

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**REQUEST THAT THE SUPREME COURT APPROVE
PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**



PREPARED BY
THE STATE BAR OF CALIFORNIA

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I. INTRODUCTION

As the rising costs of administering the California Bar Examination¹ continue to outpace the revenue the State Bar receives from admissions fees, the State Bar has been exploring alternative methods of administering the examination in a manner that is more cost-effective and convenient for the State Bar and applicants alike.

Through this petition, the State Bar, based on the approval and recommendation of the Committee of Bar Examiners (Committee), seeks an order modifying the May 19, 2022, Order Concerning the July 2022 California Bar Examination. Specifically, the State Bar seeks an order recognizing its intent to replace the National Conference of Bar Examiners' (NCBE)

¹ The California Bar Examination is also known as the General Bar Examination and consists of multiple-choice, essay, and performance test questions. Qualified attorney applicants may opt not to take the multiple-choice portion of the examination but must take the essay and performance test portion. In such instances, the essay and performance test questions constitute what is known as the Attorneys' Examination.

Multistate Bar Examination (MBE) on the California Bar Examination with multiple-choice questions drafted by an alternative vendor that may be administered remotely and in designated test centers beginning with the February 2025 California Bar Examination.

II. AUTHORITY OF THE COURT

Because this request seeks modifications to the requirements for admission to the practice of law and, in particular, the California Bar Examination, it is submitted to this Court for approval pursuant to the Court's inherent authority over attorney admissions and California Rule of Court, rule 9.6(a), under which modifications to the California Bar Examination must be approved by the Court.

The Court has inherent authority to admit persons to the practice of law in California. (Cal. Rules of Court, rule 9.3; *In re Attorney Discipline* (1998) 19 Cal.4th 592, 593; *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336; *Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300.)

Further, under California Rules of Court, rule 9.6(a), the Committee is responsible for determining the California Bar Examination's format, scope, topics, content, and grading process

“subject to review and approval by the Supreme Court.” The Committee has approved the requested modification² and the State Bar is hereby seeking this Court’s approval.

III. BACKGROUND

As a result of rising facility and proctor costs, increasing numbers of applicants with testing accommodations, and stagnant examination fees, the State Bar Admissions Fund is facing a solvency crisis. A 2023 projection showed that the Admissions Fund would become insolvent by the beginning of 2026. In response, the State Bar initiated fee increases beginning with the February 2024 California Bar Examination and began to assess how a transition to remote and/or test-center-based exam administration might occur. In-person testing as heretofore administered is estimated to cost \$8.4 million in 2025; hybrid/remote vendor options are forecasted at \$4.4 million. After personnel, expenses related to administering the examination are the second largest budget item in the Admissions Fund.

² (Appendix of Exhibits [“AE”], Ex. 1 [Committee of Bar Examiners Open Session Minutes: April 19, 2024 at pp. 5-6].) Hereafter, all references to exhibits refer to exhibits included in the AE.

Appreciating the fiscal cliff facing the Admissions Fund, the State Bar began asking NCBE to permit remote administration of the MBE as far back as 2022. Despite repeated requests, NCBE has declined. By February 2023, the State Bar began considering the use of alternative vendors to draft multiple-choice examination questions. This consideration evolved into a formal Request for Information, which was issued in January 2024. Kaplan was the sole responsive bidder.

While the leadership of the Committee was consulted regarding the consideration of a transition to a new vendor as early as February 2024, it was not until the March 2024 meeting that State Bar staff began to publicly engage the body as a whole. In April 2024, at the direction of the Committee, State Bar staff held a number of stakeholder sessions, including one with American Bar Association accredited law schools, one with California accredited and registered law schools, and a public stakeholder input forum,³ seeking feedback regarding the possibility of engaging a new question development vendor for

³ (See Stakeholder Input Forum: Bar Exam Question Development with a New Vendor, April 16, 2024, available at <<https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000032318.pdf>> [as of September 4, 2024].)

the California Bar Examination. During these sessions, staff shared with stakeholders various options for new examination delivery models, including remote, small test-center, or a combination of the two, all of which were previously presented to the Committee at its March 15 ,2024, public meeting. (See, Ex. 2 [Committee of Bar Examiners Staff Report for Agenda Item III.A, dated March 15, 2024, at pp. 12-16]; Ex. 6 [Discussion: Bar Exam Question Development with New Vendor, dated April 2024, at pp. 91-100 [presented to law schools in April 2024].) Consistent with post-examination survey data revealing that more than 75 percent of applicants prefer to take the California Bar Examination remotely or in a small test center setting, applicants participating in the stakeholder sessions were generally supportive of remote and test center examination administrations. Law schools emphasized the need to ensure that applicants would not need to modify their preparation for the California Bar Examination upon the transition to a new vendor and that any new questions should be psychometrically pre-tested and validated.

Informed by stakeholder feedback, and with the approval of the Committee and the Board of Trustees, the State Bar entered

into an agreement with Kaplan Exam Services, LLC (Kaplan) on August 9, 2024.⁴ (See Ex. 2]; Ex. 3 at pp.18-50 [Committee of Bar Examiners Staff Report for Agenda Item III.A, dated April 19, 2024; Ex. 4 [Board of Trustees Staff Report for Agenda Item 6.2, dated July 18, 2024, at pp. 52-54]; Ex. 5 [Agreement for the Preparation of Bar Exam Testing Materials and Related Services Between the State Bar Of California and Kaplan] at pp. 56-89.)⁵ The agreement authorizes Kaplan to develop multiple-choice, essay, and performance test questions for the California Bar Examination for a five-year term. As part of the agreement, Kaplan will also provide faculty and student study guides, which the State Bar will distribute at no cost to law school faculty and

⁴ Neither the State Bar nor the Committee received any further public comments from any of the law schools raising concerns about test development or the transition once it was announced on or about May 13, 2024, that the proposed vendor was Kaplan.

⁵ Portions of the agreement have been redacted pursuant to Government Code section 7929.605, which exempts from public disclosure “test questions, scoring keys, and other examination data used to administer a licensing examination,” and Government Code section 7922, which exempts records from public disclosure if “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” Disclosure of this information would reveal confidential information about the development of the California Bar Examination that, if disclosed, would compromise examination integrity and security.

all California Bar Examination takers. Kaplan will also exit the retail bar preparation business specific to the California Bar Examination by October 1, 2024, though it may continue to offer preparation services and products for bar examinations administered by other jurisdictions. (See generally Ex. 5.)

Because the State Bar will no longer need to use the MBE, which can only be administered in person, it may now determine for itself the optimal method of delivering the California Bar Examination. After extensive research on the matter, including stakeholder engagement and applicant surveys, the State Bar plans to retain a vendor to administer the California Bar Examination remotely and in designated test centers. These test administration changes are not only preferred by applicants but will also help the State Bar close a significant gap in its Admissions Fund, which, as noted above, is projected to reach insolvency by the beginning of 2026 absent further efforts to reduce costs. In addition, the ability to test remotely or at globally available test centers removes a current economic barrier for some applicants, since the status quo administration necessitates traveling to California and finding accommodation to take a multiday exam. The State Bar projects that the new

arrangement will result in annual cost savings of up to \$4 million in California Bar Examination-related expenses—enough to significantly reduce if not eliminate the gap.

IV. PROPOSED ORDER APPROVING MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

Through this petition, the State Bar seeks an order from this Court approving modifications to the California Bar Examination. As reflected in the attached proposed order, modeled generally after the Court’s March 16, 2016, Order Approving Modifications to the California Bar Examination, the proposed order omits specific reference to an examination test vendor so that the order may apply to future administrations of the California Bar Examination. The proposed order sets forth the content for both the General Bar Examination and the Attorneys’ Examination.

In the sections that follow, this petition details the State Bar’s plan to transition to a new California Bar Examination and administration method so that the Court can be assured that the integrity, validity, and security of the California Bar Examination will be preserved.

A. Quality Assurance and Content Validation

In order to validate the content and validity of the questions the State Bar receives from Kaplan in time for the February 2025 administration of the California Bar Examination, the State Bar has developed an ongoing content validation process. Pursuant to the agreement with Kaplan, Kaplan will provide the State Bar with batches of questions on a rolling basis. (See Ex. 5 at p. 58.) Upon receipt of a batch of questions, the State Bar will convene a content validation team comprised of psychometricians, recently barred attorneys, individuals that supervise recently barred attorneys, and law school faculty. The team will review each question to ensure that the item: 1) tests for minimum competence to practice law; 2) is not biased; 3) is clear; 4) is cohesive in style with other questions; and 5) accurately tests the intended legal issue. The validation team will then recommend edits, as needed, to achieve these criteria and return them to Kaplan. Per the agreement, Kaplan will finalize the questions and return them to the State Bar within 10 days. Consistent with Business and Professions Code section 6046.6, the new questions will not require the substantial modification of

the training or preparation required for passage of the California Bar Examination.

In conducting these validation activities, the State Bar will be relying on its over four decades of experience in developing, vetting, and administering both the California Bar Examination and the First-Year Law Students' Examination (FYLSX). Its Examinations Unit, within the Office of Admissions, manages the comprehensive process of examination development, from soliciting essay questions to overseeing the grading of both examinations. The Examinations Unit has specific expertise in developing questions for the FYLSX, consisting of 100 multiple-choice questions and administered twice per year. Three of the seven subject areas tested on the multiple-choice section of the California Bar Examination are also covered on the FYLSX – Contracts, Criminal Law and Torts. Recently, the unit conducted a comprehensive refresh of the FYLSX multiple-choice questions, utilizing a panel of subject matter experts to ensure that they remain relevant and reflective of current legal standards.

The State Bar's Examination Development and Grading (EDG) Team, composed of experts with a minimum of 10 years' experience, ensures that all questions undergo rigorous editing,

pretesting, and refinement before administration. With input from expert psychometricians, law professors, practitioners, and experienced graders, both the California Bar Examination and the FYLSX are continuously updated to reflect the latest legal standards and practices. This extensive expertise and attention to detail allow the State Bar to maintain the highest standards in assessing the competencies of both law students and prospective attorneys, ensuring that only qualified candidates advance in the legal profession.

The State Bar also plans to conduct a field test of 49 of the new questions (seven in each of the seven subject matters) in the fall of 2024 and will use the results of the field test to further refine and validate the questions to be administered in the February 2025 California Bar Examination. The details of the field test are the subject of a concurrently filed parallel petition.

B. Examination Administration Methods

The State Bar is currently in discussions with ProctorU, Inc. d/b/a/ Measure Learning (Measure), a full-service test administration company and the vendor the NCBE has selected to administer certain portions of the NextGen examinations, to administer the February 2025 California Bar Examination.

Meazure has extensive experience administering over 600,000 high-stakes professional examinations and certifications around the world annually and has the infrastructure and expertise to administer the California Bar Examination. Professional organizations utilizing Meazure's examination administration platform include: the American Medical Certification Association (delivering both paper and computer-based examinations to over 25,000 healthcare professionals globally); the Association of Professional Social Compliance Auditors (certification examination administered to over 3,200 auditors across 93 countries; Chartered Accountants Ireland (25,000 rigorous examinations annually); the Canadian Organization of Paramedic Regulators (entry to practice examinations); the Royal College of Dentists of Canada (Fellowship Examination); and. Meazure's experience administering examinations for such diverse and demanding professions underscores its capability to support the State Bar, ensuring a seamless, secure, and fair testing experience for future attorneys.

If selected as the State Bar's vendor, Meazure will offer two options to applicants for taking the California Bar Examination: in person at small test centers located throughout the state (or

even outside of California, if needed) or via Meazure's online remote proctoring platform. Both the test centers and the remote platform will have human proctors reviewing test taker behavior synchronously, ensuring a high level of exam security.

Upon registration, applicants would have the opportunity to select their preferred administration method, and the State Bar would make reasonable efforts to accommodate applicants' preferences. Meazure's platform has the capacity to accommodate all test-takers remotely should they so choose; however based on applicant survey responses and the vendor's experience with other large examinations of this nature, the State Bar anticipates that up to 30 percent of the applicant pool will request to take the California Bar Examination in-person at a test center. Meazure can accommodate up to 30 percent of test takers in its test center locations. The State Bar will continue to accept and process testing accommodation requests and Meazure will implement the approved accommodations for all applicants.

V. CONCLUSION

For the foregoing reasons, the State Bar respectfully requests that the Court issue an order approving the proposed

modifications to the California Bar Examination, effective for the February 2025 administration of the examination.

Dated: September 9, 2024

Respectfully submitted,

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Document received by the CA Supreme Court.

ADMINISTRATIVE ORDER

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

[PROPOSED] ORDER APPROVING MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION

The Court is in receipt of the State Bar of California's Request That the Supreme Court Approve Proposed Modifications to the California Bar Examination, filed on September 9, 2024. The Court, having considered the State Bar's request, approves the modifications below beginning with the February 2025 California Bar Examination.

The General Bar Examination will be administered the last week in February and the last week in July of each calendar year in a manner to be determined by the State Bar. Such manners of administration include, but are not limited to, in-person, remote, and/or administration in designated test centers.

The first day of the General Bar Examination will be comprised of five one-hour essay questions and one 90-minute Performance Test.

The second day of the General Bar Examination will consist of 200 multiple-choice questions.

The first day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the multiple-choice portion of the exam but may opt to do so by enrolling for and taking the full General Bar Examination

The length of each session, the order of testing, and the overall length of the examination may be modified for applicants granted certain testing accommodations.

The answers to the five essays and the Performance Test questions will be graded on the basis of 700 possible raw points – representing up to 100 raw points for each of the five essay questions and up to 200 raw points for the 90-minute Performance Test question.

During the grading process, the written and multiple-choice components will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorney Examination will have their scores scaled, and the answers to the

five essays and the Performance Test questions will be weighted at 100 percent.

The passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 points.

This order supersedes the Court's May 19, 2022, order. The Court will revise or supersede this order, as necessary, regarding this and future administrations of the General Bar Examination.

Chief Justice