



The State Bar of California

OPEN SESSION AGENDA ITEM IV. B. OCTOBER 2023

DATE: October 13, 2023

TO: Members, Committee of Bar Examiners

FROM: Paul Kramer, Committee of Bar Examiners
Ashley Silva-Guzman, Committee of Bar Examiners
Audrey Ching, Program Director, Office of Admissions
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Subject: Action on Eligibility Rules: Recommendation to Circulate Rules Revision for Public Comment; Recommendation to Repeal Duplicative Policy on Calculating One Year of Credit; 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 to entry to the profession. 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. This review process was part of a comprehensive project designed to 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, and eliminated or revised if they present barriers that do not further public protection.

In addition, staff reviewed historical Committee of Bar Examiners agenda items, minutes, and motions to ensure we captured all directives, policies, and guidelines previously adopted, and learned from the thinking of prior committee members in determining what should be included in the current rule proposal.

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 these and 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. At the April 2023 committee meeting, the committee engaged in a more in-depth discussion on these rules and then-Chair Paul Kramer joined the volunteer working group. The working group met several times and discussed various iterations of the proposed changes. The proposal before the committee today (see Attachment A) is the result of these combined efforts. References in this agenda item to the working group are to these committee members and the staff who worked with them.

Beyond the rules, the working group was guided by Business and Professions Code section 6060 and Rule of Court 9.30. Section 6060 establishes the requirements for admission to the practice of law in California. Rule of Court 9.30 establishes the basic requirements for students attempting to qualify for admission to practice law in California through their study at unaccredited law schools.

As part of this process, staff also 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 pursue a statutory change to stay the number of attempts for the First-Year Law Students' Examination while an applicant is on active military duty, for example, has been recommended as a legislative priority.

DISCUSSION

This section highlights the most significant changes proposed by the revisions to rules, statutes, and policies related to eligibility to sit for the First Year Law Students' Exam, the Bar Exam, and to be certified to the Supreme Court of California for admission to the State Bar.

CERTIFICATION TO THE SUPREME COURT

The overview of the admission requirements in the State Bar Rules set forth in Chapter 2, commencing with Rule 4.15 identifies the steps needed to be eligible for certification to the California Supreme Court for admission to the Bar. One of the requirements is that applicants must be in compliance with California court-ordered child or family support obligations. Failure to be in compliance results in not being certified to the Supreme Court¹. A close read of the governing statute cited in the rule, Family Code section 17520, however, requires licensing entities to issue a temporary 150-day licenses to those who meet all other licensure criteria except for compliance with a child or family support order. The State Bar follows the requirements of this statute for licensees who, at any time after licensure, are found to be out of compliance with such orders.² But staff does not believe the Bar has ever issued temporary licenses in the first instance. The working group debated this topic at length and concluded that public protection demands continuing the practice of not certifying to the Supreme Court, and not issuing licenses to applicants whose names appear on a certified list as being out of compliance with child or family support orders. The working group therefore recommends pursuing a statutory change to exempt the State Bar from this part of the requirement consistent with current practice. Very preliminary conversations with legislative staff in one house and Supreme Court staff indicate support for this approach. The working group also proposes clean up language to Rule 4.15 to improve its accuracy.

FIVE-YEAR EXPIRATION OF 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 profession in circumstances in which the delay is justified, the working group proposes changes to the rule to allow for an extension if the applicant demonstrates diligence in attempting to complete the

¹ Rarely is this the only compliance issue keeping an applicant from certification.

² The State Bar doesn't issue temporary licenses, per se, but notifies licensees that their license will be suspended in 150 days, pursuant to the terms of the statute, if they do not come into compliance with their child or family support orders.

requirements within five years. The working group believes the policy is consistent with the perspective adopted by the committee when it sought to eliminate the five-year rule.

LEGAL EDUCATION

The State Bar Rules on legal education (**Rule 4.26**) required to sit for the California Bar exam largely mirror the requirements of section 6060. An applicant can establish eligibility to take the bar exam by JD conferral from an American Bar Association (ABA)-approved law school or one accredited by the committee. The applicant may instead 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 in good academic standing), 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. After extensive discussions, both the staff and the working group have recommended specific, unambiguous language to demonstrate diligent and good-faith completion of law school studies. The revised requirement stipulates that an applicant must demonstrate either of the following: 1) completion of a minimum of four years of law school with sufficient academic progress to advance to the next year. 2) maintaining good academic standing for a minimum of four years in accordance with the law school's policies, guidelines, or regulations.

The working group is also recommending a statutory amendment to clean up an outdated reference to an LLB, bachelor of laws, degree. This revision is necessary as US law schools have not granted this degree since the early 1970s, and it could lead to confusion with undergraduate institutions currently granting "bachelor of arts in law" degrees. Additionally, this proposed change will later be recommended for parallel revision in the Admissions rules.

FIRST-YEAR LAW STUDENTS’ EXAMINATION

Under Rule 4.55, to seek admission to the Bar, an applicant must have taken the First-Year Law Students’ Examination, unless they are exempt from that requirement. Rule 4.55 provides an exemption for those who completed at least two years of college work and the first year at an ABA-approved or California accredited law school. While the rule stipulates that students from one of these school types can be exempt only if the school has advanced them to the second year of instruction, the State Bar’s experience is that applicants who were academically dismissed from their ABA-approved or California accredited law school often believe they are exempt from this requirement if they transfer to a registered school for their second year. This results in extraordinary frustration for applicants and requires significant State Bar time to address. As a result, the working group recommends clarifying **Rule 4.55** by stating that an applicant’s “full” first year of course of instruction was at ABA or Cal-accredited schools in order to be exempt from the exam.

The working group also proposed to amend the Rule to conform to B&P 6060 which provides that an exemption from the exam is established 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.

Finally, the review of historical committee documents led to the discovery of a legislative proposal approved by the committee in March 2003 to amend B&P 6060, governing the time in which a law student must pass the FYLSX in order to get credit for any study beyond the first year to address those who were called to active military duty. The legislative proposal sought to provide additional opportunities to sit for and take the exam if the call to active military duty interfered with the statutory timeline to pass the FYLSX. Staff were unable to identify any State Bar-related legislation for 2003 or the several years thereafter in which this proposal was introduced. The working group recommends that the Board adopt this statutory change as a legislative priority.

GENERAL EDUCATION

Rule 4.25 looks at the education required to begin law study—in particular the completion of two years of college work or demonstrated equivalent achievement, as certified by an applicant's law school upon request by the committee. Applicants with Master's or Ph.D. degrees from their respective schools or countries have inquired about using their graduate-level coursework to meet the "two years of college work" requirement, as some countries/schools don't mandate an undergraduate degree before pursuing a graduate-level degree. The Committee was tasked in 2013 with considering whether two years of graduate-level coursework align with the spirit of the requirement and whether a policy should be adopted for evaluating graduate degrees to fulfill the statutory pre-legal requirement. The conclusion then was that this would provide clarity to potential applicants and ensure proper processing for existing applicants. However, the proposal was not incorporated in the rules, or a formal policy or guideline adopted by the committee. The working group recommends this addition, from the 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.

UNACCREDITED LAW SCHOOL STUDY

Changes to the rules related to unaccredited law schools now include a credit calculation for a six-month period of study, in addition to the existing one-year period. This is intended to provide flexibility for applicants in establishing eligibility to sit for the bar exam. To be eligible, applicants' transcripts must clearly show non-overlapping dates for each year of study. Applicants may count less than a year of study, but only in half-year increments within a 24–26-week period. These definitions are important for evaluating law studies and also ensuring that applicants devote the appropriate amount of time to learning the law, by preventing applicants from attempting to complete a year of study in a very short period of time. These rules also play a crucial role in determining eligibility for and exemption from the First-Year Law Students' Examination.

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)

The working group also proposes to amend the statute, which currently expressly addresses unaccredited fixed facility and correspondence schools but does not reference distance-learning (or remote) modalities which the State Bar has recognized for many years.

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 ABA-approved, California-accredited, or California-unaccredited law schools 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 restart the clock 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 and starting over prohibited. 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, 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, staff will bring the existing policy back to the committee for formal action to repeal the policy.

RULE 4.33, EVALUATION OF STUDY COMPLETED OR CONTEMPLATED

The working group is proposing significant improvements to the existing rule governing the evaluation of educational qualifications for applicants seeking to begin the study of law, take the First-Year Law Students’ Examination, or sit for the California Bar Examination. The current rule has been identified as lacking clarity and contains some bureaucratic language that can be confusing for applicants.

In response, the working group has carefully crafted a revised rule to address these issues and streamline the evaluation process. The proposed changes include the separation of requests for general education eligibility from those related to legal education. This separation into distinct

sections (A, B, and C) enhances clarity and simplifies the process for applicants, allowing them to navigate it with ease.

Furthermore, the responsibilities have been clarified by clearly designating the Office of Admissions as the entity responsible for providing determinations. To enhance responsiveness, the working group has set a well-defined 60-day timeline for issuing written responses, ensuring that applicants receive timely feedback on their eligibility. These proposed changes aim to enhance the clarity, efficiency, and transparency of the evaluation process, ultimately benefiting both applicants and the organization.

To address an identified gap identified by staff, the proposal also clarifies that any proposed plan of study submitted after the initial evaluation must be accompanied by the specified fee set forth in the attached amendments to the Schedule of Charges and Deadlines.

These proposed changes aim to enhance the clarity, efficiency, and transparency of the evaluation process, ultimately benefiting both applicants and the organization.

FOREIGN EDUCATED AND FOREIGN-BARRED APPLICANTS

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 modifications deemed appropriate by the working group. The guidelines establish the criteria for individuals holding a first-degree in law from a foreign institution who seek admission to the California Bar.³ To be eligible, applicants must meet one of two requirements. First, they must obtain a certificate from a credential evaluation service sanctioned by the Committee of Bar Examiners (CBE) confirming that their foreign law degree is substantially equivalent to a Juris Doctor (JD) degree conferred by an American Bar Association (ABA)-approved or California accredited law school. Alternatively, applicants can secure a certificate from an approved credential evaluation service indicating that their foreign law degree satisfies the educational prerequisites for legal practice in the foreign state or country where it was acquired.

Moreover, applicants must submit an additional certificate from an ABA-approved or California accredited law school. This certificate must validate that the applicant has either earned a Master of Law (LLM) degree, based on a minimum of 20 semester or equivalent units of legal education, including no less than 12 semesters or equivalent units covering four subjects assessed on the California Bar Examination, including Professional Responsibility. Alternatively, applicants can demonstrate eligibility by completing 20 semester or equivalent units of legal education within an LLM program, with at least 12 semesters or equivalent units covering four subjects tested on the California Bar Examination, including Professional Responsibility. The

³ These guidelines will come back to the committee for repeal following adoption of the rules.

working group concluded that applicants should be permitted to meet the course requirements via a non-degree seeking path as well as through completion of an LLM program.

The working group also proposes to amend the rules to incorporate a committee policy adopted in April 2015 which 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.

The working group also discussed the “Guidelines for Implementation of the Policy Regarding Eligibility of Foreign-Educated Attorneys for Registration as Attorney Applicants,” adopted in June 2013. The policy proposed to the committee in 2013 required foreign-educated attorney applicants 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, the guideline expressly stated that the Office of Admissions determines whether the documentation is from the appropriate professional bar admission regulation/attorney licensing authority. Staff currently speculates that the committee felt that the former requirement was not necessary in light of discretion given to the Office of Admissions. And in fact, 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 the interests of transparency and clarity, the working group recommends explicitly including this practice and guideline into the rules and are proposing new **Rule 4.30.5 Requirements for Attorneys Licensed in a Foreign State or Country** for this purpose.

In addition to the above, the working group recommends miscellaneous technical, conforming, and nonsubstantive amendments 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

Overall, the rules streamline and otherwise improve processes currently performed by State Bar staff. Additionally, by eliminating confusing language it is anticipated that staff will be fielding fewer questions from applicants.

These proposals include additional fees proposed for work performed by staff on the Start Over Form and the Proposed Plan of Study. These proposed fees are expected to cover the administrative costs incurred by the Office of Admissions for these services.

Additionally, removing barriers related to graduate work counting as “college work” and nondegree seeking coursework counting toward eligibility for those with a first degree in law should result in a slight increase in applicants for the bar exam.

The number of applicants that will receive an extension under the revised rule 4.17 versus retaking the bar exam is likely to be de minimis and without material fiscal impact.

Similarly, there will be a, likely insignificant, reduction in applicants for the First-Year Law Students’ Examination due to incorporating the language from section 6060 exempting applicants who passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence.

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, 4.26, 4.27, 4.28, 4.29.5, 4.30, 4.30.5, 4.33, and Chapter 4 Rules 4.55 and 4.61

Appendix A to the State Bar Rules, 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 all other proposed revisions and to the rules and the Schedule of Charges and Deadlines set forth 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.*”

Further, the working group recommends that the committee forward to the Board of Trustees the proposed changes to Family Code section 17520 and Business and Professions Code section 6060 with a recommendation that these be adopted 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 recommends 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 recommends the Board of Trustees adopt as legislative priorities the proposed amendments to Family Code section 17520 and Business and Professions Code section 6060 set forth in Attachment D and E.

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*" set forth in Attachment F.

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