



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 4.1 APRIL 2025 BOARD OF TRUSTEES**

**DATE:** April 2, 2025

**TO:** Members, Board of Trustees

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

**SUBJECT:** Update on the February 2025 Bar Examination; Discussion and Approval of Recommendations Related to Provisional Licensure

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### **EXECUTIVE SUMMARY**

On March 14, 2025, the Committee of Bar Examiners resolved to recommend “to the Board of Trustees that the Supreme Court expand the Provisional Licensure Program to include test takers who took the February 2025 Bar Exam or who withdrew from the February 2025 Bar Exam.” Staff recommends supplementing that recommendation to the Supreme Court to include extending the Original Provisional Licensure Program (Original PLP), which is scheduled to sunset on December 31, 2025, absent further action. Staff further requests that the Board of Trustees recommend that, when finalizing rule revisions for any agreed upon expansion, the Supreme Court revise existing language to allow the State Bar to establish a reasonable fee for the program.

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### **RECOMMENDED ACTION**

Adopt the recommendation of the Committee of Bar Examiners to recommend that the Supreme Court expand the Original Provisional Licensure Program to apply to test takers who took or withdrew from the February 2025 Bar Exam. Staff also requests that the Board of Trustees build upon this recommendation of the Committee of Bar Examiners to:

- Extend the sunset date of the Original PLP to align with the date for this new cohort.
- Eliminate the program fees outlined in California Rules of Court rule and instead instruct the State Bar to set a reasonable fee so that the fee aligns with the cost of program operation.

## **DISCUSSION**

### **HISTORY OF THE PROVISIONAL LICENSURE PROGRAMS**

#### **Original Provisional Licensure Program**

In July 2020, the Supreme Court directed the State Bar of California “to implement, as soon as possible, a temporary supervised provisional licensure program – a limited license to practice specified areas of the law under the supervision of a licensed attorney.” The Supreme Court was moved by the unprecedented upheaval wrought by the COVID-19 pandemic, and the need to create a pathway to practice for 2020 law graduates who found themselves stepping out of law school into a world steeped in uncertainty. Two months later the Board of Trustees presented a proposal to the Supreme Court to adopt California Rules of Court rule 9.49 establishing what is referred to herein as the Original PLP. The program launched on November 17, 2020.

Under the terms of the Original PLP, participants must satisfy a number of requirements, including passage of a California Bar Exam, prior to the program’s sunset date of December 31, 2025.

#### **Pathway Provisional Licensure Program**

In January 2021, the State Bar recommended, and the Supreme Court adopted, rule 9.49.1, expanding the provisional licensure program to include those who scored between 1390 and 1439 on a bar exam administered between July 2015 and February 2020. This program, referred to as the Pathway Provisional Licensure Program (Pathway PLP), provides a path to licensure upon completion of a number of requirements including completion of 300 hours of supervised legal practice and receipt of a “satisfactory” supervisor evaluation, in lieu of bar exam passage. The Pathway PLP was adopted in recognition of the recent reduction in the passing line for the bar exam in conjunction with pandemic-related challenges with which this cohort was also struggling.

The Pathway PLP also sunsets on December 31, 2025.

### **PLP BY THE NUMBERS**

Since its launch, 912 2020 law graduates have participated in the Original PLP program; 703 have been admitted to the State Bar. As of March 21, 2025, there are 90 participants remaining in the program who have met all requirements for admission other than passing a California Bar Exam; 78 have attempted at least once and 12 have not sat for a bar exam.

There have been 1,021 participants in the Pathway PLP, with 804 admitted to the State Bar and 159 still in the program. For the vast majority of those currently active, the outstanding requirement is completion of the 300 hours of supervision required under the program.

### **RECOMMENDATION OF THE COMMITTEE OF BAR EXAMINERS**

At its March 14, 2025, meeting, the Committee of Bar Examiners conducted a discussion similar to that held by the Board of Trustees at its March 5 meeting regarding the February 2025 Bar Exam. In discussing possible remediation measures, the committee agreed that decisions about possible scoring adjustments would need to wait until exams were scored. However, the

committee felt strongly that action could and should be taken now to ensure an opportunity for impacted applicants to practice law in light of the issues surrounding the February Bar Exam. The committee therefore recommended that the Original PLP be expanded to include all who took the California February 2025 Bar Exam, as well as all who withdrew from the exam.

### **RECOMMENDATIONS OF OTHERS**

Mitchel Winick, President and Dean of the Monterey College of Law expressed his agreement with the Committee of Bar Examiner's recommendation to create a provisional licensure program for this cohort but argues the recommendation does not go far enough. Dean Winick specifically suggests that the Board of Trustees recommend that the Original PLP be expanded to include the Committee of Bar Examiner's recommended population as well as all those who are *eligible to sit* for any 2025 bar exam, indicating that concerns prior to the February 2025 Bar Exam caused some not to register, and that there is a high risk of new disruption as related to the July Bar Exam.

Claire Solot, on behalf of the Legal Services Funders Network (LSFN), also argues that the committee's recommendation does not go far enough. Rather, the LSFN recommends that the Board of Trustees ask the Supreme Court to approve a Portfolio Bar Exam (PBE) pilot using the February 2025 Bar Exam applicants as the pilot cohort. While in October 2024 the Supreme Court rejected a similar proposal made by the Board of Trustees, the LSFN believes that there are key differences between the rejected proposal and the present circumstance including the fact that the February 2025 examinee population is new to the practice of law and that there is now more data available about PBE programs successfully operating in other parts of the country.

### **RECOMMENDATIONS OF STAFF**

Staff recommends that the Board of Trustees adopt the recommendation of the Committee of Bar Examiners to recommend that the Supreme Court expand the Original Provisional Licensure Program to apply to test takers who took or withdrew from the February 2025 Bar Exam. Staff requests that the Board of Trustees build upon this recommendation of the Committee of Bar Examiners to:

- Extend the sunset date of the Original PLP to align with the date for this new cohort.
- Eliminate the program fees outlined in California Rules of Court rule 9.49 and instead instruct the State Bar to set a reasonable fee that aligns with the one-time and ongoing costs of program operation.

Although the Pathway PLP is also slated to sunset on December 31, 2025, staff does not recommend a further extension of this program's termination date as successful satisfaction of program terms does not require passage of a bar exam.

While traditionally the State Bar would transmit a set of recommendations in this vein to the Supreme Court with corresponding proposed rule revisions, given the lack of insight into how the Supreme Court may respond to any resolution acted on by the Board of Trustees and the workload associated with drafting multiple rule revision options, staff plans to submit Board-

approved recommendations alone to the Supreme Court. The Supreme Court may respond by asking the State Bar to draft rule revisions conforming to specific direction; the Supreme Court could also issue revised rules implementing its policy decision without returning to the State Bar. The request that the Board of Trustees adopt a specific resolution regarding program fees addresses the possibility that the Supreme Court decides to act on any Board of Trustees submitted resolution absent additional input from the State Bar; it is critically important that any expansion of the Original PLP be supported by appropriate fees.

## **PREVIOUS ACTION**

- [September 2020](#) Board approval of the Original Provisional Licensure Program and recommendation to the Supreme Court for adoption.
- [January 2021](#) Board Executive Committee approval of the Expanded Provisional Licensure Program and recommendation to the Supreme Court for adoption.
- [November 2022](#) Board approval of options for extension of both provisional licensure programs.
- [December 2022](#) Board request to the Supreme Court Regarding Extension of Both Provisional Licensure Programs.
- [November 2023](#) Board approval of a pilot Portfolio Bar Exam, and recommendation to the Supreme Court for adoption.

## **FISCAL/PERSONNEL IMPACT**

Due the circumstances of the pandemic, the fee for the provisional licensure program was set artificially low, knowing that it was not sufficient to cover the costs of administering the program. The one-time fee is \$75, or \$50 if the employer paying the fee receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center. Giving the State Bar the authority to establish both one-time application and ongoing licensing fees at the level necessary to cover the costs of providing the program is critical in light of the condition of both the Admissions and General Funds.

## **AMENDMENTS TO RULES OF COURT**

Title 9, Division 4, Rule 9.49

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

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

- Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System
- a.2. Update and modernize the bar admissions requirements to be more relevant to the practice of law to eliminate unnecessary barriers to admission, or to implement changes to the bar examination or other pathway to licensure approved by the Supreme Court.

## **RESOLUTIONS**

**Should the Board of Trustees concur, it is:**

**RESOLVED**, that the Board of Trustees approves the recommendation of the Committee of Bar Examiners and recommends that the Supreme Court expand the Original Provisional Licensure Program to apply to test takers who took or withdrew from the California February 2025 Bar Exam; and it is

**FURTHER RESOLVED**, that the Board of Trustees recommends that the Supreme Court extend the December 31, 2025, sunset date of the Original Provisional Licensure Program to align with the sunset date for this new cohort; and it is

**FURTHER RESOLVED**, that the Board of Trustees recommends that the Supreme Court eliminate language in the rule directing the amount of the program and instead direct the State Bar to set a reasonable fee; and it is

**FURTHER RESOLVED**, that the Board of Trustees directs staff to transmit these recommendations to the Supreme Court.

## **ATTACHMENT LIST**

None