



# The State Bar of California

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## OPEN SESSION

## AGENDA ITEM

### 4.1 JUNE 2025

## COMMITTEE OF BAR EXAMINERS

**DATE:** June 20, 2025

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

**FROM:** Donna Hershkowitz, Chief of Admissions / Legislative Director

**SUBJECT:** Discussion and Action on Mode and Method of Delivery for, and Content of, California Bar Examination After July 2025, Including Consideration of Recommendations Related to the Supreme Court order to Develop a California-Specific Bar Examination

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## EXECUTIVE SUMMARY

On [March 4, 2025](#), the California Supreme Court directed that for the July 2025 bar exam, the State Bar plan for a return to in person administration and on [May 2, 2025](#), directed, for July 2025, use of the Multistate Bar Exam (MBE) produced by the National Conference of Bar Examiners (NCBE), for the multiple-choice section of the exam. On [May 22, 2025](#), the Board of Trustees began a discussion of the need to begin planning for bar exams for 2026 and beyond. The Board adopted guiding principles for how to make decisions regarding the future development and administration of the exam, and recommended that the Committee of Bar Examiners (CBE) adopt the same guiding principles.

On June 13, 2025, [SB 253](#) was amended to specify that altering the bar exam by changing the vendor for development of multiple-choice questions (MCQs) from the NCBE, changing functionality of testing software or materials, or changing the medium in which materials are provided, is a substantial modification requiring two-years notice. If enacted, it will be effective January 1, 2025, and will apply to any changes following the July 2025 bar exam.

On [October 10, 2024](#), the Court adopted, in part and with modifications, the recommendations of the Blue Ribbon Commission on the Future of the Bar Exam (BRC), that the State Bar develop a California-specific bar exam that tests 12 topics and 7 skills. The Court adopted the [Blue Ribbon Commission](#)'s recommendation that the State Bar develop its own exam in lieu of

transitioning to the NCBE's NextGen Bar Exam. CBE member Kramer has requested that CBE discuss whether to request the Court to reconsider this decision.

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## **RECOMMENDED ACTION**

Staff recommend that the CBE consider the Board's recommendation to adopt guiding principles and priorities for exam administration and exam development.

Staff further recommend that the CBE defer making decisions about exam administration and exam development for the short-term until there is greater clarity on the direction of SB 253 (see description below). Additionally, staff believe that the CBE will have better information to assist in its decision making after the launch of the subcommittees and the development of a framework for how to proceed.

## **DISCUSSION**

On May 22, 2025, the Board began a discussion of the need to begin planning for bar exams for 2026 and beyond. The Board discussed that the State Bar had engaged Kaplan Exam Services, LLC (Kaplan) to develop MCQs for the purpose enabling remote and test-center based testing, which allowed test takers to test at home or near home and provided cost savings for both the State Bar and test takers.

The Board also noted that, for the longer term, the Court had previously ordered the development of a new California exam, recommending against adopting the NCBE's NextGen Bar Exam. The anticipated development cycle for the new exam is five years. The basis of the BRC recommendation for a California exam was that it allowed for California specific knowledge, skills, and abilities to be tested; topics and skills identified by the 2017 California Practice Analysis as those needed for entry level attorneys. The BRC also discussed the innovation in exam delivery and flexibility that adopting our own exam would provide, allowing for considerations of fairness, equity, and accessibility. The BRC adopted guiding principles that any new exam be fair, equitable, and minimize disparate performance based on race, gender, ethnicity, disability, and other immutable characteristics, and specified that fairness and equity include cost and the mode and method of how the exam is delivered or made available. This guiding principle was adopted by the Court.

## **GUIDING PRINCIPLES AND PRIORITIES FOR DECISIONS ABOUT BAR EXAM ADMINISTRATION AND DEVELOPMENT**

Having discussed the above history, the Board adopted the following guiding principles and priorities for how to make decisions regarding the future development and administration of the exam:

- Doing it right is more important than
  - Doing it fast
  - Doing it cheap
- Delivering a reliable and predictable exam

- Minimizing risk
  - If changes are made, phase rollout, move with caution
  - If changes are made, use proven technology, with appropriate testing + risk minimization
- Delivering an exam that appropriately assesses for minimum competence to practice law in California
- Exam must be accessible, affordable, fair, and equitable for test takers
- Lessons from the February 2025 bar exam must be learned before moving to a remote, online exam
- Consider developing an exam that can be delivered on a more frequent basis than 2 times per year
- Caution cannot trump innovation
- Consider both remote and in person options
- Improve work with stakeholders
  - Ensure greater transparency
  - Ensure stakeholder perspectives are sought out and considered
  - Partner with law schools to test exam administration platforms / approaches
  - Strong collaboration between BOT, CBE, and Supreme Court
  - Engage with legislative partners
- We can't rely on "business as usual" to drive the approach

The Board recommended that the CBE adopt those same guiding principles and priorities for shaping the direction for the California Bar Examination for 2026 and beyond.

Themes evident in those guiding principles and priorities include learning from previous mistakes, engaging with stakeholders to hear and consider their perspectives, and getting it right is of paramount importance. At the same time, the Board emphasized the need for innovation and adoption of approaches that are accessible, affordable, fair, and equitable for test takers.

## **EXAM ADMINISTRATION: SHORT-TERM**

Prior to the recent amendments to SB 253, staff contemplated a decision-making process on the part of the CBE and the Board that would decide on two key questions in relation to 2026 – exam administration and content. To support these decisions for 2026 and beyond, the CBE is establishing two subcommittees. These subcommittees will be supported by consultants with expertise in these areas.

The CBE's Subcommittee on Exam Administration will oversee all aspects of the operational delivery of the California bar exam. The subcommittee's primary charge is to ensure that the administration of the bar exam is secure, technologically reliable, user-friendly, accessible to all applicants, and compliant with applicable policies and standards.

The consultant assigned to work with the subcommittee will lead the development of a comprehensive framework for exam administration ensure effective and efficient exam

delivery. Among other things, they will conduct a comparative analysis of in-person, remote, and test-center based administration models, examining costs for test takers and the organization, as well as accessibility and feasibility. In addition to the CBE, they will engage key stakeholders to inform exam administration policies and practices. Although the work of the consultants and the new subcommittee on exam administration will just be starting, staff anticipate we will have more information to share with the CBE and the Board in early August to assist in shaping the decisions or the timeline for making the decisions.

The recent amendments to [SB 253](#), if enacted as drafted, would define a substantial modification of the training or preparation required for passage of the exam – requiring two-years notice of the change – as follows:

- Changing the vendor or creator of the multiple-choice questions from the NCBE.
- Changing the vendor or creator of the multiple-choice questions from a non-NCBE vendor or creator to another non-NCBE vendor or creator. (If the change is back to the NCBE, it is not a substantial modification.)
- Changing the functionality of testing software or materials.
- Changing the medium in which testing materials are provided.

This language would not prohibit the CBE from recommending a different approach to exam administration; rather it requires notice. However, by requiring notice “of the change,” it would seem to require that the CBE give relatively detailed notice of what the functionality would be. This could create some logistical challenges if, for example, the selected vendor makes changes to the platform or functionality after the notice is provided but prior to the administration of the exam. It could also require contracting for a service not to be provided for another two-years. Additionally, if the current vendor were to step out of the bar exam delivery business, or make a change to the functionality of the software, and if no other vendor provided the same functionality, this language could result in a two-year period with no exam.

State Bar staff met with Senate staff shortly after publication of these amendments to express some of these concerns. Senate staff was receptive to these concerns and are open to amending the language to add more flexibility regarding notice of changes to the functionality of testing software or materials and changes to the medium in which testing materials are provided.

## **EXAM DEVELOPMENT: SHORT-TERM**

The CBE’s Subcommittee on Exam Development would oversee the preparation quality control, and integrity of all content included in the California bar exam. The subcommittee’s primary charge is to ensure that all bar exam questions meet legal, psychometric, and fairness standards, and that content development is free of bias, error, or security risk. The consultant supporting the subcommittee will complete the development of a best-practice framework for exam development, aligned with current standards in licensure and psychometrics. They will lead efforts to support exam development activities, including content validation processes, adherence to the framework, quality standards, and timelines. They will also engage with key stakeholders to ensure transparency and a sharing of ideas.

The June 20, 2025, CBE agenda includes approval of policies for recruitment, selection, and retention of content validation panelists and subject matter experts (SMEs) to add more rigor to the content validation process and give the CBE, the Court, and the public confidence in the process used to develop fair and appropriate multiple-choice questions for the bar exam. Staff have identified an aggressive but achievable schedule to ensure that, should the CBE recommend returning to the MCQs in February 2026, all questions are reviewed by the new content validation panels and the additional layer of review for legal accuracy will be conducted. Staff have been working with Kaplan to revise the faculty and student guides and to expand the student guide to include 25 additional questions.

SB 253, if enacted, would make that decision for the CBE, requiring two-years notice prior to the return to new MCQs not developed by the NCBE. Unlike the language of SB 253 related to exam administration, State Bar staff do not anticipate this language being altered to provide greater flexibility.

Key dates, assuming SB 253 is enacted, and depending on what direction the CBE is leaning are as follows:

- July 2025: Deadline for providing notice if the CBE wants to return to Kaplan MCQs for the July 2027 bar exam.
- February 2026: Final deadline for giving notice of a switch from MBE to Kaplan MCQs (for February 2028 implementation) because MBEs will not be available as of the February 2028 bar exam).
- February 2026: Deadline for giving notice of adoption of NextGen Uniform Bar Exam (UBE), unless Kaplan MCQs are used prior to transition to the NextGen UBE.
- July 2027: Last administration of the MBE by the NCBE before it is phased out.

## **EXAM ADMINISTRATION AND DEVELOPMENT: LONG-TERM**

On July 16, 2020, the Board approved a draft charter for a joint Supreme Court/State Bar of California Blue Ribbon Commission on the Future of the Bar Exam. The Board proposed that the commission would review the results of the California Attorney Practice Analysis (CAPA), and recommendations raised by the CAPA working group, the results of the 2020 NCBE practice analysis, and additional State Bar studies conducted on the bar exam, for the purpose of developing recommendations for the Board and the Court regarding the bar exam and possible bar exam alternatives. In October 2020, the Court adopted the final charter, and in April 2021, announced the membership of the BRC.

The Board and the Court charged the commission with developing recommendations around two key issue areas: (1) whether California should develop its own bar exam, and if so, what should be tested on that exam; and (2) whether California should pursue alternatives to a traditional bar exam to determine minimum competence. Starting with its first meeting in July 2021, the commission explored and debated various issues around those topics to arrive at draft recommendations for the Board and the Court. The commission circulated the report for a 30-day public comment period, during which it received more than 1,400 comments from 867

commenters. At its final meeting on April 26, 2023, the commission explored key issues that were raised by the commenters and made slight modifications to their recommendations.<sup>1</sup>

The commission analyzed criticisms of current bar exams, the NCBE's plans for its NextGen bar exam, and explored advantages and disadvantages of developing a California exam or adopting the NextGen exam. After having considered a wealth of information, and hearing from numerous experts, the commission overwhelmingly recommended:

- The development of a California exam to assess minimum competence.
  - The commission did not recommend adopting the NCBE's NextGen bar exam.
- That CAPA's recommendations on the eight legal topics to be included in the new bar exam be adopted:
  - Administrative Law and Procedure;
  - Civil Procedure;
  - Constitutional Law;
  - Contracts;
  - Criminal Law and Procedure;
  - Evidence;
  - Real Property; and
  - Torts.
- After receiving a significant amount of public comment questioning the exclusion of Professional Responsibility, the commission recommended adding Professional Responsibility as a ninth topic to test subsequent to the public comment period.
- That CAPA's recommendations for the skills to be tested on the new exam be adopted:
  - Research and Investigation;
  - Issue-spotting and Fact-gathering;
  - Counsel/Advice;
  - Litigation;
  - Communication and Client Relationship; and
  - Negotiation and Dispute Resolution.

Two CBE members, Alex Chan and Esther Lin, served on the BRC. The CBE submitted a dissenting opinion to the BRC Report and Recommendations.<sup>2</sup> The dissent focused on the supervised pathway to licensure, and not the recommendation to develop a California-specific bar exam.

In May 2023, the Board adopted the recommendation of the BRC related to the development of a California exam. Because the BRC did not present a recommendation related to an alternative pathway to licensure (having been unable to achieve a majority vote either in support or opposition to such a proposal), the Board asked some former members of the BRC to develop a proposal for such a supervised practice pathway. That recommendation was

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<sup>1</sup> The agenda item highlighting issues the commission considered can be accessed [here](#).

<sup>2</sup> <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000030806.pdf>. See page 54 of the PDF. When initially submitted, this was an opinion of Alex Chan in his individual capacity. Before the Report and Recommendations were finalized for presentation to the Board, the CBE moved to adopt the position in full and joined in the dissent.

adopted by the Board in November 2023. On October 10, 2024, the Court adopted the BRC's recommendation to develop a California-specific exam, adding three additional topics to the list of nine recommended by the BRC. The Court also adopted the BRC's recommendation for the seven skills to be tested.

Following discussions at its meetings in December 2024 and [January 2025](#), the CBE developed recommendations for a steering committee to guide the development of the new exam and implement a structure for gathering information from experts and stakeholders and making recommendations to the Board and the Court. The CBE adopted recommendations for the size and general composition of the steering committee as well as responsibilities for appointment of the members. In addition, the CBE discussed establishing an advisory group to inform the work of the steering committee. The CBE's recommendation was scheduled to be considered by the Board in February, but was put on hold while the CBE and the Board focused on the February and July 2025 bar exams.

Following the February 2025 bar exam, with questions about the exam administration and content, CBE member Paul Kramer requested that the CBE have the opportunity to explore an alternative recommendation to the Court regarding adoption of the NextGen UBE.

## **PREVIOUS ACTION**

[May 2, 2025](#): The Court directed the return to the MBE for July 2025.

[March 4, 2025](#): The Court directed that for the July 2025 bar exam, the State Bar plan for a return to in person administration. Subsequently, the [Board](#) and [CBE](#) directed the return returning to an in person administration.

On [October 10, 2024](#), the Court adopted, in part and with modifications, the recommendations of the BRC, that the State Bar develop a California-specific bar exam. This order followed the [May 2023 adoption](#) of the final recommendations of the BRC develop its own exam in lieu of transitioning to the NCBE's NextGen Exam.

## **FISCAL/PERSONNEL IMPACT**

It is currently estimated that, absent fee increases or cost reductions, administering the bar exam in person through the end of 2026, using the MBE, while continuing to meet our contractual obligations to Kaplan for development of exam questions, will fully deplete reserves in the Admissions Fund by the end of 2026.

## **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, having considered the recommendation of the Board of Trustees, adopts the following guiding principles for exam administration and development: [to be developed during June 20, 2025, CBE discussion]

## **ATTACHMENT LIST**

None