the death or serious illness of the applicant or an immediate family member. In other instances, the statute grants authority but does not impose a requirement for refunds, leaving the determination of appropriateness to the committee. The working group discussed whether to continue the policy of not applying the refund to credit card processing fees. As credit card processing fees are a transactional fee incurred by an applicant that admissions does not keep, it was determined that the current policy was appropriate. However, further input is welcomed by the committee.

Refunds of Fees Policy

Section 6060.3(c) provides that application fees for the California bar examination, including late filing fees, shall be refunded if the applicant is unable to take the exam due to the death of an immediate family member or the serious illness or disabling injury of the applicant or their immediate family member. The refund may be subject to deductions for “administrative costs.” Although there is no corresponding State Bar rule on this matter, the committee established a Refund of Fees policy for bar exam fees, the current version of which was last updated in September 2010. While the policy does not explicitly include the First-Year Law Students' Examination (FYLSX), the staff have applied the same standards as the California bar examination.

The working group is proposing the following changes to the Refund of Fee Policy:

ACH (e-check) Payments

With the implementation of the Admissions Information Management System (AIMS), the inclusion of electronic checks (ACH) as a payment option became available. Consequently, the

refund policy requires an update to accommodate this recent addition and align it with the use of ACH as a method of payment.

90 Day Deadline to Submit Refund Request

Typically, requests for a refund due to the death of an immediate family member, medical emergency, or calamitous occurrence are received after the conclusion of the examination. However, it is not uncommon for refund requests to be submitted one, two, or even five years after the exam has taken place. By implementing a deadline of 90 days after each exam, the need for research on past exams will not be required. This change would allow an exam administration to be fully closed out prior to the next examination, ensure accurate financial reporting of revenue, and provide a clearer portrait of the number of processed refunds by our staff. The working group therefore proposes to require such refund requests to be received within 90 days following the conclusion of the exam administration. Currently, refund tracking remains an ongoing task due to the absence of a submission deadline. The statute permits the board to adopt regulations for the administration of this provision.

95 Percent Death/Medical Refund

As noted above, the statute directs that refunds shall be provided to applicants who do not take the bar exam due to the serious illness or disabling injury of the applicant or an immediate family member, or due to the death of an immediate family member. The statute implies that the refund shall be the full amount of fees paid for the bar exam, including filing fees, less administrative costs. Based on the statutory language, the committee's Refund of Fees policy set the amount of the refund at 95 percent, deducting from the total costs paid 5 percent for administrative costs. The 95 percent refund applies to the general exam fee, attorney exam fee, laptop fee, and any late fees paid for submitting the application past the timely filing deadline. It does not include credit card processing fees. For instance, under the existing 95 percent refund policy, a general bar exam application fee of \$677 results in a refund of \$643.15, with an administrative fee of \$33.85.

The working group discussed at length whether the 5 percent set aside continues to appropriately cover administrative costs incurred. The working group concluded that the current rate results in a financial loss to the State Bar. Administrative costs include: the process of handling an exam application, from receipt to approval; and sunk costs associated with test center expenses, such as facility rental, printing of exam materials, and ordering and packing supplies for test centers. Additionally, once the exam begins, there are further costs related to onsite staff, proctor time, shipping of exam materials, and other operational expenses. Upon receipt of a request for a 95 percent refund, there are additional costs involved in processing and approving the refund. The statute does not specify what it intended with the reference to "administrative costs," but it certainly seems to imply that a significant portion of the funds paid are to be refunded in these terrible circumstances. The working group is sympathetic to applicants facing such circumstances and recognizes that they are beyond their control. However, the working group is also aware of the significant deficit in the Admissions budget and ongoing cost increases, and thus explored ways in which to thread the needle between

these two very real concerns. The working group recommends increasing the percentage of administrative costs deducted from these refunds.

In considering whether to adjust the refund policy, the working group examined policies from other bar jurisdictions. Looking at the websites, the working group concluded that most jurisdictions do not allow refunds of exam fees under any circumstances; one jurisdiction considers granting refunds in extenuating circumstances. The working group proposes to reduce the 95 percent refund to a 20 percent refund, taking into account the resources already invested leading up to the exam day. In light of the significant change proposed, the statutory direction to provide refunds in such instances, and the lack of definition of administrative costs in this instance, the working group recognizes that this recommendation may seem extreme and welcomes a fulsome discussion of the issues.

The current refund policy permits the 95 percent refund only if the death or disabling injury occurred after the submission of an application to sit for the bar exam, but before the administration of the exam begins. The statute makes no such explicit distinction, although it arguably can be read this way since it requires the refund if the applicant does not “take” the bar exam. In 2017, the committee discussed, in addition to what is allowed under the current policy, providing a 50 percent refund in cases of death or serious or disabling illness to the applicant or an immediate family member if the incident occurred after the applicant had arrived at the test center and testing had already commenced. The committee took no action on the options discussed at that meeting. Staff feel that relying on the use of the word “take” in the statute to make the distinction currently included in the Refund of Fees Policy is inappropriate, and inconsistent with other contexts in which the Bar currently defines what it means to take an exam. However, a greater deduction for administrative fees may certainly be in order in such instances.

Definition of Immediate Family Members

In order to provide clarity on what is considered an “immediate family member,” the working group was guided by the definition in the California Family Rights Act (<https://calcivilrights.ca.gov/employment/family-care-medical-leave-guide/>).

Technical Corrections

Other non-substantive amendments to the policy are proposed for greater clarity and consistency.

Rejected Payments for Exam Applications

Occasionally, payments are rejected for reasons including returned checks, declined e-check (ACH) payments, or credit card chargebacks initiated by the cardholder. When the payment is rejected, the application to sit for the exam remains incomplete, and the applicant is required to resubmit the payment along with a \$20 insufficient payment service charge. Despite not having

fully paid, applicants still reserve a seat at a test center, as the protocol does not involve abandoning the application. However, this protocol presents a challenge when test centers have reached their maximum capacity. It puts individuals at a disadvantage who wish to apply and pay their fees to take the exam at a popular test center that is already at its maximum capacity.

To address this issue, the working group proposes implementing a new policy requiring applicants to resolve any payment issues within 14 days of receiving notification regarding insufficient payment. If a replacement payment is not received in our office via email or snail mail within this timeframe, the application would be deemed abandoned. In such cases, applicants who still wish to sit for the exam would need to submit a new application and pay any applicable late fees at that time. However, re-filing for the same exam might be restricted by the application filing deadlines². This policy would help free up seats at test centers for other individuals who have paid and are eager to take the exam. The committee's input and approval are sought regarding the proposed policy, as outlined in Attachment B. The committee should also consider a protocol for instances for when an applicant's second payment is unsuccessful.

FISCAL/PERSONNEL IMPACT

Increasing the amount of administrative costs that the State Bar retains would help address the structural deficit in the Office of Admissions. Changing the current refund policy to broaden the definition of family members will increase the number of refunds being requested and issued by the office of admissions. Although staff does not have precise numbers on how many applicants might fall into this category, given the current state of the budget, some consideration should be given to any potential loss of revenue.

RECOMMENDATION

It is recommended that the Committee of Bar Examiners approve the Rejected Fees Policy concerning withdrawal of applications to sit for an exam based on insufficient payments in Attachment B.

PROPOSED MOTION

Should the Committee of Bar Examiners agree with the staff recommendation, the following motion should be made:

MOVE, that the Committee of Bar Examiners approves the Rejected Fees Policy concerning withdrawal of applications to sit for an exam based on insufficient payments as set forth in Attachment B.

² If an applicant submitted their application right before the final filing deadline, they would be allowed the same 14-day grace period to resolve issues.

ATTACHMENT(S) LIST

- A.** Title 4, Chapter 5 of the Rules of the State Bar Relevant to Examinations
- B.** Proposed Rejected Payment Policy
- C.** Request for Refund of Fees Form
- D.** February 2023 CBX Costs