

June 2021

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Frederick M. Farrar

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### Recommended Citation

Frederick M. Farrar, Outline of Bar Examination Procedure, 28 Dicta 320 (1951).

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## OUTLINE OF BAR EXAMINATION PROCEDURE

By FREDERICK M. FARRAR  
*of the Denver Bar*

This outline had best begin by explaining a somewhat confusing distinction between the two committees concerned with the selection of candidates for admission to the Bar in Colorado. These two committees both operate under the jurisdiction of the Supreme Court. One committee, called the Bar Committee, concerns itself with the ethical aspects of the candidates for the Bar and it is not within the scope of this outline to consider its activities. The other committee is called the Law Committee and its jurisdiction consists of conducting the written examinations requisite for admission to the Bar.

This committee, the Law Committee, consists of a chairman and eight examiners appointed by the Supreme Court. In addition, there is a secretary who is usually an official of the Court. The appointments are made specifically for examiner or for chairman of the Law Committee. There is no definite time limit to these appointments, the Supreme Court retaining the privilege of removing and replacing either the chairman or any examiner at will. Neither the chairman nor the examiners of the Law Committee receive anything for their services except necessary expenses. However, the number of applicants in recent years has become increasingly large and the Supreme Court has made provision for each examiner to engage an assistant. The assistant receives \$100 for his services in helping the examiner prepare the questions and grade the answers. This \$100 fee is granted for each examination.

The procedure in preparing and giving the examination is as follows: The Law Committee sets the date for the Bar Examinations. These are held twice yearly, usually in January and June; however, these dates are variable to meet room conditions, etc., at the State House. At various times in the past, Bar Examinations have been given in other locations but this has usually proved unsatisfactory. The date for the examination having been set, the chairman of the committee, several weeks in advance of the examination, notifies each examiner and assigns the subjects on which each shall prepare examinations. Time allotted to each division is also stipulated. In the past, it was customary for one examiner to examine on the same subjects year after year but recently that procedure has been changed, in that subjects, to some extent, are rotated among the examiners. The reasons given for this rotation are twofold. First, in some cases examiners have preferred subjects other than those they had previously covered and changes were made to accommodate them when feasible. Secondly, there was an unconscious tendency on the part of the examiners to stereotype their questions over the years. Presumably, applicants

for the Bar are not aware of the questions nor of their type, but nevertheless, even though the applicants are not allowed to retain the questions, considerable foreknowledge of the type of question to be expected was obtainable. This rotation, to some extent, eliminates that factor and, in the opinion of the Law Committee, makes the examinations fairer.

At the present time, Bar Examinations are conducted on eighteen subjects. These eighteen subjects are divided into eight divisions, each division being handled by one examiner. The divisions and the subjects examined under them are as follows:

- I. Contracts—Agency—Partnership
- II. Wills and Estates—Domestic Relations
- III. Torts—Damages
- IV. Criminal Law—Evidence
- V. Constitutional Law—Taxation
- VI. Civil Procedure—Conflict of Laws
- VII. Water Rights—Corporations
- VIII. Property—Equity—Trusts

It should be emphasized that these divisions and the subjects examined upon are not necessarily fixed and may be changed at the discretion of the committee either by addition or deletion of subjects on which the examinations will be conducted, or by a change in subjects in any division. This change may be made only upon reasonable notice to all those concerned.

When the chairman of the committee notifies the examiners they are to prepare the questions, he also sets a date some weeks thereafter for a meeting of the examiners. At this meeting, each one of the examiners in turn presents the questions he proposes to ask at the coming examination. After reading the questions to the committee as a whole he explains the reasons for the question and gives the answer which he would normally expect. Then, this question is discussed by the group. Frequently, the committee feels the question is not suitable, is too severe, not clearly worded, or that it has some other disadvantage, and accordingly the question may be amended to meet general approval.

When the committee has all the questions worded to its satisfaction they are transmitted to its secretary who has them printed in preparation for the examination.

A general outline of the thoughts motivating the committee while they are discussing the questions may be helpful. The committee makes every effort to keep the questions fair and representative and does not knowingly allow any of a trick nature to be given at the examination. It is possible, of course, that there may be a disagreement between the committee's point of view on a question and that of the applicant. But that arises only by accident, as there is a deliberate effort to prevent any such misunderstanding. Sometimes the questions present complex factual situations; this is done intentionally in an effort to test the

applicant's power of analysis and his ability to pick out the pertinent points.

At the time of the actual examination the applicant is assigned a number and for each division of the examination receives a booklet in which to write the answers. On one corner of the booklet's cover there is a perforated section bearing the number assigned to the applicant. After the applicant has written his examination the booklet containing the answers is returned, together with the questions, to the secretary of the Law Committee who is in charge of the actual examinations. He removes the numbered section from the examination cover substituting therefor a number known only to himself.

#### IDENTITY IS CONCEALED

Thus, while the applicant knows the number originally assigned to him there is no way in which he may know the substitute number and he is unable to inform any examiner as to what examination paper number he may have had. The only possible way in which the examiner might identify the paper would be by recognizing an applicant's handwriting or by the applicant's inclusion of some identification in the answers. This, however, is strictly contrary to rules. When the secretary has put the substitute number on the examination paper he transmits them to the examiner of the division to which the paper pertains. The examiner and his assistant then proceed to evaluate the papers and give results in the form of numerical grades on a basis of 100. This grading is primarily the examiner's province but in doing this, unless he be new on the committee, he is guided by his knowledge of past committee attitude towards the question and grading procedure in general. To digress a moment at this point it should be emphasized that grading is not and cannot be made an exact science; necessarily the examiner uses his best discretion. The examiners, particularly in the case of questions of doubtful nature, will almost always give credit for a well-reasoned and convincing answer even though that answer may not coincide with the examiner's opinion. One other factor is that the answers given by most applicants tend to be overly long. The Law Committee believes the question may be answered, and answered well, in a sentence or a short paragraph. Potential applicants for the Bar should keep this in mind. To return to the matter of grading, it is the writer's understanding that usually the questions as graded by the various examiners run about the same average; however, at times there may be considerable variance.

When the examiners have finished grading the papers there is a second committee meeting. At this meeting, the grades which have been previously transmitted to the secretary of the committee are reviewed by the committee as a whole. If on this review it appears to them that one or more of the examiners have graded

unusually severely or unusually liberally they may, and frequently do, direct that that examiner's grades be modified, either up or down. This is done to put the results of all the examinations on a more uniform plane, and to provide that all the answers are more or less equalized. At that time, the grades of each applicant, as finally revised on each of the subjects examined, are averaged and this average grade is the one transmitted to the Supreme Court. In the past it was the custom to give the applicant a grade on each division of the examination only. That is, if the examination was on Contracts, Agency and Partnerships, he would receive only one grade on the group. But in recent years it has become the practice to grade each subject separately and since there are, at the present time, eighteen subjects the applicant will have eighteen grades which will be averaged to arrive at the one presented to the Supreme Court. It was formerly required that the student pass each subject in order to be eligible for admission to the Bar but at present that procedure has been changed so that if the applicant has an average grade which is passing, he is eligible for admission as having passed the examination.

When the committee is satisfied that the grades are equalized and those applicants who have done satisfactorily have passing grades, its work is done.

Only when these grades have finally been determined by the committee and the results thereof reported to the Supreme Court through the secretary of the committee is there any knowledge by anyone other than the secretary of the identity of the substitute numbers on the papers. After the secretary has received the approved grades from the committee he goes through his numbered records and presents the grades to the Supreme Court under the applicant's name.

Then, and wholly without the knowledge or concurrence of the Law Committee, the Supreme Court may in its discretion change the grades and on an occasion has done so. But the Law Committee wishes to stress that these changes are solely within the Supreme Court's province and not the acts of the examining committee.

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#### NINTH JUDICIAL DISTRICT BAR ASSOCIATION

At a recent meeting of the Ninth Judicial District Bar Association, the members elected as their officers for the 1951-52 fiscal year Charles F. Stewart as President, Kenneth Balcomb, Jr. and William R. Shaw as Vice Presidents, George J. Petre, Secretary-Treasurer, and Allyn Cole as representative of their association on the Board of Governors of the Colorado Bar Association.