



The State Bar of California

OPEN SESSION

AGENDA ITEM

4.3 JUNE 2025

COMMITTEE OF BAR EXAMINERS

DATE: June 20, 2025

TO: Members, Committee of Bar Examiners

FROM: Cody Hounanian, Program Director, Office of Admissions

SUBJECT: Adoption of Criteria for Selection of Content Validation and Standard Validation Panelists

EXECUTIVE SUMMARY

Prior to the administration of the February 2025 California Bar Examination, the State Bar of California convened content validation panels consisting of recently licensed attorneys, individuals who supervise recently licensed attorneys, and law school faculty to provide feedback on drafted multiple-choice questions and answer choices to help ensure that the questions: (1) appropriately test for minimum competence to practice law; (2) do not exhibit any bias; (3) are clearly written; (4) are cohesive in style with other questions; and (5) accurately test the intended legal issue.

After the February 2025 bar exam, the State Bar convened two standard validation panels, also comprised of recently licensed attorneys, individuals who supervise recently licensed attorneys, and law school faculty to review all questions administered on the exam. One standard validation panel determined how many of the multiple-choice questions a minimally competent attorney should be expected to answer correctly. That panel then recommended a raw passing score on the multiple-choice component of the exam. The other standard validation panel made independent judgments about the expected performance on each essay and Performance Test question for a minimally competent applicant and recommended a raw passing score for the written portion of the exam.

This staff report proposes a policy, set forth in Attachment A, for the recruitment and selection of future participants on content validation and standard validation panels. The policy is designed to prevent conflicts of interest, mitigate risks of copyright infringement and other legal claims, and ensure exam security and integrity.

RECOMMENDED ACTION

Adopt the proposed policy regarding the eligibility, recruitment, and selection of content validation panelists for multiple-choice questions for the California Bar Examination and standard validation panelists assessing performance on multiple-choice and written sections of the exam.

Confirm that the Exam Development and Grading (EDG) team will serve as the content validation panel for essay questions – performing similar functions to those currently performed – and the Performance Test Review team will serve as the content validation panel for Performance Test questions.

DISCUSSION

Prior to the administration of the February 2025 California Bar Examination, newly developed multiple-choice questions were reviewed by content validation panels composed of law school faculty, recently licensed attorneys (those licensed within the past five years), and supervisors of recently licensed attorneys. Panelists evaluated whether the questions:

- Adequately assessed minimum competence to practice law;
- Displayed any form of bias;
- Were clearly written;
- Maintained stylistic consistency with other questions; and
- Accurately tested the intended legal concept.

A total of ten panels were conducted prior to the February 2025 bar exam, facilitated by assessment specialists and psychometricians from ACS Ventures. Psychometricians trained panelists and led the panels through a structured review process. Panelists were expected to evaluate the materials critically and provide constructive feedback that was based on their professional judgment and free from external influences, bias, or conflicts of interest. The panels recommended revisions, as needed, to achieve the criteria listed above. In addition, all multiple-choice questions were subject to legal review by an additional reviewer for legal accuracy. In total, 723 questions were reviewed by those ten panels.

After the administration of the February 2025 bar exam, the State Bar convened two standard validation panels also comprised of law school faculty, recently licensed attorneys, and supervising attorneys. The standard validation panels were necessary because, with the introduction of newly developed multiple-choice questions, exam scores could no longer be anchored to the multiple-choice questions purchased from the National Conference of Bar Examiners (NCBE) as has been the case historically.

One standard validation panel assessed which multiple-choice questions tested on the February 2025 bar exam a minimally competent attorney would be expected to answer correctly. Panelists made independent judgments about the expected performance using the definition of a minimally competent attorney that was developed for the State Bar's 2017 [standard setting study](#) – also known as a Performance Level Descriptor.

The second standard validation panel assessed performance on the essay and Performance Test questions tested on the February 2025 bar exam. Each panelist reviewed a selection of written responses scored at various levels and made an independent judgment about the expected performance on each question using the same definition of a minimally competent attorney.

As a result of these efforts, the recommended raw passing scores on the multiple-choice and written portions of the exam were calculated for the committee to consider. Ultimately, the committee recommended a raw passing score to the Supreme Court for approval.

In [April 2025](#), the committee recommended, for the February 2025 bar exam only, a raw passing score of 534 points. However, the committee recognized that a new minimum raw passing would need to be established for the future because the minimum raw passing score for February was intended to address the collective effects of the disruptions that challenged the February exam.

To maintain appropriate committee oversight and improve consistency, the State Bar will convene future content and standard validation panels under a policy approved by the committee. The policy includes eligibility criteria and recruitment and selection procedures.

Although the committee has not made a recommendation as to whether and when to return to the use of multiple-choice questions developed for the California Bar Exam, and recent amendments to Senate Bill 253, if enacted, would require a two-year notice prior to implementing such a change, staff believes proceeding with this policy is appropriate in light of the existing contract with Kaplan Exam Services. It is in the State Bar's best interest to engage Kaplan in the iterative process envisioned by the contract to ensure that questions are put into final form.

To give the committee, the Supreme Court, and the public confidence in the questions, staff propose that content validation panels selected pursuant to the attached policy re-review all multiple-choice questions previously reviewed with the exception of the small number from the February 2025 bar exam that performed well and have been selected to be equators for future exams. The panels will also review multiple-choice questions that have not yet undergone content validation. Note that under the proposed policy, draft essay questions will be reviewed through a content validation process conducted by the EDG team, and draft Performance Test questions will be validated by the Performance Test Review team. Staff are still discussing with these teams the specific process to be used.

The State Bar will recruit a sufficient number of panelists to support content validation panels of 21 to 35 participants. Each panel will include law school faculty, recently licensed attorneys, and supervisors of recently licensed attorneys. Recruitment will prioritize subject matter expertise, with three to five participants per subject area, and also consider representation from all three groups to ensure perspectives from instructors and practitioners are included. Panels may proceed with a minimum of 14 participants, provided at least two subject matter experts are present for each subject area to support meaningful discussion and consensus.

Previously, panels were smaller and did not prioritize subject matter expertise. Under the new approach, larger panels are anticipated to be able to review up to 90 questions in a single content validation session.

After content validation panelists complete their review, subject matter experts (SMEs) will conduct open-book reviews focused solely on the legal accuracy of the questions and answer choices. Eligibility, recruitment, and selection of SMEs is described in a separate policy to be considered by the committee also at the June 20, 2025, meeting.

After administration of the multiple-choice questions, standard validation panelists will assess multiple-choice and written questions to develop recommended raw passing scores. The committee will recommend a raw passing score to the Supreme Court, and once a new raw passing score is adopted by the court, it will serve as an anchor for equating in grading future exams.

The State Bar will recruit a sufficient number of panelists to support standard validation panels of up to 21 participants. Specific subject matter expertise is of less importance than it is for content validation, so recruitment will focus on representation from law school faculty, recently licensed attorneys, and supervisors of recently licensed attorneys only. Panels may proceed with a minimum of 12 participants, based on established psychometric standards.

PROPOSED ELIGIBILITY CRITERIA FOR CONTENT AND STANDARD VALIDATION PANELISTS

To prevent conflicts of interest, mitigate risks of copyright infringement and other legal claims, and ensure exam security and integrity, staff recommend that the following criteria be adopted for the recruitment and selection of panelists:

1. The panelist must not have an immediate family member who will take either of the two California Bar Examinations immediately following the beginning of their engagement with the State Bar as a panelist.¹

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 panelist must not have a close personal relationship with someone who will take either of the two California Bar Examinations immediately following the beginning of their engagement with the State Bar as a panelist.

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 panelist. 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.

¹ Panelists will review the entire bank of questions, including those not selected for any specific exam, so they will not know which exam, if any, the questions might be tested on. However, a reasonable limitation is necessary.

3. The panelist must not have been engaged in commercial activities related to bar exam preparation in the two years immediately preceding their engagement with the State Bar as a panelist. The panelist also must not engage in such activities while participating as a panelist.

This restriction is intended to prevent any real or perceived financial conflicts of interest. 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 the purposes of this restriction.

While the State Bar cannot impose forward-looking restrictions on future commercial activities due to California's prohibition on non-compete agreements, all panelists will be subject to strict confidentiality obligations prohibiting them from sharing any exam materials they review.

4. The panelist must not have performed work either directly or indirectly, including volunteer work, for, or had an independent contractor relationship with, the NCBE at any time in the year immediately preceding their engagement with the State Bar as a panelist, including work relating to the NextGen Bar Exam through AccessLex or any other entity. The panelist also must not perform such work while participating as a panelist.
5. The panelist must not have had a license or agreement with NCBE relating to the use of NCBE intellectual property or with any bar preparation company relating to the use of its intellectual property, including use of exam questions, except as to any agreement that panelist entered into when taking the bar exam, at any time in the three years immediately preceding their engagement with the State Bar as a panelist. The panelist must not enter into any agreement with the NCBE or any bar preparation company relating to the use of its intellectual property while participating as a panelist.
6. The panelist must be able to represent that participating in this review process would not violate any agreement the panelist may have entered into with NCBE relating to the use of NCBE's intellectual property or with any bar preparation company relating to the use of its intellectual property.
7. The panelist must agree not to access, refer to, or use any NCBE exam questions or any exam questions from other bar preparation companies during the course of their engagement with the State Bar.
8. The panelist must be an active licensee in at least one state in which they are licensed and be in good standing in any state in which they are licensed and must not have any pending disciplinary charges before an attorney disciplinary board or committee. Any public 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 public discipline history checks are conducted, for example, for members of the State Bar Board of Trustees and its subentities.

9. The panelist 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.

These criteria are set forth in the proposed policy, attached.

The committee may also consider whether to establish additional qualification standards beyond those proposed above, such as:

- A panelist selected as law school faculty must have a minimum of ____ years of experience as a full-time instructor.
- A panelist selected as a supervisor of recently licensed attorneys must currently supervise at least ____ recently licensed attorneys.

Alternatively, the committee may wish to include in the policy requirements that apply to the overall composition of each panel. For example, the committee could set a target ratio of faculty to licensees or specify a ratio from different types of law schools. However, this approach may also make recruitment more difficult.

Note that imposing additional requirements may make recruiting the necessary number of panelists challenging.

RECRUITMENT OF PANELISTS

The attached policy also describes the approach for soliciting law school faculty, recently licensed attorneys, and supervising attorneys to serve as content and standard validation panelists.

Because the multiple-choice questions on the California Bar Examination do not test California-specific law, recruitment for content validation panels will target faculty across the country. Due to the inclusion of California-specific law on the written portion of the bar exam, recruitment for standard validation panels will target California licensees. All recruitment efforts will seek applications from faculty affiliated with law schools that are ABA-approved or accredited by or registered with the committee.

The policy also notes that panelists shall be paid for this work.

APPROVAL OF SELECTED SUBJECT MATTER EXPERTS WHO MEET THE ESTABLISHED CRITERIA

Consistent with the committee's Policy Regarding Selection, Retention and Service as Members of the Examination Development and Grading Team, adopted December 2, 2006, and most recently amended in October 2021, which provides that determinations as to whether to renew

a term of an existing EDG team member are made by the Director of Admissions in consultation with the Chair, this policy provides that the final selection of panelists who meet the established criteria will be approved by the Chair and 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 panelist.

POSSIBLE FUTURE SUPREME COURT APPROVAL OF POLICY

The proposed rule changes to Title 9 of the California Rules of Court proposed by the Supreme Court on May 28, 2025, and currently out for public comment, if adopted, would require review and approval by the Supreme Court of any committee-adopted policy for the committee's selection of panelists and subject matter experts for any content validation panels. However, following communications with a liaison for the Supreme Court, staff is informed that the Court is not intending to review any policy adopted by the committee prior to the effective date of the rules nor to stand in the way of the committee proceeding with this policy and the content validation panels that will be established pursuant to it.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

Based on rates paid to those who perform similar responsibilities for the State Bar, staff currently anticipate a rate of \$100 per hour.

Content Validation Panels: In 2025, the estimated cost for panels of up to 35 participants is \$224,000. This includes the review of 200 new multiple-choice questions and the re-review of approximately 550 existing questions. Starting in 2026, the annual cost is expected to be \$140,000 for the review of 400 new multiple-choice questions each year. These estimates assume each panel can review 90 questions per day. For comparison, panels comprised of 14 to 21 panelists can review 60 questions per day. Thus, depending on the timing of when the new multiple-choice questions might be deployed, the schedule could be made less aggressive, spreading the costs out over an additional year or years.

Standard Validation Panels: For panels of up to 21 participants, costs are estimated to be \$67,200 one-time, after the first exam in which the new multiple-choice questions are deployed. This estimate assumes working over four days, consistent with the process used after the February 2025 bar exam. This is a one-time cost unless a new question development vendor is introduced in the future. No costs are anticipated for 2025.

AMENDMENTS TO RULES

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RESOLUTIONS

Should the Committee of Bar Examiners concur, it is:

RESOLVED, that the Committee of Bar Examiners approves the policy for recruitment and selection of content validation panelists to review multiple-choice questions and standard validation panelists, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the Committee of Bar Examiners approve using the Exam Development and Grading team for the content validation of essay questions and the Performance Test Review team for the content validation of Performance Test questions.

ATTACHMENT LIST

- A. Policy Regarding Eligibility, Recruitment, and Selection of Content Validation and Standard Validation Panelists