

December 17, 2020

Ms. Donna S. Hershkowitz  
Interim Executive Director  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105  
[Donna.Hershkowitz@calbar.ca.gov](mailto:Donna.Hershkowitz@calbar.ca.gov)

Re: Chapter 6 Notice of Violation of Examination Rules or Policies

Dear Ms. Hershkowitz:

Two issues relating to the Chapter 6 Notice of Violation of Examination Rules or Policies process, which was outlined at the December 10, 2020, Annual Law School Assembly meeting, have come to our attention. As discussed more fully below, we respectfully urge the State Bar to allow persons challenging notices of violation to sit for the February Bar Exam, and to allow such persons to view videos of alleged violations when responding to notices.

During the December 10<sup>th</sup> meeting, the State Bar notified attendees that its staff is in the process of reviewing 3,190 flagged proctoring videos from the October administration of the California Bar Examination—i.e., more than one-third of all test-takers were flagged for possible violations. The State Bar gave no indication of what standards it would impose to assess whether the flagged conduct warrants a Chapter 6 notice and we have no information as regards the number of candidates that have (or can be expected) to receive a Chapter 6 notice.

At the meeting, State Bar staff explained that upon receipt of a Chapter 6 notice, an applicant has ten days to respond in writing. After the State Bar receives the response, staff look into the matter further and decide whether the applicant should be sanctioned. If an applicant receives a sanction for a disputable violation, the applicant may request an appeal. According to Admissions and Educational Standards Rule 4.71(B), “An examination score may be held in abeyance pending resolution of the matter.” However, during the meeting, the State Bar staff stated that if an applicant requests an appeal, the applicant’s bar exam score **will be** held in abeyance. This means that the applicant will not know their score and the applicant will not be allowed to timely register for the February 2021 bar examination before the matter is resolved.

The first issue with the Chapter 6 process is that applicants cannot register for or sit for the February 2021 bar examination if they are appealing disputable sanctions. The prohibition imposes a substantial penalty on applicants, some of whom are not ultimately going to be found to have truly committed an exam violation. Additionally, given that the State Bar can schedule an administrative hearing within ninety days of the applicant’s request, or later if good cause is shown, there is absolutely no guarantee that the matter will be resolved prior to the February 2021 bar examination. (See Admissions and Educational Standards Rule 4.72 (B)). An

applicant should not be forced to choose between appealing a disputable sanction and sitting for the bar examination. Applicants who receive disputable sanctions should be permitted to register for and sit for the February 2021 bar examination as they wait for their appeals to be resolved.

The second issue with the Chapter 6 process is that applicants are not allowed to view the flagged videos before responding to the Chapter 6 notices. Applicants do not have access to all of the information that they need in order to address or explain the suspected violations. In fact, without the seeing the videos, applicants may not even necessarily know what they are responding to—especially in light of the fact that the State Bar has not defined where the line might be between flagged conduct that it deems harmless and that warranting of a serious penalty. For example, some of the Chapter 6 notices we have seen describe the alleged misconduct in vague terms like “facial view of your eyes was not within view of the camera for a prolonged period of time,” which gives the applicant insufficient notice of the alleged misconduct. Providing applicants, especially those who are suspected of disputable violations, with the ability to view the videos is logical given that anyone who receives a disputable sanction will almost necessarily seek an appeal and will presumably be allowed to view the video as part of the appeal process. Therefore, applicants should be allowed to view the videos prior to responding to the Chapter 6 notices so that they can defend themselves and resolve these matters in a timely manner.

Finally, at your earliest convenience, we ask that you supply information regarding the number of applicants that have, or can be expected, to receive Chapter 6 notices.

Thank you for your prompt attention to this matter.

Respectfully,

Paul L. Caron  
Duane and Kelly Roberts Dean and Professor of Law  
Pepperdine Caruso School of Law

Erwin Chemerinsky  
Dean and Jesse H. Choper Distinguished Professor of Law  
University of California, Berkeley School of Law

Eric C. Christiansen  
Dean of the Law School (Interim, 2020-21) and Professor of Law  
Golden Gate University

Margaret A. Dalton  
Interim Dean and Professor of Law  
University of San Diego School of Law

Allen K Easley  
Dean & Professor of Law  
Western State College of Law at Westcliff University

David L. Faigman  
Chancellor & Dean and John F. Digardi Professor of Law  
University of California Hastings College of the Law

Susan Freiwald  
Dean and Professor of Law  
University of San Francisco School of Law

Brian Gallini  
Dean & Professor of Law  
Willamette University College of Law

Andrew T. Guzman  
Dean and Carl Mason Franklin Chair in Law, and Professor of Law and Political Science  
University of Southern California, Gould School of Law

Anna M. Han  
Interim Dean and Professor of Law  
Santa Clara University School of Law

José Roberto (Beto) Juárez, Jr.  
Dean and Professor of Law  
Nova Southeastern University, Shepard Broad College of Law

Kevin S. Marshall  
The Frank Lizarraga Endowed Dean and Professor of Law  
University of La Verne College of Law

Jenny S. Martinez  
Richard E. Lang Professor of Law &  
Dean of Stanford Law School

Jennifer L. Mnookin  
Dean and Ralph and Shirley Shapiro Professor of Law  
University of California, Los Angeles School of Law

Matt Parlow  
Dean and Donald P. Kennedy Chair in Law  
Chapman University Dale E. Fowler School of Law

L. Song Richardson  
Dean and Chancellor's Professor of Law  
University of California, Irvine School of Law

Theodore W. Ruger  
Dean & Bernard G. Segal Professor of Law  
University of Pennsylvania Carey Law School

Sean M. Scott  
President and Dean  
California Western School of Law

Michael Waterstone  
Fritz B. Burns Dean and Professor of Law  
Loyola Law School, Loyola Marymount University

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

Ms. Audrey Ching  
Assistant Director, Admissions  
The State Bar of California  
180 Howard St.  
San Francisco, CA 94105  
[audrey.ching@calbar.ca.gov](mailto:audrey.ching@calbar.ca.gov)