



The State Bar of California

Committee of Bar Examiners Teleconference

Open Session Minutes
Friday, June 23, 2023
9:02 a.m. – 3:55 p.m.

Time Meeting Commenced: The Committee of Bar Examiners meeting commenced in open session at 9:02 a.m. The Committee moved to closed session at 3:15 p.m. The Committee returned to open session at 3:55 p.m.

Time Meeting Adjourned: 3: 55 p.m.

Chair: Paul A. Kramer

Committee Coordinator: Devan McFarland

Members Present: James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, James Efting, Kareem Gongora [arrived late], Larry Kaplan, Paul A. Kramer, Alexander C. Lawrence, Jr., Esther P. Lin [joined late], Ashley Silva-Guzman, Vincent Reyes, David A. Torres

Members Absent: Dolores Heisinger and Bethany J. Peak

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.

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 public comment on the Testing Accommodation Rules Revision concerning the extension of an applicant's time limit on appealing a testing accommodations decision.

2. Ray Hayden

Ray Hayden provided public comment on their proposed revisions to the California Bar Examination, specifically the multiple-choice portion of the examination. Their proposed revisions would create a remote testing option. Ray Hayden also advises their proposed revision to the California Bar Examination would be cost effective and assure better protection of the public.

3. Sandy Brooks, Dean of Cal Northern School of Law

Sandy Brooks provided public comment on the proposed fee increases related to the California Accredited Law Schools. Sandy Brooks stated their opposition to the fee increases and their belief the increases will harm smaller schools and their students.

5. Edith Pomposo, Dean of Peoples College of Law

Dean Edith Pomposo provided public comment on I.B. Action on Probation and Progress Report, Request for Waiver to Teach Classes Online Due to COVID, and Major Change – Change of Administrative Headquarters – Peoples College of Law. Dean Pomposo spoke on the challenges the law school has faced, specifically the school's capacity issues. Dean Pomposo advised the law school's current facility is being sold and they are looking to acquire a new facility, which accounts for the school's proposed compliance deadlines.

5. Josh Schoonover, Dean of Western Sierra Law School

Dean Josh Schoonover provided public comment on I.D. Action on Inspection Report and Major Change to Deliver Classes via Physical Classroom and Distance Delivery in the Fixed-Facility Category – Western Sierra Law School. Dean Schoonover stated Western Sierra Law School's registration should be approved and the school's next inspection should occur in the fall of 2026 or 2025, rather than the proposed 2024. Dean Schoonover requested the law school's registration be renewed for five years and that the Committee approves the law school's major change request seeking to remain in the fixed-facility category, but permit, at its discretion and the discretion of its instructors, to offer its classes primarily in its fixed-facility classroom(s), but with an integrated synchronous online extension via meeting room software, such as Zoom or other similar platforms.

B. Approval of April 21, 2023, Committee of Bar Examiners Public Meeting Minutes

RESOLVED, that the Committee of Bar Examiners that the Committee approves and adopts the April 21, 2023, Committee of Bar Examiners public meeting minutes.

Moved by David A. Torres, seconded by Robert Brody

Ayes – (10) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, Larry Kaplan, Alexander C. Lawrence, Jr., Ashley Silva-Guzman, Paul A. Kramer, Vincent Reyes, David A. Torres

Noes – (0)

Abstain – (1) James Efting

Recuse- (0)

Absent – (4) Kareem Gongora, Dolores Heisinger, Esther Lin, Bethany Peak

Minutes adopted.

C. Chair's Report

Discussion only.

II. Examinations

A. Approval of Draft Report to the Supreme Court on the February 2023 California Bar Examination

RESOLVED, that the Committee of Bar Examiners approve the draft Supreme Court Report on the February 2023 California Bar Exam be finalized and submitted to the Court.

Moved by David A. Torres, seconded by Robert Brody

Ayes – (11) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, James Efting, Larry Kaplan, Alexander C. Lawrence, Jr., Ashley Silva-Guzman, Paul A. Kramer, Vincent Reyes, David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (4) Kareem Gongora, Dolores Heisinger, Esther Lin, Bethany Peak

Motion carries.

III. Operations and Management

A. Action on Revisions to the Special Admissions Rules: Recommendation to the Board of Trustees to Circulate for Public Comment Amendments to the State Bar Rules and Rules of Court Related to Registered In-House Counsel, Registered Legal Aid Attorneys, Registered Military Spouse Attorneys, Foreign Legal Consultants, and Out of State Attorney Arbitration Counsel

RESOLVED, that the Committee of Bar Examiners recommend to the Board of Trustees to circulate the proposed rules set forth in Attachments A through R for a 60-day public comment period.

Moved by David A. Torres, seconded by Kareem Gongora

Ayes – (12) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, James Efting, Kareem Gongora, Larry Kaplan, Alexander C. Lawrence, Jr., Ashley Silva-Guzman, Paul A. Kramer, Vincent Reyes, David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (3) Dolores Heisinger, Esther Lin, Bethany Peak

Motion carries.

B. Discussion and Action on the Refund of Fees Policy for Examinations

RESOLVED, 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.

Moved by Kareem Gongora, seconded by David A. Torres

Ayes – (12) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, James Efting, Kareem Gongora, Larry Kaplan, Alexander C. Lawrence, Jr., Ashley Silva-Guzman, Paul A. Kramer, Vincent Reyes, David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (3) Dolores Heisinger, Esther Lin, Bethany Peak

Motion carries.

IV. Educational Standards

A. Administrative Updates from Accredited and Unaccredited Law Schools

Discussion only.

B. Action on Probation and Progress Report, Request for Waiver to Teach Classes Online Due to COVID, and Major Change – Change of Administrative Headquarters – Peoples College of Law

RESOLVED, that the Committee of Bar Examiners receive and file the following documents from Peoples College of Law: May 2023 progress report, June 2023 progress report, including Attachment H Request for Waiver to Teach Classes Online due to the Pandemic Emergency, and Attachment G Major Change to the Administrative Office.

FURTHER RESOLVED, that the committee again remind PCL that the submission of late, incomplete, or inconsistent progress reports will contribute to the committee's assessment of whether PCL is able to achieve and sustain compliance.

FURTHER RESOLVED, that the law school update the committee as to its compliance in general, but in particular with Rule 4.241 and California Business and Professions Code 6061.7(a), requested since January, for which failure to comply can result in termination of registration.

FURTHER RESOLVED, that the law school be directed to file, as soon as possible and no later than its July 1, 2023 progress report, a motion for permanent change to the distance learning category if it intends teach classes online in fall 2023, or alternatively affirm in its

July 1, 2023 progress report that it will be teaching classes in-person in a fixed-facility in fall 2023, with the understanding that the law school will not be permitted to change to the distance learning category until a proper motion has been reviewed and approved by this committee.

FURTHER RESOLVED, the law school is directed to supplement its major change request to change its administrative office as soon as possible and no later than its July 1, 2023 progress report with sufficient detail for the committee to evaluate the proposal including: 1) confirming its category and providing a separate major change request if that category is distance or correspondence instead of the current fixed-facility; 2) documenting its plans to fulfill the library required by its category choice; 3) describing the contingency plan if a space is not found; 4) documenting the criteria being used to seek a permanent location and the location in which classes will be taught in fall 2023; and 5) documenting how those criteria are appropriate for the category selected, whether fixed-facility or distance learning. The law school will not be permitted to change its administrative headquarters until a proper motion has been reviewed and approved by the committee.

FURTHER RESOLVED, that consistent with the committee's guidance in March 2023, PCL should be reminded of its responsibility to take prompt action to establish full compliance, as well as any other steps necessary to avoid noncompliance with any other rule or guideline, and to provide evidence of this in its July 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 the law school be required to provide a copy of this order to all current and prospective students until further notice, and post this motion prominently on its website home page along with the original probationary order, and attach this motion to student disclosures.

FURTHER RESOLVED, that all outstanding requests and compliance actions, except as noted, must be completed and documented by the law school in the August 1, 2023 progress report.

Moved by James Efting, seconded by Vince Reyes

Ayes – (10) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, James Efting, Kareem Gongora, Ashley Silva-Guzman, Paul A. Kramer, Vincent Reyes, David A. Torres

Noes – (0)

Abstain – (0)

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

Absent – (3) Dolores Heisinger, Esther Lin, Bethany Peak

Motion carries.

C. Action on Response to Notice of Noncompliance and Request for Voluntary Termination of Registration – Pacific West College of Law

RESOLVED, that the Committee of Bar Examiners receive and file Pacific West School of Law's response to the Notice of Noncompliance issued by the committee.

FURTHER RESOLVED, that the committee accept the law school's voluntary termination of registration and agreement to act as custodian of records, and urge the law school to fulfill transcript requests and other document requests promptly and in compliance with California Civil Code section 1788.91.

FURTHER RESOLVED, that the committee find that the law school is not in compliance with the Rules for Unaccredited Law Schools and not likely to come into compliance based on its failure to file a 2022 Annual Report, and that the law school's registration as a fixed-facility law school be terminated as of June 23, 2023, and its degree granting authority for all graduate law classes and degrees, including the JD, LLM and Master of Law, be terminated as of June 23, 2023.

FURTHER RESOLVED, that the law school be directed to retain student and graduate records and advise current and former students and graduates how to contact the custodian to request copies of their official transcripts.

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

Ayes – (12) James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, James Efting, Kareem Gongora, Larry Kaplan, Alexander C. Lawrence, Jr., Ashley Silva-Guzman, Paul A. Kramer, Vincent Reyes, David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (3) Dolores Heisinger, Esther Lin, Bethany Peak

Motion carries.

D. Action on Inspection Report and Major Change to Deliver Classes via Physical Classroom and Distance Delivery in the Fixed-Facility Category – Western Sierra Law School

RESOLVED, that the Committee of Bar Examiners receive and file the 2021 Periodic Inspection Report of Western Sierra Law School and adopt all recommendations in the report.

FURTHER RESOLVED, that the law school be directed to provide an update as to the status of each recommendation in the inspection, with supporting documentation, as part of the law school's 2023 Annual Report, including those that the law school identified as complete in their response.

FURTHER RESOLVED, that the committee renew the law school's registered, unaccredited fixed-facility status, and set the law school's next inspection for spring 2024, unless the committee determines that one is required sooner.

FURTHER RESOLVED, that the law school's major change be received, filed, and denied, that the law school be directed to return to teaching its program in its fixed-facility in

fall 2023 unless the law school receives approval from the committee for a major change, and that the law school refile its major change of administrative headquarters by July 24, 2023 describing the facilities that will be available at the start of the fall 2023 term.

Moved by James Efting, 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, Larry Kaplan, Alexander C. Lawrence, Jr., Esther Lin, Ashley Silva-Guzman, Paul A. Kramer, Vincent Reyes, David A. Torres

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (2) Dolores Heisinger, Bethany Peak

Motion carries.

V. Moral Character

A. Presentation on the Unauthorized Practice of Law

David Lane provided a presentation.

VI. Report from Director

A. Discussion of 2023 CBE Workplan

Amy Nuñez provided a presentation and oral report.

B. Reminder: CBE Chair & Vice-Chair Applications

Audrey Ching provided a presentation and oral report.

C. Provisionally Licensed Lawyer Data Following May 31, 2023, Deadline

Tara Clark provided a presentation and oral report.

D. Blue Ribbon Commission Update

Audrey Ching provided a presentation and oral report.

E. Admissions Fee Proposal Update

Donna Hershkowitz provided a presentation and oral report.

F. Rules Timeline

Amy Nuñez provided an oral report.

G. Next meeting: August 18, 2023, Remote Zoom and August 19, 2023, Second Calibration

Audrey Ching provided an oral report.

H. EDG Team Update

Lisa Cummins provided an oral report.

I. Recent Developments

Audrey Ching 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)]
Diviacchi v. State Bar, N.D. Cal., Case No. 3:23cv2417
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
Hill v. Peoples College of Law et al., C.D. Cal. Case No. 2:23CV1298
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
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 April 21, 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 Filed in Connection of the July 2023 California Bar Exam

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

III. Operations and Management

A. Action on the June 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. 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