

## RESOLUTION 2-14-03

### DIGEST

#### Committee of Bar Examiners: Law School Deans

Amends Business and Professions Code section 6046 to expand the Committee of Bar Examiners to include three law school deans.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

None known.

#### Reasons:

This resolution amends Business and Professions Code section 6046 to expand the Committee of Bar Examiners to include three law school deans. This resolution should be disapproved because it would create a potential conflict of interest between the appointed deans and the Committee of Bar Examiners and would raise confidentiality concerns.

The current composition of the Committee of Bar Examiners (“Committee”) includes practicing attorneys, judges and non-lawyer members of the public, so that the practical issues which face attorneys once they pass the bar are well represented. Law schools are currently involved in the work of the Committee through the Law School Council and Law School Assembly. In addition, those members of law school communities wishing to comment on the actions of the Committee may attend open meetings of the Committee. This resolution seeks to increase this involvement, specifically, the law school deans’ involvement. However, such involvement beyond the current level is likely to create conflicts of interest and loss of confidence in the integrity of the bar examination process by the general public.

The Committee is charged with preparing the bar exam as well as evaluating the moral character of applicants for the bar. As such, the Committee has information both as to the topics on the bar exam and confidential information about the moral character of applicants. Although it is unlikely that a dean member of the Committee would share the information he or she may gain regarding topics on an upcoming bar exam or the moral character of bar applicants, the possibility that such a breach of confidence could occur would threaten public trust. As with many areas of the law, it is not the actual impropriety, but the appearance of impropriety, which is of concern. This resolution would create the appearance of impropriety. Moreover, given the relatively small number of law schools, appointing three deans to the Committee would create disproportionate representation for law schools, and would give disproportionate influence to the three law schools whose deans are on the Committee.

### SECTION/COMMITTEE REPORT

#### COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA

Recommendation: **DISAPPROVE**

#### Reasons:

Dean members of the Committee would be placed in a conflict-of-interest position that would threaten the integrity of the Committee’s decision making process. They would have access to bar examination questions before they are used and, as members of the Committee, would have access to information about their students and others that they ordinarily would not have access to because of confidentiality requirements, such as moral character determination applications and petitions. The Committee does not

believe that dean members would disclose confidential examination and applicant information, but the public's confidence in the integrity of the process of development and administration of the bar examination and the applicants' confidence in the confidentiality of their personal information might, indeed probably would, suffer because information hitherto unavailable could be disclosed to the benefit of their students.

The Committee also registers and accredits law schools. To avoid an appearance of impropriety, dean members would not be able to participate in any related closed session discussions as they would be privy to inside information regarding a law school's status or problems, which in some cases might be considered the competition.

The resolution does not address the identity of the entity or person who would make the appointments to the Committee nor the process for the making of the appointments.

Adding deans to the membership of the Committee is unnecessary. Currently, input on Committee activities and policies is received through the Law School Council that is composed of elected representatives of the various types of law schools in California, including those approved by the American Bar Association, those accredited by the Committee and those that are not accredited but are authorized by the Board for Private Postsecondary and Vocational Education to confer degrees (unaccredited and correspondence law schools); members of the Committee; and a representative of the Board of Governors. The Law School Council generally meets at least once a year or more often depending on the interests and schedules of the dean members.

In addition, input is received from the California legal education community through the Law School Assembly that is composed of the deans of all law schools in California as well as the members of the Committee. The Law School Assembly meets every one to two years to discuss matter of interest to both the Committee and the legal education community in California.

Finally, all law school deans are provided with a copy of the Committee's open agenda prior to each Committee meeting and are welcome to attend any open session portion of the Committee and its subcommittees meetings. They are also provided with a copy of the open session portion of the meeting minutes after they have been approved by the Committee.

## **TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 6046 to read as follows:

- 1 §6046
- 2 The board may establish an examining committee having the power:
- 3 (a) To examine all applicants for admission to practice law.
- 4 (b) To administer the requirements for admission to practice law.
- 5 (c) To certify to the Supreme Court for admission those applicants who fulfill the
- 6 requirements provided in this chapter.
- 7 The examining committee shall be comprised of ~~19~~ 22 members, 10 of whom shall be
- 8 members of the State Bar or judges of courts of record in this state, three of whom shall be law
- 9 school deans from American Bar Association or state accredited law schools in California, and nine
- 10 of whom shall be public members who have never been members of the State Bar or admitted to
- 11 practice before any court in the United States. At least one of the attorney members shall have been
- 12 admitted to practice law in this state within three years from the date of their appointment to the
- 13 examining committee.

(Proposed new language underlined; language to be deleted stricken.)

PROPOSER: Steven Wall, Franne Ficara, Colin Wied, Aaron Katz, Chris Todd, Charles Bird, Gina Dronet, Lilys McCoy, Cindy Davis, and Rita Hanscom.

#### STATEMENT OF REASONS

Existing Law: The current membership of the Committee of Bar Examiners of the State Bar of California does not include law school representatives.

This Resolution: Adds three law school deans to the Committee of Bar Examiners.

The Problem: The makeup of the Committee of Bar Examiners is dictated by the above section. It calls for 10 lawyers and 9 non-lawyers. There is no provision to include law school representatives on the Committee. Because the decisions made by the Committee greatly impact the law schools by affecting their curriculum offerings, the timing of the bar examinations, and the subjects tested, the Committee would benefit from having the input and perspective of several law school representatives.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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