

4.2 Adoption of Criteria for Selection of Subject Matter Experts for Bar Examination Multiple-Choice Question Content Validation Process



The State Bar of California

OPEN SESSION

AGENDA ITEM

4.2 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 Subject Matter Experts for Bar Examination Multiple-Choice Question Content Validation Process

EXECUTIVE SUMMARY

To enhance the content validation process for the development of multiple-choice questions used on the California Bar Examination, the State Bar of California plans to recruit a slate of subject matter experts (SMEs) to conduct an additional layer of review for legal accuracy. This report proposes a policy for SME eligibility, recruitment, and selection that is designed to prevent conflicts of interest, confirm that the SME's participation would not violate other agreements they may have relating to the use of intellectual property, ensure exam security and integrity, and ensure an appropriate level of oversight by the Committee of Bar Examiners. Staff recommend that the committee adopt the policy set forth in Attachment A.

RECOMMENDED ACTION

Adopt the proposed policy regarding recruitment and selection of subject matter experts as part of the content validation processes for the multiple-choice questions for the California Bar Examination.

DISCUSSION

Prior to the February 2025 California Bar Examination, multiple-choice questions used on the exam and drafted for future exams were reviewed by content validation panels comprised of law school faculty, recently admitted attorneys, and supervising attorneys of recently admitted attorneys. In addition, all multiple-choice questions were subject to legal review by an additional reviewer for legal accuracy. The purpose of the review was to evaluate whether the

questions (1) appropriately test for minimum competence to practice law; (2) exhibit any bias; (3) are clear; (4) are cohesive in style with other questions; and (5) accurately test the intended legal issue. Constructive feedback from the content validation panels and legal accuracy reviewer was used to revise the questions, when necessary, to meet the criteria listed above.

To further enhance the content validation process, the State Bar has initiated a plan to retain law school faculty and retired members of the California judiciary to serve as additional SMEs providing another layer of review. Under this plan, 21 SMEs will be retained—three for each of the seven subjects tested on the multiple-choice section of the bar exam: civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts.

After the content validation panels review the draft multiple-choice questions, and necessary revisions are completed, the SMEs will conduct an open-book review of the questions and answer choices for legal accuracy.

Because the State Bar already has a structured content validation process, facilitated by assessment specialists and psychometricians from ACS Ventures who provide training and guide panelists through the process of determining the appropriate content to test on an exam, the plan envisions that the role of SMEs will be limited to assessing the legal accuracy of the drafted question and the selected answer. SMEs will be tasked with citing the legal source supporting their determination, and if they believe that a question is incorrect, explaining what is incorrect.

SMEs will not draft or revise questions or answers, in whole or in part. This limitation also allows for somewhat greater flexibility in the eligibility criteria, broadening the pool of available SMEs.

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.

PROPOSED ELIGIBILITY CRITERIA FOR SMES

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 SMEs:

1. The SME 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 SME.¹

¹ SMEs 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.

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 SME 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 SME.

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 SME. 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.

3. The SME 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 SME. The SME also must not engage in such activities while participating as a SME.

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 SMEs will be subject to strict confidentiality obligations prohibiting them from sharing any exam materials they review.

4. The SME must not have performed work either directly or indirectly, including volunteer work, for, or had an independent contractor relationship with, the National Conference of Bar Examiners (NCBE) at any time in the year immediately preceding their engagement with the State Bar as a SME, including work relating to the NextGen Bar Exam through AccessLex or any other entity. The SME also must not perform such work while participating as a SME.
5. The SME must be able to represent that participating in this review process would not violate any agreement the SME 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. The SME 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 SME.
6. The SME 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.

7. The SME 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 already proposed, such as:

- A SME must have a minimum of ___ years of experience as a full-time instructor.

RECRUITMENT OF SMEs

The attached policy also describes the approach for soliciting law school faculty and retired California judges and justices to participate as SMEs as part of the content validation process.

Staff had solicited applications and resumes from law school faculty and retired California judges and justices based on preliminary eligibility requirements that largely reflect those recommended above, although some changes are proposed in the attached policy following preliminary discussions with the Chair. Because the multiple-choice questions on the California Bar Examination do not test California-specific law, recruitment for SMEs will target faculty across the country. All recruitment efforts will seek applications from those affiliated with law schools that are ABA-approved or accredited by or registered with the committee.

The policy also notes that SMEs 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 SMEs 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 SME.

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. 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.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

Based on a rate of \$100 per hour for 21 SMEs, with the potential for a higher rate for retired judicial officers, staff anticipates costs ranging from \$100,000 to \$150,000 (using a high estimate of 50 – 70 hours for each SME).

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 subject matter experts to review multiple-choice questions for the California Bar Examination, as set forth in Attachment A.

ATTACHMENT LIST

- A. Policy Regarding Eligibility, Recruitment, and Selection of Subject Matter Experts for Multiple-Choice Question Legal Accuracy Review



The State Bar *of California*

POLICY REGARDING ELIGIBILITY, RECRUITMENT, AND SELECTION OF SUBJECT MATTER EXPERTS FOR MULTIPLE-CHOICE QUESTION LEGAL ACCURACY REVIEW

To ensure the accuracy of the multiple-choice questions developed for the California Bar Examination and instill confidence in the public about the quality of the questions, the Committee of Bar Examiners directs that an additional review be conducted by paid subject matter experts (SMEs) retained by the State Bar to review the questions for legal accuracy.

ROLE OF SUBJECT MATTER EXPERTS

After content validation panels review draft multiple-choice questions to ensure the questions appropriately test for minimum competence to practice law, do not exhibit any bias, are clearly written, are cohesive in style with other questions, and accurately test the intended legal issue, SMEs will conduct an open-book review of the questions and answer choices for legal accuracy. SMEs will cite the legal source supporting their determination of the legal accuracy, and if they believe that a question or answer choice is incorrect, explain what is incorrect. SMEs will not draft or revise questions or answers, in whole or in part.

ELIGIBILITY CRITERIA FOR SUBJECT MATTER EXPERTS

To prevent conflicts of interest, mitigate risks of copyright infringement and other legal claims, and ensure exam security and integrity, the committee establishes the following eligibility criteria for SMEs:

1. The SME 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 SME. 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 SME 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 SME. 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 SME. 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.

3. The SME 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 SME. The SME also must not engage in such activities while participating as a SME. 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.
4. The SME must not have performed work either directly or indirectly, including volunteer work, for, or had an independent contractor relationship with, the National Conference of Bar Examiners (NCBE) at any time in the year immediately preceding their engagement with the State Bar as a SME, including work relating to the NextGen Bar Exam through AccessLex or any other entity. The SME also must not perform such work while participating as a SME.
5. The SME must be able to represent that participating in this review process would not violate any agreement the SME 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. The SME 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 SME.
6. The SME 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.
7. The SME 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.

RECRUITMENT, SELECTION, AND RETENTION OF SUBJECT MATTER EXPERTS

Whenever necessary to ensure a sufficient number of SMEs are available to conduct legal accuracy reviews of multiple-choice questions, the State Bar shall conduct a broad solicitation of law school faculty and retired California judges and justices.

Because the multiple-choice questions on the bar exam do not test California-specific law, recruitment for SMEs will target faculty across the country and will seek applications from faculty affiliated with law schools approved by the American Bar Association's Council of the Section of Legal Education and Admissions to the Bar (ABA-approved) or accredited by or registered with the committee.

Submitted applications will be reviewed by staff for compliance with eligibility criteria and staff will make initial recommendations to the Chair of the committee. The final selection of SMEs

who meet the established criteria will be approved by the Chair. The SMEs will be selected on the basis of subject matter expertise, experience, and the criteria listed above. Selections will be made without regard to race, color, religion, sex (including gender identity or expression and sexual orientation), national origin, age, disability status, genetic information, or any other characteristic protected by law.

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 SME.

Three SMEs will be retained for each of the seven subjects tested on the multiple-choice section of the bar exam (civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts) for a total of 21 SMEs.

If a SME no longer meets the eligibility criteria or otherwise becomes unable to fulfill their duties, this is grounds for the State Bar to terminate the agreement with the SME, following consultation between the Chair and the Chief of Admissions or their designee.

ADVERTISING/PUBLICITY

SMEs shall not advertise or engage in any publicity about their roles as having served as a SME with the State Bar or the committee or otherwise achieved some sort of expertise associated with the development of exam questions, without prior written consent from the State Bar.



The State Bar of California

4.2 & 4.3 Adoption of Criteria for Selection of Subject Matter Experts and Content and Standard Validation Panelists

Cody Hounanian, Program Director, Office of Admissions

Committee of Bar Examiners, June 20, 2025

Proposed Policy Goals



Ensure Committee oversight and approval of the selection of content and standard validation panelists and subject matter experts (SMEs).



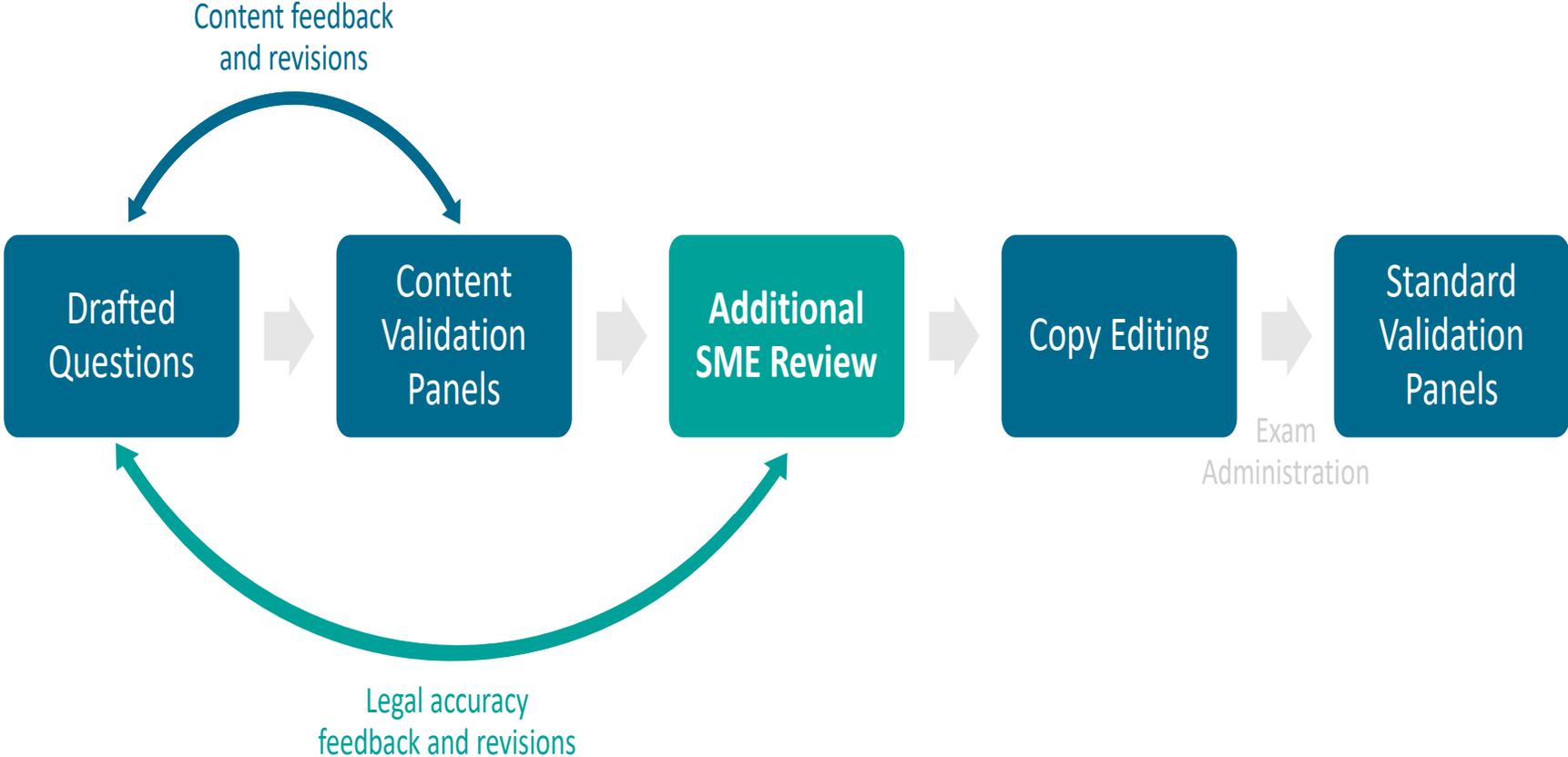
Enhance MCQ review through an added layer of SME evaluation.



Prevent conflicts of interest, mitigate copyright and legal risks, protect exam security and integrity.



Multiple-Choice Question Review



Content Validation Panels

- Comprised of law school faculty, recently admitted attorneys, and supervisors of recently licensed attorneys.
- Panels are trained and led by assessment specialists and psychometricians.
- Panels assess whether each MCQ:
 - Appropriately test for minimum competency
 - Is free from bias
 - Is clearly written
 - Aligns stylistically with other questions
 - Accurately test the intended legal issue
- Iterative review process; panels will re-review existing MCQs.
- Separate content validation for essay and Performance Test questions to be conducted by EDG and PT Review teams.



Additional SME Review

- Comprised of law school faculty and retired members of the California judiciary.
 - Three for each of the seven subjects tested.
- Review MCQs for legal accuracy only:
 - Open book review, citing legal sources
 - Will not draft or revise questions
 - Iterative review process



Standard Validation for MCQ, Essay, and PT

- New standard validation is required:
 - Exam scores can not be anchored to NCBE MCQs
 - Feb. 2025 exam presented unusual circumstances
- Comprised of law school faculty, recently admitted attorneys, and supervisors of recently licensed attorneys.
- Assess expected performance of a minimally competent attorney:
 - Which MCQs expected to answer correctly
 - Independent judgments about the expected performance on each written question
- Panels recommend raw passing scores for the MCQ and written portions of the exam.



Proposed Eligibility Criteria

Criteria	SMEs	Panelists
Must not have an immediate family member or a close personal relationship with someone who will take either of the two California Bar Examinations immediately following the beginning of their engagement.	Applies	Applies
Must not have been engaged in commercial activities related to bar exam preparation in the two years immediately preceding their engagement (or while participating).	Applies	Applies
Must not have performed work either directly or indirectly, including volunteer work, for, or had an independent contractor relationship with the NCBE in the year immediately preceding their engagement (or while participating).	Applies	Applies
Must not have had a license or agreement with NCBE or with any bar preparation company relating to the use of its intellectual property, including use of exam questions, at any time in the three years immediately preceding their engagement (or while participating).	Does not apply	Applies
Must not access, refer to, or use any exam questions from NCBE or another bar preparation company during the course of their engagement with the State Bar.	Does not apply	Applies

Proposed Eligibility Criteria

Criteria	SMEs	Panelists
Must be able to represent that participating in this review process would not violate any agreement the SME may have entered into with NCBE or any bar preparation company relating to the use of its intellectual property.	Applies	Applies
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.	Also includes retired members of the California judiciary	Applies
Must agree to promptly disclose any change in circumstances that could create a real or perceived conflict of interest or otherwise impact their eligibility.	Applies	Applies



Proposed Selection Policy



Broad solicitation



Applications reviewed by staff and
recommendations made to Chair



Chair approves final selection



Termination only after consultation
between Chair and Chief of Admissions



Possible Discussion Items

- Definition of “recently licensed”
 - Five years of experience selected
 - Committee uses a three-year window for membership
 - California Lawyers Association’s New Lawyers Section allows up to eight years
- Family and close personal relationship restriction
 - Next two exam administrations selected
 - Panelists will not know which exam questions will be used on; a reasonable limitation is necessary
- Prohibition on License or Agreements with Bar Preparation Companies
 - Three-year minimum recommended but can be longer
- Possible Additional Qualification Standards:
 - For example, a minimum number of years of experience





Next Steps

- Committee approves final eligibility criteria and selection policy.
- Initiate recruitment for content / standard validation panels, re-initiate recruitment for SMEs:
 - Staff reviewed 123 applications for SMEs based on preliminary criteria.
- Staff to make recommendations to Chair.
- (Note: staff recommends moving forward pending CBE recommendation as to timing for use of new MCQs and recent amendments to Senate Bill 253)



Questions?

