

RESOLUTION 11-04-04

DIGEST

Committee of Bar Examiners: Composition:

Amends Government Code section 6046 to require that the composition of the Committee of Bar Examiners include three members who are law school deans or their representatives.

RECOMMENDATION

DISAPPROVE

History:

Similar to Resolution 02-14-03 which was withdrawn.

Reasons

This resolution amends Government Code section 6046 to require that the composition of the Committee of Bar Examiners include three members who are law school deans or their representatives. This resolution should be disapproved because the functions of the Committee of Bar Examiners are far broader than establishing qualifications and standards for the practice of law.

The Committee also administers the application of such standards, monitors the qualifications and performance of accredited law schools, considers and acts on applications for accreditation and reviews confidential information about applicants for admission to the bar, many of whom are law school students. For law school deans to participate in such matters would likely pose direct conflicts of interest with their other professional responsibilities. Law school deans and representatives already consult with and advise the Committee in the determination of appropriate subject matter and other curriculum determinations through the Law School Council and the Law School Assembly.

SECTION/COMMITTEE REPORT

COMMITTEE OF BAR EXAMINERS RECOMMENDATION

DISAPPROVE

The Committee of Bar Examiners opposes the resolution. This position is solely that of the Committee of Bar Examiners and has not been adopted or endorsed by the State Bar's Board of Governors.

Historically, there has been no law school representation on the Committee of Bar Examiners (Committee). In fact, those appointed to the Committee who had teaching or administrative ties to a law school have been required to sever those ties because of the perceived conflict of interest. Almost everything the Committee does affects law students and/or law schools, thus creating the potential for conflicts of interest. Members know in advance the questions used on the bar examination, internal management policies and act on individual student petitions, moral character determinations and testing accommodations appeals. For just a few law school

representatives to have access to this type of information could be perceived as a conflict, as well as unfair. The resolution does not address these issues.

There are many opportunities for input from the law schools. The Law School Council is composed of ten deans from the various categories of law schools (ABA-approved, California-accredited, unaccredited, correspondence) based on total enrollment and category of school. Generally, the Council meets once a year. The Law School Assembly, composed of the deans from all California law schools, meets every one to two years with the Committee. Proposed amendments to the Rules Regulating Admission to Practice Law in California, to the scope and the format of the examination and any other significant change to existing policy are distributed and discussed with the law schools in advance of any final decisions. In addition, Office of Admissions Staff meets annually with the law school registrars. The law school deans are provided with copies of the open agenda and schedule of all Committee meeting prior to the meetings, and are welcome to attend the public session portion of the Committee's meetings. Copies of the final open session meeting minutes are also sent to them following approval by the Committee.

The resolution is based on the concept that these avenues of communication are inadequate because they have not led to a consensus between the legal education community in California and the Committee as to the skills that students should possess to qualify them for entry into the legal profession. A consensus might be difficult since the purpose of law schools is education while that of the Committee is public protection.

Currently, on the Committee there are ten lawyer members appointed by the Board of Governors and nine public members appointed by the Governor, the Senate Rules Committee and the Speaker of the Assembly. Both lawyer and public members are appointed for four year terms, although public members continue to serve after their terms have expired until their successors are appointed. The resolution is silent with respect to whether the deans would be lawyer members (in which case they would have to be members of the State Bar and not all are) or whether they would be considered public members (in which case Section 6046.5 of the Business and Professions Code would also require amendment).

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
8 be members of the State Bar or judges of courts of record in this state, three of whom shall

9 be law school deans, or their representatives, from ABA or state accredited law schools in
10 California, and nine of whom shall be public members who have never been members of
11 the State Bar or admitted to practice before any court in the United States. Each law
12 school appointment shall be for a term of two years. At least one of the attorney members
13 shall have been admitted to practice law in this state within three years from the date of
14 their appointment to the examining committee.

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

PROPONENT: San Diego County Bar Association

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: Would add three law school representatives to the Committee of Bar Examiners.

The Problem: The Committee of Bar Examiners consists of 10 lawyers and 9 non-lawyers, but no law school representatives. Yet, the decisions made by the Committee affect the law schools by impacting their curriculum offerings including the subjects and issues tested, and the timing of the bar examinations. The Committee would benefit from having the input and perspective of law school representation and the law schools would benefit from having direct involvement in the committee's decisions. Any concerns about exam security can be addressed by internal policies.

California's law schools educate the great majority of attorneys who practice in California. The profession will be strong and the public protected only if the law schools perform their jobs well. The single greatest influence on the shape of the law school curriculum is the bar exam. It is essential that there be close collaboration between the law schools and the Committee of Bar Examiners. There should be a consensus between the law schools and the Committee concerning what skills students should possess to qualify them for entry into the profession.

Unfortunately, no such consensus exists. Under the current system, the law schools are involved too peripherally and intermittently to be able to participate meaningfully in the work of the Committee. The Law School Council meets only once a year and the Law School Assembly meets every one to two years but neither are part of the Committee of Bar Examiners. This resolution provides for the close collaboration that is needed and that has not been achievable under the current system.

The Committee of Bar Examiners, as a testing body, should have the benefit of legal educators on the committee. The Educational Testing Service, the largest testing program in the world includes educators on its board. The Law School Admissions Council, which administers the LSAT, includes legal educators on its board. Likewise, the Committee of Bar Examiners should include legal educators as well.

As an accrediting agency, the Committee of Bar Examiners has avoided involving current legal educators, believing this to be a conflict of interest. However, the American Bar Association Accreditation Committee has always used legal educators, including deans, and regional accrediting agencies for the Department of Education use educators as inspectors. Accrediting inspection teams generally include legal educators from schools that may be competing with each other without any suggestion of impropriety.

The following deans and law schools are in favor of this resolution: Norman Abrams, UCLA; Bob Berring, Berkeley; Jeff Brand, USF; Dave Burcham, Loyola; Neil Cogan, Whittier; Maryann Jones, Western State; Mary Kay Kane, Hastings; Peter Keane, Golden Gate; Charles Nelson, Pepperdine; Elizabeth Rindskopf-Parker, McGeorge; Dan Rodriguez, USD; Steve Smith, California Western; Matt Spitzer, USC; Kathleen Sullivan, Stanford; Leigh Taylor, Southwestern; Ken Vandavelde, Thomas Jefferson; Parham Williams, Chapman.

IMPACT STATEMENT

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

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