



# The State Bar of California

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## **OPEN SESSION**

### **AGENDA ITEM**

#### **1.1 SEPTEMBER 2024**

#### **COMMITTEE OF BAR EXAMINERS**

**DATE:** September 30, 2024

**TO:** Members, Committee of Bar Examiners

**FROM:** Audrey Ching, Director, Office of Admissions  
Bridget Gramme, Special Counsel, Division of Consumer Protection,  
Admissions, Access and Inclusion

**SUBJECT:** Consideration of and Action Approving Modifications to the California Bar Examination, starting with the February 2025 Administration and to Address the California Supreme Court's September 18, 2024 Order (Case No. S286825), Including Vendors for Question Development and Remote/In-Person Test Center Exam Administration

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### **EXECUTIVE SUMMARY**

Over the past two years, in the face of skyrocketing exam administration costs and looming admissions fund insolvency, the State Bar has been researching and developing various proposals for exam administration cost savings. The proposal that was the most cost effective—switching to remote and in-person, test center exam delivery—would not be possible while administering the Multistate Bar Examination (MBE) due to restrictions imposed by the National Conference of Bar Examiners. The State Bar has since been pursuing a plan to replace the MBE with multiple-choice questions developed by Kaplan Exam Services, LLC, thus enabling the State Bar to administer the exam in a manner that is not only less expensive, but overwhelmingly preferred by applicants.

Throughout this process staff has heard and considered feedback from a number of stakeholders, many of whom expressed concerns about the timing of the change, the quality and process for validating the questions, and the capability of a new exam administration

vendor to securely and effectively administer the exam remotely and in small test-centers.<sup>1</sup> This item sets forth the comprehensive plan the State Bar has put into place to address these concerns, and seeks the Committee of Bar Examiners' formal approval of the following: (1) to utilize Kaplan-developed multiple-choice questions for the February 2025 bar exam and on future bar exams; (2) to utilize Proctor U, dba Meazure Learning, to provide the bar exam delivery platform, administer the exam either remotely or in-person in the proper format, provide sufficient proctoring and technical support for both remotely administered and test-center administered exams and test centers for the February 2025 bar exam, and on future bar exams; (3) to approve that, beginning with the February 2025 bar exam, and on future bar exams, the multiple-choice portion of the exam will consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts and be delivered remotely and/or in person at vendor-run or State Bar-run test centers; and (4) to direct staff to seek appropriate approval from the Supreme Court to modify its prior order on the bar exam, in accordance with the approved modifications set forth above.

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## **RECOMMENDED ACTION**

That the Committee of Bar Examiners (CBE) approve of three components for the administration of the bar exam beginning in February 2025, and direct staff to seek appropriate approval from the Supreme Court in accordance with the approved modifications, as set forth in the resolution (Attachment A) and described in the executive summary above.

## **DISCUSSION**

### **BACKGROUND**

#### **CBE and Supreme Court Authority Over the Bar Exam**

Under rule 9.6(a) of the California Rules of Court, the CBE is responsible for determining the bar exam's format, scope, topics, content, questions, and grading process "subject to review and approval by the Supreme Court." Historically, and even prior to the adoption of rule 9.6 of the California Rules of Court, the CBE has provided recommendations to the Supreme Court related to changes to the bar exam.

Most recently, during the COVID-19 pandemic, the Supreme Court issued an order concerning the July 2022 bar exam, which specified that the bar exam would be administered in-person and that the second day of the general bar exam would consist of the Multistate Bar Examination (MBE). (Attachment B.) Because there has been no intervening order that would permit the State Bar to deviate from administering the MBE, a Supreme Court order is necessary to effectuate that change to the bar exam. Additionally, while the Supreme Court issued a series of orders during the COVID-19 pandemic that permitted remote testing for the bar exam, and then returned the bar exam to being administered in-person, to administer the bar exam remotely,

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<sup>1</sup> Many of these concerns are articulated in this September 17, 2024, [letter](#) from a number of American Bar Association accredited law schools in California to the Supreme Court.

in-person at test centers, or through a combination of methods, a Supreme Court order is likewise required.

### **Status of Supreme Court Petition**

On September 9, 2024, the State Bar filed a petition with the Supreme Court seeking approval of proposed modifications to the bar exam. The modifications included permitting the State Bar to administer the bar exam in-person, remotely, and/or in designated test centers and removing reference to the MBE, so that the State Bar could utilize multiple-choice questions developed by another vendor. (Attachment C.)

On September 18, 2024, the Supreme Court denied the petition without prejudice. (Attachment D.) The Court indicated that the State Bar could file a new petition seeking those modifications once they were considered and approved by the CBE.

The purpose of this meeting is to give the CBE another opportunity to consider these changes to the bar exam in accordance with the Court's order. .

### **Cost-Savings Measures Required by Increasing Costs of the Bar Exam**

When the bar exam returned to in-person administration in 2022, the State Bar was faced with significant increased costs of administering the exam, including rising facility and proctor expenses, which significantly impacted the Admissions Fund budget.

Thus, in fall 2022, the State Bar explored the possibility of ETS – Educational Testing Services, the original developers of the MBE in the early 1970s– taking over the drafting of the multiple-choice and written questions to allow for remote testing. At the time, due to the anticipated cost and long development timeline, staff determined that proposal was not feasible. In June 2023, State Bar staff advised the CBE that the Admissions Fund was facing insolvency by 2026, and that the budgetary issues were primarily attributable to exam-related expenses, including escalating testing facility and proctor costs, which could not be solved while utilizing the existing examination question provider due to prohibitions on remote testing.

At its [June 28, 2023](#) meeting, the CBE began discussing potential cost-saving measures to reduce the increasing expense of administering the bar exam. Staff presented various models for reducing costs, which included reducing the number of exam sites, and administering the essays and performance test remotely. At that meeting, the [CBE recommended](#) that the Board of Trustees (Board) consider a cost-reduction model whereby the MBE would be administered at a reduced number of test sites, and the essays and performance test portion of the bar exam would be administered remotely. [Staff solicited public comment](#) regarding an in-person exam using four contracted sites and the two State Bar offices.

State Bar staff presented the CBE's recommendation to the Board during its [July 2023 meeting](#), but suggested one change, which was to replace the San Francisco State Bar office with a different testing accommodation site because of the planned sale of the building. [No action was](#)

[taken](#) by the Board at the July 20 meeting. [On August 10, 2023](#), the Board approved a reduced number of testing locations for the February 2024 bar exam.

On [November 3, 2023](#), the State Bar held a stakeholder forum to solicit feedback on how to deliver a secure remote exam for applicants with testing accommodations as part of its efforts to explore the feasibility of a remote and/or hybrid bar exam. Stakeholders commented on live, remote proctoring as a secure option, along with other ideas on exam security.

Soon thereafter, during the Board's [November 2023 meeting](#), staff presented updates to the proposed cost-reduction models and advised that test-center and fully-remote exam models were not feasible for July 2024. As a result, staff recommended that the bar exam be administered at a reduced number of test sites in July 2024 while continuing to explore other options. The Board [did not take any action](#) at that time. During its January 18, 2024, meeting, the [Board approved](#) administering the July 2024 exam at a reduced number of test sites.

In January 2024, State Bar staff posted a Request for Information to identify vendors who could develop multiple-choice, essay, and performance test questions for the bar exam. During the [January 26, 2024](#), CBE meeting, staff provided an update on the July 2024 bar exam and explained that staff was continuing to evaluate options for future exams.

### **New Vendor to Develop Bar Exam Questions**

During its [March 2024](#) meeting, the CBE discussed a proposal to allow the State Bar to contract with a new vendor to develop multiple-choice questions for the bar exam. The State Bar staff report explained that the Admissions Fund would become insolvent by 2026 if structural budget issues were not addressed. The report explained that the largest expenses were bar exam-related costs and that notwithstanding exam application fee increases, the Admissions Fund continued to face insolvency.<sup>2</sup> As explained in the staff report, the National Committee of Bar Examiners (NCBE), which develops the MBE, requires that the MBE be administered in “jurisdiction-run facilities” and prohibits the MBE from being administered remotely or in vendor-owned test centers. The staff report explained that if the State Bar had its own bank of multiple-choice questions, the State Bar would be able to administer the exam in a more cost-effective manner.

After the March 2024 CBE meeting, staff solicited CBE liaisons to meet periodically with State Bar staff regarding the cost-saving measures needed for the bar exam. The CBE liaisons recommended holding meetings with law school deans and the public, which were subsequently scheduled, and one liaison attended the meetings. The CBE liaisons were kept

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<sup>2</sup> Effective with the February 2024 exam, application fees for non-attorneys increased 26% from \$677 to \$850. Attorney applicants was 52.6% from \$983 to \$1500.

apprised of staff's discussions with potential exam question development vendors, including Kaplan.<sup>3</sup>

The State Bar held two separate stakeholder meetings on April 3 and 4 – one with the California-accredited law school and registered law school deans, the other with the American Bar Association law school deans. The law school deans emphasized the need to see the newly developed questions as soon as possible to ensure sufficient time to prepare students for the exam. In response to that concern, the Kaplan contract provides that Kaplan will develop, and the State Bar will provide, a free study guide for applicants and a free faculty guide. Additionally, the State Bar plans to “field test” the Kaplan questions on November 8 and 9..

On [April 16, 2024](#), the State Bar held a public stakeholder input forum to solicit feedback on the proposal to contract with a new vendor to develop exam questions. The [forum materials](#) explained that staff was exploring utilizing questions developed by a new vendor as soon as February 2025. During the course of the stakeholder meetings, [Dr. Chad Buckendahl presented](#) on the anticipated question development process and provided an overview of the psychometric validation process that would be employed to ensure exam and score reliability.

At the [April 19, 2024](#), CBE meeting, the staff report specifically noted that staff was exploring administering the February 2025 bar exam remotely, at in-person test centers, or in a hybrid format. The staff report explained that in order to do so, the State Bar would need to contract with a new vendor to develop questions for the exam. The State Bar's psychometrician, Dr. Buckendahl was also in attendance at the meeting to answer questions about how new multiple-choice questions could be validated. After discussion, the CBE voted to [recommend to the Board](#) that the State Bar retain a new vendor to develop bar exam questions, including multiple-choice questions.

Consistent with the CBE's recommendation, the staff report for the [May 16, 2024](#), Board meeting recommended that the Board contract with Kaplan North America, LLC (Kaplan) to develop new bar exam questions, but the item was withdrawn. As described in the staff report for the CBE's [June 21, 2024](#), meeting, [Kaplan received a letter](#) from the NCBE raising intellectual property and contractual concerns regarding their proposed bar exam question development. The staff report further discussed staff's continued efforts to pursue a solution that would permit Kaplan-developed questions to be utilized beginning in February 2025.

On [July 18, 2024](#), staff reported to the Board that it was continuing to negotiate with Kaplan to reach a contract on exam question development, including multiple-choice questions for the February 2025 bar exam. The [Board authorized and delegated authority](#) to the Board chair and executive director to execute an agreement with Kaplan to develop multiple-choice, essay, and performance test questions for the bar exam. On August 9, 2024, the State Bar entered into a

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<sup>3</sup> Kaplan provided the multiple-choice questions for the bar exam experiment pilot in October 2023. The deployment and performance of the questions on this pilot was successful.

contract with Kaplan. (Attachment E.) The contract specified that Kaplan would provide multiple-choice questions for the February 2025 bar exam.

The CBE was advised during its [August 16, 2024](#), meeting that the State Bar had entered into a contract with Kaplan to supply multiple-choice questions for future bar exams, beginning with the exam in February 2025. Since entering into the contract, the State Bar, in consultation with its expert psychometricians, has established a plan to ensure that the multiple-choice questions will be properly vetted and prepared before the February 2025 exam and that process will continue through the end of the year. Specifically, under the contract with Kaplan, the State Bar will receive rolling batches of multiple-choice questions in advance of the February 2025 bar exam. Upon receipt of each batch of questions, the State Bar will convene a content validation team comprised of psychometricians, recently admitted attorneys, individuals that supervise recently admitted attorneys, and law school faculty to review each question to ensure that it: (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.<sup>4</sup> The content validation team will recommend edits, as needed, and return them to Kaplan. Kaplan will then 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 bar exam.

Finally, as reflected in the resolution (Attachment A), staff seeks approval from the CBE to request the Supreme Court modify its most recent order on the bar exam to remove all references to the MBE and instead order that the General Bar Exam include 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts. As described above, such an order is required pursuant to rule 9.6(a) of the California Rules of Court and will allow the State Bar to utilize Kaplan to supply the multiple-choice questions for the February 2025 and future administrations of the bar exam.

### **Remote Administration and Vendor-Run Test Centers**

With the exception of bar exams administered during the height of the COVID-19 pandemic, the State Bar has consistently contracted with various facilities to administer the bar exam in-person, consistent with the NCBE's requirement that the MBE be delivered only at in-person jurisdiction-run exam sites. In order to achieve cost savings, in 2024, as set forth above, the [Board approved](#) staff's recommended proposal to contract with fewer facilities. However, the cost savings from this change is not enough to address the Admissions Fund deficit.

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<sup>4</sup> On September 9, 2024, the State Bar submitted a petition to the Supreme Court that sought an order that would permit the State Bar to implement a scoring adjustment on the 2025 bar exam administrations. The petition described that the proposed bar exam experiment would also allow the State Bar to field test the Kaplan-developed questions in advance of the February 2025 bar exam.

Now that the State Bar has contracted with Kaplan, if a Supreme Court order is issued authorizing the State Bar to utilize multiple-choice questions without reference to the MBE, the State Bar will have the flexibility to administer the exam remotely or at vendor-run test centers, which may significantly reduce the bar exam related expenditures. To realize the potential savings, State Bar staff has been working to identify vendors that could administer an exam remotely and/or at vendor-run test centers.

On September 19, 2024, at staff's recommendation, the Board of Trustees approved a contract amount of \$4,108,500 for Meazure Learning, subject to negotiation of appropriate contractual terms and action by CBE, to provide a test administration platform, remote and in-person proctoring, and vendor-run test centers for the 2025 bar exam administrations.<sup>5</sup>

Meazure Learning is a leading provider of online proctoring and exam administration services. They have experience administering high-stakes exams for various professional licensing bodies and educational institutions. Some notable exams and organizations that use Meazure Learning include: Association of American Medical Colleges, Canadian Practical Nurses Registration Examination, Law School Admissions Council, American Association of Professional Coders, and the Chartered Accountants of Ireland.

Meazure Learning has demonstrated the capacity and ability to deliver complex exams efficiently. Their platform offers live proctoring instead of recording, which provides real-time supervision and reduces the need for post-exam review of recordings. This approach enhances the integrity of the exam process but will require a stable internet connection for the entirety of the exam.

Regarding in-person locations, small, contracted testing centers, and temporary pop-up centers in the larger geographic areas, will be available in California. Meazure Learning also has test centers across the United States and globally to ensure accessibility for candidates who prefer or require in-person testing.

Once staff identified Meazure Learning as a potential vendor, staff, Board, and CBE representatives tested the exam platform. Although some of the participants identified some desired enhancements with the product or test centers, Meazure Learning has worked with State Bar staff to correct those issues.

Prior to recommending Meazure Learning to the Board, staff considered several other exam administration options. Although the State Bar has utilized Examsoft as the bar exam delivery platform for many years, their business model does not support live, remote proctoring.

Staff also approached Prometric, the vendor State Bar has utilized for the past two years to administer the remote First-Year Law Students Exam. However, Prometric does not have the same capacity to administer the bar exam as Meazure Learning, and using Prometric would

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<sup>5</sup> The contract amount also includes delivery of the legal specialization examinations in the fall of 2025.

require a longer exam testing window. Prometric's overall pricing was also much higher than Meazure Learning's proposal. These factors would increase expenses for the State Bar, require a much larger question item bank, and create logistical challenges for examinees.

Staff also met extensively with PearsonVUE, another well-known exam administration vendor. However, PearsonVUE likewise lacked the capacity to accommodate the bar exams in 2025 and eventually did not pursue the opportunity with the State Bar.

Given these considerations, staff believes Meazure Learning is the most suitable vendor for administering the bar exam, offering a balance of experience, technological capability, and cost-effectiveness.

### **Additional Considerations**

Failure to move forward with the proposed changes could significantly impact the State Bar financially and operationally. Without this transition:

- The State Bar will be required to purchase the MBE, which it must elect to do no later than November 1, 2024, at an estimated cost of \$324,000 for February 2025.
- The State Bar will be required to contract with large test sites to administer the exam because remote administration of the MBE is not permitted. Staff anticipates that this cost would be approximately four million dollars (about \$2.4 million above the estimated cost for delivering the exam in February using the Meazure Learning platform).
- It is possible that there will not be a test site available in the San Francisco Bay Area for the February 2025 exam, and applicants would need to travel to sit for the exam.
- It is possible that there will not be a test site available in the San Diego Area for the February 2025 exam, and applicants would need to travel to sit for the exam.
- The State Bar remains contractually obligated to pay Kaplan \$2 million in 2025 for question development.
- Further delays may cause confusion among applicants.

Additionally, availability of a remote exam reflects applicant preference. A post-exam survey conducted after the July 2024 exam revealed that a majority of applicants preferred a remotely proctored or test center-based exam. Additionally, many applicants reported substantial travel and lodging costs associated with in-person testing, with a majority spending over \$500 and nearly one-third spending more than \$1,000 to take the bar exam above and beyond the application fees and test preparation expenses.

For the reasons outlined above, the CBE's approval of these recommendations is essential for the timely and effective administration of the California Bar Examination in 2025 and beyond.

## **RECOMMENDATION**

Staff recommends that the CBE adopt the resolution (Attachment A) that formally approves three key items to implement changes to the administration of the bar exam beginning in February 2025. These recommendations follow extensive work and prior discussions and actions taken by the CBE and are in alignment with actions taken by the Board to effectuate these changes.

## **PREVIOUS ACTION**

[Action on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration](#)

## **FISCAL/PERSONNEL IMPACT**

The budgetary impact of status quo exam administration has been well documented. Delaying the implementation of the new testing modalities in 2025 would require additional costs to procure the MBE questions, at the newly increased rate of \$72 per applicant (approximately \$324,000), along with the facility and proctoring costs that would have to be secured in a short time. The estimates to administer the exam in person as required by the NCBE would be approximately \$4 million for February 2025 – about \$2.4 million more than the cost of administering the exam under the Measure Learning proposal.

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

None – core business operations

## **RESOLUTIONS**

See attachment A.

## **ATTACHMENT(S) LIST**

- A. Resolution of the Committee of Bar Examiners Approving Modifications to the California Bar Examination
- B. May 19, 2022 Supreme Court Order Concerning the July 2022 California Bar Examination (Administrative Order 2022-05-18)
- C. State Bar Petition: Request that the Supreme Court Approve Proposed Modifications to the California Bar Examination, Case No. S286825
- D. September 18, 2024 Supreme Court Order, Case No. S286825
- E. August 9, 2024 Agreement for the Preparation of Bar Exam Testing Materials and Related Services Between the State Bar of California and Kaplan