The State Bar of California

Committee of Bar Examiners
Teleconference

Open Session Minutes
Monday, September 30, 2024
9:01 a.m. – 12:04 p.m.

Time Meeting Commenced:	The Committee of Bar Examiners meeting commenced in open session at 9:01 a.m. The meeting adjourned at 12:04 p.m.
Time Meeting Adjourned:	12:04 p.m.
Chair:	Alex H. Chan
Committee Coordinator:	Devan McFarland
Members Present:	James A. Bolton, Ph.D., Robert S. Brody, Alex H. Chan, Kareem Gongora, Paul A. Kramer, Alexander C. Lawrence, Jr, Justice Shama H. Mesiwala, Bethany J. Peak, Ashley Silva-Guzman, Vincent Reyes, Alan Yochelson
Members Absent:	Michael Cao, M.D, Larry Kaplan, Esther Lin, Judge Renee C. Reyna
State Bar Executive Staff Present:	Ellin Davtyan, Bridget Gramme, Leah Wilson

OPEN SESSION

Call for Public Comment

Chair Chan called for public comment, inquiring as to whether there were person(s) who wished to comment on any agenda item. The following comments were provided to the Committee:

1. Deborah Merritt

   Deborah Merritt, a distinguished University Professor at Ohio State University and an expert on lawyer licensing, strongly supported the State Bar's proposals for the bar exam. They noted that moving the exam out of convention centers would reduce costs and improve convenience. Merritt praised Kaplan's efficient question-creation process compared to the slower NCBE process and emphasized that the proposed phase one experiment, including score adjustments, is fair and beneficial for all candidates, maintaining the integrity of the California Bar Exam while reducing burdens.

2. Susan Bakhshian

   Susan Bakshian, a California attorney and professor, supported the State Bar's exam reforms by highlighting that February is better for implementing changes due to fewer applicants. She emphasized that Kaplan's question-drafting process is more efficient

than the NCBE's and argued that concerns about fairness overlook existing inequalities; the proposed 40-point adjustment fairly supports those close to passing.

3. Benjamin

   Benjamin supported the February 2025 vendor change for the bar exam but expressed concerns about the proposed experiment for validating exam questions, suggesting it could undermine the exam's purpose. They questioned the necessity of additional data collection since psychometricians are already analyzing past data. Additionally, Benjamin recommended that the petition for bar exam changes include a clear rule from the California Supreme Court to ensure all applicants wanting remote testing are accommodated, with in-person options available only for those who prefer them.

4. Henry Marini

   Henry Marini shared their experience as a protester against Scientology, highlighting issues of lawfare and the abuse of the court system by Scientology attorneys. They called for the revocation of a California attorney's law license. Marini urged the committee for assistance, noting that they have reached out to various government agencies for help in addressing these concerns.

5. Ray Hayden

   Ray Hayden advocated for the direct admission of candidates in the provisionally licensed lawyer program to the California bar, emphasizing their commitment. They criticized the written section of the California Bar Exam as not indicative of success and suggested that a well-designed multiple-choice exam would be a better measure of competence.

6. Claire

   Claire highlighted the State Bar's ongoing efforts to reform attorney licensure, tracing initiatives back to 2018. They emphasized the importance of ensuring competent licensing while noting increased costs and stress for bar examinees. Claire called for alternative licensure methods, which are supported by the public and could reduce expenses. They urged the State Bar to consider the needs of provisionally licensed lawyers and to shift media focus toward the positive work being done, rather than just financial concerns.

7. Jacqueline Horani

   Jacqueline Harani, a former clinical law professor and practicing attorney, expressed support for the California Bar exam's transition to remote testing in February. They emphasized that this change could significantly enhance diversity within the legal profession and address racial and economic injustices. Jacqueline highlighted the financial burdens of travel and accommodations for candidates, which can hinder access to the exam. They urged everyone, especially the media, to recognize the positive impact of remote testing on candidates and the broader legal community.

8. Tyler Gespeck

   Tyler Gespeck, a provisionally licensed lawyer, shared their experience of balancing work with caring for their 18-month-old child, Leo, who is undergoing treatment for brain cancer. Despite challenges, Tyler continued working remotely to support clients. They urged for an update on the Portfolio Bar exam proposal, expressing concern that if

the program sunsets, it could wrongly suggest that those who haven't passed the bar lack competence.

9. Kenny

   A speaker expressed concern about the misuse of taxpayer funds and harassment faced by Scientology protesters due to a California attorney's actions. They highlighted the emotional and financial toll of these threats, particularly impacting individuals with disabilities. The speaker also raised alarm about online harassment and stalking linked to Scientology, urging authorities to take action against these practices and help those affected.

10. Carla

    The speaker thanked the board for their concern about the bar exam and expressed solidarity with Henry Marini. They raised concerns about threats against protesters and a California attorney of colluding with the Church of Scientology to misuse the court system.

11. Audit LA

    The speaker commended efforts for equitable attorney pathways but raised concerns about systemic corruption linked to the Church of Scientology. They shared experiences of meeting trafficking survivors and criticized the city attorney for enabling abuses, including unlawful arrests of protesters and non-compliance with accessibility regulations.

1. Business

4.1 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

WHEREAS, the Committee of Bar Examiners (CBE), pursuant to the authority delegated to it by the Board of Trustees (Board), is responsible for determining the California Bar Examination's format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court, as set forth in rule 9.6(a) of the California Rules of Court;

WHEREAS, the Admissions Fund has had a budget deficit since 2022, but has been able to support its operations with fund reserves, cost cutting measures and recent increases to the admissions fees;

WHEREAS, the Admissions Fund has depleted its reserves, and in the absence of additional modifications to the administration of the bar exam, the Admissions Fund will become insolvent in 2026;

WHEREAS, the developer of the Multistate Bar Examination (MBE), the National Committee of Bar Examiners (NCBE), prohibits the MBE from being delivered remotely or in vendor-run test centers, and the MBE is currently part of the bar exam;

WHEREAS, the NCBE has announced that is transitioning to a new exam and will no longer administer the MBE after July 2027;

WHEREAS, on April 19, 2024, the CBE recommended to the Board that the State Bar retain a new vendor to develop exam questions to allow for cost-effective bar exam administration, including fully remote, designated test centers, or hybrid approaches;

WHEREAS, on July 18, 2024, the Board authorized and delegated authority to the Board chair and executive director to negotiate terms of and, if appropriate, execute an agreement with Kaplan North America, LLC (Kaplan) or its designated subsidiary in an amount not to exceed $8.25 million for a term of five years for the development of multiple-choice, essay, and performance test questions for the bar exam, and take any necessary actions to effectuate the agreement;

WHEREAS, on August 9, 2024, the State Bar entered into a contract with Kaplan North America, LLC for question development for the bar exam;

WHEREAS, on September 9, 2024, the State Bar filed a petition with the Supreme Court (Case (Case No. S286825) seeking approval of proposed modifications to the bar exam, including 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 Kaplan;

WHEREAS, on September 18, 2024, the Supreme Court denied the petition without prejudice to a future petition seeking modifications that have been considered and formally approved by the CBE;

WHEREAS, so that the bar exam is administered securely, the State Bar requires the use of a vendor to deliver bar exam questions to applicants;

WHEREAS, after conducting vendor outreach and evaluating vendors that could securely administer the bar exam in the proper format, either remotely and/or in vendor-owned test centers, and that could provide a sufficient level of proctoring and technical support for both remotely administered and test-center administered examinations, State Bar staff recommended to the Board at its September 19, 2024 meeting to contract with ProctorU dba Meazure Learning (Meazure Learning), beginning with the February 2025 bar exam;

WHEREAS, on September 19, 2024, the Board approved a contract in the amount of $4,108,500 for Meazure Learning, subject to negotiation of appropriate contractual terms and action by CBE, that will, among other things, enable Meazure Learning to

provide a secure exam delivery platform, proctoring services for both remote and test center examinations, and test centers for the February and July 2025 bar exams;

WHEREAS, following the Board's September 19, 2024, approval of the Meazure Learning contract amount, and in preparation for the CBE's September 30, 2024, meeting, State Bar staff has continued discussions with Meazure Learning on, among other things, its software security features, proctoring levels, availability of technical support, and ability to administer all aspects of the exam; and

WHEREAS, on September 30, 2024, the CBE held a meeting for the purpose of considering and taking action approving modifications to the bar exam, 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.

NOW, THEREFORE, IN CONSIDERATION OF THE RECITALS HEREIN AND THE INFORMATION PRESENTED IN THE ACCOMPANYING STAFF REPORT AND STAFF PRESENTATION AT THE COMMITTEE OF BAR EXAMINERS' SEPTEMBER 30, 2024, MEETING, THE COMMITTEE OF BAR EXAMINERS RESOLVES AS FOLLOWS:

SECTION 1. The Committee of Bar Examiners approves the use of the Kaplan-developed multiple-choice questions for the February 2025 bar exam and future bar exams, subject to psychometric validation.

SECTION 2. The Committee of Bar Examiners approves Meazure Learning as the vendor to provide a secure examination 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 examinations, and test centers for the February 2025 bar exam, and future bar exams, subject to negotiation of contract terms.

SECTION 3. The Committee of Bar Examiners approves that, beginning with the February 2025 administration of the bar exam, (a) the multiple-choice portion of the bar exam shall consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts and (b) be delivered remotely and/or in person at vendor-run or State Bar-run test centers.

SECTION 4. The Committee of Bar Examiners directs staff to seek appropriate approval from the Supreme Court to modify its prior order on the bar exam in accordance with Sections 1 through 3 of this resolution.

Moved by Kramer, Seconded by Gongora

Ayes – (10) Brody, Chan, Gongora, Kramer, Lawrence, Mesiwala, Peak, Silva-Guzman, Reyes, Yochelson

Noes – (0)
Abstain – (0)
Absent – (5) Bolton, Cao, Kaplan, Lin, Reyna

Motions passes.

CLOSED SESSION

1. Closed Business

1.1. Discussion and Consideration Regarding the Preparation of Examination Materials and Security of Test Administration of the California Bar Examination

**Closed pursuant to Business and Professions Code § 6026.7(c)(3) and Government Code § 11126(c)(1)*

ADJOURN