



# The State Bar *of California*

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## **POLICY REGARDING RECRUITMENT AND SELECTION OF SUBJECT MATTER EXPERTS FOR MULTIPLE-CHOICE QUESTION LEGAL ACCURACY REVIEW**

To ensure the accuracy of the multiple-choice questions developed for the California Bar Examination and instill confidence in the public about the quality of the questions, the Committee of Bar Examiners (committee) directs that an additional review be conducted by subject matter experts (SMEs) retained by the State Bar to review the questions for legal accuracy.

### **ROLE OF SUBJECT MATTER EXPERTS**

After the content validation panel assesses the drafted multiple-choice questions to ensure they are legally accurate, at the appropriate level of complexity to assess minimum competence for an entry-level attorney, and satisfy all other criteria, the SMEs will conduct an open-book review of the questions and answer choices for legal accuracy. SMEs will assess the legal accuracy of the drafted question and the answer choice that is keyed as correct, cite the legal source supporting their determination of the accuracy of the question and response, and if they believe that a question or correct answer choice is incorrect, explain what is incorrect. SMEs will not draft or revise questions or answers, in whole or in part.

Three SMEs will be retained for each of the seven subjects tested on the multiple-choice section of the bar exam (civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts) for a total of 21 SMEs. The SMEs will be selected on the basis of subject matter expertise, legal educational attainments, and experience, without regard to race, color, religion, sex (including gender identity or expression and sexual orientation), national origin, age, disability status, genetic information, or any other characteristic protected by law.

The committee's policies relating to the recruitment, selection, and retention of SMEs are as follows:

### **ELIGIBILITY CRITERIA FOR SUBJECT MATTER EXPERTS**

To prevent conflicts of interest, confirm that the SME's participation would not violate other agreements they may have relating to the use of intellectual property, and ensure exam security and integrity, the committee establishes the following eligibility criteria for SMEs:

1. The SME must not have an immediate family member scheduled to take the July 2025 California Bar Examination. An "immediate family member" includes a spouse or domestic partner, children (including adoptive or stepchildren), siblings (including half-

or stepsiblings), parents (including stepparents), grandparents, grandchildren, and in-laws.

2. The SME must not have a close personal relationship with someone who will take the July 2025 California Bar Examination. A “close personal relationship” is a relationship other than an immediate family member that would or may be perceived to interfere with or influence the SME. This includes, but is not limited to, a significant other (boyfriend, girlfriend, or partner), close friends, roommates, co-participants in study groups, subordinate employees, and mentees.
3. The SME must not have been engaged in commercial activities related to bar exam preparation in the two years prior to being selected. Prohibited commercial activity includes a broad set of compensated activities outside of regular academic employment including, but not limited to, publishing books or other bar preparation materials, paid lecture series, or selling course content. Work performed solely in a faculty capacity for an academic institution is not considered commercial activity for this purpose.
4. The SME must not have performed work either directly or indirectly, including volunteer work, for or had an independent contractor relationship with the National Conference of Bar Examiners (NCBE) at any time in the year prior to being selected, including work relating to the NextGen Bar Exam through AccessLex or any other entity.
5. The SME must be able to represent that participating in this review process would not violate any agreement the SME may have entered into with NCBE relating to the use of NCBE’s intellectual property or with any bar preparation company relating to use of its intellectual property.
6. The SME must be in good standing in any state in which they are licensed. Specifically, a SME must not have any pending disciplinary charges before an attorney disciplinary board or committee. Any attorney disciplinary history shall be reviewed by staff in consultation with the Chair of the committee to determine if any such history is disqualifying. Such complaint and discipline history checks are conducted, for example, for members of the State Bar Board of Trustees and its subentities.
7. The SME must agree to promptly disclose any change in circumstances that could create a real or perceived conflict of interest or otherwise impact their eligibility under the criteria above during the course of their engagement with the State Bar.

## **RECRUITMENT, SELECTION, AND RETENTION OF SUBJECT MATTER EXPERTS**

Whenever necessary to ensure a sufficient number of SMEs are available to conduct reviews of multiple-choice questions for legal accuracy, the State Bar shall conduct a broad solicitation to law school faculty as well as retired California judges and justices.

Submitted applications will be reviewed by staff for compliance with eligibility criteria and staff will make initial recommendations to the Chair of the committee. The final selection of SMEs who meet the established criteria will be approved by the Chair.

The Chief of Admissions or their designee, in consultation with the committee Chair will determine whether to extend an offer to enter into an initial agreement with a SME.

If a SME no longer meets the eligibility criteria or otherwise becomes unable to fulfill their duties, this is grounds for the State Bar to terminate the agreement with the SME, following consultation between the Chair and the Chief of Admissions or their designee.

#### **ADVERTISING/PUBLICITY**

SMEs shall not advertise or engage in any publicity about their roles as having served as a SME with the State Bar of California or the committee or otherwise achieved some sort of expertise associated with the development of exam questions, without prior written consent from the State Bar.