



The State Bar of California

BOARD OF TRUSTEES

180 Howard Street, San Francisco, CA 94105

April 15, 2020

Hon. Tani G. Cantil-Sakauye, Chief Justice of California
Associate Justices of the California Supreme Court
350 McAllister Street, 5th Floor
San Francisco, CA 94102-4797

Sent via email

RE: Options for the Supreme Court's Consideration: California Bar Examination and First-Year Law Students' Examination

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The situation caused by the COVID-19 pandemic, including the stay-at-home orders and social distancing requirements needed to protect Californians and stop the spread of the novel coronavirus, has called into serious question the ability to administer the First-Year Law Students' Examination and the California Bar Examination in the usual fashion in June and July 2020, respectively. The State Bar has given careful consideration to how to proceed, culminating in a meeting of the Board of Trustees on April 14, 2020, to consider various options being discussed in California and nationally.

At the outset, I want to acknowledge the thoughtful work of the Committee of Bar Examiners and State Bar staff on the difficult questions presented, all of which contributed to the Board's deliberations and the options put before you today. In addition, the Board and the Committee of Bar Examiners received substantial public comment, both oral and written, that was taken into account in formulating these options. I want to acknowledge and thank all of the commenters for participating in this process. In many cases, the comments included moving accounts of applicants' hard work and sacrifice in obtaining a law degree, financial obligations including debt they have undertaken in that regard, and responsibilities the applicants have to their communities and families. These comments underscored the significance of proceeding in as thoughtful a manner as possible regarding the upcoming examinations to ensure that applicants are treated fairly and that the public is protected, consistent with the State Bar's

mission, among other things, to advance the ethical and competent practice of law and to support efforts for greater access to, and inclusion in, the legal system.

Arguments about how best to address the unique situation posed by the COVID-19 pandemic and its impact on the ability of applicants to prepare for and successfully take the examinations and become licensed have identified several factors that need to be considered and weighed, including:

- The difficulty many law students face to prepare for a July 2020 California Bar Examination appropriately due to the conditions posed by stay-at-home orders and unavailability of other study sites, such as libraries.
- The adverse impact of delaying the examination for law students, many of whom have undertaken substantial debt under the assumption they would take and successfully pass the July 2020 examination.
- The economic impact on individuals and families resulting from the COVID-19 pandemic which has accelerated the need for graduating law students to enter the workforce.
- Access to justice is even more critical now, as Californians are losing jobs, homes, educational opportunities, and are being subject to predatory behavior of unscrupulous individuals. This is not the time to slow the numbers of qualified lawyers entering the profession.
- The need to ensure minimum competency of new licensees, of which the bar examination is an important component.

The options for proceeding which are described below are shaped by the Board's belief that it is not feasible to administer an in person examination in June or July, especially because approximately 9,000 people typically sit for the July bar examination and the Governor announced yesterday that large gatherings of people must be avoided through August. The Board also recognizes that at this time no one can predict with any certainty when regulatory restrictions will allow for the resumption of major gatherings, such as sitting for the California Bar Examination. Finally, the Board recognizes the importance of the California Bar Examination to those who take it and those who rely on it as a determination of minimal competence to practice law in California, and thus are reluctant to conduct the examination in a remote, online format without first testing this modality. Thus the Board believes these options have the greatest likelihood of success, and support the mission of the State Bar to ensure public protection.

OPTION 1 – PREFERRED OPTION

- Proceed with the plans to administer the June First-Year Law Students’ Examination, delivering the examination online, with remote proctoring, instead of in person. The State Bar had been preparing for online proctoring of examinations, but until the current situation had planned that the examinations would still be administered in person at State Bar identified testing sites. The State Bar has been communicating with the testing and remoting proctoring vendors and believes it can safely and securely administer the examination remotely. The State Bar believes it prudent to make the first online examination administration the First-Year Law Students’ Examination, which involves many fewer applicants than the California Bar Examination.
- To address the fact that some students may not be able to take an online First-Year Law Students’ Examination in June, or may be challenged with a setting that is not conducive to studying for or taking such an examination, rule changes should be adopted to provide that students must pass the First-Year Law Students’ Examination within the first *four* administrations after they become eligible to take the examination (rather than the current limit of three) in order to be eligible for law school credit beyond the first year.
- Postpone the July California Bar Examination to September 9-10, 2020, one of the two sets of fall 2020 dates identified by the National Conference of Bar Examiners (NCBE).
- Prepare to administer the September California Bar Examination online, in person, or both as needed to address social distancing needs in place at that time. The experience administering the June First-Year Law Students’ Examination online will assist in ensuring a smooth online administration if that becomes necessary.
- Postpone the October First-Year Law Students’ Examination to November 2020 so as not to risk depletion of resources by attempting to grade simultaneously the September California Bar Examination and the First-Year Law Students’ Examination.

Because the bar examination includes the Multistate Bar Examination, or MBE, administered by the NCBE, to fully administer the bar examination online requires the cooperation of NCBE in allowing the MBE to be delivered online if social distancing limitations in September make in person delivery impossible or unwise. In a report issued on April 9, 2020, NCBE noted that it is “actively consulting with outside testing, technology, and exam security experts to evaluate alternative methods of testing, including options such as online, remote-proctored testing, if the traditional group setting must be canceled or modified.”¹

¹ Bar Admissions During the COVID-19 Pandemic: Evaluating Options for the Class of 2020. National Conference of Bar Examiners, April 9, 2020, p.2.

Because the State Bar cannot guarantee that NCBE will allow online delivery of the MBE in September 2020, the Board of Trustees believes that a backstop is critical.² That could be provided by convening a working group to study the development of a provisional certification program, under which eligible individuals would receive certification to be permitted to work under the supervision of a licensed California attorney. This would be an expansion of the Practical Training of Law Students Program authorized by Rule of Court 9.42. The Board believes that the working group should develop the eligibility criteria, the scope of work that can be performed with such certification, and the conditions under which this provisional certification would terminate. To prevent undue delay, any rules recommended by the working group should be presented to the Supreme Court by September 1, 2020, for consideration in the event the Bar Examination cannot be administered on September 9-10, 2020. Ideally the provisional certification program would be implemented such that certification could be issued by Thanksgiving 2020, the usual time when July bar examination results are announced.

The provisional certification program would, if adopted, replace only the bar examination as a prerequisite to licensure. All other requirements for licensure would be prerequisite to obtaining provisional certification, including completion of moral character screening.

OPTION 2

In lieu of Option 1, both the June First-Year Law Students' Examination and the July California Bar Examination could be cancelled. In that event, the next scheduled administration of the First-Year Law Students' Examination would be October 2020 and of the California Bar Examination would be February 2021.

The Board recommends that the working group described above be convened as part of this option as well. Since, under this option, the State Bar would not be in the position of having to prepare for an online administration of the June First-Year Law Students' Examination and a September administration of the California Bar Examination, the working group could be provided an accelerated timeline, with any rules to be presented to the Supreme Court by July 31, 2020, for adoption.

The above options are a distillation and refinement of many diverse ideas considered before settling on what the Board viewed as the most viable for presentation to the Court. The Board appreciates the opportunity to share its thoughts with the Supreme Court, and stands ready to

² One option considered during the State Bar's study process included the possibility of administering only the California-specific written portion of the California Bar Exam in an online format, foregoing the MBE. However, following a discussion with the State Bar's psychometrician the Bar was convinced that both the written component and the MBE must be administered and graded to ensure the integrity of the examination, and that the scaled scoring is valid and reliable.

Hon. Tani G. Cantil-Sakauye, Chief Justice of California
Associate Justices of the California Supreme Court
April 15, 2020
Page 5

assist the Court in implementing whatever decisions the Court makes regarding the examinations and/or provisional certification.

Sincerely,

A handwritten signature in cursive script that reads "Alan K. Steinbrecher". The signature is written in black ink and is positioned above the typed name.

Alan K. Steinbrecher
Chair