

S287231

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**RENEWED REQUEST THAT THE SUPREME COURT
APPROVE PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**



PREPARED BY
THE STATE BAR OF CALIFORNIA

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**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

**RENEWED REQUEST THAT THE SUPREME COURT
APPROVE PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**

I. INTRODUCTION

For approximately two years, the State Bar of California (State Bar) has been evaluating how it can reduce the costs of administering the California Bar Examination—the largest cost center of the Admissions Fund, which is experiencing a structural deficit—in light of the soaring costs of annually administering over 13,000 bar examinations in-person at State Bar-run test centers. Through this petition, the State Bar, following the approval of the Committee of Bar Examiners (CBE), seeks an order modifying this Court’s last-issued order on the California Bar Examination—which includes the two-day General Bar Examination and the one-day Attorneys’ Examination—so that it can achieve these necessary cost savings. The requested modifications will allow the State Bar to efficiently administer the bar examination while ensuring examination security and integrity and eliminating unnecessary barriers to accessing the examination.

Specifically, the State Bar requests that this Court adopt an order that: eliminates reference to the Multistate Bar Examination (MBE); directs, consistent with prior orders, that the second day of the bar examination will consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts; and permits the bar examination to be delivered remotely and/or in-person at vendor-run or State Bar-run test centers. Such modifications will enable the State Bar to utilize multiple-choice questions developed by Kaplan Exam Services, LLC (Kaplan) rather than purchase the MBE from the National Conference of Bar Examiners (NCBE) and to engage ProctorU, Inc. d/b/a/ Meazure Learning (Meazure Learning) to administer the examination remotely or at Meazure Learning's test centers.

Accordingly, for the reasons set forth in this petition, this Court should adopt the attached proposed administrative order modifying the California Bar Examination.

II. CBE APPROVAL OF AND THIS COURT'S AUTHORITY TO ADOPT PROPOSED MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

Under rule 9.6(a) of the California Rules of Court, “[t]he Committee of Bar Examiners, pursuant to the authority delegated to it by the Board of Trustees, is responsible for determining the bar examination’s format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court. The Supreme Court must set the passing score of the examination.” As described below, the CBE has approved the requested modifications and has directed staff to seek an order from this Court approving those modifications, which is necessary to effectuate the changes to the bar examination.

A. CBE Took Necessary Actions to Approve the Proposed Modifications

At the CBE’s April 19, 2024, meeting, the CBE approved a motion recommending that the Board of Trustees (Board) retain a new vendor to develop bar examination questions. (Appendix of Exhibits (AE), Ex. 17 [CBE Open Session Minutes: April 19,

2024] at pp. 166–167.)¹ This approval followed staff’s recommendation that a new vendor was necessary to allow for cost-effective bar examination administration approaches, including remote and vendor-owned test center administration. (Ex. 16 [CBE Staff Report for Agenda Item III.A, dated April 19, 2024] at pp. 133–140.) The CBE’s action in April was the culmination of previous CBE and Board discussions and stakeholder forums regarding the need to explore alternative methods of administering the bar examination, given the increasing costs of administration and the impending Admissions Fund deficit, as further explained in Section IV.A.–B., *post*.

In response to the Supreme Court’s September 18, 2024, order denying without prejudice the State Bar’s earlier filed petition (Case No. S286825) that sought modifications to the bar examination, the CBE held a meeting on September 30, 2024. At that meeting, the CBE unanimously adopted a resolution that specifically approved the following:

¹ Hereafter, all references to exhibits refer to exhibits included in the AE.

1. The use of the Kaplan-developed multiple-choice questions for the February 2025 bar exam and future bar exams, subject to psychometric validation;
2. Measure 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; and
3. 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.

(Ex. 25 [CBE Resolution, dated September 30, 2024] at

pp. 293–295.)² The CBE’s resolution also “direct[ed] staff to seek appropriate approval from the Supreme Court to modify its prior order on the bar exam in accordance” with the CBE’s foregoing approval. (*Id.* at p. 295.)

² While this petition seeks an order that would apply to the February 2025 administration of the bar examination and future examinations, the Court is currently considering recommendations submitted by the Blue Ribbon Commission on the Future of the Bar Examination, which, when this Court acts on those recommendations, may supersede any order issued in response to the instant petition as it relates to future bar examinations.

B. Action by This Court Is Necessary to Adopt the CBE’s Approved Modifications to the Bar Examination

As described above, rule 9.6(a) of the California Rules of Court requires that modifications to the bar examination be approved by the Court. The Court also has inherent authority to admit persons to the practice of law in California. (Cal. Rules of Court, rule 9.3; *In re Attorney Discipline* (1998) 19 Cal.4th 592, 593; *Hustedt v. Workers’ Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336; *Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300; see also Bus. & Prof. Code, §§ 6064, 6066.)

This Court’s action to approve the proposed modifications to the bar examination is required by rule 9.6. Further, this Court’s action is necessary because the last-issued order on the bar examination for the July 2022 administration provides, in pertinent part, that the General Bar Examination would be held in-person and the second day of the General Bar Examination consists of the MBE.³ (Ex. 2 [California Supreme Court Order

³ The California Bar Examination is also known as the General Bar Examination and consists of multiple-choice, essay, and performance test questions. Qualified attorney applicants may opt not to take the multiple-choice portion of the examination but must take the essay and performance test portion. In such

Concerning the July 2022 California Bar Exam, dated May 19, 2022] at p. 11.) This Court’s approval of the proposed modifications to the bar examination will enable the State Bar to utilize Kaplan as the vendor for the multiple-choice component of the General Bar Examination and Meazure Learning as the vendor to administer the bar examination remotely or in vendor-run test sites.

III. PROPOSED MODIFICATIONS TO THE BAR EXAMINATION FOR THIS COURT’S APPROVAL

As reflected in the proposed order attached to this Petition, and following the CBE’s approval, the proposed modifications for this Court’s approval to the bar examination, beginning with the February 2025 administration, are as follows:

1. The reference to the MBE on the second day of the General Bar Examination is omitted and replaced with 200 multiple-choice questions covering constitutional law, contracts, criminal law and

instances, the essay and performance test questions constitute what is known as the Attorneys’ Examination.

The MBE is a six-hour, 200-question, multiple-choice examination developed and graded by the NCBE, a private, not-for-profit corporation that designs and sells licensing tests. The State Bar has historically purchased the MBE from the NCBE and uses it as part of the General Bar Examination. The MBE covers civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts.

procedure, civil procedure, evidence, real property, and torts.

2. The reference to the administration of the California Bar Examination being in-person is omitted and replaced with an authorization to administer the examination remotely and/or in-person at vendor-run or State Bar-run test centers.

(Ex. 25 at pp. 292–296.)⁴ In addition, consistent with this Court’s prior orders on the bar examination, the proposed order specifies that the examination will be administered the last week in February and the last week in July of each calendar year.

Through this Petition, the State Bar requests that this Court approve the proposed modifications to the bar examination as set forth in the proposed order.

IV. BACKGROUND AND BASIS FOR PROPOSED MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

The bar examination tests the knowledge and abilities of those seeking admission. The requested modifications do not seek to change that fundamental purpose, but, instead, would permit the State Bar to administer the examination in more

⁴ Because the proposed modifications eliminate reference to the MBE, inclusion of the subject matters in the proposed order directs that the same subject matters in the multiple-choice questions will continue to be tested as in prior years. (See fn. 3, *ante*; Bus. & Prof. Code, § 6046.6.)

cost-effective ways that are preferred by applicants. This request is the culmination of CBE action, previous CBE and Board discussions, stakeholder and public input, vetting of vendors, and consultation with experts to ensure that the proposed changes to the bar examination do not negatively affect its integrity or security. (See Ex. 24 [CBE Staff Report for Agenda Item 1.1, dated September 30, 2024] at pp. 224–233.)

A. Increasing Costs for Administering the Examination Required the State Bar to Explore Alternative Methods of Examination Administration

When the bar examination returned to in-person administration in 2022, the State Bar faced significant increased examination administration costs, including rising facility and proctor expenses. State Bar staff began to evaluate how to reduce examination-related expenses in 2022. As part of those efforts, the State Bar requested authorization from NCBE to administer the MBE remotely, but NCBE was and continues to be unwilling to alter its position that the MBE must be administered at jurisdiction-run facilities. As such, the State Bar could not substantially reduce the examination-related expenses and correct the budget shortfall without replacing the MBE.

Examination administration expenses comprise the largest non-personnel cost in the State Bar’s Admissions Fund; the 2024 Office of Admissions’ budget reflected deficit spending of \$3.8 million, which would leave only \$3.3 million in reserves at year’s end. (Ex. 12 [Board Staff Report for Item 701, dated February 26, 2024] at pp. 109–111; Ex. 13 [Relevant Excerpts of State Bar 2024 Adopted Final Budget, dated February 28, 2024] at pp. 115–118.)

During the CBE’s June 28, 2023, meeting, following a staff presentation that explained that the Admissions Fund was facing insolvency by 2026, and that the budgetary issues were primarily attributable to examination-related expenses, including escalating testing facility and proctor costs, the CBE recommended that the Board consider a cost-reduction model whereby the MBE would be administered at a reduced number of test sites, and the essays and performance test portion of the bar examination would be administered remotely. (See Ex. 3 [CBE Staff Presentation for Agenda Item VI.E, dated June 28, 2023] at p. 15–23; Ex. 4 [CBE Open Session Minutes: June 28, 2023] at

p. 27.)⁵ On August 10, 2023, the Board approved a reduced number of testing locations for the February 2024 bar examination, with the understanding that staff would return to the Board at later date to discuss proposals for remote testing. (Ex. 5 [Board Executive Committee Staff Report for Agenda Item II.B, dated August 10, 2023] at pp. 29–37; Ex. 6 [Board Executive Committee Open Session Minutes: August 10, 2023] at p. 42].)

Concurrent with consideration of ways to reduce the cost of examination administration, the Board adopted fee increases to stabilize the Admissions Fund; effective with the February 2024 examination, application fees for non-attorneys increased 26 percent from \$677 to \$850. Attorney applicant fees increased 52.6 percent from \$983 to \$1500. (Ex. 7 [Board Staff Report for Agenda Item 701, dated September 21, 2023] at p. 53; Ex. 8 [Board Open Session Minutes: September 21–22, 2023] at p. 71;

⁵ State Bar staff also solicited public comment regarding the reduction in the number of test sites. (See Public Comment Solicitation on Proposed Changes to the Administration of the California Bar Exam, available at: <<https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2023-Public-Comment/Proposed-Changes-to-the-Administration-of-the-California-Bar-Exam>> [as of October 1, 2024].)

Ex. 20 [Board Staff Report for Agenda Item 3.2, dated September 19, 2024] at pp. 195–196; Ex. 21 [Board Resolution on September 22, 2023 Open Session Minutes, dated September 19, 2024] at p. 212.)

During the Board’s November 2023 meeting, staff presented updates to the proposed cost-reduction models and advised that a remote model for the essay and performance test portion of the examination was not feasible for July 2024. (See Ex. 9 [Board Staff Presentation for Agenda Item 702, dated November 16–17, 2023] at pp. 76–83.) Subsequently, during its January 18, 2024, meeting, the Board approved administering the July 2024 examination at a reduced number of test sites. (Ex. 10 [Board Staff Report for Agenda Item 703, dated January 18, 2024] at pp. 90–92; Ex. 11 [Board Open Session Minutes: January 18–19, 2024] at pp. 98–99.)

B. Following the CBE’s Recommendation, the Board Approved a Contract with Kaplan to Develop Examination Questions

While the reduced site option generated examination administration savings, those savings, even if annualized, are insufficient to address the structural deficit in the Admissions Fund. Reliance on the fund’s reserve balance is not sustainable in

the long term, necessitating consideration of a more significant change to examination development and delivery processes. With this imperative in mind, in January 2024, State Bar staff posted a Request for Information to identify vendors who could develop multiple-choice, essay, and performance test questions for the bar examination, which would permit remote administration of the examination. Kaplan was the sole respondent.

During its March 2024 meeting, the CBE discussed a proposal to allow the State Bar to contract with a new vendor to develop multiple-choice questions for the bar examination. (Ex. 14 [CBE Staff Report for Item III.A, dated March 15, 2024] at pp. 120–124.) The staff report noted that the NCBE requires that the MBE be administered in “jurisdiction-run facilities” and prohibits the MBE from being administered remotely or in vendor-owned test centers. (*Id.* at p. 120.) The staff report further explained that if the State Bar had its own bank of multiple-choice questions, the State Bar would be able to administer the examination in a more cost-effective manner. (*Ibid.*)

Following the March 2024 CBE meeting and with input from CBE liaisons, the State Bar held two separate stakeholder meetings with law school deans who emphasized the need to

ensure that applicants would not need to modify their preparation for the bar examination upon the transition to a new vendor, that any new questions should be psychometrically pre-tested and validated, and the need to see examples of the newly developed questions as soon as possible to ensure sufficient time to prepare students for the examination.

On April 16, 2024, the State Bar held a public stakeholder input forum to solicit feedback on the proposal to contract with a new vendor to develop examination questions. (See Ex. 15 [Stakeholder Input Forum: Bar Exam Question Development with a New Vendor: April 16, 2024] at pp. 126–131.) Consistent with post-examination survey data revealing that more than 75 percent of applicants prefer to take the bar examination remotely or in a small test center setting, applicants participating in the stakeholder sessions were generally supportive of remote and test center examination delivery.

Following the stakeholder forums, at its April 19, 2024, meeting, the CBE voted to recommend to the Board that the State Bar retain a new vendor to develop bar examination questions, including multiple-choice questions. (Ex. 17 [CBE Open Session Minutes: April 19–20, 2024] at pp. 166–167.) On

July 18, 2024, staff reported to the Board that it was continuing to negotiate with Kaplan to reach a contract on examination question development for the February 2025 bar examination. (Ex. 18 [Board Staff Report for Item 6.2, dated July 18, 2024] at p. 172.) Consistent with the CBE's recommendation, the Board authorized and delegated authority to the Board chair and executive director to execute an agreement with Kaplan to develop multiple-choice, essay, and performance test questions for the bar examination. (Ex. 19 [Board Open Session Minutes: July 18–19, 2024] at p. 190.)

On August 9, 2024, the State Bar entered into a contract with Kaplan for development of bar exam materials, including

multiple-choice questions starting with the February 2025 bar examination.⁶ (Ex. 24 at p. 259.)⁷

The CBE was advised during its August 16, 2024, meeting that the State Bar entered into a contract with Kaplan to supply multiple-choice questions for future bar examinations, beginning with the February 2025 bar examination.

As described in Section II, *ante*, on September 30, 2024, the CBE specifically approved using Kaplan-developed

⁶ For February 2025, Kaplan will only develop multiple-choice questions. (Ex. 24 at p. 259.) Among other key provisions, the contract requires Kaplan to exit the retail bar preparation business specific to the California Bar Examination by October 1, 2024, though it may continue to offer preparation services and products for bar examinations administered by other jurisdictions. And, in response to concerns raised by the law school deans, pursuant to the contact, Kaplan will develop, and the State Bar will provide, a free study guide for applicants and a free faculty guide. (Ex. 24 at p. 278.)

⁷ Portions of the agreement have been redacted pursuant to Government Code section 7929.605, which exempts from public disclosure “test questions, scoring keys, and other examination data used to administer a licensing examination,” and Government Code section 7922, which exempts records from public disclosure if “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” Disclosure of this information would reveal confidential information about the development of the California Bar Examination that, if disclosed, would compromise examination integrity and security.

multiple-choice questions on the February 2025 bar examination and on future examinations as well as seeking an order from this Court removing reference to the MBE. (Ex. 25 at pp. 293–295.) As explained in Section III, *ante*, such an order will enable the State Bar to utilize Kaplan to develop the multiple-choice questions for the bar examination.

C. The State Bar Will Engage in Quality Assurance and Content Validation of Kaplan-Developed Multiple-Choice Questions

Since entering into the agreement with Kaplan, the State Bar, in consultation with its expert psychometrician, has established a plan to ensure that the multiple-choice questions Kaplan develops will be properly vetted and prepared before the February 2025 bar examination; that process will continue through the end of the year, as further discussed below. Additionally, the State Bar plans to “field test” the Kaplan questions on November 8 and 9.⁸

⁸ On September 9, 2024, the State Bar submitted a petition to the Supreme Court that sought an order that would permit the State Bar to implement a scoring adjustment on the 2025 bar examination administrations. (Case No. S286827.) The petition described that the proposed bar examination experiment would also allow the State Bar to field test the Kaplan-developed questions in advance of the February 2025 bar examination.

Pursuant to the agreement, Kaplan will provide the State Bar with batches of questions on a rolling basis. (See Ex. 24 at pp. 259–260.) Upon receipt of a batch of questions, the State Bar will convene a content validation team comprised of psychometricians, recently licensed attorneys, individuals that supervise recently licensed attorneys, and law school faculty. (See *id.* at p. 262.) The content validation teams will review each question to ensure that the item: (1) tests for minimum competence to practice law; (2) is not biased; (3) is clear; (4) is cohesive in style with other questions; and (5) accurately tests the intended legal issue. The validation team will then recommend edits, as needed, to achieve these criteria and return them to Kaplan. Kaplan will finalize the questions and return them to the State Bar within 10 days. Consistent with Business and Professions Code section 6046.6, the new questions will not require substantial modification of the training or preparation required to pass the bar examination.

In conducting the content validation activities, the State Bar will be relying on its over four decades of experience in developing, vetting, and administering both the bar examination and the First-Year Law Students' Examination (FYLSX). The

Examinations Unit, within the Office of Admissions, manages the comprehensive process of examination development, from soliciting essay questions to overseeing the grading of both the FYLSX and bar examination. The Examinations Unit has expertise in developing questions for the FYLSX, which consists of 100 multiple-choice questions and is administered twice per year. Three of the seven subject areas tested on the multiple-choice section of the bar examination are also covered on the FYLSX—contracts, criminal law, and torts. Recently, the unit conducted a comprehensive refresh of the FYLSX multiple-choice questions, utilizing a panel of subject matter experts to ensure that the questions remain relevant and reflective of current legal standards.

The State Bar also has experience in vetting bar examination questions through its Examination Development and Grading Team. This team comprises experts with a minimum of 10 years' experience and is responsible for ensuring that all essay and performance questions undergo rigorous editing, pre-testing, and refinement before administration. This extensive expertise and attention to detail allow the State Bar to maintain high standards in assessing the competencies of both

law students and prospective attorneys, ensuring that only qualified candidates are licensed to practice law.

The proposed modifications do not seek any change to the scaled passing score for the bar examination, which is currently 1390, pursuant to this Court’s August 10, 2020, Order Concerning Modifications to the California Bar Examination. (See Ex. 1 [California Supreme Court Order Concerning Modifications to the California Bar Examination, dated August 10, 2020] at pp. 6–7.) For many years, the State Bar has anchored its grading of the bar examination to the MBE to control for variation in examination difficulty across years of examinations. This process involves adjusting the raw passing score for each examination administration and is called equating. The process of equating preserves the interpretation of what it means to pass the examination and ensures fairness across different examination administrations.

If the Court permits the State Bar to utilize non-MBE multiple-choice questions, because the examination will no longer be anchored to the MBE, the CBE will be required to set a raw passing score through a standard validation study. Importantly, this is not a change to the scaled passing score of 1390. The State

Bar's psychometrician will convene an expert panel to review the examination data following the February 2025 administration to develop a recommendation for a raw passing score that is equivalent to current expectations. Thereafter, the CBE will make a policy determination to set a raw passing score that will establish the baseline for what is considered passing performance on the examination. The raw scores will be converted in a linear transformation to maintain the scaled passing score of 1390.

D. Administering the Bar Examination Remotely or at Test Centers Is Expected to Achieve Cost Savings

With the exception of bar examinations administered during the height of the COVID-19 pandemic, the State Bar has historically contracted with various facilities to administer the bar examination in-person, consistent with the NCBE's requirement that the MBE be delivered only at in-person jurisdiction-run examination sites.

Now that the State Bar has contracted with Kaplan, if this Court issues the proposed order, the State Bar will have the flexibility to administer the examination remotely or at vendor-run test centers, which is expected to significantly reduce the bar examination-related expenditures. To realize the potential

savings, after significant research, State Bar staff identified Meazure Learning as the most suitable vendor to administer an examination remotely and/or at vendor-run test centers based on their experience, technological capability, and relative affordability.

State Bar staff considered several examination administration vendors to administer the bar examination before recommending Meazure Learning. (Ex. 24 at pp. 230–232.) Staff’s recommendation to engage Meazure Learning is grounded in their capacity and ability to deliver a high volume of complex examinations efficiently and securely.

Meazure Learning is a leading provider of online proctoring and examination administration services, with extensive experience administering high-stakes examinations for various professional licensing bodies and educational institutions.

Meazure Learning has also demonstrated the capacity and ability to deliver complex examinations efficiently and securely. Their platform offers live proctoring instead of record and review, which provides real-time supervision and reduces the need for post-examination review. Remote proctoring allows the proctors to monitor applicants through their webcam as well as being able

to view their screen. Additionally, the proctor-to-applicant ratio is significantly lower than other vendors at one proctor to four applicants. The Meazure Learning platform utilizes a proprietary secure browser that can also detect security incidents that will be reported to the State Bar.

In addition to offering a remote administration option, Meazure Learning will also provide small, in-person testing centers, and temporary pop-up centers in larger geographic areas for applicants who wish to test in-person or are unable to test remotely. Meazure Learning also has test centers across the United States and globally to ensure accessibility for candidates who prefer or require in-person testing.⁹ Via its remote and in-personal testing capabilities, Meazure Learning has confirmed its

⁹ The CBE is scheduled to take action on whether to permit applicants to take the bar examination from locations outside of California, including out-of-state and internationally at its October 11, 2024, meeting. During the COVID-19 pandemic, applicants were permitted to take the bar examination from any location but were required to take the examination during the same hours as all other applicants.

ability to deliver the bar examination to all applicants over the course of the two-day examination.¹⁰

Meazure Learning also provides applicant support in advance of the examination through the post-examination period. Applicants may take a pre-test to ensure that their equipment meets the specifications for running the Meazure Learning platform, and applicants participating in the “field test” of the Kaplan questions in November 2024 will be using the platform. In addition, Meazure Learning provides chat, phone, and email support for technical issues. The State Bar will continue to accept and process testing accommodation requests and Meazure Learning will implement the approved accommodations for all applicants.

Once staff identified Meazure Learning as a potential vendor, staff, Board, and CBE representatives tested the examination platform. Some participants identified certain

¹⁰ During the September 30, 2024, CBE meeting, State Bar staff indicated that for the July 2025 bar examination, staff anticipated that there would be two forms of the bar examination and that the examination would occur over the course of four days to accommodate all applicants; however, the State Bar will proceed with a two-day examination in July, requiring only one form of the examination.

desired enhancements with the product or test centers; Meazure Learning has worked collaboratively and promptly with State Bar staff to correct those issues.

On September 19, 2024, the Board approved a contract amount of \$4,108,500 for Meazure Learning, subject to negotiation of appropriate contractual terms and action by the CBE, to provide a test administration platform, remote and in-person proctoring, and vendor-run test centers for the 2025 bar examination administrations.¹¹ (Ex. 22 [Board Staff Report for Agenda Item 4.1, dated September 19, 2024] at pp. 214–220; Ex. 23 [Board Resolution on Approval of Specified Contracts, dated September 19, 2024] at p. 222.)

On September 30, 2024, the CBE unanimously passed a resolution to approve Meazure Learning as the vendor to provide a secure examination delivery platform, administer the examination either remotely or in-person in the proper format, provide sufficient proctoring and technical support for both remotely administered and test-centered administered

¹¹ This contract amount also includes delivery of legal specialization examinations in fall 2025.

examinations, and test centers for the February 2025 bar examination, and future bar examinations, subject to negotiation of the contract terms. (Ex. 25 at pp. 293–295.)

Since the Board and CBE approved the use of Meazure Learning, the State Bar has engaged in negotiations, which has resulted in an agreed-upon term sheet confirming that Meazure Learning: (1) has the capacity to deliver all examinations remotely through its online platform and the ability to provide in-person test center options; (2) has skilled technical support staffing; (3) will limit changes to the administration platform in advance of the examination; (4) has committed to provide adequate testing centers; (5) will employ a proctor-to-applicant ratio of no more than one proctor to every four applicants; and (6) will comply with the necessary data security requirements. (Ex. 26 [Terms Sheet Between Meazure Learning and the State Bar] at pp. 297–299.)¹²

¹² The State Bar is continuing to negotiate the terms of the Meazure Learning contract, which will set forth specific technical support terms. Meazure Learning provides support services 24-hours per day. (See Meazure Learning Online Proctoring Services and Test Center Services Support Operations available at: <<https://www.meazurelearning.com/support-operations>> [as of October 4, 2024].) Additionally, the contract will ensure that

Accordingly, following approval from this Court, the State Bar will be able to use Meazure Learning, beginning with the February 2025 examination, to administer the bar examination remotely or at Meazure Learning's sites.

V. CONCLUSION

For the foregoing reasons, the State Bar respectfully requests that the Court issue an administrative order approving the proposed modifications to the California Bar Examination, effective for the February 2025 administration of the examination, as set forth in the attached proposed order.

Dated: October 4, 2024

Respectfully submitted,

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The State Bar of California

Meazure Learning complies with industry standard data security requirements.

[PROPOSED] ADMINISTRATIVE ORDER

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

**ORDER APPROVING MODIFICATIONS TO
THE CALIFORNIA BAR EXAMINATION**

The Court is in receipt of the State Bar of California’s Renewed Request That the Supreme Court Approve Proposed Modifications to the California Bar Examination, filed on October 4, 2024. The Court, having considered the State Bar’s request, approves the modifications below beginning with the February 2025 California Bar Examination.

The General Bar Examination will be administered the last week in February and the last week in July of each calendar year remotely and/or in-person at vendor-run or State-Bar run test centers.

The first day of the General Bar Examination will be comprised of five one-hour essay questions and one 90-minute Performance Test.

The second day of the General Bar Examination will consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts.

The first day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the multiple-choice portion of the examination but may opt to do so by enrolling for and taking the full General Bar Examination

The length of each session, the order of testing, and the overall length of the examination may be modified for applicants granted certain testing accommodations.

The answers to the five essays and the Performance Test questions will be graded on the basis of 700 possible raw points—representing up to 100 raw points for each of the five essay questions and up to 200 raw points for the 90-minute Performance Test question.

During the grading process, the written and multiple-choice components will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorney Examination will have their scores scaled, and the answers to the

five essays and the Performance Test questions will be weighted at 100 percent.

The passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 points.

This order supersedes the Court's May 19, 2022, order. The Court will revise or supersede this order, as necessary, regarding this and future administrations of the General Bar Examination.

Chief Justice

S287231

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**APPENDIX OF EXHIBITS IN SUPPORT OF
RENEWED REQUEST THAT THE SUPREME COURT
APPROVE PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**

(Vol. I of I)



PREPARED BY
THE STATE BAR OF CALIFORNIA

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EXHIBIT 1

AUG 10 2020

ADMINISTRATIVE ORDER 2020-08-10

Jorge Navarrete Clerk

Deputy

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

ORDER CONCERNING MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

The changing circumstances surrounding the ongoing COVID-19 pandemic in California have severely limited the State Bar's ability to administer the General Bar Examination in the traditional mass in-person format. Accordingly, the court hereby approves the modifications to the standard schedule for the General Bar Examination below.

The General Bar Examination will be administered online as a remotely delivered exam over two consecutive days on Monday, October, 5 and Tuesday, October 6, 2020.

The first day of the General Bar Examination will consist of five one-hour essay questions with a one-hour lunch break.

The second day of the General Bar Examination will consist of a morning session during which the Multistate Bar Examination (MBE) will be administered. The MBE will be comprised of 100 multiple-choice questions, split into two 50-question sessions tested over 90 minutes each. After a lunch break, the second day will resume as an afternoon session during which a 90-minute Performance Test question will be administered.

The first day of testing and the afternoon session of the second day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the MBE, but may opt to do so by enrolling for and taking the full General Bar Examination.

The answers to the five essays and the Performance Test questions will be graded on the basis of 700 possible raw points — representing up to 100 raw points on each of the five essay questions and up to 200 raw points on the 90-minute Performance Test question.

During the grading process, the written and MBE components will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorneys' Examination will have their scores scaled, and the answers to the five essays and the Performance Test questions will be weighted at 100 percent.

Henceforth, the passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 possible points.

This order supersedes the court's March 16, 2016 order, S232907, and the court will revise or supersede this order, as necessary, for future administrations of the General Bar Examination.

CANTIL-SAKAUYE

Chief Justice



Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

August 10, 2020

SENT VIA USPS AND EMAIL

Alan K. Steinbrecher, Chair
State Bar of California, Board of Trustees
180 Howard Street
San Francisco, CA 94105
asteinbrecher@steinbrecherspan.com

RE: California Bar Exam

Dear Mr. Steinbrecher,

Since the court's July 16, 2020 announcement of the decision to lower the California Bar Exam passing score from 1440 to 1390, the court has received requests from prior examinees and various stakeholders of the California Bar Examination seeking a retroactive application of the new passing score to prior administrations of the exam. These requests have offered a variety of proposals regarding the extent of any retroactive application, ranging from the February 2020 administration of the exam to the July 2015 administration.

Having considered these requests, the court declines to apply the new passing score of 1390 retroactively to prior administrations of the exam. With one exception, the court is unaware of any jurisdiction in the past decade that has lowered the exam passing score and applied that decision retroactively.

Although the Supreme Court of Montana in 2016 made its decision to lower the passing score retroactive to 2013 examinees, that determination was designed to offset the effect of that court's 2013 decision to increase the passing score. No similar circumstances are present here.

Attached is the court's administrative order concerning the new passing score and the format of the administration of the October 5-6, 2020 exam. This order supersedes the court's prior March 16, 2016 order concerning the upcoming exam. Following the administration of the October exam, the court will issue additional administrative orders addressing future administrations of the exam.

August 10, 2020

2

The court continues to greatly appreciate the State Bar's ongoing efforts concerning these matters.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

cc: Donna Hershkowitz

EXHIBIT 2

MAY 19 2022

ADMINISTRATIVE ORDER 2022-05-18

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA^{Deputy}

EN BANC

ORDER CONCERNING THE JULY 2022
CALIFORNIA BAR EXAMINATION

The court hereby orders the schedule for the July 2022 General Bar Examination as set out below.

The General Bar Examination will be administered in-person over two consecutive days on Tuesday, July 26 and Wednesday, July 27, 2022, subject to any restrictions that may be imposed by any state or local public health order in effect on those dates.

The first day of the General Bar Examination will be comprised of five one-hour essay questions and one 90-minute performance test.

The second day of the General Bar Examination will consist of the Multistate Bar Examination (MBE).

The first day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the MBE but may opt to do so by enrolling for and taking the full General Bar Examination.

The length of each session, the order of testing, and the overall length of the exam may be modified for applicants granted certain testing accommodations.

The answers to the five essays and the Performance Test questions will be graded on the basis of 700 possible raw points — representing up to 100 raw points for each of the five essay questions and up to 200 raw points for the 90-minute Performance Test question.

During the grading process, the written and MBE components will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorneys' Examination will have their scores scaled, and the answers to the five essays and the Performance Test questions will be weighted at 100 percent.

The passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 possible points.

This order supersedes the court's October 20, 2021 order. The court will revise or supersede this order, as necessary, regarding this and future administrations of the General Bar Examination.

CANTIL-SAKAUYE

Chief Justice

EXHIBIT 3



The State Bar of California

Cost Reduction Models



Committee of Bar Examiners, June 28, 2023

Cost Reduction Models Considerations

- Bar Exam: single largest expenditure outside of personnel costs
- Ripe for examination of more efficient ways to deliver
- Consideration of impact on applicants with testing accommodations
- Results of surveys and data related to administration of remote exams

Key Opportunities for Changes to Exam Administration



Consolidate administration into fewer sites



Essays and PT delivered remotely



Use of State Bar offices for testing accommodations applicants

Cost Assumptions

Facilities and Proctors

Increases to Facility Costs & Proctors

Applicant Numbers

Forecasted Applicant Pool Based on Trends

Included Direct Costs

ExamSoft Licenses, Other Exam-Related Expenses (water, AV), Staff Travel

Indirect Costs Excluded

Staff Time, State Bar Office Use, Grading-Related Expenses

Reduction Models

No Change "As Is"

All Components Administered In-person

Multiple Test Sites Across the State

\$5,618,700

Six Sites

All Components Administered In-person

Six Test Sites: 3 TA & 3 Standard Sites

No sites in Sacramento, Oakland, or San Diego

Est cost: \$4,763,200

Est annual savings: \$855,500

Six Sites With One Remote Day

MBE Administered In-person / Essays & PT Administered Remotely

Six Test Sites: 3 TA & 3 Standard Sites

No sites in Sacramento, Oakland, or San Diego

Est cost: \$3,787,000

Est annual savings: \$1,500,000

Four Sites With 1 Remote Day

MBE Administered In-person & Essays & PT Administered Remotely

Four Test Sites: 3 Standard Sites & 1 TA Site, **SB Offices Used for TA**

No sites in Sacramento, Oakland, or San Diego

Est cost: \$3,692,100

Est annual savings: \$1,800,000

Rough Order of Magnitude Cost Estimates

	As Is 2024	6 Sites (no SB office)	6 sites & 1 day remote (no SB office)	4 sites & 1 day remote (w/SB office)
Proctor Costs	2,271,550.00	2,271,550.00	1,222,000.00	1,222,000.00
Staff Travel	135,000.00	135,000.00	135,000.00	135,000.00
ExamSoft License	503,500.00	503,500.00	1,203,100.00	1,203,100.00
Facilities	1,575,110.00	803,500.00	1,027,400.00	812,000.00
Other Exam Expenses	1,134,020.00	1,050,000.00	531,600.00	446,100.00
	5,619,180.00	4,763,550.00	4,119,100.00	3,818,200.00
Difference	NA	(855,630.00)	(1,500,080.00)	(1,800,980.00)



Three Supersites



Cow Palace

San Francisco



Ontario Convention
Center

Ontario



Los Angeles
Convention Center

Los Angeles

Three Testing Accommodation Sites



Hilton Arden West

Sacramento



Hilton Culver City

Culver City



DoubleTree Orange

Orange

Potential Exam Schedule for One-Day Remote

Day 1 of Testing

- **Wednesday: MBE Day**
- **Last Week of Feb/ July**
- **Standard Applicants**
- **TA Extended Time Wednesday Through Friday**

Day 2 of Testing

- **Monday: Essays & PT**
- **First Week of Mar/Aug**
- **Standard Applicants**
- **TA Extended Time Monday Through Wednesday**

evaluation of other schedule options still ongoing





Motion

MOVE that the Committee of Bar Examiners recommends, based on the information available, that the Board of Trustees consider cost reduction model [INSERT].

Questions?



EXHIBIT 4



The State Bar of California

Committee of Bar Examiners Teleconference

Open Session Minutes
Friday, June 28, 2023
12:03 p.m. – 1:26 p.m.

Time Meeting Commenced: The Committee of Bar Examiners meeting commenced in open session at 12:03 p.m.

Time Meeting Adjourned: 1:26 p.m.

Chair: Paul A. Kramer

Committee Coordinator: Devan McFarland

Members Present: James A. Bolton, Ph.D., Michael Cao, M.D, Alex H. Chan, James Efting, Kareem Gongora, Dolores Heisinger, Larry Kaplan, Paul A. Kramer, Alexander C. Lawrence, Jr., Esther P. Lin, Ashley Silva-Guzman, Vincent Reyes, David A. Torres

Members Absent: Robert S. Brody and Bethany J. Peak

State Bar Executive Staff Present: Donna Hershkowitz

OPEN SESSION

Call to Order

The Committee of Bar Examiners was called to order by Chair Kramer.

I. Chair's Time

A. Roll Call

Roll call was taken and a quorum was established.

Call for Public Comment

Chair Kramer 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. Ray Hayden

Ray Hayden provided public comment on their proposed revisions to the California Bar Examination. Their proposed revisions would create a cost-effective bar examination, assure better public of the public, and guarantee a balanced and diverse representation of California attorneys.

2. Benjamin Kohn

Benjamin Kohn provided public comment on the Testing Accommodation Rules Revision and agrees with the option to add State Bar offices as test sites for Testing Accommodation applicants. However, Benjamin Kohn commented that using the State Bar Southern California and Northern California office locations would be disproportionate compared to regular test sites that are offered statewide.

II. Operations and Management

A. Discussion and Action on California Bar Exam Cost Reduction Models Beginning with the February 2024 Exam

RESOLVED, that the Committee of Bar Examiners recommends, based on the information available, that the Board of Trustees consider cost reduction model #4 – administering the bar exam at four sites with one remote day.

Moved by David A. Torres, seconded by Larry Kaplan

Ayes – (8) James A. Bolton, Ph.D., Michael Cao, M.D, James Efting, Dolores Heisinger, Alexander C. Lawrence, Jr., Esther Lin, Vincent Reyes, David A. Torres

Noes – (4) Alex H. Chan, Kareem Gongora, Ashley Silva-Guzman, Paul A. Kramer

Abstain – (0)

Recuse- (0)

Absent – (3) Robert S. Brody, Larry Kaplan, Bethany Peak

Motion carries.

CLOSED SESSION

NONE

ADJOURN

EXHIBIT 5



The State Bar of California

OPEN SESSION AGENDA ITEM AUGUST 2023 BOARD EXECUTIVE COMMITTEE II.B

DATE: August 10, 2023

TO: Members, Board Executive Committee

FROM: Donna S. Hershkowitz, Chief of Programs & Legislative Director
Audrey Ching, Program Director III, Office of Admissions
Amy Nuñez, Program Director I, Office of Admissions

SUBJECT: Approval of February 2024 Bar Exam Testing Locations; Approval of Related Contracts Pursuant to Business and Professions Code Section 6008.6

EXECUTIVE SUMMARY

The Admissions Fund currently has a structural deficit and is not sufficiently solvent to support operations in 2024. Staff are proposing a combination of fee increases and cost reductions to balance out the revenue and expenditures. The proposed fee increases, options for which have been reviewed by the Board at two prior meetings, will be presented to the Board in final form in September. Although these increases will address the structural deficit in the Admissions Fund in significant part, a \$1 million shortfall will remain. This agenda item recommends that the Board authorize staff to reduce the number of testing locations for the February 2024 bar exam as a deficit mitigation measure. Staff anticipate returning to the Board in early 2024 with a proposal that will include remote administration of part of the July 2024 exam, further reducing expenses and balancing the Admissions Fund on a go-forward basis. This agenda item also recommends that the Board approve proceeding with the contracts for the recommended test sites.

BACKGROUND

The cost of all expenses for Admissions' operations, including all of the programs and services and the Admissions staff, is paid from the Admissions Fund. The money in the Admissions Fund comes from the fees charged by the Office of Admissions to applicants for its programs and services. The Admissions Fund is not supported by the State Bar General Fund, nor is supported by the State General Fund. Over the last five years Admissions revenue has generally been

decreasing (with a high of \$23.5 million in 2018); at the same time, expenditures have been increasing (to a high of \$24.6 million in 2022).

The Admissions Fund currently operates at a structural deficit. The 2023 Admissions Fund budget projected \$17.5 million in revenue and \$24.5 million in expenses, resulting in a deficit of \$7.0 million. At the end of 2023 the projected fund balance is anticipated to be \$4.0 million; the fund is not sufficiently solvent to support operations in 2024. Drivers for the current budget deficit include the following: escalating facility, proctor, and software costs; increases in approved requests for testing accommodations; reductions in the overall number of applicants for various admissions programs; cost-of-living adjustments and merit increases for Admissions staff which are funded out of the Admissions Fund; the failure to increase fees since 2016 or earlier for many admissions programs and services. The Admissions Fund had a healthy fund balance for several years, which it used for one-time costs such as the development and deployment of the Admissions Information Management System (AIMS) in 2018 and 2019 and a liberal refund policy for the bar exam during the pandemic. Ongoing costs have been covered by the fund balance for 2022 and 2023.

A proposal to increase fees for admissions programs and services has been presented to the Board, with the final proposal to be brought in September 2023 for Board action. Despite the significant fee increases proposed, if adopted the Admissions Fund would continue to have a deficit of more than \$1 million.

Administration of the bar exam program supported by the Office of Admissions, at a cost of \$14.5 million, including the proportionate costs for staff, is the highest cost program operated by the Office of Admissions. This fact alone suggested administration of the bar exam was the most sensible place to identify cost savings.

On June 28, 2023, staff presented the Committee of Bar Examiners (CBE) with four different models for consideration:

- As is: This model reflects what would occur absent any changes, that is, contracting 10–12 sites for the February exam; 14–16 contracted sites for the July exam; all components of the exam to be administered in-person.
- 6 sites: This model relies on the use of three contracted “super sites” for applicants with and without testing accommodations, and three small sites limited to those with testing accommodations who would be testing in private or nearly private rooms. All components of the exam to be administered in-person.
- One remote day at six contracted sites: Under this model, the essays and performance test would be administered remotely; the multiple-choice exam would need to continue in-person.
- One remote day at four contracted sites and two State Bar offices: Under this model, the essays and performance test would be administered remotely, the multiple-choice exam would need to continue in-person.

Following the CBE’s adoption of the model with one remote day and the use of State Bar offices, staff determined that additional time would be needed to consider the best methods

for implementing the remote modality on applicants with testing accommodations. Staff thus put out for public comment a fully in-person model using four contracted sites and the two State Bar offices. The public comment period closed on July 31, 2023; 679 public comments were received. The public comment is highlighted in the discussion section, below.

On July 20, 2023, staff presented a further revised model to the Board, one which replaced the State Bar's San Francisco office as a testing accommodations site with a contracted facility. The change was in response to a variety of uncertainties due to the planned sale of the State Bar's San Francisco building.

DISCUSSION

At the July Board meeting, staff presented a discussion item related to admissions service fee increases and bar exam administration cost reduction options. Trustees raised the following questions during that discussion; several of those that relate more specifically to the fee increase proposal will be answered in the agenda item on that matter presented in September.

- Are there advances in technology that we can explore to reduce proctoring costs and/or can we eliminate the Multistate Bar Exam (MBE) to eliminate in-person proctors?
 - At this time the State Bar is not able to eliminate the MBE. The MBE is critical to the scaling component of bar exam grading; simply eliminating this component of the exam will jeopardize the integrity of the entire grading process.

At its May Board meeting, the Board directed staff to transmit to the Supreme Court the recommendations of the Blue Ribbon Commission on the Future of the Exam. These recommendations included adoption of a California-specific exam, which would eliminate the use of the MBE and give the State Bar greater flexibility in the future to transition the exam to fully remote administration. The remote delivery of the exam that occurred during the height of the pandemic (October 2020, February 2021, and July 2021) recorded applicants remotely and used a combination of AI and live proctor review to determine if there were suspicious conduct. The costs of remote exam administration are significantly less than the in-person alternative.

- In light of the significant use of remote work in state government, is there a possibility to use state office buildings for administering the bar exam?
 - Yes.

The Judicial Council of California has agreed to allow us to use space at no cost in both the Milton Marks Conference Center in the lower level of the Judicial Council's San Francisco building and the Judicial Council Conference Center on the second floor of the same building.

The Department of General Services indicated they would review their facilities to see what they might have available. We expect to hear from them shortly. We do not anticipate, however, that there would be any site large enough to fully replace the contracted sites in the “as is” model,” and the State Bar does not have the staffing resources in Admissions to handle a larger number of sites (than the typical 10–16) across the state.

- Can we administer the exam more than twice per year, rotating locations?
 - No, not at this time.

The MBE is only given twice a year in February and July. The State Bar is limited to biannual testing until an alternative to the MBE is developed. Additionally, statutory change would be required to increase testing frequency.

- Why does the fee proposal include reductions in the fee for Registered Military Spouse Attorneys and Registered Legal Aid Attorneys?
 - To be addressed in the September Board agenda item.
- To what extent did law school tuition increase from 2016 to 2022 (for ABA, California accredited, and unaccredited law schools); to what extent did tuition at the UCs and CSU increase for the same period?
 - To be addressed in the September Board agenda item.
- Explore “tiered pricing” for the fee increases for the annual reports for the California accredited law schools.
 - To be addressed in the September Board agenda item.
- Compare the proposed fee amounts with the amounts assessed in other states.
 - To be addressed in the September Board agenda item.
- Can we provide a reduced cost by “bundling” several of the fees for those who are subject to multiple fees?
 - To be addressed in the September Board agenda item.
- Compare the cost of fees paid by law students up through and including sitting for the bar exam versus fees paid to the State Bar after becoming licensed.
 - To be addressed in the September Board agenda item.

CURRENT PROPOSAL

Following the identification of the Judicial Council building as a site for approximately 125 applicants with testing accommodations, staff revised the proposal that had been presented to the Board at its July meeting. The addition of the Judicial Council site allowed us to eliminate a high-cost hotel in the San Francisco Bay Area. However, to accommodate individuals who will need to test in private or nearly private rooms, staff now proposes to add back a testing

accommodations site in Sacramento for 45 applicants. The tables below set forth the current proposal for test sites for the February Exam, with a comparison to the “as is” model and the total projected costs for each model.¹

Table 1. Test Sites

“As Is” Model: Standard Test Sites	Contract Amount*	Staff Proposal: Standard Test Sites	Contract Amount*
Ontario Convention Center	\$127,750**	Ontario Convention Center	\$127,750**
Pasadena Convention Center	\$86,500	Pasadena Convention Center	\$86,500
Town & Country Resort (San Diego)	\$115,600		
Oakland Convention Center	\$135,250	Cow Palace (Daly City)	\$129,000**
@The Grounds (Sacramento)	\$111,600		
“As Is” Model: Testing Accommodation Sites	Contract Amount	Staff Proposal: Testing Accommodation Sites	Contract Amount
Sheraton Gateway LAX	\$178,500	State Bar LA Office	
Doubletree Orange	\$167,000	Doubletree Orange	\$167,000
Crowne Plaza Burlingame	\$138,700	Judicial Council (Downtown SF) Cow Palace	See above
Hilton Arden West	\$84,750	Hilton Arden West	\$84,750
Sheraton Mission Valley (San Diego)	\$91,500		
		Ontario Convention Center	See above
Total	\$1,237,150		\$595,000

* Contract amount includes the costs for meeting rooms or hotel rooms for testing, sleeping rooms and parking for State Bar staff, proctor parking, rental of tables and chairs, A/V, electrical, and water for applicants.

**The contract amount listed includes the cost for standard space and testing accommodation space.

¹ Although the cost for the two standard test sites included in both models are the same, the staff proposal increases the seating capacity at those sites by a combined 1,274 seats.

Table 2. Exam Costs

	As is Model for Feb 2024	Recommended Model for Feb 2024
Proctor Costs	\$816,000	\$816,000
Staff Travel*	\$9,000	\$9,000
ExamSoft License	\$179,000	\$179,000
Facilities and Facility-Related Expenses	\$1,237,150	\$595,000
MBE Books and Scoring	\$256,600	\$256,600
Other Expenses**	\$153,000	\$150,000
Total Cost	\$2,650,600	\$2,005,600
Savings		\$645,000

* The costs of sleeping rooms and parking at the test locations are included in facility related expenses; this staff travel line is limited to meals, mileage, and flights.

** Other expenses include exam administration items not covered by the contracts with facilities, including off-duty security officers, computers, phones, printing of materials, and delivery of materials to test sites.

PUBLIC COMMENT

The proposal for reduced exam testing locations was circulated to nearly 17,000 individuals for a period just short of 30 days. Those individuals are comprised of those who have signed up to receive updates and related to the committee and was sent to exam applicants contained in AIMS who were scheduled to take the July 2023 bar exam or had taken a previous exam but had not passed and therefore might repeat. An email was also sent to all California law school deans and was included in the weekly emails sent to applicants for the July 2023 bar exam in the weeks leading up to the exam.

Six hundred seventy-nine comments were received, 58 percent (394) from attorneys, 35 percent (236) from law student and others currently studying to take the bar, 4 percent (28) law school administrators, and 6.3 percent (43) who didn't identify as any of those.² Eighty-three percent (566) of commenters disagreed with the proposal; 5.7 percent (39) agreed; 9.6 percent (65) agreed if the proposal is modified; and 1.3 percent (9) did not state a position. Those who agreed or agreed if the proposal were modified were roughly evenly split between attorneys and those studying to take the bar exam. The public comments are accessible [here](#).

Many commenters expressed their strenuous disagreement with the proposal. Key themes from the comments include:

² Numbers exceed 100 percent as all but 6 of those identifying themselves as law school administrators also identified either as a bar applicant or an attorney.

- This proposal shifts costs from the State Bar to bar applicants who are not in a position to afford the added financial burdens of travel costs, hotel accommodations, eating out, etc. This is especially true in light of the increase in admissions fees.
- The cost doesn't pencil out. The savings for the State Bar is estimated by commenters at \$150 per applicant, but the cost for applicants who no longer have a venue in their area is significantly higher than that.
- Applicants have childcare and other needs that they will have to figure out how to address if they must travel to a further away location to take the exam which requires them to spend the night (causing additional financial burdens and anxiety).
- The larger venues will increase anxiety and stress during the exam, will create long lines for restrooms taking time away from the exam, and will require more time to get the exam started and to dismiss all the applicants at the end of the day.
- Eliminating sites, requiring travel, staying in hotels due to distance from home, and the added expenses will have a particular impact on people of color, people of lower socioeconomic status, and people with disabilities. While the State Bar says that it is committed to increasing diversity, equity, and inclusion, this proposal goes in the opposite direction.
- San Diego one of the largest cities in California, and in the nation; it has three law schools; it has a thriving attorney population. This proposal makes every person who would have tested in San Diego travel out of county and incur the additional time and costs of testing in a distant location.
- The proposal disadvantages those from any area other than Los Angeles or San Francisco. Applicants from Los Angeles or San Francisco do not have to travel, can stay in their homes, do not have the extra stress and cost of finding hotel accommodations, finding food away from home, finding childcare or adult care, etc. Other applicants have this added cost and stress, making it harder for them to succeed on the exam vis-à-vis applicants from Los Angeles or San Francisco.

The issue most frequently raised by commenters related to the elimination of San Diego as a test location, with 40 percent (273) of the commenters urging the Board to retain San Diego as a test site. Many of these comments also included other themes noted above, such as the financial burdens, stress, and disparate impact on those from disadvantaged communities. Fifteen percent (100) of the commenters focused on the financial burden that applicants would face. Five percent of commenters (37) focused their comments on support or opposition to the anticipated adoption of a partially remote exam.

Staff do not relish the elimination of any exam site and are sympathetic to all of the issues raised by the commenters. This proposal does shift costs from the State Bar to applicants. The proposal was made to address the very real budget difficulties faced by the Office of Admissions. The Office of Admissions is committed to identifying other efficiencies to reduce costs, but at this time, staff believe this proposal is necessary to address the budget situation. In response to the comments regarding San Diego, specifically, staff notes that the cost of the two San Diego sites is over \$200,000. Additionally, due to the use of larger sites, more staff will need to be deployed to each of the larger sites, resulting in the seven recommended sites being

the maximum we believe we can staff at this time. If the Board were to desire adding the San Diego sites back in, we would need to return to the “as is” model and forego any cost savings for the February 2024 exam.

APPROVAL OF CONTRACTS

Pursuant to Business and Professions Code section 6008.6, the Board is required to approve all contracts for goods, services, or both in an aggregate amount more than \$50,000 (or \$100,000 for contracts related to information technology goods and services). The contracts listed in Table 2, above, are more than \$50,000 and have met the standards established by article 4 of the Public Contract Code, as implemented through the State Bar’s Procurement Policy. The State Bar has delayed entering into contracts for the February bar exam while the decision as to the bar exam sites was pending. Board approval is required to execute the contracts. Whether the Board elects the staff recommendation, the “as is” model, or another approach, approval of contracts at this time is essential. Previously identified sites have been lost or costs increased as the more time passes. These recurring services are part of core business operations and will be included in the 2024 budget.

FISCAL/PERSONNEL IMPACT

The costs for the February Bar Exam under the “as is” model are \$2,650,600. Anticipated savings of \$645,000 will be realized if the staff recommendation to reduce the number of test sites is adopted. Staff will revisit the fee proposal to determine whether changes should be made in light of the projected costs of administering the February Bar Exam under the model adopted by the Board. Any revisions to the fee proposal will be presented to the Board in September 2023.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board Executive Committee approves the staff proposal set forth in Table 1, above; and it is

FURTHER RESOLVED, that the Board Executive Committee approves execution of the contracts listed in Table 1 to implement the staff proposal.

In the alternative, should the Board Executive Committee determine that the “as is” model should be adopted for the February Bar exam, passage of the following resolution is recommended:

RESOLVED, that the Board Executive Committee approves the “as is” model set forth in Table 1, above; and it is

FURTHER RESOLVED, that the Board Executive Committee approves execution of the contracts listed in Table 1 to implement the “as is” model.

ATTACHMENT LIST

None

EXHIBIT 6



The State Bar of California

Special Meeting of the Board Executive Committee Teleconference

Open Session Minutes
Thursday, August 10, 2023
11:32 a.m.–1:46 p.m.

Time meeting Commenced: The special meeting of the Board Executive Committee commenced in open session at 11:32 a.m. The committee moved into closed session at 11:57 a.m. The committee returned to open session at 12:15 p.m.

Time meeting Adjourned: 12:15 p.m.

Chair: Ruben Duran

Board Secretary: Louisa Ayrapetyan

Members Present: Hailyn Chen (joined late), José Cisneros, Ruben Duran, Gregory Knoll, Mark Toney, Genaro Trejo

Members Absent: Arnold Sowell Jr., Brandon Stallings

Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Duran. Roll call was taken and a quorum was established.

CALL FOR PUBLIC COMMENT

Chair Duran 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. Benjamin Kohn:
Benjamin Kohn addressed the Board regarding testing accommodation requests. Kohn stated that applicants should receive an accommodation that matches their need, such as remote proctoring with enhanced security instead of in-person proctoring or allowing food and medication during testing. Furthermore, Kohn mentioned that they submitted a public records request and hoped that there would be no exemptions claimed, unlike with previous requests.
2. Claire Solot:
Claire Solot reiterated their and the Legal Services Funders Network's (LSFN) concerns regarding bar exam proposals made in July 2023. Solot stated that the LSFN provided a three year plan that would improve the State Bar's fiscal health. Solot suggested that the committee take an approach that would allow for more data collection to help replace the multistate bar exam (MBE), increase fees over multiple years, and use money from the sale of State Bar's San

Francisco office to account for budget shortfalls. Solot stated that the State Bar's current approach shifts costs to examinees. Solot urged the committee to vote for the as-is model.¹

3. Ray Hayden:

Ray Hayden advocated for their admissions process that they argue would ensure greater public protection and greater competency for new lawyers at a lower price. Hayden's proposal is for half the exam to be remote and half in person (for the MBE section). Hayden stated that the MBE portion had been ruled invalid by multiple parties, which in turn makes the California bar exam invalid. Also, they mentioned that cost and uncertainty of travel poses a problem for out of state and remote test takers.

4. Shirleen Claiche:

Shirleen Claiche began by stating it is unfair to have applicants already approved for accommodations provide additional documentation for each new testing cycle. Claiche claims this would disproportionately affect those with the most severe disabilities. They also asked the committee to be mindful of public comment deadlines, as it was difficult for test takers to provide comments on a short turn around. Claiche stated the deadlines were suspicious. Their third comment was that it is unfair and discriminatory to require disabled applicants travel to take the bar exam, given its physical and financial costs. Claiche's final comment was to advocate for the usage of public institutions to host the bar exam to reduce costs.

5. Reann Pacheco (LAAC):

Reann Pacheco, speaking on behalf of the Legal Aid Association California, spoke in opposition to the recommendation to increase fees and reduce the number of bar exam sites. Pacheco claims this would disproportionately affect low-income graduates, rural communities, and those interested in public interest law. Reduction of sites would increase the financial and stress burden.

6. Todd Hill:

Todd Hill stated that they were been unable to receive an accurate transcript from the People's College of Law. Hill claimed that the State Bar has issues with following administrative procedures and as such filed a federal case: 2:23-CV-01298-JLS-PDX. Hill claims that they have attempted to work with the State Bar but that conflicts and a failure to follow policies has complicated that process. The lack of transcript is delaying a transfer to another school.

7. John McKee:

John McKee, the assistant dean for career and professional development at California Western School of Law, began by agreeing with Shirleen Claiche and reiterated that the removal of San Diego as a testing option would be unfair to disadvantaged and rural law graduates. McKee claims it is a diversity, equity, and inclusion issue to require that students travel to two metropolitan areas. They believe this would put extra burden on recent graduates.

¹ Chair Duran countered Solot's assertion that the State Bar had sold the San Francisco office.

Chair Duran stated that pursuant to Government Code section 11126(c)(7), 11126(a)(1), 11126(c)(2), and 11126(e)(2)(B)(i): 1 case, the Board Executive Committee will move to closed session to consider the item listed on the closed session agenda.

CLOSED SESSION

I. BUSINESS

A. Discussion Regarding Sale Price and Terms and Leasing Price and Terms for 180 Howard Street, San Francisco

**Closed pursuant to Government Code § 11126(c)(7).*

II. Discussion Regarding Audit of Closed Office of Chief Trial Counsel Files

**Closed pursuant to Government Code §§ 11126(a)(1) and 11126(c)(2).*

III. Conference with Legal Counsel – Anticipated Litigation

**Closed due to significant exposure to litigation pursuant to Government Code § 11126(e)(2)(B)(i): 1 case*

OPEN SESSION

The committee returned to open session and reported that there is no action to report from closed session.

I. CONSENT

A. Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6

RESOLVED, that the Board Executive Committee approves execution of the contracts listed 2–5 herein.

Moved by Toney, seconded by Cisneros

Ayes – (6) Chen, Cisneros, Knoll, Toney, Trejo, Duran

Noes – (0)

Abstain – (0)

Absent – (2) Sowell, Stallings

Motion carries.

II. BUSINESS

A. Approval of 2023 General Fund Budget Amendment

Presenter: Aracely Montoya-Chico, Chief Financial Officer

RESOLVED, that the Board Executive Committee, upon recommendation of the Finance Committee, approve the 2023 Proposed Budget Amendment, including the adjustment in the

budgeted vacancy rate from 15 percent to 8 percent, in the form presented this day, for the period ended August 31, 2023; and it is

FURTHER RESOLVED, that the Board Executive Committee, upon recommendation of the Finance Committee, as part of the 2023 recommended budget amendments, amend its legislative priorities to include provisions allowing the State Bar to use excess Client Security Fund and Lawyer Assistance Program reserves to support General Fund operations and authorizes staff to pursue all other options for addressing the projected budget deficit arising from the 2023 budget amendments.

Moved by Cisneros, seconded by Toney

Ayes – (6) Chen, Cisneros, Knoll, Toney, Trejo, Duran

Noes – (0)

Abstain – (0)

Absent – (2) Sowell, Stallings

Motion carries.

B. Approval of February 2024 Bar Exam Testing Locations; Approval of Related Contracts Pursuant to Business and Professions Code Section 6008.6

Presenters: Donna Hershkowitz, Chief of Programs & Legislative Director
Amy Nuñez, Program Director I, Office of Admissions

RESOLVED, that the Board Executive Committee approves the staff proposal set forth in Table 1 above, for February 2024, with the direction that the staff explore the possibility of contracting for a site in San Diego, instead of Ontario, if appropriate site is available; delegates authority to the Executive Director and Chair of Board of Trustees, to approve a contract for a San Diego location, if such appropriate site is identified.

Moved by Knoll, seconded by Toney

Ayes – (5) Chen, Cisneros, Knoll, Toney, Trejo

Noes – (1) Duran

Abstain – (0)

Absent – (2) Sowell, Stallings

Motion carries.

ADJOURN

EXHIBIT 7



The State Bar of California

OPEN SESSION AGENDA ITEM 701 SEPTEMBER 2023

DATE: September 21, 2023

TO: Members, Board of Trustees

FROM: Donna S. Hershkowitz, Chief of Programs/Legislative Director
Aracely Montoya-Chico, Chief Financial Officer

SUBJECT: Approval of 2024 Admissions Fee Increases and Fee Setting Policy; Update on February 2024 Bar Exam Locations; Discussion of July 2024 Bar Exam Administration

EXECUTIVE SUMMARY

The Admissions Fund currently has a structural deficit and is not sufficiently solvent to support operations in 2024 and beyond. Staff proposes a combination of fee increases and cost reductions to balance out revenue and expenditures going forward and begin to build back a reserve. On August 10, 2023, the Board Executive Committee approved cost reductions by reducing sites for the February 2024 Bar Exam. This agenda item requests Board approval of the proposed fee increases related to exams and the study of law, special admissions programs, and fees charged to law schools which are estimated to produce an additional \$7.9 million in revenue annually. This agenda item also recommends that the Board adopt a policy that would result in more frequent review of Admissions fees and increases based on the Consumer Price Index in intervening years. Staff is currently evaluating the feasibility of further changes to the bar exam administration, and related cost savings, beginning with the July 2024 exam; staff anticipates returning to the Board in November 2023, or January 2024, to seek Board direction following completion of that exploration.

BACKGROUND

The cost of all expenses for Admissions' operations is paid from the Admissions Fund. The money in the Admissions Fund comes from the fees charged by the Office of Admissions to applicants for its programs and services. The Admissions Fund is not supported by the State Bar General Fund or the State General Fund. Over the last five years Admissions revenue has generally been decreasing; at the same time, expenditures have been increasing.

The Admissions Fund currently operates at a structural deficit. Current projections are that 2023 revenue will be approximately \$19.5 million (up \$2 million from budgeted projections) and expenditures approximately \$25.5 million, on target with budgeted expenditures. If the revenue and expenditure figures hold, at the end of 2023 the projected fund balance is estimated to be approximately \$6 million. Projected 2024 revenue totals \$17.5 million and expenditures \$25.9 million. The result in 2024, absent action to increase revenue and decrease expenditures, is a deficit of \$8.4 million—more than the funds available in the reserve. Drivers for the current budget deficit include the following: escalating facility, proctor, and software costs; increases in costs related to approved requests for testing accommodations; reductions in the overall number of applicants for various admissions programs; cost-of-living adjustments and merit increases for Admissions staff; and the failure to increase fees since 2016 or earlier for many admissions programs and services. The Admissions Fund had a healthy fund balance for several years, which it used for one-time costs such as the development and deployment of the Admissions Information Management System (AIMS) in 2018 and 2019 and a liberal refund policy for the bar exam during the pandemic. Ongoing costs have been covered by the fund balance for 2022 and 2023.

In May 2022, staff presented (for discussion only) a comprehensive proposal to increase admissions service fees. In January 2023, [staff highlighted](#) the condition of the Admissions Fund to both the Finance Committee and the Board. The expenses for each program were reevaluated, using the 2023 adopted budget and actual program activity recorded for 2022, to determine new break-even points. An updated analysis was presented to the Committee of Bar Examiners (CBE) at their January and March 2023 meetings in addition to the Committee of State Bar Accredited and Registered Schools in April 2023. In mid-April staff circulated a proposal for public comment, incorporating the feedback received from these subentities and the earlier input from the Finance Committee and the Board. On May 9, 2023, staff presented an [analysis](#) to the Finance Committee, followed by a [Board agenda item](#) 10 days later, describing each Admissions fee in detail and outlining the two options for increasing the fees: Option 1, referred to as the “break-even” option, proposed fee increases designed to cover the cost of expected expenditures; and Option 2 proposed more modest increases for fees affecting students and nonattorneys. Option 2 resulted in a continued projected operating deficit of \$4.5 million. Staff presented key themes from the public comments that were analyzed in advance of the Board meeting.¹ After discussion of the fund condition and the fee increases proposed, the Board directed staff to develop a third option to get closer to break-even than Option 2, but to make some reductions to the Option 1 proposals where the Option 1 increase would be especially significant.

In July 2023, staff circulated a revised proposal for public comment based on the direction from the Board. That is the proposal being presented today in this agenda item. Themes from both public comment opportunities are highlighted in the discussion section below.

¹ The public comment period closed the week of the Board meeting, so the last 200 comments or so were not reviewed in advance of the meeting.

DISCUSSION

Following the direction of the Board at the May Board meeting, staff revised the Admissions fee increase proposal to carry out the direction of adhering to the “break-even” proposal except where the increase proposed was particularly steep. The revised proposal, also reflecting the original options for comparison, is included as Attachment A.

At the July Board meeting, staff presented a discussion item related to bar exam administration cost reduction measures and pending Admissions fee increases. Trustees posed several questions regarding fee increases, and directed staff to provide responses to those questions when the fee increase proposal was brought forward for Board action. The questions and answers are provided below:

- Why does the fee proposal include reductions in the fee for Registered Military Spouse Attorneys (RMSAs) and Registered Legal Aid Attorneys (RLAAs)?
 - Goal 2 of the State Bar Strategic Plan is to “increase access to the legal system though improved access to legal advice and legal services.” One of the implementation steps to move the needle on that goal is to increase the number of attorneys admitted through special admissions programs. Operational plan activities to accomplish that include identifying factors contributing to the low number of RLAAs, conducting an outreach and education campaign to increase awareness of the RLAA and RMSA programs, and revising rules to eliminate unnecessary hurdles for all special admissions programs. Lowering fees for the RLAA and RMSA programs is consistent with those goals/steps. Furthermore, the number of RMSAs and RLAAs is quite small. With 7 and 46 participants respectively, increasing the fees to the same level as other special admissions fees will do little to help the Admissions budget.
- Explore “tiered pricing” for the fee increases for the annual reports for the California accredited law schools.
 - See Attachment B, setting forth three options for how to structure a tiered approach to annual report fees. Having considered several ways to create tiered costs based on the school’s enrollment numbers, staff is recommending that the Board select one of these options in lieu of the fee set forth in Attachment A.
- Compare the proposed fee amounts with the amounts assessed in other states.
 - See [Attachment C](#).
- To what extent did law school tuition increase from 2016 to 2022 (for ABA, California accredited (CALs), and unaccredited law schools); to what extent did tuition at the UCs and CSUs increase for the same period?
 - See Attachment D.
- Can we provide a reduced cost by “bundling” several of the fees for those who are subject to multiple fees?

- The vast majority of applicants for admission are subject to multiple fees. As such, it is not clear how a bundling approach would work. Further, the fee increase model was not developed with such a structure in mind, and if discounts were provided to some types of bundles, additional increases would be required for others, benefiting neither applicants nor the State Bar.
- Compare the cost of fees paid by law students up through and including sitting for the bar exam versus fees paid to the State Bar after becoming licensed.
 - The only regular fee paid to the State Bar by licensed California attorneys individually is the annual licensing fee, set for 2023 at \$510 for active licensees and \$97.40 for inactive licensees. From that amount, active or inactive licensees may opt out of up to \$47. Additionally, there are late fees and noncompliance fees for not timely paying the annual licensing fee or complying with the triennial Minimum Continuing Legal Education requirements or the new Client Trust Account reporting requirements.
 - Fees paid to the State Bar by law students include registering with the State Bar (\$119), an Application for the Determination of Moral Character (\$551), an application to sit for a bar exam (\$677, plus a laptop fee of \$153).
 - Law students who do not attend a traditional law school but participate in the Law Office Study Program pay a fee of \$158 at the commencement of their studies and \$105 with every semiannual report (8 reports required for completion of the program).
 - Students who are required to take the First-Year Law Students' Exam have an additional fee of \$624 plus a laptop fee of \$153)
 - Students may participate in the Practical Training of Law Students Program for which they are assessed a \$55 application fee.

PUBLIC COMMENT ON TWO ROUNDS OF FEE INCREASE PROPOSALS

First Public Comment

In mid-April to mid-May, the State Bar circulated for public comment the proposal that contained Option 1, the break-even approach, and Option 2, with more modest fee increases. The public comment opportunity was circulated to nearly 17,000 individuals including those who were scheduled to take the July 2023 bar exam or had taken a previous exam but had not passed. An email was also sent to all California law school deans and was included in the weekly emails sent to applicants for the July 2023 bar exam in the weeks leading up to the exam. At the end of the 30-day comment period, 493 comments were received, with one-quarter of the comments (126 individuals) expressing a preference for Option 2, 13 percent expressing a preference for Option 1, and the majority (61 percent) preferring neither option.

As noted in the May Board agenda item, key themes from the first round of public comment included:

- Concerns about the financial burden of fee increases on law students, recent graduates, marginalized, and low-income groups.
- Disagreement with passing the cost of the State Bar deficit onto prospective bar takers.

- Concerns about the impact of fee increases on diversity and inclusion in the legal profession.
- Calls for alternative measures to generate funds for the State Bar deficit.
- Suggestions for major changes to the design and administration of the bar exam and moral character determination process to eliminate the need for high fees.
- Concerns about lack of reciprocity with other states.
- Calls for more information about the cost breakdown of the State Bar admissions services and functions.

Round one public comments have been organized into a dashboard that can be viewed [here](#).

Second Public Comment

In July, the Bar circulated the revised proposal, which hewed more closely to Option 1, the break-even approach, than to Option 2. The revised proposal, as noted in the fiscal impact section, results in a continued projected operational deficit of \$500,000 if no offsetting cost reduction measures are taken and/or if the recent bump in revenue realized represents a one-time anomaly and not a trend. The public comment opportunity was again circulated to roughly 17,000 stakeholders; 266 individuals submitted comments, many commenting on more than one category of fee increase. As would be expected, and in light of the response to the first public comment, the public comment largely disagreed with the State Bar's proposal to increase fees. The themes identified in these comments, largely consistent with the first set of public comments, include:

- Existing fees are already too high and/or the increases are too substantial.
- The State Bar should find other ways to increase revenue or decrease expenditures. Suggestions included assessing fees on licensed attorneys, and changing how the bar exam is administered.
- Fees increases should be phased in over time.
- The State Bar should create fee waivers or a sliding scale so that the fees don't serve as a barrier to the profession for those on the lower end of the socioeconomic spectrum.
- Increases to fees should have an obvious benefit for students/applicant.
- Fees charged to the California-accredited law schools should be tied to enrollment so that if the fee is passed on to students, students at smaller schools are not disproportionately impacted.

Round two public comments have been organized into a dashboard that can be viewed [here](#).

Despite the negative public comment received during both rounds of public comment, the State Bar is faced with a significant structural deficit in the Admissions Fund which must be addressed to remain solvent. Additionally, in light of the condition of the State Bar's General Fund, there is no opportunity to staunch the bleeding with a loan from the General Fund. The costs of doing business have increased; fees have not. Under these conditions significant fee increases are not optional but reasonable and necessary to defray the State Bar's expenses relating to admission to practice law and the future viability of the State Bar's Admissions function.

REVISION TO CALIFORNIA RULES OF COURT

Two of the fees included in Attachment A—the fee to appear as counsel pro hac vice and the fee to appear as out-of-state attorney arbitration counsel—are set forth in California Rules of Court rules 9.41 and 9.43, respectively. As such, no increase may go into effect until the Supreme Court adopts changes to those rules. If the Board approves the proposed increases for these programs at this meeting, staff will bring an agenda item forward to the Board in November with a recommendation to transmit the rule changes for those two fees to the Supreme Court to implement the increases.

POLICY TO ADJUST FEES IN THE FUTURE

On May 9, 2023, the Finance Committee recommended, and staff adopted, an updated policy regarding the frequency of review for all General Fund program fees. Under the policy, all General Fund program fees the State Bar charges for services will be reviewed every three years and, in the intervening years, the fees will be adjusted by the Consumer Price Index (CPI), if legally permissible.

Staff proposes to extend this policy to all fee-for-service programs in the Admissions Fund, to ensure more timely review and necessary adjustments are made such that the fees charged cover the costs to administer the programs. In light of the continuing effort to increase efficiencies and decrease program costs, however, staff believes that annual adjustment of some fees by the CPI might be inappropriate. Staff therefore recommends that the policy permit the Board to decline to apply the annual CPI adjustment to specific fees upon a showing by staff that such an increase is unnecessary.

COST REDUCTION MEASURES AND EFFICIENCIES

February Bar Exam

At its meeting on August 10, 2023, the Board Executive Committee considered the staff proposal to reduce the number of test locations for the February 2024 bar exam as a cost reduction measure. The committee directed staff to further explore whether a San Diego test site could be identified to replace the Ontario Convention Center, and delegated to the Board chair and State Bar executive director the authority to make the final decision on whether to maintain the Ontario site or go with a San Diego site. The committee approved the remainder of the test sites proposed by staff. Following the committee meeting, staff revisited a variety of venues in the San Diego area to try and identify space that could accommodate 1500–1700 applicants in place of the Ontario location (which can seat 2,300).

To augment its own known list of San Diego venues, staff solicited feedback from former Trustee Knoll as well as several San Diego law school deans. After exploration of all identified sites, staff determined that there was no available San Diego location large enough to administer the bar exam and meet the State Bar’s security needs. The venues available could seat at most 500–700 test takers, which is not sufficient.

After reviewing this information the Board chair and executive director directed staff to proceed with contracting for the Ontario location. This reduction in the number of test locations for February represents a savings of nearly \$550,000 as compared to the amount budgeted.

Staff is also attempting to identify efficiencies in how the exam is administered which could result in additional savings related to the cost of proctors, shipping materials to and from bar exam locations, printing of materials, and similar administrative costs.

July Bar Exam

For the July 2024 exam, staff is exploring several options including transitioning the California portion of the exam to a remote modality, using professional testing centers, and further modifying the geographic locations and venues for physical test administration. The State Bar has explored developing its own multiple-choice exam to replace the multiple-choice Multistate Bar Exam (MBE) in the short-term (while an entirely new bar exam is being developed), but found that such an endeavor is cost prohibitive at this time. In the meantime, the State Bar is exploring its options in light of the requirement that the MBE be delivered in person and be administered by State Bar staff.

Staff is currently in the process of gathering information about each of these options, with a particular focus on cost and the experience for those applicants who are granted testing accommodations. Staff will provide the Board with an update on the July exam administration at its November meeting, to include an articulation of the issues identified to date with respect to each of these options as well as initial cost/benefit analyses. The Board will be asked to make a decision regarding July 2024 exam modality/configuration at its January 2024 meeting. Staff will place holds on a number of potential in-person exam sites until that time so as not to circumvent the Board's deliberative process.

First-Year Law Students' Exam (FYLSX)

In addition to efforts to reduce costs in the administration of the bar exam, staff is also looking for cost saving measures and efficiencies throughout the Office of Admissions. One of the more promising ideas, and one which could be implemented quickly, comes from a report the Committee of Bar Examiners discussed in August that suggested streamlining and simplification of the First-Year Law Students' Exam (FYLSX) would be feasible without impacting the exam's overall reliability and predictive validity. Such changes could simultaneously reduce the testing burden on students, speed up grading, allow the State Bar to offer the FYLSX more than twice per year, and help maintain our pool of graders for the bar exam. The committee will discuss this in more detail at an upcoming meeting and develop a recommendation for how to proceed.

FISCAL/PERSONNEL IMPACT

The total impact of the proposed increases would result in additional Admissions Fund revenue of \$7.9 million. Absent the reduction in testing venues for the February 2024 exam, these

proposed fee increases would not fully cover the cost of provision of the specified services; a shortfall of \$0.5 million would remain for 2024. The reduction in testing venues for the February 2024 exam is projected to save \$550,000. If the only change to the July administration were a similar reduction in testing locations, staff projects additional savings of \$700,000. Additionally, revenue projections for 2023 were based on observed trends over the last several years. As noted above, revenue is now expected to exceed projections for 2023 by \$2 million. Staff will monitor 2024 receipts closely to determine if the 2023 revenue bump represents a one-time occurrence or a change in the trend line. In the meantime, the additional revenue for 2023 will assist the office in maintaining/rebuilding its reserves.

AMENDMENTS TO RULES

None

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. 1. Increase the number of attorneys admitted through special admissions programs.

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- c. 5. Continue the Mindsets in Legal Education Initiative and evaluate the merits of expanding the program.

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- c. 6. Conduct an equity and cost focused analysis of the impact of various options for administration of the bar exam on exam pass rates, including remote and open-book formats.

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- c. 7. Provide implicit bias trainings for bar exam proctors and graders to reduce any potential bias.

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- c. 8. Continue to diversify the exam development and grading pool.

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees adopts the staff recommendation for increases to fees relating to law study and exams, special admissions and law school fees, as provided in Attachment A, except as set forth below and it is

FURTHER RESOLVED, that the Board of Trustees adopts Option ____, set forth in Attachment B, related to the fee increases for annual reporting for the California-accredited Law Schools; and it is

FURTHER RESOLVED, that the Board of Trustees, directs that the Admissions fees be reviewed every three years and, in the intervening years, the fees be adjusted by the Consumer Price Index (CPI), if legally permissible, unless staff demonstrates that application of the CPI adjustment to specific fees is unnecessary.

ATTACHMENTS LIST

- A. Revised Fee Increase Proposal
- B. Tiered Structure for Annual Report Fees Charged to CALS
- C. [State-by-State Comparison of Admissions Fees](#)
- D. Tuition and Fee Increases from 2016 to 2022

REVISED FEE PROPOSAL

ATTACHMENT A

Law Study and Exams

Program	Category	Current Fee	Last Increase	Proposed New Fee	% Increase	For Reference: Prior Option 1	For Reference: Prior Option 2
Registration	Student Registration	\$119	2016	\$150	26%	\$150	\$150
	Attorney Registration	\$214	2016	\$300	40%	\$300	\$250
Bar Exam	Student Application	\$677	2016	\$850	26%	\$878	\$745
	Attorney Application	\$983	2016	\$1,500	53%	\$1,500	\$1,200
	Test Center Change	\$15		\$60	300%	\$100	\$25
First-Year Law Students' Exam	Application	\$624	2016	\$850	36%	\$1,850	\$685
	FYLSX writer/laptop change	\$15	2016	\$50	233%	\$50	\$50
Moral Character Determination	Application (student/nonattorney)	\$551	2016	\$725	32%	\$795	\$575
	Application (attorney)	\$551	2016	\$850	54%	\$1,000	\$675
	Extension (student/nonattorney)	\$265	2016	\$290	9%	\$375	\$275
	Extension (attorney)	\$265	2016	\$400	51%	\$500	\$375
Practical Training of Law Students	Application	\$55	2015	\$60	9%	\$60	\$60
	Request to Change	\$25	2015	\$30	20%	\$30	\$30
Law Office Study	Notice of Intent	\$158	2016	\$880	457%	\$880	\$880
	Semiannual reports	\$ 105	2016	\$ 525	400%	\$ 525	\$ 525

REVISED FEE PROPOSAL

Attorney Special Admissions

Program	Category	Current Fee	Last Increase	Proposed New Fee	% Increase	For Reference: Prior Option 1	For Reference: Prior Option 2
Multijurisdictional Practice	Application for Registered In-House Counsel	\$635	2016	\$1,075	69%	\$1,075	\$1,075
	Application for Legal Aid Attorney	\$635	2016	\$500	-21%	\$500	\$500
	Application for Military Spouse Attorney	\$635	2019	\$500	-21%	\$500	\$500
Out of State Attorney Arbitration Counsel	Application	\$50	pre-2014	\$500	900%	\$500	\$500
Pro Hac Vice	Application	\$50	pre-2014	\$500	900%	\$500	\$500
Foreign Legal Consultants	Application	\$370	pre-2014	\$1,000	170%	\$1,000	\$1,000
	Renewal	\$497	pre-2014	\$600	21%	\$600	\$600
	Late Renewal	\$100	pre-2014	\$150	50%	\$150	\$150

REVISED FEE PROPOSAL

Fees Charged to Law Schools

Program	Category	Current Fee	Last Increase	Proposed New Fee	Average Per Student Impact of Increase*	For Reference: Prior Option 1	For Reference: Prior Option 2
California Accredited Law Schools	CALS Annual Report	\$2,170	2018	\$22,900	\$224	\$22,900	\$2,800
	CALS Inspection* (1/5 of 5 yr base)	\$4,400		\$8,000	\$39	\$8,000	\$6,000
Registered Unaccredited Law Schools	Annual A (max 19 students)	\$725	2018	\$5,000		\$6,000	\$1,000
	Annual B (max 199 students)	\$1,090		\$7,500	\$176	\$9,000	\$1,500
	Annual C (> 200 students)	\$1,445		\$10,000		\$12,000	\$2,000
	Inspection A (1/5 of 5 yr flat)	\$1,385		\$4,500		\$6,000	\$1,600
	Inspection B (1/5 of 5 yr flat)	\$1,800		\$6,000	\$117	\$7,000	\$2,200
	Inspection C (1/5 of 5 yr flat)	\$2,200		\$7,250		\$8,000	\$2,800
	* Professional Services (hourly)	\$275		\$350		\$350	\$350

* Based on data report by law schools in the 2022 Annual Report, submitted December 2022. Note: San Francisco Law School lost its accreditation in August 2023; it has since begun operating as an unaccredited school. Analysis of per student costs and anticipated revenue were calculated prior to SFLS's switch from CALS to unaccredited.

Tiered Structure for Annual Report Fees Charged to CALS

Tiered Fee Structure for CALS Annual Report

ATTACHMENT B

	School Enrollment	# of Schools	Current Fee	Proposed New Fee	Average Per Student Impact of Increase*	Projected Revenue**
Current Proposal	All	18	\$2,170	\$22,900	\$ 224	\$412,000
Tiered Structure Option 1						
Tier A	0–99	6		\$15,250	238*	
Tier B	100–299	6		\$22,875	135	
Tier C	300 or more	6		\$30,500	70	
Total Revenue						\$412,000
Tiered Structure Option 2						
Tier A	0–99	6		10,875	170*	
Tier B	100–299	6		21,750	128	
Tier C	300–499	4		32,625	93	
Tier D	500 or more	2		43,500	53	
Total Revenue						\$413,000

Tiered Structure for Annual Report Fees Charged to CALS

Tiered Structure Option 3	
All Schools Pay \$90 per enrolled student	
Total Revenue	\$413,000

*The per student calculation for Tier A schools excludes San Francisco Law School, which had significantly reduced its enrollment while on probation, and recently lost its accreditation.

** Projected revenues were calculated prior to SFLS' transition from a California accredited Law School to an unaccredited law school.

Tuition And Fee Increases from 2016 To 2022

ATTACHMENT D

School Type	2016 Avg Annual Tuition	2016 Avg Annual Fees	2022 Avg Annual Tuition	2022 Avg Annual Fees	Increase in Avg Annual Tuition	Increase in Avg Annual Fees	Increase in Avg Annual Tuition + Fees
ABA-approved Law Schools – Typically Requiring 3 Years							
ABA Schools	37,072	857*	41,461	1,653	12%	93%	16%
ABA Schools – CA Only	49,677	438*	56,916	1,084**	15%	106%	17%
CALS and Unaccredited Schools – Typically Requiring 4 Years***							
CALS	16,379	523****	18,686	1,017	14%	95%	17%
Unaccredited	6981	365****	8,005	515	15%	42%	16%
UCs and CSUs							
CSUs	5,472	1,409	5,742	1,748	5%	24%	9%
CSU professional schools	6,738	1,409	7,175	1,748	7%	24%	10%
UCs	11,160	12,294	11,928	13104	7%	7%	7%
US professional schools	11,160	12,294	11,700	12,852	5%	5%	5%

* Annual fees for ABA law schools not reported until 2019. 2019 numbers used in this column.

** Average is determined based on the number of schools reporting assessment of fees, not average of total number of ABA schools in California.

***CALs and Unaccredited Schools report the total cost to complete a JD. Whereas ABA law schools are three-year programs, CALs and unaccredited schools are typically four year programs. Total reported costs for CALs and unaccredited law schools were divided by 4 to arrive at the annual number. Excludes Northwestern California University School of Law, which with 2022 tuition and fees of approximately \$4,000 is an outlier among all the other CALs; excludes from the % change overtime schools that had a significant decrease in tuition due to reclassification from ABA to CALs or CALs to Unaccredited. Excludes 2018 fees for schools reporting incorrectly.

**** The State Bar did not maintain data about fees for 2016. The data reported on fees is for 2018.

EXHIBIT 8



The State Bar of California

Regular Meeting of the Board of Trustees Hybrid

Open Session Minutes
Thursday, September 21, 2023
10:53 a.m.–6:18 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 10:53 a.m. The Board moved into closed session at 12:34 p.m. The Board returned to open session at 3:19 p.m.

Time meeting Adjourned: 6:18 p.m.

Chair: Ruben Duran

Board Secretary: Louisa Ayrapetyan

Members Present: Mark Broughton, Raymond Buenaventura, Hailyn Chen (joined late), José Cisneros, Ruben Duran, Sarah Good Melanie Shelby, Arnold Sowell Jr., Brandon Stallings, Mark Toney, Genaro Trejo

Members Absent: None

Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Duran. Roll call was taken and a quorum was established.

PUBLIC COMMENT

Chair Duran 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 Board:

1. Neha Malik:
Neha Malik, speaking on behalf of the Legal Funders Network, stated their support for the Portfolio Bar Exam (PBE) as an alternative method of licensure. Malik stated that an alternative method for licensure would help alleviate the civil legal aid crisis, improve public safety, and improve diversity, equity, and inclusion. Malik further iterated that supervised practice is the gold standard for licensure, rather than an exam-based process.
2. Lucas Wright:
Lucas Wright, speaking on behalf of the Bigglesworth Family Foundation, stated their support for the PBE as an alternative method of licensure. Wright mentioned that a PBE program would increase the number of attorneys working in rural areas, citing the

working group's report and findings from the provisional licensure lawyer (PLL) program. Wright also mentioned that the PBE would result in more attorneys able to help low-income individuals and work in public interest law. It would also increase diversity. The Biggleworth Family Foundation further encouraged the State Bar to submit a grant to aid in covering the start up costs for the PBE pilot program.

3. Marlene Lara:

Marlene Lara began by giving a brief tribute to recently passed Trustee Greg Knoll. Lara mentioned Trustee Knoll's commitment to enhancing equity, equality, and advocating for the vulnerable members of society. Lara also mentioned Trustee Knoll's desire for exploring an alternative pathway to licensure and asked the Board to honor Trustee Knoll's legacy by approving the PBE proposal.

4. Jules Sarkar:

Jules Sarkar spoke in support for the PBE as an alternative method of licensure and thanked Susan Bakhshian and the working group for their efforts. Sarkar spoke against item 701, an increase in admission fees, stating that an increase is unwarranted given the costs associated with the bar exam and the lack of explanation provided. Sarkar asked the governor-appointed members if they knew where the State Bar's funds were and they could access those funds, citing an argument made by the State Bar in a case heard in the 9th Circuit Court of Appeals.

5. Maria Dominguez:

Maria Dominguez, who serves on the Board of Directors of the East Bay La Raza Lawyers Association, asked the Board to approve the PBE proposal. Dominguez stated that having to take the bar multiple times served as a detriment to their community and as well as her personal finances (having to take time to study prevented her from earning credit towards her loans). Citing the State Bar's diversity report card, Dominguez argued that the PBE could help make California's attorney population better reflect California's actual population, amongst Latinos in particular. Dominguez stated that the East Bay La Raza Lawyers Association submitted a letter in support of the PBE.

6. Sandra Brooks:

Sandra Brooks, the dean of California Northern School of Law and speaking on behalf of the California Accredited Law Schools (CALs), wanted to register their objection to the proposed 2024 Admission fees increases. Brooks stated that while regular increases are a normal part of business, it is unprecedented for the CALs to absorb increases of 95 percent and 80 percent. Brooks claims that the proposed per student impact of \$224 is misleading because the impact is disproportionately large for smaller schools. Brooks thanked staff for the tiered proposal and encouraged trustees to adopt option 3: where all schools pay \$90 per enrolled student.

7. Benjamin Kohn:

Benjamin Kohn spoke first on the proposed changes to the February 2024 and July 2024 bar exams, mentioning their earlier comments on the usage of body exams to permit remote accommodations for some test takers. Kohn mentioned that Trustee Knoll seemed in favor of this proposal, quoting that Trustee Knoll felt the State Bar "wasn't

thinking hard enough” with regards to remote accommodations for disabled applicants. Kohn mentioned that their proposals were seen as too burdensome for staff and not brought before the Board.

8. Ray Hayden:

Ray Hayden spoke in support of Benjamin Kohn’s comments regarding testing accommodations and Jules Sarkar’s comments on Admissions fees. Hayden stated their support for the PBE and reiterated their proposal for an alternative pathway to licensure modeled off programs utilized by the military and air traffic controllers. Hayden also advocated support for the State Bar’s creation of their own multiple-choice exam.

9. Todd Hill:

Todd Hill asked the State Bar how long someone should have to wait for the State Bar to fulfil an action that is within the agency’s duty. Hill mentioned their federal case against the State Bar (2:23-CV-01298-JLS-PD). Hill stated that’s the State Bar held the People’s College of Law in noncompliance and still has not provided relief by providing Hill’s transcripts. Hill stated that the State Bar has a moral imperative to respond promptly to their complaint.

10. Mitchel Winick:

Mitchel Winick, the president and dean of Monterey College of Law, spoke on item 701 and asked the Board to remove or delay the decision regarding fee increases to CALS. Winick claims that while the proposal asks for a 955 percent increase in fees, it does not provide cost-cutting measures or previous cost-cutting measure preposed in prior rules changes. Winick further spoke in support of the PBE.

11. Jessica Juarez:

Jessica Juarez, a current PLL, spoke that while they and other PLLs appreciate the extension, the extension does not address the issues inherent in preparation for and having to take the bar exam. Juarez stated that the Board addressing an alternative pathway for licensure it critical to their and other’s livelihoods. Juarez mentioned that if PLLs were permitted to serve as a pilot group in 2024, this would allow for the results of the pilot program to coincide with the release of 2024 exam results and resolve the question of licensure before the expiration of the PLL program.

12. Reann Pacheco:

Reann Pacheco, with the Legal Aid Association of California, stated their complete support for the PBE and urged the Board to approve the pilot today. Pacheco claimed that legal aid organization would like to get their PLLs on a pathway to licensure now and use these well-trained lawyers to fill open positions.

10 MINUTES

Approval of July 20–21, 2023, Open Session Minutes

Moved by Stallings, seconded by Buenaventura

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Shelby, Sowell, Stallings, Toney, Trejo, Duran

Noes – (0)
Abstain – (1) Broughton
Absent – (0)

Minutes adopted.

30 CHAIR'S REPORT

Chair Duran provided an oral report. Chair Duran also presented the following resolutions for adoption:

WHEREAS, the members of the Board of Trustees of the State Bar of California express our sincerest gratitude to Mark Broughton for nearly 7 years of tireless service to the State Bar; and

WHEREAS, Mark Broughton's contributions as a member of the Board of Trustees spanned the historic transformation of the State Bar to a purely regulatory agency, a process in which he played a critical leadership role, forging the path between the “old” and “new” State Bar; and

WHEREAS, Mark Broughton’s participation in the former California Commission on Access to Justice and his tireless advocacy for increased access to court and legal services in rural communities, exemplified his deep dedication to improving access to justice for all Californians; and

WHEREAS, Mark Broughton's illustrious legal career, spanning from San Diego to Fresno, California, has encompassed criminal law, civil litigation, and personal injury, demonstrating his versatility and dedication to protecting the Constitutional rights of his clients; and

WHEREAS, Mark Broughton, has represented clients in over 200 jury trials across federal and state courts and is regularly called upon by the Fresno County Superior Court to handle special circumstances/death penalty cases; and

WHEREAS, Mark Broughton's active involvement in the Fresno County Bar Association, his dedicated work with the Northern California Innocence Project, and his roles as a mock trial attorney judge, team coach, and educator, have all contributed to the enrichment and growth of the legal profession, showcasing his commitment to mentoring and fostering the next generation of legal leaders; so let it be

RESOLVED, that the State Bar Board of Trustees expresses its profound appreciation to Mark Broughton for his exceptional service, leadership, and enduring contributions to ensuring that the State Bar of California truly fulfills its public protection mission.

Moved by Stallings, seconded by Cisneros

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Shelby, Sowell, Stallings, Toney, Trejo, Duran
Noes – (0)
Abstain – (1) Abstain
Absent – (0)

Motion carries.

Chair Duran stated that pursuant to Government Code section 11126(c)(7) the Board of Trustees will move to closed session to consider the items listed on the closed session agenda.

CLOSED SESSION

1000 MINUTES

Approval of July 20–21, 2023, Closed Session Minutes

7000 MISCELLANEOUS

7001 Discussion Regarding Sale Price and Terms and Leasing Price and Terms for 180 Howard Street, San Francisco

**Closed pursuant to Government Code § 11126(c)(7).*

OPEN SESSION

The Board returned to open session and reported that there is no action to report from closed session.

60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE

60-1 Ad Hoc Commission on the Discipline System Recommendations: Status Update Regarding Board Directed Follow Up Work

Presenters: Leah Wilson, Executive Director
George Cardona, Chief Trial Counsel
Lisa Chavez, Program Director, Office of Mission Advancement & Accountability Division
Steve Moawad, Special Counsel, Division of Regulation
Suzanne Grandt, Attorney, Office of General Counsel
Kathy Sher, Attorney, State Bar Court

Presentation and discussion only.

700 BUSINESS

702 Report from the Alternative Pathway Working Group: Request to Circulate for Public Comment

Presenter: Audrey Ching, Program Director, Office of Admissions

RESOLVED, that the Board of Trustees authorizes staff to circulate for public comment, for a period of 30 days, the Report to the Board of Trustees of the State Bar of California: Proposal for a Portfolio Bar Examination as set forth in Attachment A.

Moved by Shelby, seconded by Stallings

*Ayes – (11) Broughton, Buenaventura, Chen, Cisneros, Good, Shelby, Sowell, Stallings, Toney,
Trejo, Duran
Noes – (0)
Abstain – (0)
Absent – (0)*

Motion carries.

Regular Meeting of the Board of Trustees
Hybrid

Open Session Minutes
Friday, September 22, 2023
9:34 a.m.–2:14 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 9:34 a.m. The Board moved into closed session at 1:21 p.m. The Board returned to open session at 2:13 p.m.

Time meeting Adjourned: 2:14 p.m.

Chair: Brandon Stallings

Board Secretary: Louisa Ayrapetyan

Members Present: Raymond Buenaventura, Hailyn Chen, José Cisneros, Sarah Good, Mary Huser, Melanie Shelby, Arnold Sowell Jr., Brandon Stallings, Mark Toney, Genaro Trejo

Members Absent: None

Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Duran. Roll call was taken and a quorum was established. Chair Stallings was sworn in as the new chair and Trustee Duran resigned from the Board of Trustees.

30 CHAIR'S REPORT

Chair Stallings provided an oral report. Chair Stallings also presented the following resolution for adoption:

RESOLVED, that the Board of Trustees approves the committee, officer, and liaison assignments, as presented in Attachment A, effective September 22, 2023.

Moved by Buenaventura, seconded by Cisneros

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

40 EXECUTIVE DIRECTOR'S REPORT

Executive Director Leah Wilson provided an oral report and an update on case processing and operational metrics.

50 CONSENT AGENDA

50-2 Report on Action Taken by the Board Executive Committee Approving Specified Contracts Pursuant to Business and Professions Code Section 6008.6

WHEREAS, the contracts listed herein required execution before the next regularly scheduled meeting of the Board of Trustees; and

WHEREAS, on August 10, 2023, the Board Executive Committee approved said contracts; it is hereby

RESOLVED, that the Board of Trustees affirms the action taken by the Board Executive Committee on behalf of the Board.

50-3 Approval of Quarter Two 2023 Investment Report

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee approve the 2023 Second Quarter Investment Report in the form presented this day, for the six months ended June 30, 2023.

50-4 Approval of Quarter Two 2023 Board and Management Travel Expenses Report

RESOLVED, that the Board of Trustees, upon recommendation of the Audit Committee, approves the second quarter of 2023 Board and management travel expense report in the form presented this day, for the three months ended June 30, 2023.

Consent calendar moved by Toney, seconded by Sowell

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

This item was pulled off the consent calendar for a separate discussion.

50-1 Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6

RESOLVED, that the Board of Trustees approves execution of the contracts listed herein, excluding contract line item 13.

Moved by Shelby, seconded by Sowell

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE
60-2 Report on Random Audit of Office of Chief Trial Counsel Files Closed Between
September 1, 2021, and February 28, 2022, and Office of Chief Trial Counsel Response

Presenter: George Cardona, Chief Trial Counsel

Presentation and discussion only.

60-3 Proposed Amendments to California Rules of Court (Rules 9.8.5, 9.9, 9.32, and 9.49)
and Rules of the State Bar (Rules 2.2, 2.5, 2.15, 2.30, 2.51, 2.53, 2.71, 2.111 and New
State Bar Rules 2.140–2.153) Relating to Regulatory Function of the State Bar: Return
from Public Comment and Request for Adoption

Presenter: Steve Moawad, Special Counsel, Division of Regulation

RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.2 of the Rules of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the approval of the proposed amendments to rule 2.2 of the Rules of the State Bar is subject to the California Supreme Court’s approval of proposed amendments to Rule of Court 9.9 without any material changes; and it is

FURTHER RESOLVED, that the effective date of the amendments to rule 2.2 of the Rules of the State Bar would be the effective date of proposed amendments to Rule of Court 9.9 if the California Supreme Court approves proposed amendments to Rule of Court 9.9 without any material changes; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 9.9 of the California Rules of Court, as set forth in Attachment C; and it is

FURTHER RESOLVED, that staff is directed to submit proposed new Rule of Court 9.9 to the California Supreme Court with a request that the proposed amendments to Rule of Court 9.9 be approved; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.5 of the Rules of the State Bar, as set forth in Attachment E; and it is

FURTHER RESOLVED, that the approval of the proposed addition of subdivision (L) to rule 2.5 of the Rules of the State Bar is subject to the California Supreme Court’s approval of proposed amendments to Rule of Court 9.8.5 without any material changes; and it is

FURTHER RESOLVED, that the effective date of the proposed amendments to rule 2.5 of the Rules of the State Bar will be December 1, 2023, with the exception of the addition of rule 2.5(L) of the Rules of the State Bar which will be effective on the effective date of proposed amendments to Rule of Court 9.8.5 if the California Supreme Court approves proposed new Rule of Court 9.8.5 without any material changes; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 9.8.5 of the California Rules of Court, as set forth in Attachment G; and it is

FURTHER RESOLVED, that staff is directed to submit proposed new Rule of Court 9.8.5 to the California Supreme Court with a request that the proposed amendments to Rule of Court 9.8.5 be approved; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.15 of the Rules of the State Bar, as set forth in Attachment I; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.30 of the Rules of the State Bar, as set forth in Attachment K; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar, as set forth in Attachment M; and it is

FURTHER RESOLVED, that the approval of the proposed amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar is subject to the California Supreme Court's approval of proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court without any material changes; and it is

FURTHER RESOLVED, that the effective date of the amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar would be the effective date of proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court without any material changes; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court, as set forth in Attachment O; and it is

FURTHER RESOLVED, that staff is directed to submit proposed new Rule of Court 9.32 and proposed amendments to rule 9.49 of the California Rules of Court to the California Supreme Court with a request that proposed new Rule of Court 9.32 and proposed amendments to rule 9.49 of the California Rules of Court be approved; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.111 of the Rules of the State Bar, as set forth in Attachment Q.

Moved by Good, seconded by Buenaventura

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60-4 Annual Discipline Report Review and Approval Timeline and Discussion of Inclusion of Demographic Data in Report

Presenter: Yun Xiang, Chief Mission Officer

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee will review, evaluate, and approve the Annual Discipline Report due annually on October 31; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee approves the procedures the State Bar will follow in its production of the Annual Discipline Report due October 31, 2023.

Moved by Good, seconded by Sowell

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60-5 Discussion Regarding State Bar Diversion Program

Presenters: George Cardona, Chief Trial Counsel
Melanie Lawrence, Program Director, Office of Professional Support & Client Protection
Enrique Zuniga, Public Trust Liaison

Presentation and discussion only.

60-6 Complaint Review Unit Overview and Recent Process Improvements

Presenters: Ellin Davtyan, General Counsel

Presentation and discussion only.

700 BUSINESS

701 Approval of 2024 Admissions Fee Increases and Fee Setting Policy; Update on February 2024 Bar Exam Locations; Discussion of July 2024 Bar Exam Administration

Presenters: Donna Hershkowitz, Chief of Programs/Legislative Director
Aracely Montoya-Chico, Chief Financial Officer

RESOLVED, that the Board of Trustees, directs staff to adjust the proposed fees related to California Accredited Law Schools downward to adjust the Options set forth in Attachment B, accordingly; it is

FURTHER RESOLVED, that the Board of Trustees directs staff to circulate the Options set for the in Attachment B, as modified, for a 30-day public comment period; and it is

FURTHER RESOLVED, that the Board of Trustees, directs that the Admissions fees be reviewed every three years and, in the intervening years, the fees be adjusted by the Consumer Price Index (CPI), if legally permissible, unless staff demonstrates that application of CPI adjustment to specific fees is unnecessary.

Moved by Buenaventura, seconded by Chen

Ayes – (9) Buenaventura, Chen, Cisneros, Good, Huser, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (1) Shelby

Motion carries.

703 Approval of 2023 Midyear Budget Variance Report (Including Quarter Two Financial Statements Report) and Projection

Presenter: Aracely Montoya-Chico, Chief Financial Officer

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee approves the 2023 Midyear Budget Variance Report (including Q2 Financial Statements Report) and Projection, in the form presented this day, for six months ended June 30, 2023.

Moved by Sowell seconded by Trejo

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

704 Proposed Amendments to Rules 9.11 and 9.90 of the California Rules of Court: Return from Public Comment and Approval; Update on Conflict of Interest Code for the Board of Trustees of the State Bar of California

Presenters: Ellin Davtyan, General Counsel
Robert Retana, Deputy General Counsel
Shelby King, Attorney, Office of General Counsel

RESOLVED, following notice and publication for comment, that the Board of Trustees approves the proposed amendments to Rules of Court 9.11 and 9.90 as set forth in Attachments D and E; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed amendments to Rules of Court 9.11 and 9.90 to the California Supreme Court with a request that the proposed amendments be approved; and it is

FURTHER RESOLVED, that staff is directed to inform the other appointing authorities, including the governor, the Senate Committee on Rules, and the Speaker of the Assembly, for the Board of Trustees about these proposed rule changes and request that they consider adopting similar procedures or otherwise consider actual or potential conflicts of interest in their appointment process.

Moved by Chen, seconded by Buenaventura

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

Chair Stallings stated that pursuant to Government Code section 11126(a)(1), Government Code section 11126(c)(2), and Government Code section 11126(e)(2)(A), the Board of Trustees will move to closed session to consider the items listed on the closed session agenda.

CLOSED SESSION

7000 MISCELLANEOUS

7002 Discussion Regarding Special Audit Committee Directed Audit of Closed Office of Chief Trial Counsel Files – to be considered on September 22, 2023

**Closed pursuant to Government Code §§ 11126(a)(1) and 11126(c)(2)*

7003 Conference with Legal Counsel–Anticipated Litigation

Agaton et al. v. State Bar of California et al. (L.A. Super. Ct. Case No. 23STCV21606)

**Closed pursuant to Government Code § 11126(e)(2)(A)*

OPEN SESSION

The Board returned to open session and reported that there is no action to report from closed session.

ADJOURN

EXHIBIT 9



The State Bar of California

Update on July 2024 Bar Exam Administration

Cody Hounanian, Assistant Director, Admissions
Amy Nuñez, Assistant Director, Admissions

Board of Trustees Meeting, November 16–17, 2023

Background and Discussion Overview



Structural budget issues impacting the Office of Admissions

- Approved fee increases close most, but not all of the gap



Cost reductions needed

- Bar exam administration
 - February 2024, reduced sites
 - July 2024?
 - One-day remote?



- Deep dive: one-day remote
 - Exam security
 - Proctoring options
 - Testing Accommodations applicants

Revised: 2024 Budget Forecast Presented at September Meeting

Revenue	\$17.5 million*
Expenditures	-\$25.5 million**
Fee Increases Adopted	\$6.9 million***
February 2024 Bar Exam Cost Reduction Measure	\$550,000

Difference **-\$550,000**

July 2024 Bar Exam Cost Reduction Measure: TBD

* Projected revenue may increase due to a higher-than-expected number of Bar Exam applicants
** Before 2024 Bar Exam cost reduction measures
*** Estimate based on CALS fees not adopted and PHV and OSAAC fees pending Supreme Court approval

Exploration Completed



**Analyzed data
from post-
exam surveys
and outcomes**



**Engaged other
jurisdictions
and potential
partners**



**Identified new
remote exam
approaches
and
technologies**



**Reviewed
testing
accommodation
application
process**



**Gained
feedback from
experts and
stakeholders**

In-person Models

Traditional Facilities

Pros:

Familiar administration
Less travel time and cost
for exam takers
Most secure

Cons:

Does not achieve
necessary cost reduction
Some traditional facilities
are no longer available

Reduced Facilities

Pros:

Familiar
administration
State Bar cost
reduction
Most secure

Cons:

Additional travel time
and cost for exam
takers
Some facilities are not
secured for July 2024

One-day Remote Models

ExamSoft Proctoring and Exam Delivery

Pros:

- ExamSoft platform is familiar
- Established vendor
- Further State Bar cost reductions as compared to facilities models

Cons:

- Exam security and limitations of record and review
- Risk of tech failure,
- Does not address many accommodations

New Proctoring and Exam Delivery Options

Pros:

- Dual-camera live proctoring is more secure
- More accommodations addressed
- Further State Bar cost reductions compared to one-day remote with ExamSoft

Cons:

- Risk of tech failure
- Untested at scale
- Less established vendors
- Nonsecure mode required

ExamSoft and In-home Proctors

Pros:

- In-home proctoring addresses additional accommodations
- Improves exam security
- Minimal cost increase if State Bar contracts directly with in-home supportive service workers

Cons:

- Logistically challenging
- Additional cost if State Bar contracts with support service organizations

Testing Accommodation Forum

- Some exam takers are eager for the State Bar to utilize new remote exam delivery and proctoring platforms and/or test center providers.
- Additional cameras are welcomed by some if it means remote exams are available to those with accommodations.
- Exam takers want the ability to leave the view of camera when necessary.
- Allowances for bathroom breaks is an important topic to exam takers.

Additional Research is Required

- The technology already used by the State Bar is evolving:
 - ExamSoft launched new testing accommodation features.
 - Other vendors are launching improvements in the coming months.
- New proctoring platforms require research:
 - Dual-camera proctoring has not been stress-tested at scale.
 - Remote exam delivery with live assistants requires additional testing.
- Test-center and fully-remote exam models cannot be achieved in time for July 2024.
- Novel approaches, such as in-home proctoring, require additional review and partner engagement.

Preliminary Staff Recommendation for July 2024: Reduced Facilities



Continues cost reductions necessary to improve Office of Admissions budget position.



Safest approach given current degree of unknowns.



Staff will continue to explore other options and will bring final recommendation to the Board in January.

Questions



EXHIBIT 10



The State Bar of California

OPEN SESSION AGENDA ITEM 703 JANUARY 2024

DATE: January 18, 2024

TO: Members, Board of Trustees

FROM: Cody Hounanian, Program Director, Office of Admissions
Amy Nuñez, Program Director, Office of Admissions

SUBJECT: Approval of July 2024 Bar Exam Administration and Testing Locations; Approval of Related Contracts Pursuant to Business and Professions Code Section 6008.6

EXECUTIVE SUMMARY

As a deficit mitigation measure, in [August 2023](#), the Board of Trustees approved reducing the number of facilities at which the February 2024 bar exam would be administered. Staff proposed to return to the Board in early 2024 with a recommendation for how to administer the July 2024 bar exam, anticipating the proposal would include remote administration of part of the exam as a further cost mitigation measure. In [November](#), based on its exploration of various remote options to date, staff presented a preliminary recommendation to mirror the February 2024 exam administration for the July exam. At that time, staff were continuing to finalize their analysis of the feasibility of administering the written portion of the exam remotely. After concluding its exploration of various approaches, this agenda item recommends that the July 2024 bar exam be administered in person, using the approach identified for the February exam. In addition, in response to the discussion at the August 2023 Board meeting, staff has confirmed facilities in San Diego for the exam. This agenda item recommends that the Board approve contracting for the July 2024 bar exam test sites identified herein.¹

¹ A previous version of this agenda item noted that staff would provide updates to the Board regarding the confirmation of a San Diego exam facility. Staff were able to confirm a San Diego facility. Amendments have been made to reflect updates shared with the Board on January 18, 2024 and have been identified in the footnotes throughout.

BACKGROUND

In 2023 the Board approved substantial increases in [Admissions fees](#) to address the structural deficit in the Admissions Fund. The fee increases adopted to date are projected to increase revenue by \$7.5 million annually.² Concurrently, staff sought to identify cost reductions to close the funding gap, so as not to rely solely on fee increases. Since administration of the bar exam is the highest cost program operated by the Office of Admissions, it posed the greatest opportunity for additional savings.

In [June 2023](#), the Committee of Bar Examiners debated several options for cost-saving measures related to bar exam administration, including reducing the number of exam facilities, utilizing no-cost space at State Bar offices, and remote exam administration. The committee recommended that Admissions consider a one-day remote bar exam to improve Admissions' budget position. Staff determined that further assessment was needed to identify feasible one-day remote bar exam options in a post-pandemic environment; of particular significance are the issues of exam security and accessibility for applicants with testing accommodations.

As a result, in August 2023, staff recommended and the Board adopted a plan to continue in-person administration of the bar exam for February 2024, using a reduced number of facilities as well as State Bar office space in Los Angeles and space provided free of charge by the Judicial Council in San Francisco to reduce the need for costly facility contracts. At the time it was estimated that this model would decrease February 2024 bar exam expenses by \$550,000. Staff indicated it would return to the Board in early 2024 with a recommendation for cost savings measures for administration of the July 2024 exam but anticipated that would include a one-day remote bar exam model.

In early November 2023, staff held a public stakeholder input forum to solicit feedback regarding a possible transition to a one-day remote exam.³ Participants expressed views including:

- That applicants be permitted to leave the view of the camera during a remote exam for unscheduled restroom breaks, stretching breaks, or other reasons approved as a testing accommodation;
- That additional cameras could be used to improve the test-taking experience (for example, limiting erroneous violation flags and providing for more freedom of movement) while also enhancing exam security and integrity;
- That the State Bar should adopt a test-center bar exam model where the exam is administered at many locations across the state that are operated by a vendor; and
- That certain COVID-19 precautions be implemented especially if in-home proctoring was pursued.

² Because the increased fees for applications to appear as Pro Hac Vice and Out-of-State Attorney Arbitration Counsel are not effective until the Supreme Court adopts rule changes, the amount realized in 2024 will be less than the full \$7.5 million.

³ A video of the Testing Accommodations Stakeholder Input Forum is available on YouTube at <https://www.youtube.com/watch?v=910Hv49VqHU>

At the November 2023 Board meeting, staff presented an update on various models being considered for administration of the July 2024 bar exam and provided an overview of key themes that had emerged from the public stakeholder forum. Based on this research, staff preliminarily recommended the reduced number of facilities model as is being used for February. However, staff had not had the opportunity to finalize exploration of several issues and indicated that additional study, primarily regarding the possible transition to a one-day remote administration and follow-up with the Board was needed.

DISCUSSION

The November 2023 update to the Board indicated that additional assessment of the following topics was needed prior to staff finalizing its recommendation regarding July 2024 bar exam administration:

- Latest ExamSoft technology enhancements
- New remote proctoring vendors
- Options for in-home proctoring
- Test-center options

Each of these topics is explored more fully below.

ExamSoft Enhancements: Admissions currently uses ExamSoft’s Exemplify solution for all in-person exams. During the pandemic, Admissions used ExamSoft’s remote test taker authentication and proctoring solutions, ExamID and ExamMonitor, to administer fully remote bar exams. While the ExamSoft platform has been widely used by law schools and licensing entities, and therefore offers strong familiarity among students and applicants, prior usage of its remote proctoring solutions uncovered several notable issues.

One issue is the inability to deliver certain testing accommodations in the remote exam environment. Examples of testing accommodations that have been incompatible with remote exams delivered through ExamSoft include unscheduled bathroom breaks, hard copy or USB exam materials, handwriting answers, the need for physical scratch paper, laying down or standing (out of view of the web camera), physical assistance such as typists or readers, and other specialized assistance software or equipment.

Another issue hampering this approach is the platform’s record-and-review proctoring method, in which test takers are recorded through their cameras with AI flagging possible rule violations. This approach required review of all flagged videos subsequent to the exam to determine rule violations and incidents of cheating, which was extraordinarily labor intensive.

ExamSoft has made improvements that make it able to address more, but not all, of the testing accommodations that were previously incompatible with the platform.⁴ Most notably, ExamSoft is now compatible with screen-reading software used by test takers who are visually

⁴ More about ExamSoft’s accessibility features can be found here: <https://support.examssoft.com/hc/en-us/articles/13291240030989-Exemplify-Accessibility-Features>.

impaired. However, for test takers with other accommodations, like the need for a typist or other assistant or unscheduled bathroom breaks, the State Bar would need to find alternatives or have them test in person.⁵

Thus, while the ExamSoft platform has made notable improvements in recent years, a significant number of testing accommodations applicants could not be supported by the platform and the record and review proctoring method continues to be an inferior approach requiring an inordinate amount of staff time.

New Remote Proctoring Vendors: Staff investigated other remote exam delivery and proctoring solutions with the goal of identifying a solution capable of delivering testing accommodations better than previous remote exam administrations. Of particular interest were platforms offering dual-camera, live proctoring functionality. This approach offers several benefits compared to record-and-review proctoring, including improved exam security, the ability to administer more types of testing accommodations remotely, and the elimination of labor-intensive post-exam video review.

Staff were especially interested in a vendor that offered dual-camera, live proctoring along with the ability to integrate with a separate exam delivery platform that offered the ability to have even more types of accommodations remotely, including physical assistants such as typists or readers.

Despite these promising advancements, staff concluded that additional time was needed to ensure these solutions would be successful for an exam as large as the California bar exam with a set time frame in which the exam must be administered; none of the solutions reviewed had a track record of delivering concurrent proctoring services on a scale equivalent to the bar exam.

In-Home Proctoring: Staff explored developing an in-home proctoring model where most test takers would use a remote proctoring platform while a smaller number with accommodations incompatible with the platform would have proctors administer the exam in their homes. Staff engaged the Department of Social Services, labor groups, and businesses to assess the feasibility of recruiting in-home supportive service workers as proctors. Ultimately it was determined that in-home proctoring presents risks, including liability and safety concerns.

Test Center Model: Staff explored the idea of transitioning the bar exam to test centers statewide. One of the key benefits of a test-center model is that a vendor's staff can proctor the exam in person and in real-time, and they are available to assist with technology issues. Staff is already researching the feasibility of a test center model for future bar exams. While promising long-term, operational complexities preclude implementing such an approach by July 2024. Securing extensive facilities and proctors for prolonged exam periods poses staffing challenges

⁵ While stakeholder forum participants suggested that no monitoring during in-home bathroom breaks was needed, State Bar staff does not believe that unmonitored at-home breaks would provide the requisite level of exam security.

for vendors, as does adhering to tight exam administration windows vital for exam security and integrity. Further exploration will continue throughout 2024.

STAFF RECOMMENDATION: REDUCED NUMBER OF FACILITIES MODEL

Following consideration of all of the above, staff has determined that at this time, the best approach is a continuation of the in-person, reduced number of facilities, model as it offers the best balance between administration-related considerations and cost reduction. In-person bar exam administration provides satisfactory exam security and integrity and a more uniform experience for test takers with testing accommodations, and the familiarity of in-person exams reduces the risk of exam administration errors. While the one-day remote models offer the largest opportunity for cost reduction, as outlined in the Fiscal Impact section below, each potential remote solution carries significant challenges at this time related to technology risks, limited testing accommodations compatibility, and scalability.

Table 1 summarizes the facilities required for July 2024 under the recommended model, and the total contracting requirements to secure necessary facilities which are pending Board approval today. The contracting needs pending approval include room rental costs as well as facility-related expenses, like table and chair rental or electricity, which vary from location to location.

Table 1. Staff Recommendation: July 2024 Bar Exam Facilities and Contracting*

July 2024 Confirmed Facilities	July 2024 Contracting Pending Board Approval
Pasadena Convention Center	\$148,305
Ontario Convention Center	\$174,850
Hilton Sacramento Arden West**	\$119,600
Anaheim Convention Center	\$82,600
Oakland Convention Center	\$150,000
@The Grounds (Sacramento)	\$85,000
Olympic Training Center (Chula Vista)***	\$200,000
DoubleTree Orange**	Approved Nov. 2022
State Bar (Los Angeles)**	--
Judicial Council (San Francisco)**	--
University of San Diego**,**	--

*Table 1 has been amended to reflect the updates presented to the Board on January 18, 2024.

**Facilities available to test takers with testing accommodations only.

***Olympic Training Center may allow for testing accommodations to be administered in lieu of USD.

As with the February 2024 bar exam, along with contracted facilities, the proposal includes no-cost facilities, such as the Judicial Council’s conference centers in San Francisco and the Los Angeles office of the State Bar. Staff confirmed the use of the Oakland Convention Center and @The Grounds in Sacramento which provides a large facility to test takers located in Sacramento and Northern California.⁶

Additionally, staff confirmed the use of the Olympic Training Center in Chula Vista as a San Diego area facility with seats for over 500 test takers.⁷

Approval of Contracting for July 2024 Bar Exam Facilities

Pursuant to Business and Professions Code section 6008.6, the Board is required to approve all contracts for goods, services, or both in an aggregate amount of more than \$50,000 (or \$100,000 for contracts related to information technology goods and services). The contracting for facilities listed in table 1, above, are more than \$50,000 and have met the standards established by Article 4 of the Public Contract Code, as implemented through the State Bar’s Procurement Policy. The State Bar has delayed entering contracts for the July bar exam while the decision as to the bar exam administration model was pending. Board approval is required to complete contracting for the facilities; whether the Board adopts the staff recommendation of the reduced number of facilities model or another approach, these facilities will be required.

FISCAL/PERSONNEL IMPACT

The proposed reduced number of facilities approach was reflected in the draft Admissions Fund budget presented to the Finance Committee earlier this month. Should the Board decide to revert back to the traditional administration model of exam delivery, with more contracted facilities, an additional \$354,000 in expenses would need to be added to the 2024 admissions budget.

Remote exam administration continues to offer the greatest potential savings, estimated at between \$630,000 and \$845,000 in additional savings beyond those realized by the reduced number of facilities approach, depending upon the remote model selected.

Table 2. July 2024 Bar Exam Administration Estimated Costs

	Traditional administration	Reduced number of facilities	One-day remote*
Total Costs	\$4,509,455	\$4,155,314	\$3,453,465

⁶ Confirmation regarding the use of the Oakland Convention Center and @The Grounds was not included in a previously posted version of this agenda item. Amendments have been made to the text to reflect updates shared with the Board on January 18, 2024.

⁷ A previous version of this agenda item identified several options for consideration in San Diego. Staff have since confirmed use of the Olympic Training Center. Amendments have been made to the text to reflect updates shared with the Board on January 18, 2024.

Savings	\$354,141	\$1,055,990
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*One-day remote total costs and savings represent an average across multiple models including using the ExamSoft platform with in-home proctors and using new remote proctoring vendors and in-home proctors.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees approves the staff recommendation of the reduced number of facilities model as described above; and it is

FURTHER RESOLVED, that the Board of Trustees approves contracting for the confirmed facilities listed in table 1, as revised on the day of this Board meeting; and it is

FURTHER RESOLVED, that, should any of the facilities remain unconfirmed, the Board delegates to the Board chair, upon recommendation of the executive director, the authority to approve the contracts for the final facilities.

ATTACHMENT LIST

None

EXHIBIT 11



The State Bar of California

Regular Meeting of the Board of Trustees Hybrid

Open Session Minutes
Thursday, January 18, 2024
9:22 a.m.–1:36 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 9:22 a.m. The Board moved into closed session at 12:30 p.m. The Board returned to open session at 1:36 p.m.

Time meeting Adjourned: 5:12 p.m.

Chair: Brandon Stallings

Board Secretary: Louisa Ayrapetyan

Members Present: Patricia Barahona, Raymond Buenaventura¹, Hailyn Chen, José Cisneros, Sarah Good, Mary Huser, Arnold Sowell Jr., Brandon Stallings, Mark Toney, Genaro Trejo

Members Absent: Melanie Shelby

Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Stallings. Roll call was taken and a quorum was established.

PUBLIC COMMENT

Chair Stallings 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 Board:

1. Anonymous caller:

The participant inquires about the finalized test locations for the July exam, specifically questioning if Sacramento will be a testing site. The response indicates that the topic will be discussed later in the agenda and encourages the participant to provide any additional comments. The participant expresses concerns about the burden on applicants if Sacramento is not included as a testing location, especially considering the removal of many locations for previous exams. They request a full refund for those who signed up for the February exam but may need to commute to another city for the July exam. The participant suggests extending the deadline for exam sign-ups to alleviate the burden on applicants.

¹ Trustee Buenaventura was recorded as present during the roll call, yet was absent for segments of the meeting, resulting in his non-participation in the voting for multiple agenda items.

2. Benjamin Kohn:
Benjamin Kohn addresses the issue, suggesting a pilot program for remote testing methods to accommodate those with disabilities. He emphasizes the importance of operational reliability and affordability for exam accessibility.

3. Claire Solot:
Claire Solot, representing the Legal Services Funders Network, highlights the geographic equity issues faced by Northern California examinees if only one testing site is offered. She urges the Board to consider at least two sites in Northern California to balance the distribution of testing locations.

10 MINUTES

Approval of November 16–17, 2023, Open Session Minutes

Moved by Huser, seconded by Sowell

Ayes – (8) Chen, Cisneros, Good, Huser, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (2) Barahona, Shelby

Absent – (2) Buenaventura, Stephens

Minutes adopted.

30 CHAIR'S REPORT

Chair Stallings provided an oral report.

RESOLVED, that the Board of Trustees approves the committee assignments as presented in Agenda Item 30-2, effective January 18, 2024.

Moved by Shelby, seconded by Toney

Ayes – (10) Barahona, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (2) Buenaventura, Stephens

Motion carries.

40 EXECUTIVE DIRECTOR'S REPORT

Executive Director Leah Wilson provided an oral report.

50 CONSENT AGENDA

50-1 Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6

RESOLVED, that the Board of Trustees approves execution of the contracts listed herein.

50-2 Adoption of Employee Pay Schedule

RESOLVED, that the Board of Trustees approves the 2024 employee pay schedule included as Attachment A, as described herein.

50-3 Adoption of State Bar Court Judge Pay Schedule

RESOLVED, that the Board of Trustees approves the State Bar Court judge pay schedule included as Attachment A, as described herein.

50-4 Proposed Amendments to California Rules of Court Relating to Fees for Pro Hac Vice (Rule 9.40) and Out-of-State Attorney Arbitration Counsel (Rule 9.43): Return from Public Comment and Request for Approval and Transmission to the Supreme Court for Adoption

RESOLVED, that the Board of Trustees approves the amendments to CRC rules 9.40 and 9.43 set forth in Attachments A (redline) and B (clean); and it is

FURTHER RESOLVED, that the Board of Trustees directs staff to transmit a petition to the Supreme Court seeking adoption of these amendments to CRC rules 9.40 and 9.43.

50-5 Approval of State Bar Member to the Judicial Council of California Information Technology Advisory Committee

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, approve the appointment of Carrie Holmes to serve on the Information Technology Advisory Committee for a three-year term, commencing at the close of the meeting of the Board of Trustees on January 18–19, 2024, and expiring at the close of the meeting of the Board of Trustees on September 23–24, 2027, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, approve Smita Rajmohan as alternate member, if a midterm vacancy is created.

50-6 Approval of New Member to the Lawyer Assistance Program Oversight Committee

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee, approve the appointment of Dr. Lisa Johnson to serve on the Lawyer Assistance Program Oversight Committee, for a four-year term, commencing at the close of the meeting of the Board of Trustees on January 18–19, 2024, and expiring at the close of the meeting of the Board of Trustees on September 23–24, 2027, or until further order of the Board of Trustees, whichever occurs earlier.

50-7 Annual Review and Approval of Investment Policy

This agenda item was withdrawn prior to the start of the Board meeting.

Consent calendar moved by Toney, seconded by Chen

Ayes – (10) Barahona, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings
Noes – (0)
Abstain – (0)
Absent – (2) Buenaventura, Stephens

Motion carries.

701 Proposed Changes to Conflict of Interest Code for Designated Employees of the State Bar of California: Return from Public Comment and Request for Adoption

Presenters: Ellin Davtyan, General Counsel
Brady Dewar, Assistant General Counsel, Office of General Counsel

RESOLVED, that the Board of Trustees approves and adopts, effective March 1, 2024, the updated Conflict of Interest Code for Designated Employees of the State Bar of California as set forth in Attachment A.

Moved by Toney, seconded by Sowell

Ayes – (11) Barahona, Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings
Noes – (0)
Abstain – (0)
Absent – (1) Stephens

Motion carries.

702 Judicial Nominees Evaluation Commission Task Force Proposed Revisions to Rules: Return from Public Comment and Request for Adoption

Presenters: Justin Palmer, Chair, Judicial Nominees Evaluation Commission
Bridget Gramme, Deputy Chief of Programs

Resolution as amended by Trustee Toney:

RESOLVED, that the Board of Trustees adopts the proposed amendments to Title 7 of the Rules of the State Bar as proposed in Attachment A, effective immediately; and it is

FURTHER RESOLVED, that the Board of Trustees adopts Option 1 for rule 7.52; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff to return to the Board at its November 2024 meeting to report on the implementation of rule 7.52 and propose any recommended revisions.

Moved by Toney, seconded by Buenaventura

Ayes – (5) Buenaventura, Huser, Shelby, Sowell, Toney
Noes – (6) Barahona, Chen, Cisneros, Good, Trejo, Stallings

Abstain – (0)
Absent – (1) Stephens

Motion fails.

Resolution as presented by the Judicial Nominees Evaluation Commission Task Force, with an amendment made by Trustee Sowell:

RESOLVED, that the Board of Trustees adopts the proposed amendments to Title 7 of the Rules of the State Bar as proposed in Attachment A, effective immediately; and it is

FURTHER RESOLVED, that the Board of Trustees adopts Option 2 for rule 7.52; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff to return to the Board at its November 2024 meeting to report on the implementation of rule 7.52 and propose any recommended revisions.

Moved by Cisneros, seconded by Chen

Ayes – (10) Barahona, Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Trejo, Stallings
Noes – (0)
Abstain – (1) Toney
Absent – (1) Stephens

Motion carries.

703 Approval of July 2024 Bar Exam Administration and Testing Locations; Approval of Related Contracts Pursuant to Business and Professions Code Section 6008.6

Presenters: Cody Hounanian, Assistant Director, Office of Admissions
Amy Nuñez, Assistant Director, Office of Admissions

RESOLVED, that the Board of Trustees approves the staff recommendation of the reduced number of facilities model as described above; and it is

FURTHER RESOLVED, that the Board of Trustees approves contracting for the confirmed facilities listed in table 1, as revised on the day of this Board meeting; and it is

FURTHER RESOLVED, that, should any of the facilities remain unconfirmed, the Board delegates to the Board chair, upon recommendation of the executive director, the authority to approve the contracts for the final facilities.

Moved by Sowell, seconded by Toney

Ayes – (10) Barahona, Buenaventura, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings
Noes – (0)
Abstain – (0)
Absent – (2) Chen, Stephens

Motion carries.

704 Update on Admissions Fee Increases Related to California Accredited Law Schools: Plan for Further Refinements

Presenter: Donna Hershkowitz, Chief of Programs

Presentation and discussion only.

705 Media and Communications Training

Presenters: Teresa Ruano, Director, Office of Strategic Communications & Stakeholder Engagement
Rick Coca, Senior Program Analyst, Office of Strategic Communications & Stakeholder Engagement

Presentation and discussion only.

706 Adoption of Preliminary 2024 Legislative Priorities and Affirmative Legislative Proposals

Presenters: Donna Hershkowitz, Chief of Programs
Bridget Gramme, Deputy Chief of Programs

RESOLVED, that the Board of Trustees adopts as a legislative priority securing an increase in the attorney licensing fee to support the operations of the State Bar; and it is

FURTHER RESOLVED, the Board of Trustees directs staff to pursue the following affirmative legislative proposals as detailed in this item:

- Continue pursuing enhanced bank reporting of client trust accounts to the State Bar;
- Clarify the Fair Political Practices Commission’s administrative enforcement authority with respect to the State Bar;
- Amend section 6037 of the Business and Professions Code to authorize removal of board members “for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct,”;
- Amend sections 6040 (b) and 6141 (a) of the Business and Professions Code to permit the State Bar to set the date for submission of the licensing fees;
- Amend section 6046.8 of the Business and Professions Code to adjust the timing of the next bar exam evaluation in light of anticipated Supreme Court action;
- Amend section 6155 of the Business and Professions Code to permit certified Lawyer Referral Services to establish formal partnerships with nonprofits and revise statutory caps on Lawyer Referral Service certification fees;
- Amend section 6140.03 (b)(5) of the Business and Professions Code to extend the sunset date on the earmark to fund summer law fellowships for an additional five years;
- Amend section 6177 of the Business and Professions Code and section 55.32(f) of the Civil Code to eliminate incorrect references; and

- Amend section 6031.5 (b) of the Business and Professions Code to remove or correct obsolete references.

Moved by Sowell, seconded by Trejo

Ayes – (10) Barahona, Buenaventura, Chen, Cisneros, Good, Huser, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (2) Shelby, Stephens

Motion carries.

707 Board of Trustees Strategic Planning Session

1. April Legislative Reports: Business and Professions Code Sections 6086.20 and 6145.1

- Review of Requirements
- Discussion of Request for Licensing Fee Reforms

2. Governance, Conflict of Interest, and Other Reforms

- Review of Work and Recommendations of the Ad Hoc Committee of Oversight & Accountability Reforms

Presenters: Leah Wilson, Executive Director
Ellin Davtayan
Donna Hershkowitz, Chief of Programs

Presentation and discussion only.

Chair Stallings stated that pursuant to Business and Professions Code section 6026.7 and 6086.1(c), Government Code section 11126(e)(2)(A), and Government Code section 11126(e)(2)(B)(i), the Board of Trustees will move to closed session to consider the items listed on the closed session agenda.

CLOSED SESSION

1000 MINUTES

Approval of November 16–17, 2023, Closed Session Minutes

Approval of October 23, 2023, Closed Session Minutes

7000 MISCELLANEOUS

7001 Request to Waive Confidentiality Pursuant to Business and Professions Code Section 6086.1

**Closed pursuant to Business and Professions Code §§ 6026.7 and 6086.1(c)*

7002 Conference with Legal Counsel—Existing Litigation

Agaton et al. v. State Bar of California et al. (L.A. Super. Ct. Case No. 23STCV21606)

**Closed pursuant to Government Code § 11126(e)(2)(A).*

7003 Conference with Legal Counsel – Existing Litigation
Beck v. State Bar of California, Verified Petition for Writ of Mandate (California Supreme Court Case No. TEMP-QEQ55581)

**Closed pursuant to Government Code § 11126(e)(2)(A).*

7004 Conference with Legal Counsel – Potential Litigation

**Closed pursuant to Government Code § 11126(e)(2)(B)(i).*

OPEN SESSION

The Board reconvened in open session and announced that there were no actions to report from the closed session. The meeting was then recessed until Friday, January 19, 2024.

Regular Meeting of the Board of Trustees
Hybrid

Open Session Minutes
Friday, January 19, 2024
10:03 a.m.–2:18 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 10:03 a.m.
Time meeting Adjourned: 2:18 p.m.
Chair: Brandon Stallings
Board Secretary: Louisa Ayrapetyan
Members Present: Patricia Barahona, Raymond Buenaventura, Hailyn Chen, José Cisneros, Sarah Good, Mary Huser, Melanie Shelby, Arnold Sowell Jr., Brandon Stallings, Mark Toney, Genaro Trejo
Members Absent: None
Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Stallings. Roll call was taken and a quorum was established.

707 Conflict of Interest & Form 700 Training (Fair Political Practice Commission/Office of General Counsel)

Presenter: Ellin Davtyan, General Counsel
Brady Dewar, Assistant General Counsel, Office of General Counsel

Presentation and discussion only.

**707 Board of Trustees Strategic Planning Session
4. 2022–2027 Strategic Plan Review**

Presenter: Leah Wilson, Executive Director

RESOLVED, that the Board of Trustees approves the following modifications to the 2022–2027 Strategic Plan:

Substantive Language Edits:

1. **Goal 1:**
Diversity, Equity, and Inclusion
 - a. Identify ~~and implement strategies to address other~~ disparities in discipline rates and outcomes, including those related to solo and small firm practitioners.
2. **Goal 2:**
Effectiveness
 - a. ~~Update and modernize~~ **Revise** the bar admissions requirements to be more relevant to the practice of law, ~~in alignment with the recommendations of the Blue~~

~~Ribbon Commission on the Future of the Bar Exam to eliminate unnecessary barriers to admission, or to implement changes to the bar examination or other pathway to licensure approved by the Supreme Court.~~

Consumer Focus

- a. Continue to analyze data points to identify the ~~root-potential~~ causes of inequities in accessing legal services to inform policy recommendations to ~~and~~ reduce the access to legal services gap.

Diversity, Equity, and Inclusion

- a. Identify data-supported practices that promote retention and advancement of a diverse and inclusive legal profession, including strategies that support solo and small-firm practitioners, and share those practices through toolkits and other resources.

Minor Language Edits:

1. Goal 2:

Diversity, Equity, and Inclusion

- a. Increase the numbers of diverse attorneys in the legal profession by encouraging ~~through~~ diversity pipeline programs that support aspiring attorneys in graduating from law school and passing the bar exam.
- b. Engage DEI leaders and other stakeholders to encourage legal employers to set and publicly commit to measurable diversity, equity, and inclusion goals through the State Bar DEI-Diversity Leadership Seal Program.

2. Goal 4:

Effectiveness

- a. Enhance visibility of and accessibility to State Bar public meetings.

Condense Seven Implementation Steps to Two:

3. Goal 3:

Consumer Focus

- a. ~~Implement the Office of Professional Competence's 5-year plan for preventative education e-learning and self-assessment modules.~~
- b. ~~Create a license resource page on the State Bar website to provide information and tools on emerging topics and issues including mental health, financial literacy, and navigating imposter syndrome in the workplace.~~
- c. Position the State Bar as a trusted resource, ~~and~~ increase proactive interactions with licensees, ~~beyond admitting attorneys into the profession, collecting fees, and monitoring MCLE compliance and ensure that licensees are aware of how the work of the Bar supports the competent and ethical practice of law.~~

Diversity, Equity, and Inclusion

- a. ~~Support attorneys from disenfranchised and underserved communities who may experience unique practice management and other challenges.~~

4. Goal 4:

Effectiveness

- a. ~~Ensure that licensees are aware of the work of the State Bar and how the bar supports competent and ethical practice.~~

Consumer Focus

- a. ~~Create and sustain partnerships with other organizations, entities, and stakeholder groups.~~ Build a robust, diverse, and mission-oriented network of partners.

Diversity, Equity, and Inclusion

- a. ~~Increase the number and variety of stakeholders to include affinity bar associations and a broad range of organizations invested in the mission of the State Bar.~~

The approval of modifications to the 2022–2027 strategic plan has been postponed for discussion until the March 2024 Board meeting. At that time, staff will present a draft of Goal V for the Board's consideration.

708 Artificial Intelligence Overview and Training

Presenter: Erika Doherty, Program Director, Office of Professional Competence

Presentation and discussion only.

ADJOURN

EXHIBIT 12



The State Bar of California

OPEN SESSION AGENDA ITEM 701 FEBRUARY 2024

DATE: February 26, 2024

TO: Members, Board of Trustees

FROM: Aracely Montoya-Chico, Chief Financial Officer

SUBJECT: Approval of State Bar Final 2024 Budget Pursuant to Business and Professions Code Section 6140.1

EXECUTIVE SUMMARY

This agenda item requests that the Board of Trustees approve the 2024 final budget, which can be found [here](#)¹. The State Bar will file the budget with the Legislature to meet the February 28 statutory submission deadline after adoption by the Board. At its January 10 meeting, the Finance Committee held detailed discussions on the preliminary budget presented at that time. The board was also presented the preliminary budget at its January 18–19 meeting. This item presents the final 2024 budget.

Bar-wide revenue is budgeted at \$428.9 million, while expenses \$400.9 million, resulting in a surplus position of \$28.0 million. Grant revenue and expenses, which are mostly pass-through, account for a significant portion of bar-wide revenues and expenses as well as the overall surplus budget position.

General Fund (GF) revenue is budgeted at \$96.3 million, while expenses are \$118.4 million, resulting in deficit spending of \$22.1 million. Included in the GF budget are \$7.1 million in one-time investments to be incurred only for 2024. The State Bar General Fund operating reserves are projected to end 2023 at \$36.0 million. The large reserve balance is a result of selling the San Francisco building and receiving net proceeds of \$30.0 million.

The 2024 Admissions budget also reflects an ongoing structural deficit. Admissions revenue is budgeted at \$26.9 million, while expenses are \$30.7 million, resulting in deficit spending of \$3.8

¹ A PDF version of the budget is under development and will be posted as soon as available, a date which will be prior to the February 28 due date for the report.

million. To address the ongoing deficit of the fund in 2024 and beyond, fee increases to various admissions programs were proposed and adopted in 2023. The Board will be asked to act on additional admissions related fee increases at its March 2024 meeting. In addition, the Office of Admissions is conducting an in-depth analysis to determine where cost-cutting measures can be implemented; any identified measures will be presented to the Board later this year.

BACKGROUND

The State Bar has been experiencing a decreasing General Fund (GF) reserve balance year-over-year in addition to a significant structural deficit in the Admissions Fund. The board took action in 2023 by increasing Admissions and GF service fees, and submitting a request for an \$82 fee increase for active licensees effective January 1, 2024, to address the State Bar's structural GF deficit, estimated to total \$17 million at that time. The Legislature did not approve a fee increase for 2024.

The State Bar sold its San Francisco building in November 2023 and received the net proceeds upon closing of the sale of approximately \$30 million, which was deposited into the GF reserves. In absence of a fee increase, Senate Bill, SB 40, signed into law in October 2023, provided guidance on the use of the building funds to support State Bar operations. The bill authorized "the use of net proceeds from the sale of the State Bar's San Francisco office building, after paying for costs related to the sale and new space, for employee salaries, and the operational costs for the discipline system and administration of the bar exam. All other funds must be held by the State Bar until approved by the Legislature."

The final budget is required to be filed with the Legislature by February 28, 2023. In addition to satisfying the statutory requirement, adoption of the final budget will finalize the State Bar's 2024 spending authority.

DISCUSSION

STATE BAR-WIDE BUDGETED REVENUES AND EXPENSES

The proposed 2024 Final Budget includes budgeted revenues of \$428.9 million and expenses of \$400.9 million. The overall net \$28.0 million surplus is mostly from grants related funds. Grant revenue and expenses are 65 percent and 58 percent, respectively, of bar-wide totals. The GF has a \$22.1 million deficit and the Admissions Fund \$3.8 million deficit. Other smaller funds with deficit positions offset the large surplus bar-wide totals.

Budgeted revenues represent an increase of \$94.2 million or approximately 28 percent compared to \$334.7 million budgeted revenues in 2023. The vast majority of State Bar revenue is derived from grant-related sources and the annual attorney licensing fee. The primary driver for the 2024 revenue increase is IOLTA revenue.

Budgeted expenses of \$400.9 million represent a net increase of \$106.9 million or 36 percent compared to \$294.0 million budgeted in 2023. Key changes in the most significant expense line items over prior year include grant expense increase of \$84.6 million from

planned Legal Services Trust Fund (LSTF) disbursement, and personnel increases of \$10.0 million due to a cost-of-living adjustment (COLA) and merit increases. Table 1 below shows a comparison summary of the State Bar-wide revenues and expenses for 2024 and 2023.

Table 1. State Bar-Wide Budgeted Revenues

Amount (in millions)			
	2024 Budget	2023 Budget	\$ Change
Revenue	\$428.9	\$334.7	\$94.2
Expenses	\$400.9	\$294.0	\$106.9
Surplus	\$28.0	\$40.7	(\$12.8)

GENERAL FUND

The proposed 2024 General Fund budgeted revenues of \$96.3 million represent an increase of \$4.9 million or 5 percent compared to \$91.4 million budgeted revenues in 2023. The main source of GF revenue is mandatory licensee fees, which increased by 0.7 percent from 2023 to 2024.

Expenses for 2024 total \$118.4 million, an increase of \$13.6 million or 13 percent as compared to the 2023 budget. The 2024 budgeted deficit is \$22.1 million. The budget relies on \$2.8 million in a one-time OPEB expenditure deferral; without this deferral, the projected 2024 deficit would be nearly \$25 million. Of the \$22.1 million deficit amount, \$7.1 million reflects one-time expenditures primarily reflected in the Services budget line item, which include the following:

- Digitization project to support smaller SF footprint (\$2M)
- LA office elevator upgrade (\$1.5M)
- SF office restack architectural and construction services (\$0.8M)
- Redesign and security improvements for State Bar website (\$0.3M)
- Five-year radical disparities study in attorney discipline (\$0.1M)
- Five-year update to California Justice Gap Study (\$0.4M)
- Phone system upgrade for Contact Center (\$0.5M)
- Agaton Litigation (\$0.5M)
- 2024 lease costs considered one-time expense as lease payments will decline in 2025 due to a planned downsizing of SF office space (\$1M)

Outside of the above expenditures, there is an increase of \$6.4 million in personnel expenses as a result of a negotiated COLA of 2.5 percent, merit increases, and increased healthcare costs.

Ending 2023 GF reserves are projected to total \$36.0 million. The large reserve balance is a result of selling the San Francisco building and receiving net proceeds of \$30.0 million. The remaining \$6.0 million is due to the release of loan proceeds that were restricted to be used for the IT and capital projects. Upon selling the building, the funds are no longer required to be restricted. Although the State Bar’s reserve policy sets a reserve floor of 17 percent for most funds, the 2024 proposed budget will result in the General Fund reserve balance totaling \$13.9 million, or 11.8 percent, at the end of 2024.

Table 2 below shows a comparison summary of the General Fund revenues and expenses for 2024 and 2023.

Table 2. General Fund Budget

Amount (in millions)			
	2024 Budget	2023 Budget	\$ Change
Revenue	\$96.3	\$91.4	\$4.9
Expenses	\$118.4	\$104.9	\$13.6
Deficit	(\$22.1)	(\$13.5)	(\$8.6)

ADMISSIONS FUND

Because of the nature of admissions work, namely development and administration of the bar examination, the Admissions Fund incurs millions in nondiscretionary expenditures for professional services, exam, temporary help, and travel expenses annually. To develop the 2024 Admissions Fund budget, staff accounted for both the admissions service fee increases adopted by the Board in September 2023, as well bar exam administration cost reduction measures presented to the Board in September and November 2023.

The fee increases and cost reductions have helped close the structural deficit in the Admissions Fund; however, the 2024 budget relies on deficit spending of \$3.8 million.

The proposed 2024 Admissions Fund budget includes budgeted revenues of \$26.9 million and expenses of \$30.7 million. Budgeted revenues represent an increase of \$7.3 million or 38 percent compared to \$19.6 million budgeted revenues in 2023 due to the admissions service fee increases. Expenses are budgeted at \$30.7 million, an increase of \$4.4 million or 17 percent as compared to the 2023 budget. The main drivers of the increase are personnel costs and indirect costs. The \$2.6 million temporary rise in indirect costs is related to the one-time expenses in the GF². To offset the increase of total expenses in 2024 and in light of the deficit position in the Admissions Fund, the board could consider using a portion of building sale proceeds to pay for a portion of exam related expenses; SB 40 allows for building sale proceeds to be used in this manner. If the Board chooses to go in that direction, staff will incorporate that decision into the mid-year budget amendment.

There is an ongoing structural deficit in Admissions operations driven largely by flat bar examination fees, a reduced number of bar exam applicants over the last several years, and higher operating costs due to negotiated merit increases and COLA's and a return to an in-person bar exam. The Admissions Fund 2023 ending reserve balance is approximately \$7.0 million. With the budgeted 2024 deficit spending of \$3.8 million, the Fund is projected to end 2024 with \$3.3 million of reserves. Remaining pending admissions services fee increases will need to be adopted, and additional bar exam administration cost saving measures identified, by the end of this year, in order for the Admission Fund to remain solvent beginning in 2026.

² The significant variance between budgeted 2023 and 2024 indirect costs reflects the State Bar's historical practice of not truing up indirect costs annually. Had a true-up occurred in 2023, Admissions Fund indirect costs would have increased by about \$0.6 million in that year, resulting in a smaller variance between 2023 and 2024 amounts.

Table 3 below shows a comparison summary of the General Fund revenues and expenses for 2024 and 2023.

Table 3. Admissions Fund Budget

Amount (in millions)			
	2024 Budget	2023 Budget	\$ Change
Revenue	\$26.9	\$19.6	\$7.3
Expenses	\$30.7	\$26.3	\$4.4
Deficit	(\$3.8)	(\$6.7)	(\$2.9)

OVERALL IMPACT ON RESERVES

The financial viability of each fund is assessed by comparing the reserves of each fund, projected through December 31, 2024, against the Board’s minimum reserve guideline of two months (17 percent) of operating expenses. The Board’s policy also calls for spend-down funding whenever a fund surpasses 30 percent of operating expenses. Funds that are excluded from the minimum reserve target requirement (noted as N/A below) are all grant-related funds (specifically, the Legal Service Trust, Equal Access, Justice Gap, and Bank Settlement Funds) and the Client Security Fund. The table below shows a summary of reserves for 2024.

**Table 4. Projected Reserves – All Funds
At December 31, 2024**

Amount (in 000s)						
Funds	Reserve 12/31/2023	2024 Budget Revenues	2024 Budget Expenses	Budgeted Surplus/ (Deficit)	Projected Reserve 12/31/2024	Reserve Level (%)
General Fund	36,095	96,341	(118,487)	(22,146)	13,949	11.8%
Admissions	7,051	26,927	(30,704)	(3,777)	3,274	10.7%
Elimination of Bias	(0)	325	(482)	(157)	(157)	-32.6%
Lawyers Assistance Program	1,010	2,249	(3,017)	(768)	242	8.0%
Legislative Activities	248	55	(295)	(240)	8	2.5%
Bank Settlement	4,844	168	(4,699)	(4,531)	313	N/A
Client Security	8,890	8,865	(8,318)	547	9,437	N/A
Equal Access	2,770	37,921	(38,732)	(811)	1,959	N/A
Grants	2,450	97,907	(96,772)	1,135	3,585	N/A
Justice Gap	4,918	1,228	(1,008)	220	5,138	N/A
LSTF	188,416	157,378	(98,923)	58,455	246,871	N/A

Based on the 2024 Budget, all funds are expected to have reserves below the 17 percent target at the end of 2024.

As discussed above, the Admissions and General Funds face structural deficits that will require continued reserve spending absent revenue increases and cost reductions.

The EOB Fund has had a decline in revenues the past few years. However, the State Bar's work in diversity, equity, and inclusion has only increased. The EOB Fund is running out of reserves as the revenue stream is insufficient to support the State Bar's DEI work.

Business and Professional Code section 6140.9 (d) states that any excess funds not needed to support the Lawyer Assistance Program (LAP), including reserve funds, may be transferred to the Client Security Fund, provided there are sufficient funds available to fully support the program. Given that LAP does not have excess funds in 2024, its reserves are decreasing, and the Client Security Fund continues to have healthy reserves, a transfer is not necessary or recommended at this time.

The Legislative Activities Fund was changed to opt-in in 2023 and as a result, revenue has significantly decreased and is projected to continue on a downward trend.

2025-2027 FORECAST

Except for line items with known variances, the 2025 to 2027 forecast years assumes the following:

- 3 percent inflationary increase for expenses annually.
- Merit increases for all full-time equivalent (FTEs) that are eligible and have not reached their salary cap.
- 2.5 percent COLA in 2025 for all FTEs per the negotiated MOU. No COLA increases for 2026-2027 as they have not been negotiated with the union.
- Flat staffing levels compared to 2024.
- Minimal growth in mandatory license fees of 0.28 percent annually³.
- No statutory fee increase.

Without a fee increase, the General Fund will become insolvent in 2025, as all remaining reserves will be depleted. In addition, the Admissions Fund faces a structural deficit and is projected to exhaust its reserves in 2026.

FISCAL/PERSONNEL IMPACT

The fiscal impact of the 2024 Final Budget for revenues is a net increase of \$94.1 million and expenditures a net increase of \$106.9 million compared to the 2023 budget. Of these amounts, \$76.4 million of revenue and \$84.6 million of expenses comprise grant-related funds.

AMENDMENTS TO RULES

None

³ Staff is analyzing attorney growth projections for future years to ensure accurate estimates are used for projecting licensee fees; specifically, the .28 percent may be too low. If, post budget adoption, a change in the estimate is recommended and approved by the board, staff will incorporate that adjustment in the midyear budget.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – compliance

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees adopts the 2024 Final Budget.

FURTHER RESOLVED, that the Board of Trustees authorize staff to make technical adjustments and corrections to the 2024 Final Budget prior to submitting it to the Legislature by February 28, 2024.

ATTACHMENTS LIST

- A. [2024 Final Budget](#)

EXHIBIT 13



The State Bar of California

Title of Report: 2024 Adopted Final Budget
Statutory Citation: Business and Professions Code Section 6140.1 and 6140.12
Date of Report: February 28, 2024

The State Bar of California has submitted a report to the Legislature in accordance with Business and Professions Code section 6140.1 and 6140.12, which requires the State Bar to submit a final budget to the Legislature by February 28 of each year. This summary is provided pursuant to Government Code section 9795.

The State Bar Board of Trustees adopted a new five-year strategic plan in May 2022 structured around four goals: (1) protecting the public by strengthening the attorney discipline system; (2) improving access to and inclusion in the legal system; (3) regulating the legal profession; and (4) engaging partners. The State Bar's 2024 budget allocates resources to support the continued provision of core services and to advance the organization's five-year strategic plan.

The State Bar's budget is comprised of eleven funds. The General Fund, Admissions Fund, and grant-related funds support most State Bar activity and expenditures. The 2024 budget reflects the ongoing unfortunate reality of a structural General Fund operating deficit, a shrinking General Fund reserve, and no scheduled attorney licensing fee increases to improve the health of that fund. The State Bar is, however, pursuing a fee increase request for 2025. The Admissions Fund also faces a challenging deficit position; however, with recently adopted service program fee increases, this fund's deficit position decreased as compared to prior years.

Budgeted 2024 revenues of \$428.9 million reflect an increase of \$94.2 million compared to 2023, comprised entirely of grant-related revenue; overall budgeted expenses of \$400.9 million represent a net increase of \$106.9 million for over the same comparative period. Key changes from 2023 include:

- Revenue increased \$94.2 million from the 2023 budget mostly due to increased interest revenue from Lawyers' Trust Accounts (IOLTA) and state and federal grants revenue.
- Personnel expenses increased by \$10 million from the 2023 budget primarily due to cost-of-living adjustments, merit increases, and benefit healthcare rate increases.
- Building operations increased by \$4.4 million from the 2023 budget reflecting the impact of transitioning from owned to leased office space. The cost will decrease in 2025 when the State Bar reduces its San Francisco office footprint.
- Services expenditures increased by \$7.1 million reflecting critical one-time investments that support key strategic initiatives.

The 2024 Adopted Final Budget can be accessed at: <https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Reports>. A printed copy of the report may be obtained by calling 415-538-2000.

Judicial Evaluations

PERSONNEL

JNE employs approximately three full-time employees.

	Positions					Salaries			
	2023 Budget	2024 Budget	2025 Forecast	2026 Forecast	2027 Forecast	2024 Budget	2025 Forecast	2026 Forecast	2027 Forecast
Deputy Chief of Programs	0.10	0.05	0.05	0.05	0.05	\$12,894	\$13,235	\$13,236	\$13,236
Program Analyst	1.00	1.00	1.00	1.00	1.00	100,539	107,489	112,117	113,762
Program Coordinator	1.00	1.00	1.00	1.00	1.00	94,550	99,967	100,247	100,273
Program Director I	0.00	0.10	0.10	0.10	0.10	17,941	19,232	19,610	19,642
Program Supervisor	1.00	1.00	1.00	1.00	1.00	126,985	135,764	137,667	137,931
Total FTE	3.10	3.15	3.15	3.15	3.15	\$352,908	\$375,687	\$382,878	\$384,845

EXPENSE

Total 2024 budgeted expenses for JNE are approximately \$1.15 million.

	2023 Budget	2024 Budget	2025 Forecast	2026 Forecast	2027 Forecast
Personnel Costs	\$473,392	\$531,000	\$570,000	\$587,000	\$598,000
Building Operations	625	6,000	6,000	6,000	6,000
Services	955	2,000	2,000	2,000	2,000
Supplies	141	500	1,000	1,000	1,000
Equipment	2,111	500	1,000	1,000	1,000
Other Expenses	165,000	266,000	273,000	281,000	289,000
Indirect Costs	244,317	341,000	333,000	343,000	353,000
Total Expenses	\$886,541	\$1,147,000	\$1,186,000	\$1,221,000	\$1,250,000

OFFICE OF ADMISSIONS

The Office of Admissions is responsible for all activities pertaining to admission to the practice of law in California. In April 2023, the Office of Admissions was reorganized. The unit designations below reflect these organizational changes.

ADMINISTRATION AND EXAMINATIONS

Develops, delivers, and grades all admissions-related exams, including legal specialization exams.

ELIGIBILITY AND TESTING ACCOMMODATIONS

Determines eligibility to take an exam, as well as oversight of special admissions programs.

MORAL CHARACTER DETERMINATIONS

Processes moral character applications from applicants seeking admission to practice law in California.

LAW SCHOOL REGULATION

Oversees the registration of unaccredited law schools and the accreditation process for California accredited law schools.

FISCAL YEAR 2024 PROJECTS AND OBJECTIVES

- ✓ Implement Supreme Court direction as related to the recommendations of the Blue Ribbon Commission on the Future of the Bar Exam and the Alternative Pathways Working Group.
- ✓ Implement a revised approach to testing accommodation request determination.
- ✓ Test components of the California Bar Exam administration on performance, including remote versus online, open versus closed book, and allotted time.
- ✓ Establish a privacy law specialty.
- ✓ Launch a joint accreditation application for law schools fully approved by non-State Bar accreditors.
- ✓ Develop officewide data quality and reporting practices that result in clearer insights into effectiveness, efficiency, and barriers to both.

PERSONNEL

The Office of Admissions employs just under 70 full-time employees.

	Positions					Salaries			
	2023 Budget	2024 Budget	2025 Forecast	2026 Forecast	2027 Forecast	2024 Budget	2025 Forecast	2026 Forecast	2027 Forecast
Administrative Assistant I	2.00	0.00	0.00	0.00	0.00	\$0	\$0	\$0	\$0
Administrative Assistant II	1.00	0.00	0.00	0.00	0.00	0	0	0	0
Administrative Supervisor	2.00	0.00	0.00	0.00	0.00	0	0	0	0
Attorney III	0.00	1.00	1.00	1.00	1.00	147,993	153,526	155,381	157,258
Chief Programs Officer	0.50	0.00	0.00	0.00	0.00	0	0	0	0
Deputy Chief of Programs	0.00	0.45	0.45	0.45	0.45	116,047	119,113	119,127	119,128
Fiscal Services Specialist	1.00	0.00	0.00	0.00	0.00	0	0	0	0
Financial Analyst	0.00	1.00	1.00	1.00	1.00	97,332	100,028	100,292	100,557
Investigator I	4.00	2.00	2.00	2.00	2.00	185,265	192,974	196,048	198,804
Investigator II	5.00	7.00	7.00	7.00	7.00	723,773	751,276	761,000	767,097
Office Assistant II	3.00	0.00	0.00	0.00	0.00	0	0	0	0
Principal Program Analyst	2.00	2.00	2.00	2.00	2.00	305,499	309,200	309,200	309,200
Program Analyst	6.00	6.00	6.00	6.00	6.00	599,663	625,985	634,038	640,387
Program Assistant II	5.00	0.00	0.00	0.00	0.00	0	0	0	0
Program Assistant III	3.00	0.00	0.00	0.00	0.00	0	0	0	0
Program Coordinator	2.00	1.00	1.00	1.00	1.00	97,830	100,275	100,275	100,275
Program Director I	1.00	3.00	3.00	3.00	3.00	573,520	593,733	600,822	604,372
Program Director III	1.00	1.00	1.00	1.00	1.00	237,563	237,705	237,705	237,705
Program Manager I	1.00	0.00	0.00	0.00	0.00	0	0	0	0
Program Manager II	3.00	3.00	3.00	3.00	3.00	462,795	477,592	480,891	484,261
Program Specialist	15.00	0.00	0.00	0.00	0.00	0	0	0	0
Program Specialist I	0.00	9.00	9.00	9.00	9.00	619,737	644,869	653,970	660,669
Program Specialist II	0.00	4.00	4.00	4.00	4.00	318,687	328,827	330,694	331,913
Program Specialist III	0.00	17.00	17.00	17.00	17.00	1,395,398	1,445,550	1,458,420	1,467,949
Program Supervisor	7.00	9.00	9.00	9.00	9.00	1,143,169	1,186,838	1,202,068	1,208,595
Senior Administrative Assistant	3.00	0.00	0.00	0.00	0.00	0	0	0	0
Senior Attorney	1.00	0.00	0.00	0.00	0.00	0	0	0	0
Senior Program Analyst	2.00	3.00	3.00	2.00	2.00	304,354	269,469	225,103	229,310
Total FTE	70.50	69.45	69.45	68.45	68.45	\$7,328,625	\$7,536,960	\$7,565,033	\$7,617,480

2024 BUDGET BY EXPENSE CATEGORY

Total 2024 budgeted expenses for the Office of Admissions are \$30.7 million, an increase of \$4.4 million over 2023. The increase is attributable to a reduction in the staff vacancy rate and increases in salaries and benefits, alongside a temporary rise in indirect costs in 2024 related to one-time expenses as well as costs associated with the building sale.

Expense Categories	2023 Budget	2024 Budget	2025 Forecast	2026 Forecast	2027 Forecast
Personnel Costs	\$8,762,093	\$10,517,000	\$10,958,000	\$11,105,000	\$11,294,000
Building Operations	25,006	29,000	30,000	31,000	32,000
Services	2,185,094	1,975,500	2,037,000	2,100,000	2,163,000
Supplies	40,687	43,000	49,000	50,000	51,000
Equipment	452,149	642,500	663,000	683,000	703,000
Other Expenses	281,590	240,500	248,000	253,000	259,000
Exam Related Expenses	7,484,309	7,591,000	7,592,000	7,804,000	8,021,000
Indirect Costs	7,061,217	9,666,000	7,572,000	7,800,000	8,034,000
Total Expenses	\$26,292,145	\$30,704,500	\$29,149,000	\$29,826,000	\$30,557,000

Note: If the California Supreme Court approves pending recommendations related to a new California Bar Exam and/or a portfolio-based exam, the 2025-2027 forecast will be modified to reflect necessary investments needed to implement those recommendations.

INTERFUND TRANSACTIONS

Expense Categories	2023 Budget	2024 Budget	2025 Forecast	2026 Forecast	2027 Forecast
Interfund Transfer In	\$0	\$495,000	\$510,000	\$525,000	\$541,000
Total Interfund Transactions	\$0	\$495,000	\$510,000	\$525,000	\$541,000

2024 BUDGETED REVENUE

Total 2024 budgeted revenue for the Office of Admissions is approximately \$26.4 million, compared to \$19.6 million in 2023. The rise in 2024 Admissions budgeted revenue stems from fee increases implemented in 2023.

Fund	2023 Budget	2024 Budget	2025 Forecast	2026 Forecast	2027 Forecast
Admissions					
Other Fees	\$8,282,630	\$8,489,000	\$8,966,000	\$8,998,000	\$9,504,000
Exam Fees	11,232,373	17,423,500	18,016,000	18,486,000	19,111,000
Investment Income	66,761	520,000	536,000	552,000	568,000
Admissions Total	19,581,764	26,432,500	27,518,000	28,036,000	29,183,000
Total Fund Sources	\$19,581,764	\$26,432,500	\$27,518,000	\$28,036,000	\$29,183,000

EXHIBIT 14



The State Bar of California

OPEN SESSION AGENDA ITEM III.A. MARCH 2024 COMMITTEE OF BAR EXAMINERS

DATE: March 15, 2024

TO: Members, Committee of Bar Examiners

FROM: Audrey Ching, Program Director, Office of Admissions
Cody Hounanian, Program Director, Office of Admissions
Amy Nuñez, Program Director, Office of Admissions

SUBJECT: Update on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration

EXECUTIVE SUMMARY

The Office of Admissions is confronted with a structural budget problem that will see the Admissions Fund become insolvent in 2026. The largest drivers of expenses are bar exam-related costs, exacerbated by testing facility and proctor challenges. In 2023, the Board of Trustees approved a 26 percent and 32 percent increase in the bar exam application fee for students and attorneys, respectively, to cover growing exam costs. The State Bar recognizes that these fees, along with other Admissions fees such as registration and moral character fees, present a challenge for applicants and, despite the fee increase, the Admissions Fund still faces insolvency.

In an effort to continue to responsibly manage the budget and avoid any future cost escalation for applicants, staff, in consultation with psychometricians, are exploring developing exam questions with a new vendor, including multiple-choice questions to replace the Multistate Bar Examination (MBE) and mirror the MBE in content, difficulty, and scope. Currently, the National Conference of Bar Examiners (NCBE) develops the MBE and requires the MBE to be delivered in a “jurisdiction-run facility,” like the large convention centers that are currently used to administer the bar exam. NCBE prohibits the MBE from being delivered remotely or in a vendor-owned test center. Developing and owning its own bank of multiple-choice questions would allow the State Bar to adopt an alternative cost-effective exam administration approach for the February 2025 bar exam and beyond. In this item, staff seek feedback from the

Committee of Bar Examiners to guide further research and discussions with potential vendors as staff consider independent question development.

BACKGROUND

As the committee is aware, the Admissions Fund faces a significant structural deficit resulting from a combination of factors including higher prices for testing facilities post-pandemic, difficulties in securing proctors, and reliance on costly staffing agencies. In 2023, the actual cost to administer the bar exam, including the cost of MBE materials, was nearly \$10 million.

To address escalating costs, the Board approved a series of fee increases in September 2023, including a 26 percent rise in the bar exam application fee for students and a 32 percent increase for attorney applicants.¹ Even with these adjustments, if exam administration continues as-is the Admissions Fund is projected to be insolvent by the end of 2026.²

In June 2023, the committee directed staff to research a one-day remote exam model as a potential cost-saving measure.³ While a remote exam was deemed unfeasible for the July 2024 exam, recent developments, such as the identification of additional remote exam vendors and the possibility of utilizing vendor-owned test centers, suggests there are other cost-effective alternatives to administer the entirety of the bar exam. These options are being explored by staff. Realizing the benefits of these opportunities is contingent on independence from the NCBE and its exam administration requirements.⁴

CURRENT LIMITATIONS

Having conducted research regarding potential cost savings measures, staff believe the greatest benefits would be achieved if the State Bar had the flexibility to administer the entirety of the exam at a vendor-owned test center, remotely, or a combination of the two. However, the NCBE prohibits remote or vendor-owned test-center administration of the MBE, severely limiting the State Bar's ability to choose a more cost-effective exam administration approach.

Considering these challenges, Admissions posted a Request for Information (RFI) in January 2024, seeking information from possible vendors who could develop both multiple-choice, MBE-like questions as well as written essays and performance tests, with a goal of adopting an

¹ State Bar of California Board of Trustees, Agenda Item Number: 701 (September 2023). <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000031535.pdf>.

² State Bar of California Board of Trustees, Agenda Item Number: 701 (February 2024). <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000032180.pdf>.

³ Committee of Bar Examiners (June 2023). <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000031129.pdf>.

⁴ In May 2023, the Board advanced recommendations from the Blue Ribbon Commission on the Future of the Exam which, if approved by the Supreme Court, would result in the development of a California-specific exam and a separation from the NCBE irrespective of the present initiative. Here staff seeks to accelerate that independence to achieve much-needed costs savings.

alternative, cost-effective exam administration approach starting with the February 2025 bar exam.

DISCUSSION

As staff explore exam-related cost-saving measures, it is important to note that no alteration of the exam itself is being proposed. The only proposal on the table is to change the vendor used for exam development to allow for alternative exam administration methods. The format and content will not change, and therefore no substantial modification of the training or preparation for passage of the examination will be necessary such that two years notice of the change would be required.^{5,6}

Based on staff's research and review of vendor responses to date, it appears that developing multiple-choice questions with a new vendor can be achieved at a cost comparable to the current costs of procuring the MBE alone or the entirety of the exam. Although staff is early in its discussions with possible vendors, and it would jeopardize negotiations to publicly disclose the details of preliminary discussions underway, staff is confident that an alternate to the MBE or the entire exam could be developed and psychometrically validated as being equivalent to the current exam in time for the February 2025 exam administration. Costs cited indicate that the State Bar would save money on exam development going this route, particularly when taking into account the entirety of the exam as opposed to just the MBE. The greater benefit, however, will be realized through changed exam administration which staff estimates will generate up to \$2 million in savings per exam administration.

Staff are cognizant that questions developed with a new vendor must maintain the exam's standards of validity and reliability. Admissions has vetted this change and has been working closely with its psychometrician, Chad Buckendahl, who has identified methods that would preserve the reliability of exam scores and ensure there is no impact on necessary exam preparation. Staff are further assured that reliable, new questions can be developed using the same content validation methodology implemented in 2023 for the refresh of the multiple-choice questions used for the First-Year Law Students' Examination. More specifically, the questions would be analyzed using Item Response Theory (IRT), a methodology that facilitates the evaluation of the statistical properties of questions and is the same methodology used by the NCBE to ensure consistency in the interpretation of MBE scores from one exam to the next.⁷

EXAM ADMINISTRATION METHOD

With the development of its own multiple-choice questions, Admissions can consider various alternative exam administration methods to achieve cost savings. Staff has identified three options for exploration:

⁵ CA Rules of Court, rule 9.6.

⁶ CA Bus & Prof Code § 6046.6.

⁷ Item Response Theory (IRT) is a set of psychometric methods that can be used to evaluate the statistical properties of questions in a way that is sample independent.

Fully Remote: At the direction of the committee, extensive research has been conducted on remote exam models. In January 2024, staff recommended to the Board a continuation of in-person exams through at least July 2024 to allow additional time to address concerns related to technological failure, compatibility with testing accommodations, and scalability.⁸ Continued research is underway, including engagement with additional remote exam vendors and attending exam industry trade conferences to learn more about available options.

Test Centers: Vendor-owned test-center exam administration presents an appealing option for cost savings and operational efficiency enhancements. Under a vendor-owned test-center model, Admissions would eliminate labor-intensive tasks such as securing and managing large exam facilities and recruiting and compensating proctors. Other expenses would be reduced including: contracting and managing hotel and convention center sites; infrastructure, equipment, and technology; and travel and logistics. Early discussions have taken place with a leading test-center vendor with an extensive network across California.

Combining Remote and Test Centers: Enhanced flexibility could enable Admissions to adopt a hybrid approach combining remote and test-center administration methods. Various options are under consideration, including allowing applicants to choose their preferred method, providing remote exam administration as a testing accommodation, or having a fixed capacity for both options.

COMMITTEE FEEDBACK AND NEXT STEPS

Given the significant facilities costs in administering the bar exam, and the continuing financial concerns, Admissions aims to finalize an alternative bar exam administration method for the February 2025 exam. Feedback from the committee is crucial to address concerns and prepare a recommendation to the Board. Additionally, staff seek committee liaisons to provide ongoing input, and guide stakeholder engagement to ensure comprehensive consideration of all perspectives.

Staff propose the following timeline, which would enable a new administration model by February 2025:

- *March committee meeting:* Volunteer liaisons solicited to assist staff in exploring the development of exam questions, including MBE-like multiple-choice questions, and alternative administration methods.
- *March-April:* Staff and liaisons seek input from stakeholders regarding proposed changes.
- *April committee meeting:* Staff and liaisons present recommendations for committee

⁸ State Bar of California Board of Trustees, Agenda Item Number: 703 (January 2024).
<https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000032055.pdf>

feedback.

- *May Board meeting:* Staff presents recommendations to the Board for adoption.

FISCAL/PERSONNEL IMPACT

The Office of Finance’s final 2024 budget forecasts deficit spending of \$3.8 million, and the Admissions Fund is projected to end 2024 with \$3.3 million of reserves. The final budget states, in part, that bar exam administration cost-saving measures will need to be adopted in order for the Admission Fund to remain solvent in 2026.

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

None

ATTACHMENT(S) LIST

None

EXHIBIT 15



The State Bar of California

Stakeholder Input Forum: Bar Exam Question Development with a New Vendor Tuesday, April 16, 2024, 10:00 a.m. to 12:00 p.m.

PURPOSE OF FORUM

The State Bar of California is exploring the possibility of retaining a new vendor to develop bar exam questions to be used as soon as the February 2025 administration. This would include the development of psychometrically-sound multiple-choice questions to replace the Multistate Bar Examination (MBE) which is currently provided by the National Conference of Bar Examiners (NCBE).

The State Bar is in discussions with possible vendors and seeks public comment and input from stakeholders to identify considerations that will further inform exploration of this initiative.

BACKGROUND

At its March 15, 2024, meeting, the Committee of Bar Examiners discussed [staff's proposal](#) to retain a new vendor to develop bar exam questions. Currently, the MBE multiple-choice questions are developed by the NCBE which restricts how the MBE can be administered. Staff believe that using a new vendor to develop questions would reduce exam-related costs and enable the State Bar to administer the exam in the most cost-effective manner. The proposal contemplates changing only the vendor used for exam question development; the format, scope, and content of the exam will not change. Staff have been working closely with the State Bar's psychometrician throughout the process to ensure that a change in vendor would maintain the exam's rigorous standards of validity and reliability and to ensure there is no impact on exam preparation. The psychometrician will be present at the forum to explain the timeline and validation process.

INPUT FROM STAKEHOLDERS REGARDING PROPOSED CHANGES

Public comments and input from stakeholders at the forum should be focused on the proposal to develop exam questions with a new vendor. The facilitators' comments during the forum should not be interpreted as committing to or rejecting any particular course of action. Rather, the State Bar hopes to gather input to inform continued exploration of these options.



The State Bar of California

OPEN SESSION
AGENDA ITEM III.A.
MARCH 2024
COMMITTEE OF BAR EXAMINERS

DATE: March 15, 2024

TO: Members, Committee of Bar Examiners

FROM: Audrey Ching, Program Director, Office of Admissions
 Cody Hounanian, Program Director, Office of Admissions
 Amy Nuñez, Program Director, Office of Admissions

SUBJECT: Update on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration

EXECUTIVE SUMMARY

The Office of Admissions is confronted with a structural budget problem that will see the Admissions Fund become insolvent in 2026. The largest drivers of expenses are bar exam-related costs, exacerbated by testing facility and proctor challenges. In 2023, the Board of Trustees approved a 26 percent and 32 percent increase in the bar exam application fee for students and attorneys, respectively, to cover growing exam costs. The State Bar recognizes that these fees, along with other Admissions fees such as registration and moral character fees, present a challenge for applicants and, despite the fee increase, the Admissions Fund still faces insolvency.

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To address escalating costs, the Board approved a series of fee increases in September 2023, including a 26 percent rise in the bar exam application fee for students and a 32 percent increase for attorney applicants.¹ Even with these adjustments, if exam administration continues as-is the Admissions Fund is projected to be insolvent by the end of 2026.²

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Combining Remote and Test Centers: Enhanced flexibility could enable Admissions to adopt a hybrid approach combining remote and test-center administration methods. Various options are under consideration, including allowing applicants to choose their preferred method, providing remote exam administration as a testing accommodation, or having a fixed capacity for both options.

COMMITTEE FEEDBACK AND NEXT STEPS

Given the significant facilities costs in administering the bar exam, and the continuing financial concerns, Admissions aims to finalize an alternative bar exam administration method for the February 2025 exam. Feedback from the committee is crucial to address concerns and prepare a recommendation to the Board. Additionally, staff seek committee liaisons to provide ongoing input, and guide stakeholder engagement to ensure comprehensive consideration of all perspectives.

Staff propose the following timeline, which would enable a new administration model by February 2025:

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feedback.

- *May Board meeting:* Staff presents recommendations to the Board for adoption.

FISCAL/PERSONNEL IMPACT

The Office of Finance’s final 2024 budget forecasts deficit spending of \$3.8 million, and the Admissions Fund is projected to end 2024 with \$3.3 million of reserves. The final budget states, in part, that bar exam administration cost-saving measures will need to be adopted in order for the Admission Fund to remain solvent in 2026.

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

None

ATTACHMENT(S) LIST

None

EXHIBIT 16



The State Bar of California

OPEN SESSION AGENDA ITEM III.A. APRIL 2024 COMMITTEE OF BAR EXAMINERS

DATE: April 19, 2024

TO: Members, Committee of Bar Examiners

FROM: Audrey Ching, Program Director, Office of Admissions
Cody Hounanian, Program Director, Office of Admissions
Amy Nuñez, Program Director, Office of Admissions

SUBJECT: Action on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration

EXECUTIVE SUMMARY

At the March 2024 Committee of Bar Examiners meeting, the committee discussed a proposal for the State Bar to develop bar exam questions with a new vendor, enabling the adoption of alternative, cost-effective exam administration approaches beginning with the February 2025 administration. Informed by the committee's March discussion, staff worked with committee liaisons to explore the available options. Staff also sought feedback from various stakeholders, law schools, and the public. This item summarizes the feedback received and the State Bar's response, presents additional details regarding projected cost savings and logistics, and seeks the committee's recommendation to the Board of Trustees on a proposed course of action.

BACKGROUND

The Admissions Fund faces insolvency in 2026. The Office of Finance's final 2024 budget forecasts Admissions Fund deficit spending of \$3.8 million; the fund is projected to end 2024 with just \$3.3 million of reserves.

The significant structural deficit is primarily attributed to exam-related expenses, notably escalating testing facility and proctor costs. If the State Bar does not adopt changes to bar exam administration, it may be required to further increase fees, reduce the number of exam locations and proctors, and pursue other exam-related cost-saving measures; such actions would negatively impact applicants and could affect exam security.

To prudently manage the budget, staff have explored the prospect of transitioning to an alternative, cost-effective exam administration approach such as a fully remote online exam, utilizing small vendor-owned test centers, or a combination of the two beginning with the February 2025 administration. Staff estimates that adopting one of these alternatives would yield savings between \$3 million and \$4.3 million annually beginning in 2025 — enough to largely or fully eliminate the existing structural deficit.

Before the State Bar can pursue the exam administration approaches above, it must retain a new vendor to develop multiple-choice questions for the bar exam. Currently, the multiple-choice component of the exam — referred to as the Multistate Bar Examination (MBE) — is supplied by the National Conference of Bar Examiners (NCBE) which prohibits the MBE from being administered remotely or at vendor-owned test centers. The MBE will be phased out in 2028, meaning the State Bar will be required to replace the multiple-choice questions regardless of this current proposal. Additionally, recommendations from the Blue Ribbon Commission on the Future of the Exam, awaiting Supreme Court approval, call for replacing the MBE with a California-specific exam necessitating a similar change. Here staff propose to expedite the transition to a new vendor to achieve much-needed cost savings.

In January 2024, the State Bar issued a Request for Information (RFI), seeking proposals from potential vendors capable of developing multiple-choice questions equivalent to the MBE. Staff also requested information about the development of essays and performance tests to identify additional cost-saving opportunities.

No alteration of the exam itself is being proposed. The only proposal on the table is to change the vendor used for exam development to allow for alternative exam administration methods. The format and content will not change, and therefore no substantial modification of the training or preparation for passage of the examination will be necessary such that two years' notice of the change would be required.^{1,2}

At the March 2024 committee meeting, staff outlined a timeline for collecting stakeholder feedback throughout March and April.

On April 3 and 4, 2024, staff held discussions with over two dozen deans and faculty members representing California-accredited and registered, unaccredited law schools and over sixty representing American Bar Association-approved law schools as part of the stakeholder feedback solicitation effort. Dr. Chad Buckendahl was present to describe the question development processes, provide an overview of the psychometric validation process that would be employed to ensure exam and score reliability, and address inquiries.

Following these sessions on April 12, deans representing California-accredited law schools submitted a letter expressing concerns with the proposal to develop questions with a new vendor. The letter has been provided to the committee as a public comment and included here in Attachment A.

¹ CA Rules of Court, rule 9.6.

² CA Bus & Prof Code § 6046.6.

Staff will host a public forum on April 16 to receive further comments and input from stakeholders regarding the proposal to develop questions with a new vendor. As of this writing, the forum has yet to take place. Staff will provide an oral update to the committee at its upcoming meeting. In addition to feedback received from law schools, several members of the public have already provided written comments which have been shared with the committee and included here in Attachment B.

DISCUSSION

STAKEHOLDER FEEDBACK

Staff have carefully considered concerns raised by stakeholders and address them, by topic area, below in Table 1. The responses are informed by consultation with Dr. Buckendahl; more information about the psychometric validation process to be used for this initiative is included in Attachment C.

Staff believe that most of the concerns have or can be addressed by providing more information about the process, through the psychometric validation process to be employed, and the preparation materials to be provided to law schools and applicants. Some uncertainties are inevitable due to the change to a new question development vendor.

It is important to note that regardless of when administration of new questions occurs or the pre-testing efforts made, the same situation and methodologies in response will arise. The State Bar is committed to upholding industry best practices for question development and validation which, in the case of developing new questions, entails gathering essential statistical data during the initial administration of those questions and evaluating it afterward. Moreover, to ensure the new questions meet expectations prior to administration, a panel of recently admitted attorneys, supervisors of recently admitted attorneys, and law school professors will assess the questions in development as is best practice.

Table 1. Summary of Law School Feedback and Response by Staff and Psychometrician

Feedback	Response
Concerns about the timeline and a lack of pre-testing	<p>While the timeline appears aggressive, staff is confident that the timeframe is achievable given that the vendor under consideration is an existing test-prep provider with experience developing MBE-like questions that will be replicating existing MBE questions.</p> <p>In addition, the State Bar has considerable experience developing and validating multiple-choice questions through the First-Year Law Students’ Exam and is aware of the effort</p>

	<p>and expectations associated with gathering validity evidence prior to administering questions.</p> <p>Regarding the process to be employed, a designated panel of recently admitted attorneys, supervisors, and law school faculty, will evaluate the questions produced by the vendor to ensure alignment of questions with MBE content areas, adherence to writing style, and suitability for assessing minimum competency. After the initial administration, questions will undergo analysis using Item Response Theory to establish new baseline data; the same methodology that NCBE uses to ensure consistency.</p> <p>Some of the new questions will be field-tested via the California Bar Exam Experiment in October 2024.³</p>
<p>Uncertainty regarding how well scores on existing practice exams will predict performance on new questions</p>	<p>The vendor under consideration is an existing test-prep company with expertise in developing practice materials.</p> <p>While information about various test-prep companies' specific methodologies is not available, the new multiple-choice questions will be designed to measure the same content areas using the same item types as the MBE; preparation should remain unchanged.</p> <p>There will always be variations between performance on practice exams developed by test-prep companies and performance on the actual exam administered.</p>
<p>Need for new preparation materials and guidance for law schools and applicants</p>	<p>While new preparation materials aren't necessary, since the proposal is to simply replace the current MBE questions, the State Bar understands that any change to the bar exam may create worry for students and law schools. The State Bar will provide a content map, study guide, faculty guide, and sample questions to alleviate concerns.</p> <p>The proposal is deliberately designed to ensure there is no modification in preparation necessary. The proposal simply replaces MBE questions with equivalent ones while</p>

³ The California Bar Exam Experiment is a mock exam study that aims to understand the impact of various exam modalities and designs. The mock exams are administered in a way that emulate the bar exam as closely as possible. A pilot California Bar Exam Experiment administered in October 2023 utilized questions developed by the same vendor currently under consideration for this proposal. A full, larger-scale experiment will be conducted in October 2024.

	maintaining consistency in domain measurement, item types, and number of questions.
Questions about the replication of MBE questions that no longer meet best practices and suggestions for improvements	<p>Any contract with a new vendor would require the vendor to replicate MBE multiple-choice questions currently in use.</p> <p>Working with a new vendor does allow for future improvements that align multiple-choice questions with current best practices.</p>
Concerns about a lack of a passing score study before administration and uncertainty about the equating and scaling process	<p>In any scenario involving new exam content historical data for equating and scaling wouldn't be available. This remains true regardless of whether a new vendor is hired, the timeframe before new questions are administered, or if pre-testing or other efforts were conducted beforehand.</p> <p>A final “raw” passing score can only be determined after data is collected on a motivated, representative sample of applicants; field test data generally underestimate item performance.</p> <p>To establish a “raw” passing score, the State Bar plans to employ the same validation approach utilized by the NCBE, namely, Item Response Theory.</p> <p>Only questions meeting the criteria for inclusion will be used for scoring. A passing score study after the initial administration recommends a baseline passing score, facilitating equating for future exams. The passing score is not the exam cut score set by the California Supreme Court.</p>

While the State Bar is confident in the effectiveness of proposed psychometric validation processes and other measures to ensure question validity, exam score reliability, and consistent exam preparation, it recognizes that additional steps may be needed to enhance confidence in the proposed changes. In response to the feedback received, as noted in the table above, staff worked with Dr. Buckendahl to develop a plan to integrate a selection of the newly developed multiple-choice questions into the October 2024 California Bar Exam Experiment. This will provide a way to pre-test items ahead of the February 2025 administration. Additionally, some California-accredited law schools voiced concerns about the proposal's potential impact on their compliance with State Bar rules and guidelines related to their bar pass rates. In response to this concern, staff recommends that the committee explore temporary measures that would alleviate any adverse effects on law school compliance during the transition to new exam questions, such as an “MPR holiday” where the State Bar would track bar pass rates at California-accredited law schools in 2025, but the results would not be folded into the five-year average used for compliance purposes.

EXAM QUESTION DEVELOPMENT WITH NEW VENDOR

Staff, in close consultation with Dr. Buckendahl and the committee liaisons, have held extensive discussions over the past several weeks with a respondent to the RFI that has extensive experience in crafting MBE-like questions for bar exam preparation materials. This vendor's proposals meet the State Bar's requirements for question validity, reliability, and security, and have confirmed that it can produce the requested materials in time for the February 2025 administration target. If retained by the State Bar, the vendor would exit the test-prep market in California and develop the requisite number of multiple-choice bar exam questions equivalent to the MBE. The vendor may develop essays and performance tests as well. The State Bar would retain intellectual property rights, and the vendor would produce a no-cost study guide for all bar exam applicants.

At this writing, the vendor's exam development proposals range from \$1.15 million to \$1.375 million annually. Additionally, the vendor's proposal includes a no-cost study guide, addressing stakeholder requests for sample questions and other materials. Staff are currently evaluating the proposals and aim to finalize an agreement before the May Board of Trustees meeting.

As a contingency plan, the committee should be aware that the State Bar can request MBE exam materials from the NCBE up to six weeks before the administration date.

EXAM ADMINISTRATION APPROACHES

The development of new multiple-choice questions is aimed at offering the State Bar flexibility to pursue alternative, cost-effective bar exam administration approaches. Staff explored three approaches, described below, including fully remote, vendor-owned test centers, and a hybrid approach combining the two. Each would produce significant savings compared to the current in-person administration at large venues — estimated to be between \$3 million and \$4.3 million in savings annually.

While the impetus of this proposal is budget-driven, applicants will also benefit from the change to a new administration approach. Each option would result in savings for applicants as well including reduced travel and lodging expenses. These options also align with test taker preference. A survey of 1,589 test takers who sat for the February 2024 bar exam found that 75 percent would prefer to take the exam on a computer remotely or in a smaller test setting.

Fully Remote

Staff have received proposals from vendors capable of administering a fully remote bar exam, possessing the necessary infrastructure to accommodate the significant volume of applicants. All the vendors under consideration offer live remote proctoring, effectively addressing various exam security and integrity concerns that emerged during the pandemic-era remote exams. A fully remote administration approach would alleviate costly and labor-intensive tasks such as securing and managing large exam facilities and the recruitment and compensation of proctors.

Staff continues to assess how to provide an equivalent exam experience for applicants with testing accommodations in a fully remote environment.

Vendor-Owned Test Centers

A vendor-owned test center approach offers many of the cost savings and operational benefits that a fully remote administration would as well as additional benefits such as on-site proctors who can promptly address technology issues and a standardized testing environment, particularly beneficial for those lacking suitable home environments. This approach would also help mitigate or eliminate issues related to testing accommodations in a fully remote administration. One concern has been vendors’ ability to meet the high volume of applicants that sit for each bar exam administration. Staff is actively working with test center vendors to develop a custom solution.

Hybrid: Remote and Vendor-Owned Test Center

Combining remote administration with the opportunity for applicants to choose to test at a vendor-owned test center presents a compelling strategy for achieving substantial cost savings while maximizing benefits and tailoring the exam experience to individual applicant needs. Vendors under consideration have, without developing a custom solution, the capacity to serve all applicants via a hybrid remote/test center approach. Staff continues to assess how to provide an equivalent exam experience for applicants with testing accommodations in a hybrid environment.

Contingency Planning: “As-Is” In-Person Administration

Staff is actively working to reserve facilities for February 2025 as a contingency plan.

FISCAL/PERSONNEL IMPACT

Staff estimates the “as-is” cost of bar exam question development and administration in 2025 will total \$8.4 million. Table 2 shows the estimated annual cost savings that will be achieved if the State Bar contracts with a new question development vendor and adopts the various alternative exam administration approaches beginning with the February 2025 administration.

Table 2. Annual Cost Savings from Alternative Bar Exam Administration Approaches

Approach	Annual Savings
Fully remote	\$4.3 million
Vendor-owned test center	\$3 million
Hybrid	\$4 million

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

Staff recommend that the State Bar retain a new vendor to develop exam questions which would allow for the adoption of cost-effective bar exam administration approaches.

Should the Committee of Bar Examiners concur, passage of the following motion is recommended:

MOVE, that the Committee of Bar Examiners recommend to the Board of Trustees that the State Bar retain a new vendor to develop bar exam questions.

ATTACHMENT(S) LIST

- A.** Letter from California-Accredited Law Schools
- B.** Written Public Comment Bar Exam Question Development with New Vendor
- C.** Presentation from State Bar Psychometrician Chad Buckendahl on Test Development and Validation Process



CALS CALIFORNIA ACCREDITED
LAW SCHOOLS

April 12, 2024

State Bar of California
Office of Admissions
180 Howard Street
San Francisco, CA 94105

Re: *Stakeholder Forum on Bar Exam Question Development*

Dear Office of Admissions,

The California Accredited Law Schools (CALs) deans are writing to express serious concern with the State Bar's proposed aggressive timeline to attempt to create a valid, reliable, and fair multiple-choice bar exam. The State Bar's primary mission is public protection, and it has identified the bar examination as a key component of that mission. Yet the State Bar's decision to create a new multiple-choice exam in less than a year appears primarily to be motivated by the State Bar's budget concerns and not its mission. In addition, as institutions vested with the responsibility to prepare law students for licensure, the deans have serious reservations about whether applicants can properly prepare for the new exam without appropriate advance notice of such significant exam changes.

During a recent stakeholder meeting, the State Bar identified several proposed steps to create a valid, reliable, and fair multiple-choice exam. According to the State Bar staff, the questions would need to be finalized by November 2024 to be used in February 2025. In just over six months, the State Bar has proposed that it can hire a vendor; confirm an exam blueprint; review existing questions; develop new questions; review questions for content, cognitive complexity, bias, diversity, inclusiveness, and appropriate level to meet the minimum competence standard; construct exam forms; complete an operational pretest; evaluate technical quality to remove questions that do not function properly; and determine a raw passing score. This proposal does not appear to be practical or realistic. In contrast, the National Conference of Bar Examiners (NCBE), an organization with more than 90 years of expertise in exam development and implementation, dedicated over three years to creating a new exam, including conducting field testing, publishing exam design and content specifications, administering a prototype exam, and performing a standard-setting exercise *before* the first administration of the exam.

Moreover, neither the law schools nor the applicants will have sufficient information to properly prepare for the exam. Applicants preparing for the bar examination rely heavily on law schools and bar preparation companies to properly prepare for both the substantive content and exam-

taking methodology for such a high-stakes test. The bar examination companies create multiple-choice questions that mimic the current Multistate Bar Examination (MBE). Based on years of data, applicants, and those supporting their efforts, are aware of what practice scores are necessary to be successful on the MBE portion of the examination. Law schools use these practice questions and data to build bar preparation courses and to support applicants' study efforts.

If the State Bar goes forward with its proposed aggressive timeline, neither the law schools nor the February 2025 applicants will have the necessary guidance, practice questions that mirror the form and structure of the new multiple-choice questions, and understanding of the raw score they will need to achieve to be successful. In fact, during the stakeholder meeting, Chad Buckendahl suggested that the raw score standard may not be determined until *after* the exam is administered. In contrast, the NCBE has already released sample multiple-choice questions for the 2026 NextGen Bar Exam.

Moreover, it seems that there are invalid assumptions being made, such as that most, if not all, takers perform similarly on essays and multiple choice. Based on information available to the schools in terms of bar preparation performance or data from unsuccessful applicants, it is often not the case. Because there is no public data to confirm whether it is the case on the actual bar exam, there is even less of a basis for advising February 2025 applicants of their performance during bar preparation studies. In addition, some schools have been advised that only the more recently drafted style of MBE questions will be created by the vendor. The NCBE, however, continues to use some of the older style MBE questions. This is concerning because February 2025 applicants have been and will be studying for the exam using NCBE questions, which continue to use the earlier style of questions.

These issues call into serious question the State Bar's assertion that there is "no substantial modification of the training or preparation for passage of the examination." Given the above factors, this is simply not true. The MBE portion of the exam is worth 50 percent of the applicant's score. Law schools and bar prep programs spend significant time helping students learn how to dissect and answer MBE questions. Applicants spend a significant amount of money on bar preparation material that is expected to be accurately geared toward the exam that the individual will be taking. The current proposal makes that impossible. It is not accurate to assert that substantial modification in training will not be necessary. It is also clear from the proposed timing that no appropriate training could be accomplished in time for the February 2025 exam when the State Bar will not even have completed or tested the potential questions until November 2024.

The timeline creates serious administrative issues as well. As proposed, the State Bar will not know if it has created a valid, reliable, and fair multiple-choice exam until, at the earliest, November 2024, and at the latest, after the exam is administered. This raises serious questions, such as: If the State Bar does not meet these exacting standards, will it be able to pivot back to the standard MBE questions and rent appropriate venues? Does this create a scenario in which the February 2025 bar examination needs to be canceled or postponed? Additionally, how will

applicants be able to alter their preparation from one exam to another without any reasonable notice? Finally, because the exam development, design, and implementation as proposed will be unvalidated, how will the validity of the 2025 MPR scoring and results be accomplished without calling the overall exam into question?

Given these very serious concerns, the CALS strongly encourage the State Bar to reschedule the launch of new multiple-choice exam until it is confident that the exam is valid and reliable, a baseline score has been determined, and law schools and applicants have access to sufficient time and material to properly prepare for the exam. The NCBE will continue to offer the MBE until February 2028. While we understand that the State Bar may not want to wait nearly four years to launch its alternative to the MBE, cost consideration alone is not a compelling argument or justification for the State Bar to rush toward a hasty, risky, and poorly planned 10-month implementation of such a critical public protection process for professional licensure.

Respectively submitted,

California Accredited Law Schools

Dean Sandra Brooks
Cal Northern School of Law

Dean Jackie Gardina
The Colleges of Law (Santa Barbara Campus)
The Colleges of Law (Ventura Campus)

Dean Martin Pritikin
Purdue Global Law School

Dean Brian Purtill
Empire College School of Law

Dean Matthew Reynolds
Humphreys University
Drivon School of Law

Dean Lisa Hutton
JFK College of Law and Public Service
National University

Dean Filomena Yeroshek
Lincoln Law School of Sacramento

Dean Mitch Winick
Monterey College of Law
Kern County College of Law
San Luis Obispo College of Law
(A branch campus of Monterey College of Law)

Dean Michael Clancey
Northwestern California University
School of Law

Dean Janice Pearson
San Joaquin College of Law

Dean Linda Keller
Thomas Jefferson School of Law

Dean Eric Halvorson
Trinity Law School
Trinity International University

Dean Kevin Marshall
University of La Verne
College of Law and Public Service

From: [Raymond Hayden](#)
To: [AdmissionsDirector](#)
Subject: 16 Apr 2024 Meeting submission
Date: Friday, April 5, 2024 6:46:12 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I might have sent this to the wrong addresses initially - sorry about that.

I would like this note distributed to the 16 April 2024 Meeting, and as always, I thank you all in advance!

Ray Hayden, JD
ray@rayhayden.us

I want to bottom line this because humans do not read until things are broken, and I want to save you all some time here.

CAVEAT - if you want the MORE details, contact me and ask me, I have tons, and can talk for hours on end, but this is going to be short.

BOTTOM LINE UP FRONT: This process MUST Assure a more Competent Newly Licensed Lawyer, provide Greater Protection for the General Public, and Guarantee a more Diverse California Bar Membership. Anything less is a complete failure.

Less than a 90% PASS rate is a failure of the exam, not the exam taker!

The FYLSX MUST have a passing rate of better than 90% - anything less than that is a complete failure of that exam.

I sat for it six times, I scored two 65's and three 72's before I nailed the 78 on the FYLSX that I passed in Oct 2014. I have tons of information that others, and myself, had been looking into all this time to prove it, less than a 90% pass rate on the FYLSX is wrong on every single level.

The MCQ's MUST be HONESTLY Objective, no tricks or traps, no nonsense! They must also be FAIR... no more East is driving west on North Avenue when South was travelling north on Eastern Way... STOP IT!

The Feb 2025 CGBX MUST be remote, ONLY MCQ's, and MUST have a Pass Rate of greater than 90% - anything less than that is a complete failure of the exam, not the exam taker!

CalBar tells us what to study, and how to study it. I've done the math, it is IMPOSSIBLE to justify the insanely lame pass rate of the California Bar Exam - or any other bar exam!

- 1) All bar exams, everywhere, are invalid.
- 2) The MBE portion of the Bar Exam, is specifically invalid.

IAALS, and the NCBE themselves, determined TWO key points after MULTI YEAR STUDIES.

I was at ALL of the Blue Ribbon Commission meetings on the Future of the California Bar Exam, they both presented on it... and it is true. In 2020, IAALS reported first, and the NCBE blew a gasket... two months later? The NCBE released their results CONFIRMING what IAALS had reported after their OWN multi year study...

In case anyone missed it? This was the reported reason WHY the NCBE tossed the entire exam to start up the NextGen Bar Exam in the first place!

Oh, and in case anyone missed THAT - the MBE was released in Feb 1972... it has NEVER been valid... and this demonstrates that NOT ONE SINGLE ATTORNEY, anywhere, who passed the bar exam with an MBE component, has EVER passed a valid bar exam.

I have a relatively short way to create what must be done for the Feb 2025 CGBX - but you're going to have to invite me to speak at the meeting to hear how to (almost free) create honestly objective, and FAIR MCQ's within a period of less than three months time!

I could get it done in two months with help from CalBar, but I cannot create the actual questions... but I can tell you how to get it done fast!

From: [Teresa Belville](#)
To: [AdmissionsDirector](#)
Subject: Re: Agenda and Materials Posted: Stakeholder Forum on Bar Exam Question Development with a New Vendor | April 16, 2024
Date: Saturday, April 6, 2024 1:11:27 AM

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CalBar Admissions Director,

I have read the Executive Summary for the proposed bar exam changes.

My understanding of this proposal is as follows:

- If exam administration continues as-is, then the Admissions Fund is projected to be insolvent by the end of 2026.
- The realization of the benefits of these cost-savings opportunities is contingent on independence from the NCBE and its exam administration requirements, which includes its prohibition on the delivery of the MBE by remote delivery or in a vendor-owned test center.

First, I fully support the State Bar to declare independence from the NCBE, in order to pursue a potential adoption of an alternative cost-effective bar exam administration. It appears that bar administration costs are escalating, and at this point, with insolvency on the horizon, the State Bar clearly needs to make reasoned changes.

Second, I do not believe that bar exam administration is compromised either in testing remotely or in a test vendor center. I have taken several exams in test vendor centers (e.g. national insurance exams for professional designations, and a PMP project management certification exam). Remote testing generally uses AI functionality, which is already used in many commercial applications (e.g. technical writing, creative writing, radiological or MRI imaging medical analysis, research areas).

Third, given today's alternatives, I feel that my disabled colleagues taking the bar exam are far too constrained within the current methodology. Generating more alternatives for this group will likely help some of them to have less challenges in getting to the exam, and hopefully to have more of them pass. I feel that this group is better equipped to understand disabled or disadvantaged clients. Additionally, I see this group generally as being disadvantaged by both explicit and implicit biases within society.

Fourth, I see passing the bar exam as just one metric, and certainly no guarantee. I have

read countless postings from the State Bar about people who passed the bar, and are now suspended, on probation, resigned pending charges, or disbarred. Moreover, not all of those persons with active licenses are actually practicing law, and resulting in no contribution in those areas where it is potentially most needed. Then for those who converted their licenses to inactive (and are not limited by some physical or mental challenge), I feel that there should be some encouragement or incentive for them to activate their license for pro bono matters or clinics, some of which can be done remotely/virtually.

Fifth, I would encourage the State Bar to continue to explore innovative pathways to licensure, especially those pathways focused on promoting competence with diversity and inclusivity. I feel that those of us not fitting within a particular socio-economic stratum are the ones struggling the most with bar costs, bar preparation and then the bar exam. I see that other neighboring states have derived alternative pathways, such as Oregon and, recently, Washington state.

I certify that the aforementioned is my own assessment on this topic, and I used no AI suggestions or toolkit to create a response.

Thank you for consideration of this comment.

Teresa Belville

From: The State Bar of California - Office of Admissions <admissions@calbar.ca.gov>

Sent: Friday, April 5, 2024 2:17 PM

To: teresab306@gmail.com <teresab306@gmail.com>

Subject: Agenda and Materials Posted: Stakeholder Forum on Bar Exam Question Development with a New Vendor | April 16, 2024



From: [Andy Murphy](#)
To: [AdmissionsDirector](#)
Subject: New Vendor to Develop a Multiple-Choice Exam for the State Bar of California.
Date: Sunday, April 7, 2024 4:40:28 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

RE: New Vendor to Develop a Multiple-Choice Exam for the State Bar of California.

The bar exam has become expensive for applicants. Preparing for the bar exam can be expensive too. This is an undue hardship on applicants with little money, like me.

I therefore support the State Bar looking to reduce the cost of taking the bar exam, and I do support the proposal to get a new vendor to develop a multi-choice exam. And I understand the MBE is going away in 2026, so if the State Bar wants to use a multiple-choice exam, it must develop its own exam.

However, I think it is a mistake to make the exam too much like the MBE. The MBE can test some obscure points of law that have no relevance to the practice of law. The MBE can hardly be described as a fair exam to assess minimum competence to practice law. So I urge the State Bar to develop a fair multiple-choice exam that should be passable by anyone with a law degree.

Andy Murphy, JD.

From: [Jaesang Lee](#)
To: [AdmissionsDirector](#)
Subject: Cost Reduction Initiatives Related to the Bar Exam: Comment from a Stakeholder
Date: Thursday, April 11, 2024 4:19:19 AM

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Dear Audrey Ching, Cody Hounanian, and Amy Nunez,

Thank you for the invitation. I am very glad that I have the opportunity to provide feedback and input regarding Cost Reduction Initiatives Related to the Bar Exam to the State Bar.

I **agree with** Staff's perspective that "Vendor-owned test-center exam administration with newly developed MBE-like multiple-choice questions presents an appealing option for cost savings and operational efficiency enhancements," **on the condition** that the State Bar can implement a system of internal control to ensure that newly developed MBE-like multiple-choice questions meet the State Bar's standard and that the Vendor-owned test-center appropriately administers the bar exam.

To ensure that the newly developed multiple-choice questions, similar to the MBE, meet the State Bar's standard and do not compromise the effectiveness of the State Bar exam, it is imperative to implement a verification procedure. This will ensure that a new vendor adheres to the content validation methodology and IRT in developing new questions that meet the exact goals of those methodologies.

To achieve this, the State Bar should closely work with the new vendor during the development stage to ensure that the new vendor follows the instructions and that the newly developed questions maintain the same level of difficulty, rigorousness, and comprehensiveness as previous MBE questions. The State Bar should not give complete discretion to the new vendor regarding how it applies those methodologies.

In order to address any complaints from stakeholders about the reliability of the newly developed questions, the State Bar should document all the steps that the new vendor has taken to ensure the proper application of those methodologies and that the State Bar has

taken to ensure the validity of the new vendor's work. By doing so, the State Bar can ensure that the newly developed questions meet the State Bar's standards and maintain the same level of rigor and comprehensiveness as previous MBE questions.

To ensure that the changed exam, including newly developed MBE-like multiple-choice questions, is appropriately administered at the vendor-test center, the State Bar may consider the following, among others:

- 1) getting periodic audits of randomly selected testing centers from an outside audit firm that provides affordable audit services,
- 2) regularly reviewing video footage of exam administrations,
- 3) examining what algorithms or mechanisms a test-center vendor will be using to choose which questions from the question bank will pop up on each applicant's computer screen,
- 4) determining whether those algorithms are fair enough,
- 5) looking for any risk of hacking or system error, and
- 6) adopting a disaster recovery process in case something goes wrong at a vendor-test center.

This approach will help the State Bar to uphold the integrity of the exam and ensure that the exam results are reliable. This will also help to maintain the trust of stakeholders in the State Bar's examination process.

Thank you.

Sincerely,

Jaesang Lee

jslee875@gmail.com

From: [Merritt, Deborah](#)
To: [AdmissionsDirector](#)
Subject: Comment on Bar Exam Question Development with a New Vendor
Date: Monday, April 15, 2024 6:46:23 PM

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I applaud the State Bar’s proposal to pursue development of exam questions with a new vendor. This step seems essential for financial reasons. It is also laudable from a public policy perspective: Having more than one vendor creating bar exam questions may lead to an improved product nationally. Other states might choose to adopt California’s questions rather than the ones offered by NCBE.

My one reservation is that the State Bar should not let this short-term need affect design of the California exam recommended by the Blue Ribbon Commission. After investing in creation of new MBE questions, it may be tempting to incorporate those questions wholesale into the new exam. The Blue Ribbon Commission, however, stressed the need for an exam with “a significantly increased focus on assessment of skills,” one “de-emphasizing the need for memorization of doctrinal law,” and one that “is fair, equitable, and minimizes disparate performance impacts based on race, gender, ethnicity, disability, or other immutable characteristics.” MBE-style questions are unlikely to meet any of those objectives. I trust, therefore, that the State Bar will separate this initiative from its design of the future California exam.

Best wishes on this endeavor, Deborah

Deborah Jones Merritt
Distinguished University Professor
John Deaver Drinko/Baker & Hostetler Chair in Law Emerita
The Ohio State University Moritz College of Law
Cell: 614-361-6402

For up-to-date information on lawyer licensing, see <https://lawyerlicensingresources.org/>

From: [Julian Sarkar](#)
To: [AdmissionsDirector](#)
Subject: Re: Agenda and Materials Posted: Stakeholder Forum on Bar Exam Question Development with a New Vendor | April 16, 2024
Date: Tuesday, April 16, 2024 7:02:33 AM

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To the Office of Admissions:

I am providing this comment in response to the proposal to retain a new vendor to develop bar exam questions, including the development of multiple-choice questions to replace the Multistate Bar Examination (MBE).

The Office of Admissions has recently represented that it is spending more than the tens of millions in revenue it generates from the bar exam, even after having recently increased the bar exam fees. The Office of Admissions has not identified what constitutes the current tens of millions in expenditures, such as money currently spent towards question development and on the NCBE.

Based on these representations, it seems unfeasible for the State Bar to hire a new vendor for exam question development at this time. The State Bar should strongly consider ceding its responsibility and financial burden over attorney admissions to the Department of Consumer Affairs. Finally, the Office of Admissions should consider whether hiring a vendor is necessary for the proposal. For years, the State Bar has benefited from volunteer committee members that represent a wide array of the legal profession, including law school faculty. The Office of Admissions can explore creating a subcommittee of volunteer law school professors and legal professions.

Thank you for your consideration.

Julian Sarkar (he/him/his)

SarkarLaw
345 Franklin Street
San Francisco, CA 94102
(415) 795-8795
jsarkar@sarkar.law

On Fri, Apr 5, 2024 at 2:17 PM The State Bar of California - Office of Admissions <admissions@calbar.ca.gov> wrote:





Re: Agenda and Materials Posted: Stakeholder Forum on Bar Exam Question Development with a New Vendor Meeting | April 16, 2024

The State Bar of California is exploring the possibility of retaining a new vendor to develop bar exam questions to be used as soon as the February 2025 administration. This would include the development of multiple-choice questions to replace the Multistate Bar Examination (MBE). A proposal was initially discussed at the Committee of Bar Examiners meeting on March 15, 2024. A written agenda item describing the proposal can be found [here](#) and a recording of the meeting can be found [here](#).

[The State Bar's Office of Admissions invites you to a Stakeholder Input Forum on Tuesday, April 16, 2024, from 10:00 a.m. to 12:00 p.m.](#) The State Bar seeks public comment and input from stakeholders to identify considerations that will further inform the exploration of this initiative. More details about joining the forum and providing public comment can be found [here](#).

If you would like to submit written comments in advance, you may do so by sending them to admissionsdirector@calbar.ca.gov.

Please, note that the State Bar is continuing to explore options. The facilitators' comments during the forum should not be interpreted as committing to or rejecting any particular course of action. Rather, the State Bar hopes to gather input from the stakeholders and the public.

Thank you,

Office of Admissions



State Bar of California, 180 Howard Street, San Francisco, CA 94105, 415-538-2000

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Test Development & Validation – GBX

Managing change





General Bar Exam (GBX)

Steps in development and validation



GBX:

- Confirm exam blueprint
- Review existing questions
- Develop & review new questions*
- Construct exam forms*
- Collect applicant data
- Analyze data*
- Determine raw passing score*

Influencing factors

- Administration mode(s)
 - Event based, remote proctored, testing centers, combination
- Capacity to maintain administration timing
 - Same days, testing window, combination
- Number of applicants testing concurrently
 - Limits on administration modes
- Security considerations
 - Question bank size, number of forms, question exposure

Develop & review new questions

- Draft new questions relative to exam blueprint
- Review questions for:
 - Content and cognitive complexity
 - Bias, diversity, and inclusiveness
 - Appropriate level (i.e., minimally competent/qualified applicant)
- Construct forms with sets of common questions and pretest questions
 - Common question support equating across forms
 - Pretest questions are used to collect data to increase size of question bank

Analyze data

- Initial administration to collect baseline data (“operational pretest”)
- Multiple choice questions evaluated using:
 - Item response theory (IRT) – item parameters that are sample independent
 - Classical test theory (CTT) – item difficulty, item discrimination, option analysis
- Essay and PT questions evaluated using:
 - Intra- and Inter-Rater agreement indices
 - Embedded performances (validity papers)
- Evaluate technical quality to remove questions that do not function appropriately prior to finalizing scores
- Additional analyses:
 - Differential item functioning (DIF) to empirically evaluate potential bias
 - Mode effects to evaluate potential differences in delivery approaches
 - Forensic analysis (e.g., item drift, similarity analysis)

Raw scores and Scale scores



- Raw scores – number of points earned on a question or form of an examination
 - Associated with specific questions and forms of an examination
 - Not directly comparable unless the same questions are used every time
- Scale scores – transformation of raw scores to an interpretative scale
 - Intended to maintain a common interpretation of scores across forms of an examination
 - Fixed location on the scale is used as an anchor point for the passing score to maintain fairness through statistical equating

Options for GBX standard setting

- Key changes – replacement of multiple-choice items on the exam, lack of anchor items for equating the initial examination
- Could consider equipercentile equating to link to current examination
 - Not recommended because of normative interpretation
- Options to establish baseline raw passing score (no change to scale score)
 - Conduct study prior to administration
 - Content anchored but not informed by applicant data
 - Conduct study following administration
 - Content anchored and informed by applicant data
 - Initial judgments before and evaluation once student data area available
 - Content anchored, informed by applicant data, and reduces reporting time

EXHIBIT 17



The State Bar of California

Committee of Bar Examiners Teleconference

Open Session Minutes
Friday, April 19, 2024
9:00 a.m. – 12:12 p.m.

Time Meeting Commenced:

The Committee of Bar Examiners meeting commenced in open session at 9:00 a.m. The Committee moved to closed session at 11:35 a.m. The Committee returned to open session at 12:11 p.m. The meeting recessed at 12:12 p.m.

Time Meeting Recessed:

12:12 p.m.

Chair:

Michael Cao, M.D

Committee Coordinator:

Devan McFarland

Members Present:

James A. Bolton, Ph.D., Robert S. Brody, Michael Cao, M.D, Alex H. Chan, James Efting, Kareem Gongora [joined late], Larry Kaplan [joined late], Paul A. Kramer, Alexander C. Lawrence, Jr., Justice Shama H. Mesiwala, Ashley Silva-Guzman [joined late], Judge Renee C. Reyna, Vincent Reyes, Alan Yochelson

Members Absent:

Esther Lin, Bethany J. Peak

State Bar Executive Staff Present:

Bridget Gramme

OPEN SESSION

Call to Order

The Committee of Bar Examiners was called to order by Chair Cao.

I. Chair's Time

A. Roll Call

Roll call was taken and a quorum was established.

Call for Public Comment

Chair Cao 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. Deb Tharp:

Dep Tharp raised concerns about the committee's response to testing challenges during the February 2024 California Bar Examination. Sharing their firsthand encounter at the Cow Palace testing center, Deb Tharp advocated for equitable score adjustments and the recognition of substandard conditions.

2. Benjamin Kohn

Benjamin Kohn raised concerns about the unequal impact of testing conditions at the Cow Palace on applicants with accommodations compared to standard applicants during the February 2024 California Bar Examination. They argued that accommodations should address all aspects of exam conditions, not just performance, and criticized a presentation by Dr. Lovett for suggesting otherwise. Kohn emphasized the importance of considering factors like comfort and accessibility in accommodation requests, rejecting the notion that focusing solely on test performance is sufficient or lawful.

3. Feb Bar Taker

Feb Bar Taker addressed the State Bar's responses to the testing conditions at Cow Palace during the February 2024 California Bar Examination, highlighting three key points. Firstly, they noted that while the admittance bulletin advises test takers to anticipate temperature fluctuations, it fails to adequately warn about freezing temperatures. Secondly, they pointed out the subjective nature of feeling cold and referenced studies indicating its cognitive effects, underscoring the importance of considering such factors in exam conditions. Lastly, they mentioned the State Bar's consultation with their psychometrician regarding potential grading adjustments and stressed the need for comprehensive remedial actions, citing precedents from the Oregon State bar's response to similar situations.

4. Raymond Hayden

Raymond Hayden stressed the need for objectivity throughout the entire California Bar Exam particularly addressing concerns about the subjective nature of the written section. He advocated for remote availability of the exam indefinitely. Drawing from personal experience taking the California bar exam six times, Raymond highlighted subjective elements in the written portion due to the cut score and scaling, proposing a fairer grading system. They emphasized the irrelevance of numerical grades and shared insights from analyzing California's reports, suggesting bias towards failing scores. Raymond also discussed his development of definition sheets to aid examinees and cautioned against relying solely on memorization for success.

5. Phone number with last four digits ending in 9002

An examinee who took the February Bar Exam at the Cow Palace expressed concerns about distractions caused by temperature and inadequate bathroom facilities. Despite planning ahead and dressing warmly, they struggled to keep warm during the exam and faced long lines and limited restroom availability during breaks. They emphasized the need for the administration to ensure basic adequate conditions for such an important exam, respecting examinees' needs and efforts to minimize distractions.

B. Approval of March 15, 2024, Committee of Bar Examiners Public Meeting Minutes

MOVED, that the Committee of Bar Examiners approves and adopts the March 15, 2024, Committee of Bar Examiners revised public meeting minutes.

Moved by Robert S. Brody, seconded by Alan Yochelson

Ayes – (12) James A. Bolton, Ph.D, Robert S. Brody, Michael Cao, M.D, Kareem Gongora, Larry Kaplan, Paul A. Kramer, Alexander C. Lawrence, Jr., Justice Shama H. Mesiwala, Ashley Silva-Guzman, Judge Renee C. Reyna, Vincent Reyes, Alan Yochelson

Noes – (0)

Abstain – (1) James Efting

Recuse- (0)

Absent – (3) Alex H. Chan, Esther Lin, Bethany Peak

Minutes adopted.

D. Chair’s Report

Discussion only.

II. Consent Agenda

A. Report on Administrative Updates Regarding Law Schools

Consent calendar moved by Robert S. Brody, seconded by Alan Yochelson

Ayes – (14) James A. Bolton, Ph.D, Robert S. Brody, Alex H. Chan, Michael Cao, M.D, James Efting, Kareem Gongora, Larry Kaplan, Paul A. Kramer, Alexander C. Lawrence, Jr., Justice Shama H. Mesiwala, Ashley Silva-Guzman, Judge Renee C. Reyna, Vincent Reyes, Alan Yochelson

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (2) Esther Lin, Bethany Peak

Motion passes.

III. Operations and Management

A. Action on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration

MOVED, that the Committee of Bar Examiners recommend to the Board of Trustees that The State Bar retain a new vendor to develop bar exam questions.

Moved by Paul A. Kramer, seconded by Larry Kaplan

Ayes – (13) James A. Bolton, Ph.D, Robert S. Brody, Alex H. Chan, Michael Cao, M.D, James Efting, Kareem Gongora, Larry Kaplan, Paul A. Kramer, Alexander C. Lawrence, Jr., Justice Shama H. Mesiwala, Ashley Silva-Guzman, Judge Renee C. Reyna, Vincent Reyes

Noes – (0)

Abstain – (1) Alan Yochelson
Recuse- (0)
Absent – (2) Esther Lin, Bethany Peak

Motion passes.

IV. Educational Standards

A. Action on Major Change – Change of Ownership – Taft Law School

MOVED, that the Committee of Bar Examiners approve Taft Law School’s Request for Major Change of ownership effective immediately from the Boyd Family Trust to C. Robert Boyd. Taft Law School is directed to provide a schedule as to when the transaction will be complete within 30 days, and to confirm completion of the transaction to the State Bar within 30 days after the change of ownership is complete, or provide a status update by August 1, 2024, whichever comes first. The law school’s inspection schedule will remain unchanged, with the next inspection to take place in 2024.

Moved by Alan Yochelson, seconded by Robert S. Brody

Ayes – (14) James A. Bolton, Ph.D, Robert S. Brody, Alex H. Chan, Michael Cao, M.D, James Efting, Kareem Gongora, Larry Kaplan, Paul A. Kramer, Alexander C. Lawrence, Jr., Justice Shama H. Mesiwala, Ashley Silva-Guzman, Judge Renee C. Reyna, Vincent Reyes, Alan Yochelson

Noes – (0)

Abstain – (0)

Recuse- (0)

Absent – (2) Esther Lin, Bethany Peak

Motion passes.

B. Discussion and Action on Strategy to Improve Outcomes in Unaccredited Law Schools

MOVED, that the Committee of Bar Examiners directs staff to further research and develop proposal(s) regarding the initiatives below with the goal of improving outcomes at unaccredited law schools:

1. Strategic use of standardized exams to inform admissions
2. Researching methods to further track and reduce attrition
3. Collecting demographic data tailored to non-traditional students
4. Phasing in minimum, cumulative pass rates for State Bar exams

Moved by Paul A. Kramer, seconded by Robert S. Brody

Ayes – (14) James A. Bolton, Ph.D, Robert S. Brody, Alex H. Chan, Michael Cao, M.D, James Efting, Kareem Gongora, Larry Kaplan, Paul A. Kramer, Alexander C. Lawrence, Jr., Justice Shama H. Mesiwala, Ashley Silva-Guzman, Judge Renee C. Reyna, Vincent Reyes, Alan Yochelson

Noes – (0)

Abstain – (0)
Recuse- (0)
Absent – (2) Esther Lin, Bethany Peak

Motion passes.

V. Report from Director

A. Oral Report

i. Update on the Bar Exam Experiment

Amy Nuñez provided a presentation and oral report.

ii. Office of Admissions Metrics (including July 2024 Bar Exam Numbers)

Cody Hounanian provided a presentation and oral report.

iii. Final approved fee increases for California Accredited Law Schools

Cody Hounanian provided a presentation and oral report.

vi. Recent Developments

Audrey Ching provided an oral report.

CLOSED SESSION

I. Chair's Time

A. Report from Counsel (Kirsten Galler)

Report on Pending Litigation [Closed pursuant to Gov. Code § 11126(e)(1)]
Brewer v. State Bar, et al., E.D. Cal., Case No. 2:23-cv-00860, Ninth Cir., Case No. 24-2151

*Closed pursuant to Gov. Code §11126(e)(1) and Government Code 11126(c)(1)

B. Approval of March 15, 2024, Committee of Bar Examiners Closed Meeting Minutes

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(3)-(4) and Gov. Code §11126(c)(1)

C. Discussion and Approval of Written Questions for Inclusion on July 2024 California Bar Examination [Special Set for Saturday, April 20 in Closed Session]

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(3) and Gov. Code §11126(c)(1)

II. Consent Agenda

A. Report and Discussion of Staff Moral Character Determinations

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(4)

B. Report on Status of Pending Moral Character State Bar Court Cases

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(4)

III. Examinations

A. Action on Pending Testing Accommodation Requests for Review

*Closed pursuant to Bus. & Prof. Code §6026.7(c)-(3)-, and Gov. Code §11126(c)(1)

V. Moral Character

A. Action on Moral Character Cases Pending Administrative Review

* Closed pursuant to Bus. & Prof. Code §6026.7(c)(4)

ADJOURN



The State Bar of California

Committee of Bar Examiners Teleconference

Open Session Minutes
Saturday, April 20, 2024
9:00 a.m. – 9:41 a.m.

Time Meeting Commenced: The Committee of Bar Examiners meeting returned from recess in open session at 9:38 a.m. The meeting adjourned at 9:41 a.m.

Time Meeting Adjourned: 9:41 a.m.

Vice Chair: Alex Chan

Committee Coordinator: Devan McFarland

Members Present: Robert S. Brody, Alex H. Chan, James Efting, Paul A. Kramer, Esther Lin, Ashley Silva-Guzman, Judge Renee C. Reyna, Alan Yochelson

Members Absent: Justice Shama H. Mesiwala [recused], Bethany J. Peak

State Bar Executive Staff Present: None

CLOSED SESSION

The Committee of Bar Examiners meeting returned from recess in closed session at 9:00 a.m.

I. Chair's Time

C. Discussion and Approval of Written Questions for Inclusion on July 2024 California Bar Examination [Special Set for Saturday, April 20 in Closed Session]

*Closed pursuant to Bus. & Prof. Code §6026.7(c)(3) and Gov. Code §11126(c)(1)

OPEN SESSION

The Committee of Bar Examiners meeting returned from closed session at 9:38 a.m. The meeting adjourned at 9:41 a.m.

ADJOURN

EXHIBIT 18



The State Bar of California

OPEN SESSION AGENDA ITEM 6.2 JULY 2024 BOARD OF TRUSTEES

DATE: July 18, 2024

TO: Members, Board of Trustees

FROM: Audrey Ching, Program Director, Office of Admissions
Bridget Gramme, Special Counsel, Division of Consumer Protection,
Admissions, Access & Inclusion

SUBJECT: Update on Contracting with Kaplan North America LLC for Preparation of
California Bar Examination Materials and Consideration of Actions, Including
Contract Approval

EXECUTIVE SUMMARY

In April 2024, the Committee of Bar Examiners voted to recommend to the Board of Trustees that the State Bar retain a new vendor to develop bar exam questions, including multiple-choice questions to replace the Multistate Bar Exam (MBE), which would provide the necessary flexibility for the adoption of alternative, cost-effective exam administration approaches. Under the contemplated proposal, Kaplan North America LLC (Kaplan), would develop a bank of exam questions beginning with the February 2025 administration. At the May 16, 2024, meeting of the Board of Trustees, the [item](#) seeking Board approval for the proposal was withdrawn and continued. Kaplan asked the State Bar to defer the discussion of the Board item as a result of a communication it had received from the National Conference of Bar Examiners (NCBE) raising intellectual property, copyright and other contractual concerns. Staff has continued to work with Kaplan and had discussions with the NCBE to mitigate potential concerns. Negotiations are ongoing with Kaplan to ascertain the feasibility of developing questions in time for the February 2025 administration of the exam. This item provides background and context for the pending negotiations with Kaplan. The situation remains in flux; staff will update the Board on the current status of the negotiations with Kaplan at its July 18–19, 2024, meeting.

RECOMMENDED ACTION

Staff will provide an update on the status of the ongoing negotiations and, as appropriate, may seek the Board’s approval of delegated authority to the chair and executive director to finalize negotiations and execute a contract with Kaplan.

DISCUSSION

The Admissions Fund faces insolvency in 2026. The Office of Finance’s final 2024 budget forecasts Admissions Fund deficit spending of \$3.8 million; the fund is projected to end 2024 with just \$3.3 million of reserves.

The significant structural deficit is primarily attributed to exam-related expenses, notably escalating testing facility and proctor costs. If the State Bar does not adopt changes to bar exam administration, it may be required to further increase applicant fees, reduce the number of exam locations and proctors, and pursue other exam-related cost-saving measures; such actions would negatively impact applicants and could affect exam security.

To prudently manage the budget, staff explored the prospect of transitioning to an alternative, cost-effective exam administration approach such as a fully remote online exam, utilizing small vendor-owned test centers, or a combination of the two beginning with the February 2025 administration. Staff estimates that adopting one of these alternatives would yield savings between \$2.5 million and \$3.8 million annually beginning in 2025—enough to largely or fully eliminate the existing structural deficit.

While the impetus of this change is budget-driven, applicants will also benefit from a new administration approach. Each option would result in reduced travel and lodging expenses for many applicants. Survey responses also reveal that test takers prefer online or test center administration to the large testing sites we currently use.

Before the State Bar can pursue the exam administration approaches above, it must retain a new vendor to develop multiple-choice questions for the bar exam. Currently, the multiple-choice component of the exam—referred to as the Multistate Bar Examination (MBE)—is supplied by the National Conference of Bar Examiners, which prohibits the MBE from being administered remotely or at vendor-owned test centers. NCBE has announced that it will phase out the MBE in 2028, meaning the State Bar will be required to replace the multiple-choice questions regardless.

Staff held a number of stakeholder engagement sessions over the past several months to understand the potential impact of switching vendors. In the months following the May Board meeting, when the presentation of this item had to be withdrawn at the last minute, staff have continued negotiations with Kaplan to identify and address any outstanding issues and obstacles so that a set of multiple-choice questions could be developed for the February 2025 bar exam¹.

¹ These negotiations have included the development by Kaplan of a subsidiary to create State Bar exam questions.

These efforts included engaging in productive discussions with the NCBE directly to better understand the parameters of any potential copyright concerns it may have. Staff is appreciative that the NCBE leadership continues to engage in dialogue with the State Bar, as well as their responsiveness our inquiries.

Staff is continuing in its efforts to reach an agreement with Kaplan that will result in the development of quality multiple-choice questions in time for the February administration of the exam.

PREVIOUS ACTION

- [CBE April 19, 2024, meeting](#)
- [Board of Trustees May 16, 2024, meeting](#)
- [CBE June 21, 2024, meeting²](#)

FISCAL/PERSONNEL IMPACT

TBD. Contracting with Kaplan would result in millions of dollars of savings annually when taking into account the fact ensuing changes in test administration.

RESOLUTIONS

Should the Board be asked to take action, the appropriate, resolution language will be presented prior to or upon consideration of the presentation of the item.

ATTACHMENT LIST

None

² This agenda item from the CBE meeting has an attached letter from the NCBE to Kaplan North America, LLC.

EXHIBIT 19



The State Bar of California

Regular Meeting of the Board of Trustees Hybrid

Open Session Minutes
Thursday, July 18, 2024
9:23 a.m.–4:44 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 9:23 a.m. The Board moved into closed session at 12:13 p.m. The Board returned to open session at 3:12 p.m.

Time meeting Adjourned: 4:44 p.m.

Chair: Brandon Stallings

Board Secretary: Louisa Ayrapetyan

Members Present: Patricia Barahona, Raymond Buenaventura, Hailyn Chen, José Cisneros, Sarah Good, Cynthia Grande, Mary Huser, Melanie Shelby, Arnold Sowell Jr., Brandon Stallings, Mattheus Stephens, Mark Toney

Members Absent: Genaro Trejo

Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Stallings. Roll call was taken and a quorum was established.

PUBLIC COMMENT

Chair Stallings 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 Board:

1. Lorin Kline:

Lorin Kline, Director of Advocacy at the Legal Aid Association of California, addressed the Board regarding agenda item 6.4, which concerns the approval of the Interest on Lawyer Trust Accounts (IOLTA) grant distribution for 2025. She urged the Board to approve the recommended \$252 million grant distribution, highlighting the critical role this funding plays in supporting civil legal services for low-income individuals. Kline expressed gratitude to the staff and the Legal Services Trust Fund Commission for their diligent work in developing the recommendation. She noted the ongoing need for legal services, especially as other funding sources, such as state appropriations for homelessness prevention and COVID-era grants, are declining. Kline emphasized that the approval of this distribution is essential to maintaining the vital services provided by legal aid organizations across the state.

2. Lee Strauss:

Lee Strauss, a licensee of the State Bar and Assistant Presiding Arbitrator for the State Bar's Mandatory Fee Arbitration (MFA) Program, expressed concerns about the proposed increase in the MFA filing fee, as outlined in agenda item 5.11. Strauss warned that the proposed fee caps, which could require participants to pay up to \$20,000, would significantly hinder access to the MFA program, particularly in areas with lower-income households. He argued that this fee increase contradicts the original intent of the MFA Act, which was to provide a low-cost alternative to court litigation for fee disputes. Strauss urged the Board to reconsider the fee proposal and find a solution that aligns with the program's purpose without limiting public access.

3. Maeve Brown:

Maeve Brown, Executive Director of Housing and Economic Rights Advocates, spoke in support of agenda item 6.4, advocating for the approval of the \$252 million IOLTA grant distribution for 2025. Brown highlighted the ongoing need for legal services, especially as many communities have not fully recovered from the pandemic. She shared that her organization is facing a significant loss of funding, including \$1.4 million in COVID recovery-related funds. Brown emphasized the critical importance of IOLTA funding to sustain legal services and prevent the loss of experienced attorneys who have been trained to serve vulnerable populations.

4. Carmen McDonald:

Carmen McDonald, Executive Director of the Los Angeles Center for Law and Justice, echoed the previous speakers' support for the approval of the \$252 million IOLTA grant distribution for 2025, as discussed in agenda item 6.4. McDonald shared that her organization has suffered substantial funding cuts, including a \$2 million loss from the Victims of Crime Act and anticipated losses from the State Bar's homelessness prevention fund. These financial challenges have forced the organization to lay off staff and limit services to vulnerable populations. McDonald urged the Board to approve the IOLTA grant distribution to help legal aid organizations continue providing essential services.

5. Ray Hayden:

Ray Hayden, a resident of Florida and a participant in the California Bar Exam, spoke in support of agenda item 6.2, concerning the approval of the Kaplan contract. Hayden suggested that instead of solely relying on Kaplan, the California Bar should develop its own multiple-choice questions for the bar exam, which could be vetted by subject matter experts. He argued that this approach would save significant costs and provide flexibility for remote testing, which he believes is essential for the future of the bar exam. Hayden highlighted his own experience taking the California Bar Exam remotely from Florida during the pandemic and advocated for the continuation and expansion of remote testing options to make the exam more accessible to candidates worldwide.

6. Todd Hill:

Todd Hill, a former student of the People's College of Law, raised concerns about the state of legal education and the practices of certain law schools. Hill referred to his document

titled "Degrees of Deception: When Legal Education Fails," which outlines issues such as deceptive practices and challenges in providing quality education, particularly for marginalized communities. He urged the Board to consider reforms to improve transparency, accountability, and support for students in legal education. Hill emphasized that addressing these issues is crucial for maintaining the integrity of the legal profession and ensuring equitable opportunities for all aspiring attorneys.

7. Maria Grijalva:

Maria Grijalva spoke briefly about the importance of transparency within the State Bar, sharing her difficulties in obtaining disciplinary records through a public records request. She recounted her unsuccessful attempts to hire an attorney to assist with the request and highlighted the challenges she faced due to the State Bar's perceived lack of transparency. Grijalva emphasized that transparency is vital for public trust and accountability and urged the Board to ensure that all members and the public have access to the same information.

8. Benjamin Kohn:

Benjamin Kohn expressed concerns about the Kaplan contract discussed in agenda item 6.2, particularly in relation to potential copyright issues with the NCBE's materials. He suggested that the State Bar work with the Legislature to amend statutes that require two years' notice to law schools before changing exam content, which could provide more flexibility and reduce costs. Kohn emphasized that resolving these issues is essential for the successful implementation of the Kaplan contract and the broader goal of making the bar exam more accessible and cost-effective.

1. Chair's Report

Chair Stallings provided an oral report.

1.1 Approval of Board Committee Assignments

This agenda item was deferred to the September 2024 Board of Trustees meeting.

2. Executive Director's Report

Executive Director Leah Wilson provided an oral report.

3. Open Session Minutes

3.1 Approval of May 16, 2024, Open Session Minutes

Moved by Sowell, seconded by Buenaventura

Ayes – (11) Barahona, Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Stephens, Toney, Stallings

Nays – (0)

Abstain – (1) Grande

Absent – (1) Trejo

Minutes adopted.

4. Consent Calendar

4.1 Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6

RESOLVED, that the Board of Trustees approves execution of the contracts listed herein.

4.2 Proposed Amendment to Rules 1.22, 2.51, 2.53, 2.55, 2.71 of the Rules of the State Bar and Proposed New Rules 2.140–2.153 of the Rules of the State Bar Relating to Regulatory Function of the State Bar: Request for Adoption

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts the proposed amendments to rule 1.22 of the Rules of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, deems the modification to proposed rule 2.144 made after the proposed rule was circulated for public comment, as set forth in Attachment C, is non-substantive and reasonably implicit in the proposal; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts the proposed amendments to rules 2.51, 2.53, 2.55, 2.71 of, and adopts the proposed rules 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of, the Rules of the State Bar, as those proposed amendments and proposed rules are set forth in Attachment C; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, directs staff to revise and renumber all footnotes in Title 2, Division 4 (commencing with rule 2.50) of the Rules of the State Bar to allow for proper sequential references following the adoption of the amendments pursuant to this resolution.

4.3 Request for Approval of Proposed Amendment to Los Angeles County Bar Association Mandatory Fee Arbitration Rules: Filing Fee Schedule

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, hereby approves the Los Angeles County Bar Association's amendment to mandatory fee arbitration rule 14, in the form attached as Attachment A, as being in compliance with Business and Professions Code sections 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.

4.4 Proposed Amendments to the Rules of the State Bar Regarding Moral Character: Return from Public Comment and Request for Adoption Following Transmission to the Supreme Court for Approval

RESOLVED, that the Board of Trustees deems the modifications to the proposed amendments to rules 4.42, 4.47, and 4.49–4.50 made after the proposed amendments were circulated for public comment, as set forth in Attachments A and B, are nonsubstantive and reasonably implicit in the proposal; and it is

FURTHER RESOLVED, that the Board of Trustees, following a 60-day public comment period, adopts and approves the revisions to the rules regarding moral character as set forth in Attachments A and B; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff, consistent with the requirements of rule 9.5 of the California Rules of Court, to submit the proposed rule revisions regarding moral character to the Supreme Court for review and approval with the intent that the rules have an effective date sixty days after approval by the Supreme Court.

4.5 Proposed Amendments to State Bar Rules Regarding Pro Bono Practice Program (Rules 3.325–3.330): Return from Public Comment and Request for Approval

RESOLVED, that the Board of Trustees approves and adopts amendments to Title 3, Division 2, Rules 3.325–3.330 of the State Bar Rules, provided as Attachment A, effective July 18, 2024.

4.6 Proposed State Bar Rules 3.680(H)(I) (Eligibility for Pro Bono Allocation as Part of Legal Services Trust Fund Program): Return from Public Comment and Request for Approval

RESOLVED, that the Board of Trustees approves and adopts proposed State Bar Rules relating to the Legal Services Trust Fund Program—Rule 3.680(H)(I)—provided as Attachment A, effective January 1, 2025.

4.7 Approval of Annual Appointments of Officers and Members of State Bar Subentities

Committee of Bar Examiners

RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, nominate to the Supreme Court the list of candidates, as presented in Attachment A, for appointment to serve on the Committee of Bar Examiners, for a four-year term, commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2028, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the list of alternate members as presented in Attachment A, each for the remainder of the resigning member’s term if a midterm vacancy is created.

California Board of Legal Specialization

RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the appointment of Michael D. Lee to serve as chair and George P. Surmaitis to serve as vice-chair as presented in Attachment B, each for a one-year term commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2025, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the appointment of Lisa L. McGloiry and Damon Livingston Jenkins, as presented in Attachment B, to serve on the California Board of Legal Specialization, for a four-year term, commencing at the close of the meeting of the Board of Trustees on September 2024, and

expiring at the close of the meeting of the Board of Trustees on September 2028, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the list of alternate members as presented in Attachment B, each for the remainder of the resigning member's term if a midterm vacancy is created.

Council on Access and Fairness

RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the reappointment of Judge Michael Rhoads to serve as chair and Dean Chalak Richards Guineses to serve as vice-chair as presented in Attachment C, each for a one-year term commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2025, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the appointment of Komal Chokshi, Cecilia de Leon, and Yusuf Z. Zakir, as presented in Attachment C, to serve on the Council on Access, for a four-year term, commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2028, or until further order of the Board of Trustees, whichever occurs earlier.

Committee of Professional Responsibility and Conduct

RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the appointment of Cassidy Chivers to serve as chair, Daniel O'Rielly to serve as vice-chair, and Brandon Krueger to serve as advisor as presented in Attachment D, each for a one-year term commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2025, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the appointment of Vikita Poindexter, Emil Ali, Novella Coleman, and Kerri Riley, as presented in Attachment D, to serve on the Committee of Professional Responsibility and Conduct, for a four-year term, commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2028, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the list of alternate members as presented in Attachment D, each for the remainder of the resigning member's term if a midterm vacancy is created.

Client Security Fund Commission

RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the reappointment of Fenglan Liu to serve as chair and Monica Cooper to serve as vice-chair as presented in Attachment E, each for a one-year term commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2025, or until further order of the Board of Trustees, whichever occurs earlier.

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the appointment of Melanie O’Day and Cheryl Stengler, as presented in Attachment E, to serve on the Client Security Fund Commission, for a four-year term, commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2028, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the list of alternate members as presented in Attachment E, each for the remainder of the resigning member’s term if a midterm vacancy is created.

Lawyer Assistance Program Oversight Committee

RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the appointment of Heather Benton to serve as chair and James Heiting to serve as vice-chair as presented in Attachment F, each for a one-year term commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2025, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the appointment of Dr. Catherine Young, as presented in Attachment F, to serve on the Lawyer Assistance Program Oversight Committee, for a four-year term, commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2028, or until further order of the Board of Trustees, whichever occurs earlier; and it is

Legal Services Trust Fund Commission

RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the appointment of Judge Kristin Rosi and Robert Stalker, as presented in Attachment G, to serve on the Legal Services Trust Fund Commission, for a four-year term, commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2028, or until further order of the Board of Trustees, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the list of alternate members as presented in Attachment G, each for the remainder of the resigning member’s term if a midterm vacancy is created.

Review Committee of the Commission on Judicial Nominees

RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the reappointment of Maureen Onyeagbako to serve as chair, as presented in Attachment H, for a one-year term commencing at the close of the meeting of the Board of Trustees on September 2024, and expiring at the close of the meeting of the Board of Trustees on September 2025, or until further order of the Board of Trustees, whichever occurs earlier; and it is

Judicial Nominees Evaluation Commission

RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, appoints Lorena Peñaloza to serve as the chair of the 2025 Judicial Nominees Evaluation (JNE) Commission and Stephen Hamilton as presented in Attachment I, to serve as the

vice-chair of the 2025 JNE Commission, each for a one-year term commencing at the close of the last business meeting of the 2025 JNE Commission on April 2025, and expiring at the close of the last business meeting of the 2026 JNE Commission on April 2026, or until further order of the Board, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, appoints 13 new members to the 2025 JNE Commission as presented in Attachment I, each for a three-year term commencing upon administration of the oath of the office at the orientation meeting on January 2025, and expiring at the close of the last business meeting of the JNE Commission in April 2028, or until further order of the Board, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees, upon the recommendation of the Board Executive Committee, approve the list of alternate members as presented in Attachment I, each for the remainder of the resigning member's term if a midterm vacancy is created.

4.8 Approval of Quarter One 2024 Board and Management Travel Expenses Report

RESOLVED, that the Board of Trustees, upon recommendation of the Audit Committee, approves the first quarter of 2024 Board and management travel expense report in the form presented this day, for the three months ended March 31, 2024.

Consent calendar moved by Buenaventura, seconded by Sowell

Ayes – (10) Barahona, Buenaventura, Cisneros, Grande, Huser, Shelby, Stephens, Sowell, Toney, Stallings

Nays – (0)

Abstain – (0)

Absent – (3) Chen, Good, Trejo

Motion carries.

5. Board of Trustees Sitting as the Regulation and Discipline Committee

5.1 Proposed Amendments to Rules 9.8 and 9.31 of the Rules of Court and Proposed New Rule 9.33 Relating to Expungement of Attorney Discipline and Administrative Actions: Request to Circulate for Public Comment

Presenter: Mia Ellis, Deputy Special Counsel, Division Regulation

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 60 days, new rule 9.33 of the Rules of Court, as set forth in Attachment A.

Moved by Toney, seconded by Cisneros

Ayes – (12) Barahona, Buenaventura, Chen, Cisneros, Good, Grande, Huser, Shelby, Stephens, Sowell, Toney, Stallings

Nays – (0)

Abstain – (0)

Absent – (1) Trejo

Motion carries.

5.2 Ad Hoc Commission on the Discipline System: Adoption of New Discipline Cost Model and Request to Circulate Monetary Sanction Rules for Public Comment

Presenters: Leah T. Wilson, Executive Director
Shelby King, Attorney, Office of General Counsel
Jake Lewis, Principal Financial Analyst, Office of Finance

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 45 days, proposed amended rule 5.137 as outlined in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees adopts the new discipline cost methodology as reflected in Attachment B.

Moved by Chen, seconded by Grande

Ayes – (12) Barahona, Buenaventura, Chen, Cisneros, Good, Grande, Huser, Shelby, Stephens, Sowell, Toney, Stallings

Nays – (0)

Abstain – (0)

Absent – (1) Trejo

Motion carries.

5.3 Report on Random Audit of the Office of Chief Trial Counsel Files Closed Between September 1, 2022, and February 28, 2023, and Office of Chief Trial Counsel Response

Presenter: George Cardona, Chief Trial Counsel

Discussion only.

5.4 Discussion Regarding Rule 2201 Program Performance Metrics

Presenter: Stacia Laguna, Special Deputy Trial Counsel Administrator

Discussion only.

5.5 Proposed Amendments to Rules 2.2, 2.11, 2.16, and 2.71 of the Rules of the State Bar and Rule 9.31 of the Rules of Court Relating to Attorney Reporting and the Timing of the Annual Renewal Cycle: Request to Circulate for Public Comment

Presenter: Steven Moawad, Special Counsel, Division Regulation

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 60 days, proposed amendments to rule 2.2 of the Rules of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 60 days, proposed amendments to rule 2.11 of the Rules of the State Bar, as set forth in Attachment C; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 60 days, proposed amendments to rule 2.16 of the Rules of the State Bar, as set forth in Attachment E; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 60 days, proposed amendments to rule 2.71 of the Rules of the State Bar, as set forth in Attachment G, if the Board also adopts or has adopted the resolution amending rule 2.71 of the Rules of the State Bar associated with the staff report entitled “Proposed Amendment to Rules 1.22, 2.51, 2.53, 2.55, 2.71 of the Rules of the State Bar and Proposed New Rules 2.140–2.153 of the Rules of the State Bar Relating to Regulatory Function of the State Bar: Request for Adoption” during the July 2024 Board Meeting; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 60 days, proposed amendments to rule 2.71 of the Rules of the State Bar, as set forth in Attachment I, if the Board does not or did not adopt the resolution amending rule 2.71 of the Rules of the State Bar associated with the staff report entitled “Proposed Amendment to Rules 1.22, 2.51, 2.53, 2.55, 2.71 of the Rules of the State Bar and Proposed New Rules 2.140–2.153 of the Rules of the State Bar Relating to Regulatory Function of the State Bar: Request for Adoption” during the July 2024 Board Meeting; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 60 days, proposed amendments to rule 9.31 of the Rules of Court, as set forth in Attachment K; and it is

FURTHER RESOLVED, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Rules of Court or Rules of the State Bar.

Moved by Toney, seconded by Huser

Ayes – (12) Barahona, Buenaventura, Chen, Cisneros, Good, Grande, Huser, Shelby, Stephens, Sowell, Toney, Stallings

Nays – (0)

Abstain – (0)

Absent – (1) Trejo

Motion carries.

5.6 Proposed Amendments to Rule 2.31 Relating to the Deadline for Submission of the Transfer to Inactive Status Form and the Effective Date of the Transfer: Request to Circulate for Public Comment

Presenter: Steven Moawad, Special Counsel, Division Regulation

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 45 days, the proposed amendments to rule 2.31 of the Rules of the State Bar, as set forth in Attachments A and B; and it is

FURTHER RESOLVED, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Rules of Court or Rules of the State Bar.

Moved by Stephens, seconded by Barahona

Ayes – (12) Barahona, Buenaventura, Chen, Cisneros, Good, Grande, Huser, Shelby, Stephens, Sowell, Toney, Stallings

Nays – (0)

Abstain – (0)

Absent – (1) Trejo

Motion carries.

5.7 Proposed Amendments to Rules of Procedure Regarding Remote Appearances in State Bar Court Proceedings (Rules 5.17 and 5.18): Request to Circulate for Public Comment and Request for Interim Adoption of Rule Changes

Presenter: Kathy Sher, Attorney, State Bar Court

RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline Committee, determines pursuant to rule 1.10(C) of the Rules of the State Bar of California that the impending loss of one of the State Bar Court’s San Francisco courtrooms requires authorization of interim amendments to the Rules of Procedure without prior public comment to allow the court to manage its calendar efficiently through the transition; and it is

FURTHER RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline Committee, having determined pursuant to rule 1.10(C) of the Rules of the State Bar of California that an emergency justifies the Board of Trustees sitting as the Regulation and Discipline Committee to adopt these amendments on an interim basis without public comment, hereby adopts on an interim basis, effective beginning July 29, 2024, the proposed amendments to rule 5.17 of the Rules of the State Bar of California, as set forth in Attachments A and B, and proposed amendments to rule 5.18 of the Rules of the State Bar of California, as set forth in Attachments C and D; and it is

FURTHER RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline Committee authorizes staff to make available for public comment, for a period of 45 days, proposed amendments to rule 5.17 of the Rules of the State Bar of California, as set forth in Attachments A

and B, and proposed amendments to rule 5.18 of the Rules of the State Bar of California, as set forth in Attachments C and D; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amendments to the Rules of the State Bar of California.

Moved by Stephens, seconded by Grande

Ayes – (10) Barahona, Buenaventura, Cisneros, Good, Grande, Huser, Stephens, Sowell, Toney, Stallings

Nays – (0)

Abstain – (0)

Absent – (3) Chen, Shelby, Trejo

Motion carries.

5.8 Proposed New Rule of Procedure Regarding Vexatious Litigants in State Bar Court: Request to Circulate for Public Comment

Presenter: Kathy Sher, Attorney, State Bar Court

RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline Committee authorizes staff to make available for public comment, for a period of 45 days, proposed new rule 5.19 of the Rules of the State Bar of California, as set forth in Attachment A; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amendments to the Rules of the State Bar of California.

Moved by Good, seconded by Sowell

Ayes – (10) Barahona, Buenaventura, Cisneros, Good, Grande, Huser, Stephens, Sowell, Toney, Stallings

Noes – (0)

Abstain – (0)

Absent – (3) Chen, Shelby, Trejo

Motion carries.

5.9 Proposed Amendments to Rules of the State Bar Relating to Progressive Discipline (Standard 1.8): Return from Public Comment and Request for Adoption

Presenter: Kathy Sher, Attorney, State Bar Court

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, hereby approves and adopts amendments to Standard 1.8 of the Standards for Attorney Sanctions for Professional Misconduct as set forth in Attachments A and B; and it is

FURTHER RESOLVED, that the effective date of the adopted amendments to Standard 1.8 of the Standards for Attorney Sanctions for Professional Misconduct shall be January 1, 2025.

Moved by Good, seconded by Buenaventura

Ayes – (10) Barahona, Buenaventura, Cisneros, Good, Grande, Huser, Stephens, Sowell, Toney, Stallings

Noes – (0)

Abstain – (0)

Absent – (3) Chen, Shelby, Trejo

Motion carries.

5.10 Proposed Amendments to Rules of the State Bar Regarding the Lawyer Assistance Program: Request to Circulate for Public Comment

Presenters: Melanie Lawrence, Program Director, Office of Professional Support & Client Protection
Michelle Harmon, Program Supervisor, Office of Professional Support & Client Protection

RESOLVED, that the Board of Trustees sitting as the Regulation and Discipline Committee authorizes staff to make available for public comment for a period of 60 days the proposed revisions to Title 3, Division 2, Chapter 5 of the State Bar Rules as provided in Attachment A (clean) and Attachment B (redline); and it is

FURTHER RESOLVED, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed revised rules.

Moved by Toney, seconded by Grande

Ayes – (10) Barahona, Buenaventura, Cisneros, Good, Grande, Huser, Stephens, Sowell, Toney, Stallings

Noes – (0)

Abstain – (0)

Absent – (3) Chen, Shelby, Trejo

Motion carries.

5.11 Request for Approval of Mandatory Fee Arbitration Filing Fee Increase

Presenter: Melanie Lawrence, Program Director, Office of Professional Support & Client Protection

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, approves raising the application filing fees for the Mandatory Fee Arbitration program as recommended and provided in Attachment A, Title 3, Division 4, Chapter 2, “Fee Arbitration, Charges and Deadlines.”

Moved by Stephens, seconded by Shelby

Ayes – (10) Barahona, Buenaventura, Cisneros, Grande, Huser, Shelby, Stephens, Sowell, Toney, Stallings

Nays – (0)

Abstain – (0)

Absent – (3) Chen, Good, Trejo

Motion carries.

6. Business

6.1 Update on and Approval of 2024 Legislative Priorities and Affirmative Legislative Proposals; Position on Pending Legislation

Presenters: Donna Hershkowitz, Chief of Mission Advancement & Accountability/Legislative Director
Bridget Gramme, Special Counsel, Division of Consumer Protection, Admissions, Access & Inclusion

RESOLVED, that the Board of Trustees adopts an affirmative legislative proposal to amend Business and Professions Code section 6140.03 to increase the \$5 earmark for law student fellowships to \$10; and it is

FURTHER RESOLVED, that the Board of Trustees, adopts a support position on SB 940 (Umberg).

Moved by Sowell, seconded by Good

Ayes – (10) Barahona, Chen, Cisneros, Good, Grande, Huser, Stephens, Sowell, Toney, Stallings

Nays – (0)

Abstain – (0)

Absent – (3) Buenaventura, Shelby, Trejo

Motion carries.

Additional Resolution Related to Agenda Item 6.1

RESOLVED, that the Board of Trustees authorizes staff in consultation with the chair to continue to negotiate the amount of the fee increase with the Legislature and directs staff to advocate for inclusion of statutory language authorizing the State Bar to access a portion of CSF reserves and future CSF collection revenue for IT investments.

Moved by Toney, seconded by Sowell

Ayes – (10) Barahona, Chen, Cisneros, Good, Grande, Huser, Stephens, Sowell, Toney, Stallings

Nays – (0)

Abstain – (0)

Absent – (3) Buenaventura, Shelby, Trejo

Motion carries.

6.2 Update on Contracting with Kaplan North America LLC for Preparation of California Bar Examination Materials and Consideration of Actions, Including Contract Approval

Presenters: Audrey Ching, Program Director, Office of Admissions
Bridget Gramme, Special Counsel, Division of Consumer Protection,
Admissions, Access & Inclusion

RESOLVED, that the Board of Trustees authorizes and delegates authority to the Board chair and the executive director to negotiate terms of and, if appropriate, execute an agreement with Kaplan North America, LLC 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, essays, and performance test questions for the California Bar Exam, and take any necessary actions to effectuate the agreement.

Moved by Barahona, seconded by Grande

Ayes – (6) Barahona, Cisneros, Grande, Stephens, Toney, Stallings

Nays – (2) Huser, Sowell

Abstain – (2) Chen, Good

Absent – (3) Buenaventura, Shelby, Trejo

Motion carries.

6.3 Discussion of Offer and Compromise Collection Program Update

Presenter: Aracely Montoya-Chico, Chief Financial Officer

Discussion only.

6.4 Approval of Interest on Lawyers' Trust Accounts Grant Distribution for 2025

Presenters: Doan Nguyen, Program Director, Office of Access & Inclusion
Heidi Slater, Program Manager, Office of Access & Inclusion

RESOLVED, that the Board of Trustees approve the 2025 IOLTA distribution in the amount of \$252 million and maintain a reserve of \$25 million at the end of 2024.

Moved by Stephens, seconded by Good

Ayes – (11) Barahona, Buenaventura, Chen, Cisneros, Good, Grande, Huser, Stephens, Toney, Sowell, Stallings

Nays – (0)

Abstain – (0)

Absent – (2) Shelby, Trejo

Motion carries.

6.5 Approval of Revisions to Appendix A, Schedule of Charges and Deadlines, Related to Law School Fees

Presenter: Cody Hounanian, Program Director, Office of Admissions

RESOLVED, that the Board of Trustees approves revisions to the Rules of the State Bar of California Appendix A, Schedule of Charges and Deadlines, related to accredited law school fees reflecting the changes approved at the March 2024 board meeting and the accreditation services fee to be assessed in 2024 as shown in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees approves revisions to the Rules of the State Bar of California Appendix A, Schedule of Charges and Deadlines, related to unaccredited law school fees reflecting the changes approved at the March 2024 board meeting as shown in Attachment B.

Moved by Sowell, seconded by Buenaventura

Ayes – (11) Barahona, Buenaventura, Chen, Cisneros, Good, Grande, Huser, Stephens, Toney, Sowell, Stallings

Nays – (0)

Abstain – (0)

Absent – (2) Shelby, Trejo

Motion carries.

Chair Stallings stated that pursuant to Government Code section 11126(e)(2)(B)(i), 11126(c)(1), 11126(c)(17), and Business and Professions Code section 6026.7(c)(3), 6026.7, and 6086.1(c) the Board of Trustees will move to closed session to consider the items listed on the closed session agenda.

CLOSED SESSION

1. Closed Session Minutes

1.1 Approval of May 16, 2024, Closed Session Minutes

2. Closed Session Consent Calendar

2.1 Approval of Contracts Relating to the Preparation of Examination Materials or the Approval, the Grading, or the Security of Test Administration of the California Bar Examination or the First-Year Law Students' Examination

3. Closed Session Business

3.1 Conference with Legal Counsel – Anticipated Litigation

**Closed due to significant exposure to litigation pursuant to Government Code § 11126(e)(2)(B)(i).*

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

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

3.3 Discharge of Responsibilities Under Collective Bargaining Agreements

**Pursuant to Government Code § 11126(c)(17).*

3.4 Request to Waive Confidentiality Pursuant to Business and Professions Code Section 6086.1

**Closed pursuant to Business and Professions Code §§ 6026.7 and 6086.1(c).*

OPEN SESSION

The Board reconvened in open session and announced that there were no actions to report from the closed session.

ADJOURN

Regular Meeting of the Board of Trustees
Hybrid

Open Session Minutes
Friday, July 19, 2024
9:03 a.m.–10:17 a.m.

Time meeting Commenced: The Board meeting commenced in open session at 9:03 a.m.
Time meeting Adjourned: 10:17 a.m.
Chair: Brandon Stallings
Board Secretary: Louisa Ayrapetyan
Members Present: Patricia Barahona, Raymond Buenaventura, Hailyn Chen, José Cisneros, Sarah Good, Cynthia Grande, Mary Huser, Melanie Shelby, Arnold Sowell Jr., Brandon Stallings, Mattheus Stephens, Mark Toney
Members Absent: Genaro Trejo
Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Stallings. Roll call was taken and a quorum was established.

6.6 Discussion Regarding State Bar Policy on Generative AI Use

Presenters: Leah T. Wilson, Executive Director
Margaret Hagan, Executive Director of Legal Design Lab Stanford Law
Yeonwoo Lee, Intern, Office of the Executive Director

Presentation and discussion only.

ADJOURN

EXHIBIT 20



The State Bar of California

OPEN SESSION AGENDA ITEM 3.2 SEPTEMBER 2024 BOARD OF TRUSTEES

DATE: September 19, 2024

TO: Members, Board of Trustees

FROM: Louisa Ayrapetyan, Board Secretary, Office of the Executive Director

SUBJECT: Approval of Amendment to September 22, 2023, Board of Trustees Open Session Minutes

EXECUTIVE SUMMARY

This staff report seeks the Board of Trustees' approval for amendments to the September 22, 2023, open session minutes. The amendments relate to a portion of the final approved resolution regarding agenda item 701: *Approval of 2024 Admissions Fee Increases and Fee Setting Policy; Update on February 2024 Bar Exam Locations; and Discussion of July 2024 Bar Exam Administration.*

RECOMMENDED ACTION

This staff report seeks the Board's approval to revise the September 22, 2023, open session minutes to include the complete language of the resolution for agenda item 701: *Approval of 2024 Admissions Fee Increases and Fee Setting Policy; Update on February 2024 Bar Exam Locations; Discussion of July 2024 Bar Exam Administration*, as approved by the Board.

DISCUSSION

At the November 16–17, 2023, meeting, the Board approved the open session minutes from September 21–22, 2023. However, the resolution for agenda item 701: *Approval of 2024 Admissions Fee Increases and Fee Setting Policy; Update on February 2024 Bar Exam Locations; Discussion of July 2024 Bar Exam Administration* omitted the first paragraph of the final Board-approved resolution. Staff now request the Board's approval of the revised minutes, as shown in Attachment A.

PREVIOUS ACTION

[Approval of September 21–22, 2023, Open Session Minutes](#) (Approved in November 2023)

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – compliance

RESOLUTIONS

Should the Board of Trustees concur, it is:

RESOLVED, that the Board of Trustees approves the revised open session minutes of September 22, 2023, to include the complete language of the resolution for agenda item 701: *Approval of 2024 Admissions Fee Increases and Fee Setting Policy; Update on February 2024 Bar Exam Locations; and Discussion of July 2024 Bar Exam Administration*, as outlined in Attachment A.

ATTACHMENT LIST

- A. Revised September 22, 2023, Open Session Minutes



The State Bar of California

ATTACHMENT A

Regular Meeting of the Board of Trustees Hybrid

Open Session Minutes
Thursday, September 21, 2023
10:53 a.m.–6:18 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 10:53 a.m. The Board moved into closed session at 12:34 p.m. The Board returned to open session at 3:19 p.m.

Time meeting Adjourned: 6:18 p.m.

Chair: Ruben Duran

Board Secretary: Louisa Ayrapetyan

Members Present: Mark Broughton, Raymond Buenaventura, Hailyn Chen (joined late), José Cisneros, Ruben Duran, Sarah Good, Mary Huser, Melanie Shelby, Arnold Sowell Jr., Brandon Stallings, Mark Toney, Genaro Trejo

Members Absent: None

Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Duran. Roll call was taken and a quorum was established.

PUBLIC COMMENT

Chair Duran 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 Board:

1. Neha Malik:
Neha Malik, speaking on behalf of the Legal Funders Network, stated their support for the Portfolio Bar Exam (PBE) as an alternative method of licensure. Malik stated that an alternative method for licensure would help alleviate the civil legal aid crisis, improve public safety, and improve diversity, equity, and inclusion. Malik further iterated that supervised practice is the gold standard for licensure, rather than an exam-based process.
2. Lucas Wright:
Lucas Wright, speaking on behalf of the Bigglesworth Family Foundation, stated their support for the PBE as an alternative method of licensure. Wright mentioned that a PBE program would increase the number of attorneys working in rural areas, citing the

working group's report and findings from the provisional licensure lawyer (PLL) program. Wright also mentioned that the PBE would result in more attorneys able to help low-income individuals and work in public interest law. It would also increase diversity. The Biggleworth Family Foundation further encouraged the State Bar to submit a grant to aid in covering the start up costs for the PBE pilot program.

3. Marlene Lara:

Marlene Lara began by giving a brief tribute to recently passed Trustee Greg Knoll. Lara mentioned Trustee Knoll's commitment to enhancing equity, equality, and advocating for the vulnerable members of society. Lara also mentioned Trustee Knoll's desire for exploring an alternative pathway to licensure and asked the Board to honor Trustee Knoll's legacy by approving the PBE proposal.

4. Jules Sarkar:

Jules Sarkar spoke in support for the PBE as an alternative method of licensure and thanked Susan Bakhshian and the working group for their efforts. Sarkar spoke against item 701, an increase in admission fees, stating that an increase is unwarranted given the costs associated with the bar exam and the lack of explanation provided. Sarkar asked the governor-appointed members if they knew where the State Bar's funds were and they could access those funds, citing an argument made by the State Bar in a case heard in the 9th Circuit Court of Appeals.

5. Maria Dominguez:

Maria Dominguez, who serves on the Board of Directors of the East Bay La Raza Lawyers Association, asked the Board to approve the PBE proposal. Dominguez stated that having to take the bar multiple times served as a detriment to their community and as well as her personal finances (having to take time to study prevented her from earning credit towards her loans). Citing the State Bar's diversity report card, Dominguez argued that the PBE could help make California's attorney population better reflect California's actual population, amongst Latinos in particular. Dominguez stated that the East Bay La Raza Lawyers Association submitted a letter in support of the PBE.

6. Sandra Brooks:

Sandra Brooks, the dean of California Northern School of Law and speaking on behalf of the California Accredited Law Schools (CALs), wanted to register their objection to the proposed 2024 Admission fees increases. Brooks stated that while regular increases are a normal part of business, it is unprecedented for the CALs to absorb increases of 95 percent and 80 percent. Brooks claims that the proposed per student impact of \$224 is misleading because the impact is disproportionately large for smaller schools. Brooks thanked staff for the tiered proposal and encouraged trustees to adopt option 3: where all schools pay \$90 per enrolled student.

7. Benjamin Kohn:

Benjamin Kohn spoke first on the proposed changes to the February 2024 and July 2024 bar exams, mentioning their earlier comments on the usage of body exams to permit remote accommodations for some test takers. Kohn mentioned that Trustee Knoll seemed in favor of this proposal, quoting that Trustee Knoll felt the State Bar "wasn't

thinking hard enough” with regards to remote accommodations for disabled applicants. Kohn mentioned that their proposals were seen as too burdensome for staff and not brought before the Board.

8. Ray Hayden:

Ray Hayden spoke in support of Benjamin Kohn’s comments regarding testing accommodations and Jules Sarkar’s comments on Admissions fees. Hayden stated their support for the PBE and reiterated their proposal for an alternative pathway to licensure modeled off programs utilized by the military and air traffic controllers. Hayden also advocated support for the State Bar’s creation of their own multiple-choice exam.

9. Todd Hill:

Todd Hill asked the State Bar how long someone should have to wait for the State Bar to fulfil an action that is within the agency’s duty. Hill mentioned their federal case against the State Bar (2:23-CV-01298-JLS-PD). Hill stated that’s the State Bar held the People’s College of Law in noncompliance and still has not provided relief by providing Hill’s transcripts. Hill stated that the State Bar has a moral imperative to respond promptly to their complaint.

10. Mitchel Winick:

Mitchel Winick, the president and dean of Monterey College of Law, spoke on item 701 and asked the Board to remove or delay the decision regarding fee increases to CALS. Winick claims that while the proposal asks for a 955 percent increase in fees, it does not provide cost-cutting measures or previous cost-cutting measure preposed in prior rules changes. Winick further spoke in support of the PBE.

11. Jessica Juarez:

Jessica Juarez, a current PLL, spoke that while they and other PLLs appreciate the extension, the extension does not address the issues inherent in preparation for and having to take the bar exam. Juarez stated that the Board addressing an alternative pathway for licensure it critical to their and other’s livelihoods. Juarez mentioned that if PLLs were permitted to serve as a pilot group in 2024, this would allow for the results of the pilot program to coincide with the release of 2024 exam results and resolve the question of licensure before the expiration of the PLL program.

12. Reann Pacheco:

Reann Pacheco, with the Legal Aid Association of California, stated their complete support for the PBE and urged the Board to approve the pilot today. Pacheco claimed that legal aid organization would like to get their PLLs on a pathway to licensure now and use these well-trained lawyers to fill open positions.

10 MINUTES

Approval of July 20–21, 2023, Open Session Minutes

Moved by Stallings, seconded by Buenaventura

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Shelby, Sowell, Stallings, Toney, Trejo, Duran

Noes – (0)
Abstain – (1) Broughton
Absent – (0)

Minutes adopted.

30 CHAIR'S REPORT

Chair Duran provided an oral report. Chair Duran also presented the following resolutions for adoption:

WHEREAS, the members of the Board of Trustees of the State Bar of California express our sincerest gratitude to Mark Broughton for nearly 7 years of tireless service to the State Bar; and

WHEREAS, Mark Broughton's contributions as a member of the Board of Trustees spanned the historic transformation of the State Bar to a purely regulatory agency, a process in which he played a critical leadership role, forging the path between the “old” and “new” State Bar; and

WHEREAS, Mark Broughton’s participation in the former California Commission on Access to Justice and his tireless advocacy for increased access to court and legal services in rural communities, exemplified his deep dedication to improving access to justice for all Californians; and

WHEREAS, Mark Broughton's illustrious legal career, spanning from San Diego to Fresno, California, has encompassed criminal law, civil litigation, and personal injury, demonstrating his versatility and dedication to protecting the Constitutional rights of his clients; and

WHEREAS, Mark Broughton, has represented clients in over 200 jury trials across federal and state courts and is regularly called upon by the Fresno County Superior Court to handle special circumstances/death penalty cases; and

WHEREAS, Mark Broughton's active involvement in the Fresno County Bar Association, his dedicated work with the Northern California Innocence Project, and his roles as a mock trial attorney judge, team coach, and educator, have all contributed to the enrichment and growth of the legal profession, showcasing his commitment to mentoring and fostering the next generation of legal leaders; so let it be

RESOLVED, that the State Bar Board of Trustees expresses its profound appreciation to Mark Broughton for his exceptional service, leadership, and enduring contributions to ensuring that the State Bar of California truly fulfills its public protection mission.

Moved by Stallings, seconded by Cisneros

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Shelby, Sowell, Stallings, Toney, Trejo, Duran
Noes – (0)
Abstain – (1) Abstain
Absent – (0)

Motion carries.

Chair Duran stated that pursuant to Government Code section 11126(c)(7) the Board of Trustees will move to closed session to consider the items listed on the closed session agenda.

CLOSED SESSION

1000 MINUTES

Approval of July 20–21, 2023, Closed Session Minutes

7000 MISCELLANEOUS

7001 Discussion Regarding Sale Price and Terms and Leasing Price and Terms for 180 Howard Street, San Francisco

**Closed pursuant to Government Code § 11126(c)(7).*

OPEN SESSION

The Board returned to open session and reported that there is no action to report from closed session.

60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE

60-1 Ad Hoc Commission on the Discipline System Recommendations: Status Update Regarding Board Directed Follow Up Work

Presenters: Leah Wilson, Executive Director
George Cardona, Chief Trial Counsel
Lisa Chavez, Program Director, Office of Mission Advancement & Accountability Division
Steve Moawad, Special Counsel, Division of Regulation
Suzanne Grandt, Attorney, Office of General Counsel
Kathy Sher, Attorney, State Bar Court

Presentation and discussion only.

700 BUSINESS

702 Report from the Alternative Pathway Working Group: Request to Circulate for Public Comment

Presenter: Audrey Ching, Program Director, Office of Admissions

RESOLVED, that the Board of Trustees authorizes staff to circulate for public comment, for a period of 30 days, the Report to the Board of Trustees of the State Bar of California: Proposal for a Portfolio Bar Examination as set forth in Attachment A.

Moved by Shelby, seconded by Stallings

Ayes – (11) Broughton, Buenaventura, Chen, Cisneros, Good, Shelby, Sowell, Stallings, Toney, Trejo, Duran
Noes – (0)
Abstain – (0)
Absent – (0)

Motion carries.

Regular Meeting of the Board of Trustees
Hybrid

Open Session Minutes
Friday, September 22, 2023
9:34 a.m.–2:14 p.m.

Time meeting Commenced: The Board meeting commenced in open session at 9:34 a.m. The Board moved into closed session at 1:21 p.m. The Board returned to open session at 2:13 p.m.

Time meeting Adjourned: 2:14 p.m.

Chair: Brandon Stallings

Board Secretary: Louisa Ayrapetyan

Members Present: Raymond Buenaventura, Hailyn Chen, José Cisneros, Sarah Good, Mary Huser, Melanie Shelby, Arnold Sowell Jr., Brandon Stallings, Mark Toney, Genaro Trejo

Members Absent: None

Staff Present: Ellin Davtyan, Leah Wilson

OPEN SESSION

ROLL CALL

The Board of Trustees meeting was called to order by Chair Duran. Roll call was taken and a quorum was established. Chair Stallings was sworn in as the new chair and Trustee Duran resigned from the Board of Trustees.

30 CHAIR'S REPORT

Chair Stallings provided an oral report. Chair Stallings also presented the following resolution for adoption:

RESOLVED, that the Board of Trustees approves the committee, officer, and liaison assignments, as presented in Attachment A, effective September 22, 2023.

Moved by Buenaventura, seconded by Cisneros

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

40 EXECUTIVE DIRECTOR'S REPORT

Executive Director Leah Wilson provided an oral report and an update on case processing and operational metrics.

50 CONSENT AGENDA

50-2 Report on Action Taken by the Board Executive Committee Approving Specified Contracts Pursuant to Business and Professions Code Section 6008.6

WHEREAS, the contracts listed herein required execution before the next regularly scheduled meeting of the Board of Trustees; and

WHEREAS, on August 10, 2023, the Board Executive Committee approved said contracts; it is hereby

RESOLVED, that the Board of Trustees affirms the action taken by the Board Executive Committee on behalf of the Board.

50-3 Approval of Quarter Two 2023 Investment Report

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee approve the 2023 Second Quarter Investment Report in the form presented this day, for the six months ended June 30, 2023.

50-4 Approval of Quarter Two 2023 Board and Management Travel Expenses Report

RESOLVED, that the Board of Trustees, upon recommendation of the Audit Committee, approves the second quarter of 2023 Board and management travel expense report in the form presented this day, for the three months ended June 30, 2023.

Consent calendar moved by Toney, seconded by Sowell

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

This item was pulled off the consent calendar for a separate discussion.

50-1 Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6

RESOLVED, that the Board of Trustees approves execution of the contracts listed herein, excluding contract line item 13.

Moved by Shelby, seconded by Sowell

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60 BOARD OF TRUSTEES SITTING AS THE REGULATION AND DISCIPLINE COMMITTEE
60-2 Report on Random Audit of Office of Chief Trial Counsel Files Closed Between
September 1, 2021, and February 28, 2022, and Office of Chief Trial Counsel Response

Presenter: George Cardona, Chief Trial Counsel

Presentation and discussion only.

60-3 Proposed Amendments to California Rules of Court (Rules 9.8.5, 9.9, 9.32, and 9.49)
and Rules of the State Bar (Rules 2.2, 2.5, 2.15, 2.30, 2.51, 2.53, 2.71, 2.111 and New
State Bar Rules 2.140–2.153) Relating to Regulatory Function of the State Bar: Return
from Public Comment and Request for Adoption

Presenter: Steve Moawad, Special Counsel, Division of Regulation

RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.2 of the Rules of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the approval of the proposed amendments to rule 2.2 of the Rules of the State Bar is subject to the California Supreme Court’s approval of proposed amendments to Rule of Court 9.9 without any material changes; and it is

FURTHER RESOLVED, that the effective date of the amendments to rule 2.2 of the Rules of the State Bar would be the effective date of proposed amendments to Rule of Court 9.9 if the California Supreme Court approves proposed amendments to Rule of Court 9.9 without any material changes; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 9.9 of the California Rules of Court, as set forth in Attachment C; and it is

FURTHER RESOLVED, that staff is directed to submit proposed new Rule of Court 9.9 to the California Supreme Court with a request that the proposed amendments to Rule of Court 9.9 be approved; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.5 of the Rules of the State Bar, as set forth in Attachment E; and it is

FURTHER RESOLVED, that the approval of the proposed addition of subdivision (L) to rule 2.5 of the Rules of the State Bar is subject to the California Supreme Court’s approval of proposed amendments to Rule of Court 9.8.5 without any material changes; and it is

FURTHER RESOLVED, that the effective date of the proposed amendments to rule 2.5 of the Rules of the State Bar will be December 1, 2023, with the exception of the addition of rule 2.5(L) of the Rules of the State Bar which will be effective on the effective date of proposed amendments to Rule of Court 9.8.5 if the California Supreme Court approves proposed new Rule of Court 9.8.5 without any material changes; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 9.8.5 of the California Rules of Court, as set forth in Attachment G; and it is

FURTHER RESOLVED, that staff is directed to submit proposed new Rule of Court 9.8.5 to the California Supreme Court with a request that the proposed amendments to Rule of Court 9.8.5 be approved; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.15 of the Rules of the State Bar, as set forth in Attachment I; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.30 of the Rules of the State Bar, as set forth in Attachment K; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar, as set forth in Attachment M; and it is

FURTHER RESOLVED, that the approval of the proposed amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar is subject to the California Supreme Court's approval of proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court without any material changes; and it is

FURTHER RESOLVED, that the effective date of the amendments to rules 2.51, 2.53, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar would be the effective date of proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court without any material changes; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court, as set forth in Attachment O; and it is

FURTHER RESOLVED, that staff is directed to submit proposed new Rule of Court 9.32 and proposed amendments to rule 9.49 of the California Rules of Court to the California Supreme Court with a request that proposed new Rule of Court 9.32 and proposed amendments to rule 9.49 of the California Rules of Court be approved; and it is

FURTHER RESOLVED, following notice and publication for comment, the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts proposed amendments to rule 2.111 of the Rules of the State Bar, as set forth in Attachment Q.

Moved by Good, seconded by Buenaventura

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60-4 Annual Discipline Report Review and Approval Timeline and Discussion of Inclusion of Demographic Data in Report

Presenter: Yun Xiang, Chief Mission Officer

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee will review, evaluate, and approve the Annual Discipline Report due annually on October 31; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee approves the procedures the State Bar will follow in its production of the Annual Discipline Report due October 31, 2023.

Moved by Good, seconded by Sowell

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (0)

Motion carries.

60-5 Discussion Regarding State Bar Diversion Program

Presenters: George Cardona, Chief Trial Counsel
Melanie Lawrence, Program Director, Office of Professional Support & Client Protection
Enrique Zuniga, Public Trust Liaison

Presentation and discussion only.

60-6 Complaint Review Unit Overview and Recent Process Improvements

Presenters: Ellin Davtyan, General Counsel

Presentation and discussion only.

700 BUSINESS

701 Approval of 2024 Admissions Fee Increases and Fee Setting Policy; Update on February 2024 Bar Exam Locations; Discussion of July 2024 Bar Exam Administration

Presenters: Donna Hershkowitz, Chief of Programs/Legislative Director
Aracely Montoya-Chico, Chief Financial Officer

RESOLVED, that the Board of Trustees adopts the staff recommendation for increases to fees relating to law study and exams, special admissions and law school fees, as provided in Attachment A, except as set forth below; and it is

FURTHER RESOLVED, that the Board of Trustees, directs staff to adjust the proposed fees related to California Accredited Law Schools downward to adjust the Options set forth in Attachment B, accordingly; it is

FURTHER RESOLVED, that the Board of Trustees directs staff to circulate the Options set for in Attachment B, as modified, for a 30-day public comment period; and it is

FURTHER RESOLVED, that the Board of Trustees, directs that the Admissions fees be reviewed every three years and, in the intervening years, the fees be adjusted by the Consumer Price Index (CPI), if legally permissible, unless staff demonstrates that application of CPI adjustment to specific fees is unnecessary.

Moved by Buenaventura, seconded by Chen

Ayes – (9) Buenaventura, Chen, Cisneros, Good, Huser, Sowell, Toney, Trejo, Stallings

Noes – (0)

Abstain – (0)

Absent – (1) Shelby

Motion carries.

703 Approval of 2023 Midyear Budget Variance Report (Including Quarter Two Financial Statements Report) and Projection

Presenter: Aracely Montoya-Chico, Chief Financial Officer

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee approves the 2023 Midyear Budget Variance Report (including Q2 Financial Statements Report) and Projection, in the form presented this day, for six months ended June 30, 2023.

Moved by Sowell seconded by Trejo

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings
Noes – (0)
Abstain – (0)
Absent – (0)

Motion carries.

704 Proposed Amendments to Rules 9.11 and 9.90 of the California Rules of Court: Return from Public Comment and Approval; Update on Conflict of Interest Code for the Board of Trustees of the State Bar of California

Presenters: Ellin Davtyan, General Counsel
Robert Retana, Deputy General Counsel
Shelby King, Attorney, Office of General Counsel

RESOLVED, following notice and publication for comment, that the Board of Trustees approves the proposed amendments to Rules of Court 9.11 and 9.90 as set forth in Attachments D and E; and it is

FURTHER RESOLVED, that staff is directed to submit the proposed amendments to Rules of Court 9.11 and 9.90 to the California Supreme Court with a request that the proposed amendments be approved; and it is

FURTHER RESOLVED, that staff is directed to inform the other appointing authorities, including the governor, the Senate Committee on Rules, and the Speaker of the Assembly, for the Board of Trustees about these proposed rule changes and request that they consider adopting similar procedures or otherwise consider actual or potential conflicts of interest in their appointment process.

Moved by Chen, seconded by Buenaventura

Ayes – (10) Buenaventura, Chen, Cisneros, Good, Huser, Shelby, Sowell, Toney, Trejo, Stallings
Noes – (0)
Abstain – (0)
Absent – (0)

Motion carries.

Chair Stallings stated that pursuant to Government Code section 11126(a)(1), Government Code section 11126(c)(2), and Government Code section 11126(e)(2)(A), the Board of Trustees will move to closed session to consider the items listed on the closed session agenda.

CLOSED SESSION

7000 MISCELLANEOUS

7002 Discussion Regarding Special Audit Committee Directed Audit of Closed Office of Chief Trial Counsel Files – to be considered on September 22, 2023

**Closed pursuant to Government Code §§ 11126(a)(1) and 11126(c)(2)*

7003 Conference with Legal Counsel—Anticipated Litigation
Agaton et al. v. State Bar of California et al. (L.A. Super. Ct. Case No. 23STCV21606)

**Closed pursuant to Government Code § 11126(e)(2)(A)*

OPEN SESSION

The Board returned to open session and reported that there is no action to report from closed session.

ADJOURN

EXHIBIT 21



The State Bar of California

RESOLUTION ADOPTED BY THE BOARD OF TRUSTEES

Agenda Item 3.2: Approval of Amendment to September 22, 2023, Board of Trustees Open Session Minutes

RESOLVED, that the Board of Trustees approves the revised open session minutes of September 22, 2023, to correct a clerical error and to include the complete language of the resolution for agenda item 701: *Approval of 2024 Admissions Fee Increases and Fee Setting Policy; Update on February Bar Exam Locations; and Discussion of July 2024 Bar Exam Administration*, as outlined in Attachment A.

I hereby certify that the foregoing is full, true and correct copy of the resolution adopted by the Board of Trustees at its meeting held on September 19, 2024, by hybrid format in Los Angeles and Zoom.

Louisa Ayrapetyan, Board Secretary

VOTE

Moved by Toney, seconded by Cisneros

Ayes – (10) Barahona, Buenaventura, Cisneros, Good, Shelby, Stephens, Sowell, Toney, Trejo, Stallings

Nays – (0)

Abstain – (1) Grande

Absent – (2) Chen, Huser

Motion carried.

EXHIBIT 22



The State Bar of California

OPEN SESSION AGENDA ITEM 4.1 SEPTEMBER 2024 BOARD OF TRUSTEES

DATE: September 19, 2024

TO: Members, Board of Trustees

FROM: Mayte Diaz, Director of General Services

SUBJECT: Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6

EXECUTIVE SUMMARY

This item requests approval to execute contracts for goods or services with a value in excess of \$50,000 or, for information technology (IT) goods and services, in excess of \$100,000.

RECOMMENDED ACTION

Should the Board of Trustees concur in the proposed action, the Board of Trustees approves execution of the contracts listed herein.

DISCUSSION

The contracts listed below are in excess of \$50,000 (or for IT goods and services, in excess of \$100,000), and have met the standards established by Article 4 of the Public Contract Code, as implemented through the State Bar’s Procurement Policy. The contracts require approval by the Board of Trustees in order to be executed.

Ref #	Office	Cost Center	Fund	Vendor	Contract Amount	Goods or Services
1	Finance	3110	General Fund	Macias, Gini, O’Connell, LLP ¹	\$1,077,715	Independent Financial Auditing Services

¹ At the September 9, 2024, meeting, the Audit Committee recommended that the full Board of Trustees approve this contract

Ref #	Office	Cost Center	Fund	Vendor	Contract Amount	Goods or Services
2	General Counsel	4110	General Fund	Hopkins & Carley, A Law Corporation	\$50,000 (total contract value \$100,000)	Legal Services
3	General Counsel	4110	General Fund	Mitchell, Silverberg & Knupp LLP	\$50,000 (total contract value \$150,000)	Legal Services
4	General Counsel	4110	General Fund	Meyers Nave	\$25,000 (total contract value \$75,000)	Legal Services (Workplace Investigations)
5	General Counsel	4110	General Fund	Richards, Watson & Gershon A.P.C.	\$50,000 (total contract value \$125,000)	Legal Services
6	Access & Inclusion	8219	Legal Services Trust Fund	Harbor Government Solutions, LLC	\$202,710	Legal Operations, Technology and Artificial Intelligence (AI) Consultant
7	General Services	5520	General Fund	Allied Universal	\$711,470	Los Angeles Office Security Services
8	General Services	5691	General Fund	Valley Relocation	\$110,800	Office Furniture and Related Items Breakdown, Removal and Disposal Services
9	General Services	5520	General Fund	Konica Minolta Business Solutions	\$158,400	Multifunction Copiers Leasing and Maintenance
10	Human Resources	5210	General Fund	Shaw Law Group, PC	\$45,000 (total contract value \$90,000)	Employee and Labor Relations Policy/Practice Assessment
11	Information Technology	5310	General Fund	21Tech, LLC	\$25,000 (total contract value \$115,000)	Project Management Services
12	Information Technology	5310	General Fund	21Tech, LLC	\$120,000 (total contract value \$1,311,350)	AS400 Programming Services

Ref #	Office	Cost Center	Fund	Vendor	Contract Amount	Goods or Services
13	Information Technology	5310	General Fund	Tyler Technologies, Inc.	\$214,812	Odyssey Case Management System Licenses
14	Information Technology	5310	General Fund	AST, LLC	\$161,120	Oracle Cloud Application Support
15	Information Technology	5310	General Fund	Software Management Consultants, Inc.	\$24,440 (total contract value \$252,447)	Helpdesk Support Technician
16	Information Technology	5310	General Fund	Capo Solutions, Inc.	\$51,360 (total contract value \$453,282)	Odyssey CMS Support
17	Information Technology	5310	General Fund	Capo Solutions, Inc.	\$50,800 (total contract value \$358,034)	Salesforce Developer
18	Admissions	8312	Admissions Fund	ProctorU dba Meazure Learning (Experiment)	\$151,500	Live, Remote Proctoring and Test Center Services (Bar Exam Experiment)
19	Admissions	8312	Admissions Fund	ProctorU dba Meazure Learning	\$4,108,500	Live, Remote Proctoring and Test Center Services (Bar Exam and Legal Specialization Exam Administration)

1. Macias, Gini, O’Connell, LLP

Vendor provides independent financial auditing services. The requested funds are for a three-year term with the options for two one-year extensions. The cost of this contract will be included in the annual budget for the Office of Finance, and Access & Inclusion in each respective year.

2. Hopkins & Carly, A Law Corporation

Law firm is engaged to represent State Bar in bankruptcy related litigation and appeal in re Albert-Sheridan (Case Nos. 18-10548-SC & BAP No.CC-23-1024-SFL). Approval is requested for the additional contact amount of \$50,000 for the appeal related services. The cost of this contract is included in the annual budget for the Office of General Counsel.

3. Mitchell, Silverberg & Knupp LLP

Law firm is retained to provide legal services in specialized area of copyright and intellectual property. Approval is requested for the additional contract amount of \$50,000. The cost of this contract is included in the annual budget for the Office of General Counsel.

4. Meyers Nave

Law firm is engaged to provide workplace investigation legal services. Approval is requested for the additional contract amount of \$25,000. The cost of this contract is included in the annual budget for the Office of General Counsel.

5. Richards, Watson & Gershon A.P.C.

Law firm is retained for legal services in connection with contract drafting, negotiation and related advice for exam development services. Approval is requested for the additional contract amount of \$50,000. The cost of this contract is included in the annual budget for the Office of General Counsel.

6. Harbor Government Solutions, LLC.

Vendor provides legal operations, technology and Artificial Intelligence (AI) consulting services. The cost of this contract is included in the annual budget for the Office of Access and Inclusion.

7. Allied Universal

Vendor provides security staff for the Los Angeles office. The requested funds are for a one-year term. These recurring services are part of core business operations in the Office of General Services and are included in the annual budget.

8. Valley Relocation & Storage, Inc.

Vendor provides office furniture and related items breakdown, removal and disposal services in connection with the building restack project at 180 Howard Street. The cost of this contract is included in the annual budget for the Office of General Services.

9. Konica Monica Business Solutions

Vendor provides networked, multifunction digital devices (copy/print/scan/fax). The requested funds are for the leasing and maintenance cost of such devices for San Francisco and Los Angeles offices for a 15-month term. These recurring services are part of core business operations in the Office of General Services and are included in the annual budget.

10. Shaw Law Group, PC

Vendor provides employee and labor relations policy/practice assessments. The cost of this contract is included in the annual budget for Office of Human Resources.

11. 21Tech, LLC

Vendor provides project management services. The cost for this contract is included in the annual budget for the Office of Information Technology.

12. 21Tech, LLC

Vendor provides extended warranty for programming services related to the AS400. The cost for this contract is included in the annual budget for the Office of Information Technology.

13. Tyler Technologies

Vendor provides the Odyssey Case Management System for use by the Office of Chief Trial Counsel, Office of Probation, and State Bar Court. The contract covers annual licensing and maintenance. These recurring services are part of core business operations in the Office of Information of Technology and are included in the annual budget.

14. AST, LLC

Vendor provides proactive monitoring, support, defect research and resolution, maintenance and enhancement for the State Bar's Oracle Cloud Finance and Human Resources system. The cost of the contract is included in the annual budget for the Office of Information of Technology.

15. Software Management Consultants, Inc.

Vendor provides information technology professionals. The contract is for a Helpdesk Support Technician to provide in-house support. The cost for this contract is included in the annual budget for the Office of Information Technology.

16. Capo Solutions, Inc.

Vendor provides information technology professionals. The contract is for Odyssey Case Management System support services. The cost for this contract is included in the annual budget for the Office of Information Technology.

17. Capo Solutions, Inc.

Vendor provides information technology professionals. The agreement is for a Salesforce developer to provide in-house support. The cost of this contract is included in the annual budget for the Office of Information Technology.

18. ProctorU dba Meazure Learning (November 2024 Experiment Exam)

Vendor provides live, remote proctoring and test center services. This agreement covers the administration of Phase One of the Bar Exam Experiment, including live, remote proctoring and test center services, scheduled to occur November 8, 2024. The State Bar is still in the process of negotiating appropriate terms with the vendor.

Accordingly, the staff report includes a separate resolution pertaining to this contract, to allow staff to negotiate appropriate terms and obtain any further input that may be necessary, including by Committee of Bar Examiners. The cost of this contract is included in the annual budget for the Office of Admissions.

19. ProctorU dba Meazure Learning (2025 Bar Exam and Legal Specialization Exam Administration)

Vendor provides cloud-based exam banking and proctoring services that will cover both remote, and in-person proctoring at test-centers, pop-up testing centers, and platform setup for the February 2025 California Bar Exam, the July 2025 California Bar Exam, and the 2025 Legal Specialization Exams, along with implementation and platform fees for exam delivery. This solution ensures secure, flexible, and efficient exam administration, meeting the State Bar’s current and future needs. The State Bar is still in the process of negotiating appropriate terms with the vendor. Accordingly, the staff report includes a separate resolution pertaining to this contract, to allow staff to negotiate appropriate terms and obtain any further input that may be necessary, including by Committee of Bar Examiners. The cost of this contract is included in the annual budget for the Office of Admissions.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

Unless a different funding source is specified, the expenses above are included in the 2024 budget, or will be included in the budget for future years, for the cost centers noted, per the normal budget planning process.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RESOLUTIONS

Should the Board of Trustees concur, it is:

RESOLVED, that the Board of Trustees, with the exception of the two contracts with ProctorU, Inc. dba Meazure Learning (addressed below) approves execution of the contracts listed herein; and it is

FURTHER RESOLVED, that the Board of Trustees approves the contract amounts for ProctorU, Inc. dba Meazure Learning, as noted herein, and approves execution of the contracts with ProctorU, Inc. dba Meazure Learning, subject to the negotiation of appropriate contractual terms and any action that may be necessary from the Committee of Bar Examiners.

ATTACHMENT LIST

None

EXHIBIT 23



The State Bar of California

RESOLUTION ADOPTED BY THE BOARD OF TRUSTEES

Agenda Item 4.1: Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6

RESOLVED, that the Board of Trustees, with the exception of the two contracts with ProctorU, Inc. dba Meazure Learning and one contract with Macias, Gini, O’Connell, LLP (addressed below) approves execution of the contracts listed herein; and it is

FURTHER RESOLVED, that the Board of Trustees approves the contract amounts for ProctorU, Inc. dba Meazure Learning, as noted herein, and approves execution of the contracts with ProctorU, Inc. dba Meazure Learning, subject to the negotiation of appropriate contractual terms and any action that may be necessary from the Committee of Bar Examiners.

FURTHER RESOLVED, that the Board of Trustees approves the execution of the agreement with Macias, Gini, O’Connell, LLP.

I hereby certify that the foregoing is full, true and correct copy of the resolution adopted by the Board of Trustees at its meeting held on September 19, 2024, by hybrid format in Los Angeles and Zoom.

Louisa Ayrapetyan, Board Secretary

VOTE

Moved by Toney, seconded by Stephens

Ayes – (12) Barahona, Buenaventura, Cisneros, Good, Grande, Huser, Shelby, Stephens, Sowell, Toney, Trejo, Stallings

Nays – (0)

Abstain – (0)

Absent – (1) Chen

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September 15, 2022

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Motion carried.

EXHIBIT 24



The State Bar of California

OPEN SESSION

AGENDA ITEM

1.1 SEPTEMBER 2024

COMMITTEE OF BAR EXAMINERS

DATE: September 30, 2024

TO: Members, Committee of Bar Examiners

FROM: Audrey Ching, Director, Office of Admissions
Bridget Gramme, Special Counsel, Division of Consumer Protection,
Admissions, Access and Inclusion

SUBJECT: 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

EXECUTIVE SUMMARY

Over the past two years, in the face of skyrocketing exam administration costs and looming admissions fund insolvency, the State Bar has been researching and developing various proposals for exam administration cost savings. The proposal that was the most cost effective—switching to remote and in-person, test center exam delivery—would not be possible while administering the Multistate Bar Examination (MBE) due to restrictions imposed by the National Conference of Bar Examiners. The State Bar has since been pursuing a plan to replace the MBE with multiple-choice questions developed by Kaplan Exam Services, LLC, thus enabling the State Bar to administer the exam in a manner that is not only less expensive, but overwhelmingly preferred by applicants.

Throughout this process staff has heard and considered feedback from a number of stakeholders, many of whom expressed concerns about the timing of the change, the quality and process for validating the questions, and the capability of a new exam administration

vendor to securely and effectively administer the exam remotely and in small test-centers.¹ This item sets forth the comprehensive plan the State Bar has put into place to address these concerns, and seeks the Committee of Bar Examiners' formal approval of the following: (1) to utilize Kaplan-developed multiple-choice questions for the February 2025 bar exam and on future bar exams; (2) to utilize Proctor U, dba Meazure Learning, to provide the bar exam 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 exams and test centers for the February 2025 bar exam, and on future bar exams; (3) to approve that, beginning with the February 2025 bar exam, and on future bar exams, the multiple-choice portion of the exam will consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts and be delivered remotely and/or in person at vendor-run or State Bar-run test centers; and (4) to direct staff to seek appropriate approval from the Supreme Court to modify its prior order on the bar exam, in accordance with the approved modifications set forth above.

RECOMMENDED ACTION

That the Committee of Bar Examiners (CBE) approve of three components for the administration of the bar exam beginning in February 2025, and direct staff to seek appropriate approval from the Supreme Court in accordance with the approved modifications, as set forth in the resolution (Attachment A) and described in the executive summary above.

DISCUSSION

BACKGROUND

CBE and Supreme Court Authority Over the Bar Exam

Under rule 9.6(a) of the California Rules of Court, the CBE is responsible for determining the bar exam's format, scope, topics, content, questions, and grading process "subject to review and approval by the Supreme Court." Historically, and even prior to the adoption of rule 9.6 of the California Rules of Court, the CBE has provided recommendations to the Supreme Court related to changes to the bar exam.

Most recently, during the COVID-19 pandemic, the Supreme Court issued an order concerning the July 2022 bar exam, which specified that the bar exam would be administered in-person and that the second day of the general bar exam would consist of the Multistate Bar Examination (MBE). (Attachment B.) Because there has been no intervening order that would permit the State Bar to deviate from administering the MBE, a Supreme Court order is necessary to effectuate that change to the bar exam. Additionally, while the Supreme Court issued a series of orders during the COVID-19 pandemic that permitted remote testing for the bar exam, and then returned the bar exam to being administered in-person, to administer the bar exam remotely,

¹ Many of these concerns are articulated in this September 17, 2024, [letter](#) from a number of American Bar Association accredited law schools in California to the Supreme Court.

in-person at test centers, or through a combination of methods, a Supreme Court order is likewise required.

Status of Supreme Court Petition

On September 9, 2024, the State Bar filed a petition with the Supreme Court seeking approval of proposed modifications to the bar exam. The modifications included 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 another vendor. (Attachment C.)

On September 18, 2024, the Supreme Court denied the petition without prejudice. (Attachment D.) The Court indicated that the State Bar could file a new petition seeking those modifications once they were considered and approved by the CBE.

The purpose of this meeting is to give the CBE another opportunity to consider these changes to the bar exam in accordance with the Court's order. .

Cost-Savings Measures Required by Increasing Costs of the Bar Exam

When the bar exam returned to in-person administration in 2022, the State Bar was faced with significant increased costs of administering the exam, including rising facility and proctor expenses, which significantly impacted the Admissions Fund budget.

Thus, in fall 2022, the State Bar explored the possibility of ETS – Educational Testing Services, the original developers of the MBE in the early 1970s– taking over the drafting of the multiple-choice and written questions to allow for remote testing. At the time, due to the anticipated cost and long development timeline, staff determined that proposal was not feasible. In June 2023, State Bar staff advised the CBE that the Admissions Fund was facing insolvency by 2026, and that the budgetary issues were primarily attributable to exam-related expenses, including escalating testing facility and proctor costs, which could not be solved while utilizing the existing examination question provider due to prohibitions on remote testing.

At its [June 28, 2023](#) meeting, the CBE began discussing potential cost-saving measures to reduce the increasing expense of administering the bar exam. Staff presented various models for reducing costs, which included reducing the number of exam sites, and administering the essays and performance test remotely. At that meeting, the [CBE recommended](#) that the Board of Trustees (Board) consider a cost-reduction model whereby the MBE would be administered at a reduced number of test sites, and the essays and performance test portion of the bar exam would be administered remotely. [Staff solicited public comment](#) regarding an in-person exam using four contracted sites and the two State Bar offices.

State Bar staff presented the CBE's recommendation to the Board during its [July 2023 meeting](#), but suggested one change, which was to replace the San Francisco State Bar office with a different testing accommodation site because of the planned sale of the building. [No action was](#)

[taken](#) by the Board at the July 20 meeting. [On August 10, 2023](#), the Board approved a reduced number of testing locations for the February 2024 bar exam.

On [November 3, 2023](#), the State Bar held a stakeholder forum to solicit feedback on how to deliver a secure remote exam for applicants with testing accommodations as part of its efforts to explore the feasibility of a remote and/or hybrid bar exam. Stakeholders commented on live, remote proctoring as a secure option, along with other ideas on exam security.

Soon thereafter, during the Board's [November 2023 meeting](#), staff presented updates to the proposed cost-reduction models and advised that test-center and fully-remote exam models were not feasible for July 2024. As a result, staff recommended that the bar exam be administered at a reduced number of test sites in July 2024 while continuing to explore other options. The Board [did not take any action](#) at that time. During its January 18, 2024, meeting, the [Board approved](#) administering the July 2024 exam at a reduced number of test sites.

In January 2024, State Bar staff posted a Request for Information to identify vendors who could develop multiple-choice, essay, and performance test questions for the bar exam. During the [January 26, 2024](#), CBE meeting, staff provided an update on the July 2024 bar exam and explained that staff was continuing to evaluate options for future exams.

New Vendor to Develop Bar Exam Questions

During its [March 2024](#) meeting, the CBE discussed a proposal to allow the State Bar to contract with a new vendor to develop multiple-choice questions for the bar exam. The State Bar staff report explained that the Admissions Fund would become insolvent by 2026 if structural budget issues were not addressed. The report explained that the largest expenses were bar exam-related costs and that notwithstanding exam application fee increases, the Admissions Fund continued to face insolvency.² As explained in the staff report, the National Committee of Bar Examiners (NCBE), which develops the MBE, requires that the MBE be administered in “jurisdiction-run facilities” and prohibits the MBE from being administered remotely or in vendor-owned test centers. The staff report explained that if the State Bar had its own bank of multiple-choice questions, the State Bar would be able to administer the exam in a more cost-effective manner.

After the March 2024 CBE meeting, staff solicited CBE liaisons to meet periodically with State Bar staff regarding the cost-saving measures needed for the bar exam. The CBE liaisons recommended holding meetings with law school deans and the public, which were subsequently scheduled, and one liaison attended the meetings. The CBE liaisons were kept

² Effective with the February 2024 exam, application fees for non-attorneys increased 26% from \$677 to \$850. Attorney applicants was 52.6% from \$983 to \$1500.

apprised of staff's discussions with potential exam question development vendors, including Kaplan.³

The State Bar held two separate stakeholder meetings on April 3 and 4 – one with the California-accredited law school and registered law school deans, the other with the American Bar Association law school deans. The law school deans emphasized the need to see the newly developed questions as soon as possible to ensure sufficient time to prepare students for the exam. In response to that concern, the Kaplan contract provides that Kaplan will develop, and the State Bar will provide, a free study guide for applicants and a free faculty guide. Additionally, the State Bar plans to “field test” the Kaplan questions on November 8 and 9..

On [April 16, 2024](#), the State Bar held a public stakeholder input forum to solicit feedback on the proposal to contract with a new vendor to develop exam questions. The [forum materials](#) explained that staff was exploring utilizing questions developed by a new vendor as soon as February 2025. During the course of the stakeholder meetings, [Dr. Chad Buckendahl presented](#) on the anticipated question development process and provided an overview of the psychometric validation process that would be employed to ensure exam and score reliability.

At the [April 19, 2024](#), CBE meeting, the staff report specifically noted that staff was exploring administering the February 2025 bar exam remotely, at in-person test centers, or in a hybrid format. The staff report explained that in order to do so, the State Bar would need to contract with a new vendor to develop questions for the exam. The State Bar's psychometrician, Dr. Buckendahl was also in attendance at the meeting to answer questions about how new multiple-choice questions could be validated. After discussion, the CBE voted to [recommend to the Board](#) that the State Bar retain a new vendor to develop bar exam questions, including multiple-choice questions.

Consistent with the CBE's recommendation, the staff report for the [May 16, 2024](#), Board meeting recommended that the Board contract with Kaplan North America, LLC (Kaplan) to develop new bar exam questions, but the item was withdrawn. As described in the staff report for the CBE's [June 21, 2024](#), meeting, [Kaplan received a letter](#) from the NCBE raising intellectual property and contractual concerns regarding their proposed bar exam question development. The staff report further discussed staff's continued efforts to pursue a solution that would permit Kaplan-developed questions to be utilized beginning in February 2025.

On [July 18, 2024](#), staff reported to the Board that it was continuing to negotiate with Kaplan to reach a contract on exam question development, including multiple-choice questions for the February 2025 bar exam. The [Board authorized and delegated authority](#) to the Board chair and executive director to execute an agreement with Kaplan to develop multiple-choice, essay, and performance test questions for the bar exam. On August 9, 2024, the State Bar entered into a

³ Kaplan provided the multiple-choice questions for the bar exam experiment pilot in October 2023. The deployment and performance of the questions on this pilot was successful.

contract with Kaplan. (Attachment E.) The contract specified that Kaplan would provide multiple-choice questions for the February 2025 bar exam.

The CBE was advised during its [August 16, 2024](#), meeting that the State Bar had entered into a contract with Kaplan to supply multiple-choice questions for future bar exams, beginning with the exam in February 2025. Since entering into the contract, the State Bar, in consultation with its expert psychometricians, has established a plan to ensure that the multiple-choice questions will be properly vetted and prepared before the February 2025 exam and that process will continue through the end of the year. Specifically, under the contract with Kaplan, the State Bar will receive rolling batches of multiple-choice questions in advance of the February 2025 bar exam. Upon receipt of each batch of questions, the State Bar will convene a content validation team comprised of psychometricians, recently admitted attorneys, individuals that supervise recently admitted attorneys, and law school faculty to review each question to ensure that it: (1) tests for minimum competence to practice law; (2) is not biased; (3) is clear; (4) is cohesive in style with other questions; and (5) accurately tests the intended legal issue.⁴ The content validation team will recommend edits, as needed, and return them to Kaplan. Kaplan will then finalize the questions and return them to the State Bar within 10 days. Consistent with Business and Professions Code section 6046.6, the new questions will not require the substantial modification of the training or preparation required for passage of the bar exam.

Finally, as reflected in the resolution (Attachment A), staff seeks approval from the CBE to request the Supreme Court modify its most recent order on the bar exam to remove all references to the MBE and instead order that the General Bar Exam include 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts. As described above, such an order is required pursuant to rule 9.6(a) of the California Rules of Court and will allow the State Bar to utilize Kaplan to supply the multiple-choice questions for the February 2025 and future administrations of the bar exam.

Remote Administration and Vendor-Run Test Centers

With the exception of bar exams administered during the height of the COVID-19 pandemic, the State Bar has consistently contracted with various facilities to administer the bar exam in-person, consistent with the NCBE's requirement that the MBE be delivered only at in-person jurisdiction-run exam sites. In order to achieve cost savings, in 2024, as set forth above, the [Board approved](#) staff's recommended proposal to contract with fewer facilities. However, the cost savings from this change is not enough to address the Admissions Fund deficit.

⁴ On September 9, 2024, the State Bar submitted a petition to the Supreme Court that sought an order that would permit the State Bar to implement a scoring adjustment on the 2025 bar exam administrations. The petition described that the proposed bar exam experiment would also allow the State Bar to field test the Kaplan-developed questions in advance of the February 2025 bar exam.

Now that the State Bar has contracted with Kaplan, if a Supreme Court order is issued authorizing the State Bar to utilize multiple-choice questions without reference to the MBE, the State Bar will have the flexibility to administer the exam remotely or at vendor-run test centers, which may significantly reduce the bar exam related expenditures. To realize the potential savings, State Bar staff has been working to identify vendors that could administer an exam remotely and/or at vendor-run test centers.

On September 19, 2024, at staff's recommendation, the Board of Trustees approved a contract amount of \$4,108,500 for Meazure Learning, subject to negotiation of appropriate contractual terms and action by CBE, to provide a test administration platform, remote and in-person proctoring, and vendor-run test centers for the 2025 bar exam administrations.⁵

Meazure Learning is a leading provider of online proctoring and exam administration services. They have experience administering high-stakes exams for various professional licensing bodies and educational institutions. Some notable exams and organizations that use Meazure Learning include: Association of American Medical Colleges, Canadian Practical Nurses Registration Examination, Law School Admissions Council, American Association of Professional Coders, and the Chartered Accountants of Ireland.

Meazure Learning has demonstrated the capacity and ability to deliver complex exams efficiently. Their platform offers live proctoring instead of recording, which provides real-time supervision and reduces the need for post-exam review of recordings. This approach enhances the integrity of the exam process but will require a stable internet connection for the entirety of the exam.

Regarding in-person locations, small, contracted testing centers, and temporary pop-up centers in the larger geographic areas, will be available in California. Meazure Learning also has test centers across the United States and globally to ensure accessibility for candidates who prefer or require in-person testing.

Once staff identified Meazure Learning as a potential vendor, staff, Board, and CBE representatives tested the exam platform. Although some of the participants identified some desired enhancements with the product or test centers, Meazure Learning has worked with State Bar staff to correct those issues.

Prior to recommending Meazure Learning to the Board, staff considered several other exam administration options. Although the State Bar has utilized Examsoft as the bar exam delivery platform for many years, their business model does not support live, remote proctoring.

Staff also approached Prometric, the vendor State Bar has utilized for the past two years to administer the remote First-Year Law Students Exam. However, Prometric does not have the same capacity to administer the bar exam as Meazure Learning, and using Prometric would

⁵ The contract amount also includes delivery of the legal specialization examinations in the fall of 2025.

require a longer exam testing window. Prometric’s overall pricing was also much higher than Meazure Learning’s proposal. These factors would increase expenses for the State Bar, require a much larger question item bank, and create logistical challenges for examinees.

Staff also met extensively with PearsonVUE, another well-known exam administration vendor. However, PearsonVUE likewise lacked the capacity to accommodate the bar exams in 2025 and eventually did not pursue the opportunity with the State Bar.

Given these considerations, staff believes Meazure Learning is the most suitable vendor for administering the bar exam, offering a balance of experience, technological capability, and cost-effectiveness.

Additional Considerations

Failure to move forward with the proposed changes could significantly impact the State Bar financially and operationally. Without this transition:

- The State Bar will be required to purchase the MBE, which it must elect to do no later than November 1, 2024, at an estimated cost of \$324,000 for February 2025.
- The State Bar will be required to contract with large test sites to administer the exam because remote administration of the MBE is not permitted. Staff anticipates that this cost would be approximately four million dollars (about \$2.4 million above the estimated cost for delivering the exam in February using the Meazure Learning platform).
- It is possible that there will not be a test site available in the San Francisco Bay Area for the February 2025 exam, and applicants would need to travel to sit for the exam.
- It is possible that there will not be a test site available in the San Diego Area for the February 2025 exam, and applicants would need to travel to sit for the exam.
- The State Bar remains contractually obligated to pay Kaplan \$2 million in 2025 for question development.
- Further delays may cause confusion among applicants.

Additionally, availability of a remote exam reflects applicant preference. A post-exam survey conducted after the July 2024 exam revealed that a majority of applicants preferred a remotely proctored or test center-based exam. Additionally, many applicants reported substantial travel and lodging costs associated with in-person testing, with a majority spending over \$500 and nearly one-third spending more than \$1,000 to take the bar exam above and beyond the application fees and test preparation expenses.

For the reasons outlined above, the CBE’s approval of these recommendations is essential for the timely and effective administration of the California Bar Examination in 2025 and beyond.

RECOMMENDATION

Staff recommends that the CBE adopt the resolution (Attachment A) that formally approves three key items to implement changes to the administration of the bar exam beginning in February 2025. These recommendations follow extensive work and prior discussions and actions taken by the CBE and are in alignment with actions taken by the Board to effectuate these changes.

PREVIOUS ACTION

[Action on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration](#)

FISCAL/PERSONNEL IMPACT

The budgetary impact of status quo exam administration has been well documented. Delaying the implementation of the new testing modalities in 2025 would require additional costs to procure the MBE questions, at the newly increased rate of \$72 per applicant (approximately \$324,000), along with the facility and proctoring costs that would have to be secured in a short time. The estimates to administer the exam in person as required by the NCBE would be approximately \$4 million for February 2025 – about \$2.4 million more than the cost of administering the exam under the Measure Learning proposal.

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RESOLUTIONS

See attachment A.

ATTACHMENT(S) LIST

- A. Resolution of the Committee of Bar Examiners Approving Modifications to the California Bar Examination
- B. May 19, 2022 Supreme Court Order Concerning the July 2022 California Bar Examination (Administrative Order 2022-05-18)
- C. State Bar Petition: Request that the Supreme Court Approve Proposed Modifications to the California Bar Examination, Case No. S286825
- D. September 18, 2024 Supreme Court Order, Case No. S286825
- E. August 9, 2024 Agreement for the Preparation of Bar Exam Testing Materials and Related Services Between the State Bar of California and Kaplan

Committee of Bar Examiners Meeting September 30, 2024

RESOLUTION OF THE COMMITTEE OF BAR EXAMINERS APPROVING MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

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 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.

SUPREME COURT
FILED

MAY 19 2022

ADMINISTRATIVE ORDER 2022-05-18

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA DeputyEN BANC

**ORDER CONCERNING THE JULY 2022
CALIFORNIA BAR EXAMINATION**

The court hereby orders the schedule for the July 2022 General Bar Examination as set out below.

The General Bar Examination will be administered in-person over two consecutive days on Tuesday, July 26 and Wednesday, July 27, 2022, subject to any restrictions that may be imposed by any state or local public health order in effect on those dates.

The first day of the General Bar Examination will be comprised of five one-hour essay questions and one 90-minute performance test.

The second day of the General Bar Examination will consist of the Multistate Bar Examination (MBE).

The first day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the MBE but may opt to do so by enrolling for and taking the full General Bar Examination.

The length of each session, the order of testing, and the overall length of the exam may be modified for applicants granted certain testing accommodations.

The answers to the five essays and the Performance Test questions will be graded on the basis of 700 possible raw points — representing up to 100 raw points for each of the five essay questions and up to 200 raw points for the 90-minute Performance Test question.

During the grading process, the written and MBE components will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorneys' Examination will have their scores scaled, and the answers to the five essays and the Performance Test questions will be weighted at 100 percent.

The passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 possible points.

This order supersedes the court's October 20, 2021 order. The court will revise or supersede this order, as necessary, regarding this and future administrations of the General Bar Examination.

CANTIL-SAKAUYE

Chief Justice

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**REQUEST THAT THE SUPREME COURT APPROVE
PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**



PREPARED BY
THE STATE BAR OF CALIFORNIA

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Document received by the CA Supreme Court.

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

**REQUEST THAT THE SUPREME COURT APPROVE
PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**

I. INTRODUCTION

As the rising costs of administering the California Bar Examination¹ continue to outpace the revenue the State Bar receives from admissions fees, the State Bar has been exploring alternative methods of administering the examination in a manner that is more cost-effective and convenient for the State Bar and applicants alike.

Through this petition, the State Bar, based on the approval and recommendation of the Committee of Bar Examiners (Committee), seeks an order modifying the May 19, 2022, Order Concerning the July 2022 California Bar Examination. Specifically, the State Bar seeks an order recognizing its intent to replace the National Conference of Bar Examiners' (NCBE)

¹ The California Bar Examination is also known as the General Bar Examination and consists of multiple-choice, essay, and performance test questions. Qualified attorney applicants may opt not to take the multiple-choice portion of the examination but must take the essay and performance test portion. In such instances, the essay and performance test questions constitute what is known as the Attorneys' Examination.

Multistate Bar Examination (MBE) on the California Bar Examination with multiple-choice questions drafted by an alternative vendor that may be administered remotely and in designated test centers beginning with the February 2025 California Bar Examination.

II. AUTHORITY OF THE COURT

Because this request seeks modifications to the requirements for admission to the practice of law and, in particular, the California Bar Examination, it is submitted to this Court for approval pursuant to the Court's inherent authority over attorney admissions and California Rule of Court, rule 9.6(a), under which modifications to the California Bar Examination must be approved by the Court.

The Court has inherent authority to admit persons to the practice of law in California. (Cal. Rules of Court, rule 9.3; *In re Attorney Discipline* (1998) 19 Cal.4th 592, 593; *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336; *Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300.)

Further, under California Rules of Court, rule 9.6(a), the Committee is responsible for determining the California Bar Examination's format, scope, topics, content, and grading process

“subject to review and approval by the Supreme Court.” The Committee has approved the requested modification² and the State Bar is hereby seeking this Court’s approval.

III. BACKGROUND

As a result of rising facility and proctor costs, increasing numbers of applicants with testing accommodations, and stagnant examination fees, the State Bar Admissions Fund is facing a solvency crisis. A 2023 projection showed that the Admissions Fund would become insolvent by the beginning of 2026. In response, the State Bar initiated fee increases beginning with the February 2024 California Bar Examination and began to assess how a transition to remote and/or test-center-based exam administration might occur. In-person testing as heretofore administered is estimated to cost \$8.4 million in 2025; hybrid/remote vendor options are forecasted at \$4.4 million. After personnel, expenses related to administering the examination are the second largest budget item in the Admissions Fund.

² (Appendix of Exhibits [“AE”], Ex. 1 [Committee of Bar Examiners Open Session Minutes: April 19, 2024 at pp. 5-6].) Hereafter, all references to exhibits refer to exhibits included in the AE.

Appreciating the fiscal cliff facing the Admissions Fund, the State Bar began asking NCBE to permit remote administration of the MBE as far back as 2022. Despite repeated requests, NCBE has declined. By February 2023, the State Bar began considering the use of alternative vendors to draft multiple-choice examination questions. This consideration evolved into a formal Request for Information, which was issued in January 2024. Kaplan was the sole responsive bidder.

While the leadership of the Committee was consulted regarding the consideration of a transition to a new vendor as early as February 2024, it was not until the March 2024 meeting that State Bar staff began to publicly engage the body as a whole. In April 2024, at the direction of the Committee, State Bar staff held a number of stakeholder sessions, including one with American Bar Association accredited law schools, one with California accredited and registered law schools, and a public stakeholder input forum,³ seeking feedback regarding the possibility of engaging a new question development vendor for

³ (See Stakeholder Input Forum: Bar Exam Question Development with a New Vendor, April 16, 2024, available at <<https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000032318.pdf>> [as of September 4, 2024].)

the California Bar Examination. During these sessions, staff shared with stakeholders various options for new examination delivery models, including remote, small test-center, or a combination of the two, all of which were previously presented to the Committee at its March 15 ,2024, public meeting. (See, Ex. 2 [Committee of Bar Examiners Staff Report for Agenda Item III.A, dated March 15, 2024, at pp. 12-16]; Ex. 6 [Discussion: Bar Exam Question Development with New Vendor, dated April 2024, at pp. 91-100 [presented to law schools in April 2024].) Consistent with post-examination survey data revealing that more than 75 percent of applicants prefer to take the California Bar Examination remotely or in a small test center setting, applicants participating in the stakeholder sessions were generally supportive of remote and test center examination administrations. Law schools emphasized the need to ensure that applicants would not need to modify their preparation for the California Bar Examination upon the transition to a new vendor and that any new questions should be psychometrically pre-tested and validated.

Informed by stakeholder feedback, and with the approval of the Committee and the Board of Trustees, the State Bar entered

into an agreement with Kaplan Exam Services, LLC (Kaplan) on August 9, 2024.⁴ (See Ex. 2]; Ex. 3 at pp.18-50 [Committee of Bar Examiners Staff Report for Agenda Item III.A, dated April 19, 2024; Ex. 4 [Board of Trustees Staff Report for Agenda Item 6.2, dated July 18, 2024, at pp. 52-54]; Ex. 5 [Agreement for the Preparation of Bar Exam Testing Materials and Related Services Between the State Bar Of California and Kaplan] at pp. 56-89.)⁵ The agreement authorizes Kaplan to develop multiple-choice, essay, and performance test questions for the California Bar Examination for a five-year term. As part of the agreement, Kaplan will also provide faculty and student study guides, which the State Bar will distribute at no cost to law school faculty and

⁴ Neither the State Bar nor the Committee received any further public comments from any of the law schools raising concerns about test development or the transition once it was announced on or about May 13, 2024, that the proposed vendor was Kaplan.

⁵ Portions of the agreement have been redacted pursuant to Government Code section 7929.605, which exempts from public disclosure “test questions, scoring keys, and other examination data used to administer a licensing examination,” and Government Code section 7922, which exempts records from public disclosure if “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” Disclosure of this information would reveal confidential information about the development of the California Bar Examination that, if disclosed, would compromise examination integrity and security.

all California Bar Examination takers. Kaplan will also exit the retail bar preparation business specific to the California Bar Examination by October 1, 2024, though it may continue to offer preparation services and products for bar examinations administered by other jurisdictions. (See generally Ex. 5.)

Because the State Bar will no longer need to use the MBE, which can only be administered in person, it may now determine for itself the optimal method of delivering the California Bar Examination. After extensive research on the matter, including stakeholder engagement and applicant surveys, the State Bar plans to retain a vendor to administer the California Bar Examination remotely and in designated test centers. These test administration changes are not only preferred by applicants but will also help the State Bar close a significant gap in its Admissions Fund, which, as noted above, is projected to reach insolvency by the beginning of 2026 absent further efforts to reduce costs. In addition, the ability to test remotely or at globally available test centers removes a current economic barrier for some applicants, since the status quo administration necessitates traveling to California and finding accommodation to take a multiday exam. The State Bar projects that the new

arrangement will result in annual cost savings of up to \$4 million in California Bar Examination-related expenses—enough to significantly reduce if not eliminate the gap.

IV. PROPOSED ORDER APPROVING MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

Through this petition, the State Bar seeks an order from this Court approving modifications to the California Bar Examination. As reflected in the attached proposed order, modeled generally after the Court’s March 16, 2016, Order Approving Modifications to the California Bar Examination, the proposed order omits specific reference to an examination test vendor so that the order may apply to future administrations of the California Bar Examination. The proposed order sets forth the content for both the General Bar Examination and the Attorneys’ Examination.

In the sections that follow, this petition details the State Bar’s plan to transition to a new California Bar Examination and administration method so that the Court can be assured that the integrity, validity, and security of the California Bar Examination will be preserved.

A. Quality Assurance and Content Validation

In order to validate the content and validity of the questions the State Bar receives from Kaplan in time for the February 2025 administration of the California Bar Examination, the State Bar has developed an ongoing content validation process. Pursuant to the agreement with Kaplan, Kaplan will provide the State Bar with batches of questions on a rolling basis. (See Ex. 5 at p. 58.) Upon receipt of a batch of questions, the State Bar will convene a content validation team comprised of psychometricians, recently barred attorneys, individuals that supervise recently barred attorneys, and law school faculty. The team will review each question to ensure that the item: 1) tests for minimum competence to practice law; 2) is not biased; 3) is clear; 4) is cohesive in style with other questions; and 5) accurately tests the intended legal issue. The validation team will then recommend edits, as needed, to achieve these criteria and return them to Kaplan. Per the agreement, Kaplan will finalize the questions and return them to the State Bar within 10 days. Consistent with Business and Professions Code section 6046.6, the new questions will not require the substantial modification of

the training or preparation required for passage of the California Bar Examination.

In conducting these validation activities, the State Bar will be relying on its over four decades of experience in developing, vetting, and administering both the California Bar Examination and the First-Year Law Students' Examination (FYLSX). Its Examinations Unit, within the Office of Admissions, manages the comprehensive process of examination development, from soliciting essay questions to overseeing the grading of both examinations. The Examinations Unit has specific expertise in developing questions for the FYLSX, consisting of 100 multiple-choice questions and administered twice per year. Three of the seven subject areas tested on the multiple-choice section of the California Bar Examination are also covered on the FYLSX – Contracts, Criminal Law and Torts. Recently, the unit conducted a comprehensive refresh of the FYLSX multiple-choice questions, utilizing a panel of subject matter experts to ensure that they remain relevant and reflective of current legal standards.

The State Bar's Examination Development and Grading (EDG) Team, composed of experts with a minimum of 10 years' experience, ensures that all questions undergo rigorous editing,

pretesting, and refinement before administration. With input from expert psychometricians, law professors, practitioners, and experienced graders, both the California Bar Examination and the FYLSX are continuously updated to reflect the latest legal standards and practices. This extensive expertise and attention to detail allow the State Bar to maintain the highest standards in assessing the competencies of both law students and prospective attorneys, ensuring that only qualified candidates advance in the legal profession.

The State Bar also plans to conduct a field test of 49 of the new questions (seven in each of the seven subject matters) in the fall of 2024 and will use the results of the field test to further refine and validate the questions to be administered in the February 2025 California Bar Examination. The details of the field test are the subject of a concurrently filed parallel petition.

B. Examination Administration Methods

The State Bar is currently in discussions with ProctorU, Inc. d/b/a/ Meazure Learning (Meazure), a full-service test administration company and the vendor the NCBE has selected to administer certain portions of the NextGen examinations, to administer the February 2025 California Bar Examination.

Meazure has extensive experience administering over 600,000 high-stakes professional examinations and certifications around the world annually and has the infrastructure and expertise to administer the California Bar Examination. Professional organizations utilizing Meazure's examination administration platform include: the American Medical Certification Association (delivering both paper and computer-based examinations to over 25,000 healthcare professionals globally); the Association of Professional Social Compliance Auditors (certification examination administered to over 3,200 auditors across 93 countries; Chartered Accountants Ireland (25,000 rigorous examinations annually); the Canadian Organization of Paramedic Regulators (entry to practice examinations); the Royal College of Dentists of Canada (Fellowship Examination); and. Meazure's experience administering examinations for such diverse and demanding professions underscores its capability to support the State Bar, ensuring a seamless, secure, and fair testing experience for future attorneys.

If selected as the State Bar's vendor, Meazure will offer two options to applicants for taking the California Bar Examination: in person at small test centers located throughout the state (or

even outside of California, if needed) or via Meazure’s online remote proctoring platform. Both the test centers and the remote platform will have human proctors reviewing test taker behavior synchronously, ensuring a high level of exam security.

Upon registration, applicants would have the opportunity to select their preferred administration method, and the State Bar would make reasonable efforts to accommodate applicants’ preferences. Meazure’s platform has the capacity to accommodate all test-takers remotely should they so choose; however based on applicant survey responses and the vendor’s experience with other large examinations of this nature, the State Bar anticipates that up to 30 percent of the applicant pool will request to take the California Bar Examination in-person at a test center. Meazure can accommodate up to 30 percent of test takers in its test center locations. The State Bar will continue to accept and process testing accommodation requests and Meazure will implement the approved accommodations for all applicants.

V. CONCLUSION

For the foregoing reasons, the State Bar respectfully requests that the Court issue an order approving the proposed

modifications to the California Bar Examination, effective for the February 2025 administration of the examination.

Dated: September 9, 2024

Respectfully submitted,

ELLIN DAVTYAN
JEAN KRASILNIKOFF
ANIK BANERJEE

By: /s/ Anik Banerjee
ANIK BANERJEE

Assistant General Counsel
Office of General Counsel
The State Bar of California

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ADMINISTRATIVE ORDER

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

[PROPOSED] ORDER APPROVING MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION

The Court is in receipt of the State Bar of California's Request That the Supreme Court Approve Proposed Modifications to the California Bar Examination, filed on September 9, 2024. The Court, having considered the State Bar's request, approves the modifications below beginning with the February 2025 California Bar Examination.

The General Bar Examination will be administered the last week in February and the last week in July of each calendar year in a manner to be determined by the State Bar. Such manners of administration include, but are not limited to, in-person, remote, and/or administration in designated test centers.

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The first day of the General Bar Examination will be comprised of five one-hour essay questions and one 90-minute Performance Test.

The second day of the General Bar Examination will consist of 200 multiple-choice questions.

The first day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the multiple-choice portion of the exam but may opt to do so by enrolling for and taking the full General Bar Examination

The length of each session, the order of testing, and the overall length of the examination may be modified for applicants granted certain testing accommodations.

The answers to the five essays and the Performance Test questions will be graded on the basis of 700 possible raw points – representing up to 100 raw points for each of the five essay questions and up to 200 raw points for the 90-minute Performance Test question.

During the grading process, the written and multiple-choice components will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorney Examination will have their scores scaled, and the answers to the

five essays and the Performance Test questions will be weighted at 100 percent.

The passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 points.

This order supersedes the Court's May 19, 2022, order. The Court will revise or supersede this order, as necessary, regarding this and future administrations of the General Bar Examination.

Chief Justice

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SUPREME COURT
FILED

SEP 18 2024

Jorge Navarrete Clerk

S286825

Deputy**IN THE SUPREME COURT OF CALIFORNIA****En Banc**

**REQUEST THAT THE SUPREME COURT APPROVE PROPOSED
MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION**

The State Bar of California's petition filed on September 9, 2024, to modify the California Bar Examination, beginning with the February 2025 exam administration, is denied without prejudice to a future petition seeking modifications that have been considered and approved by the Committee of Bar Examiners. (See Cal. Rules of Court, rule 9.6(a).) For purposes of opening the application period for the February 2025 California Bar Examination, the October 1 date set forth in rule 4.61(a) of the Rules of the State Bar is hereby suspended, and the State Bar shall open the application period for that exam no later than October 15, 2024.

GUERRERO

Chief Justice

**AGREEMENT FOR THE PREPARATION OF
BAR EXAM TESTING MATERIALS AND RELATED SERVICES
BETWEEN
THE STATE BAR OF CALIFORNIA
AND
KAPLAN**

THIS AGREEMENT FOR THE PREPARATION OF BAR EXAM TESTING MATERIALS AND RELATED SERVICES ("Agreement") is made by and between The State Bar of California ("State Bar"), a California public corporation having a principal place of business at 180 Howard Street, San Francisco, CA 94105, and Kaplan Exam Services, LLC ("Contractor"), a Delaware limited liability company having a principal place of business at 1515 W. Cypress Creek Road, Fort Lauderdale, FL 33309. This Agreement sets forth the terms and conditions by which Contractor will perform services for the State Bar. The State Bar and Contractor are sometimes referred to individually as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, the State Bar is charged with administering the California General Bar Examination ("Bar Exam"), which tests minimum competency for entry-level attorneys and is a prerequisite for admission to the practice of law.

WHEREAS, as currently structured, the Bar Exam is composed of five essay questions, 200 multiple choice questions, and one performance test ("PT").

WHEREAS, the State Bar does not intend to alter the Bar Exam "in a manner that requires the substantial modification of the training or preparation required for passage of the examination, except after giving two years' notice of that change." (Business & Professions Code § 6046.6).

WHEREAS, the State Bar seeks to procure the services of a qualified test question preparer to assist in the preparation of questions for its Bar Exam that do not require substantial modification of the training or preparation required for passage of the examination.

WHEREAS, the State Bar will require additional services to prepare the Bar Exam's essay questions and PTs once the State Bar exhausts its reserves of existing questions.

WHEREAS, the State Bar desires to retain Contractor to prepare the multiple choice, the essay and the PT portions of the Bar Exam, beginning with the administration of the February 2025 Bar Exam ("Testing Services"). The multiple choice questions, essay questions, and PTs prepared by Contractor, as more fully described and specified in this Agreement, are collectively referred to herein as the "Test Materials."

WHEREAS, the State Bar also desires to retain Contractor to prepare (i) a study guide designed for Bar Exam test takers ("Student Guide"); and (i) a study guide designed for law school faculty ("Faculty Guide") and together with the Student Guide, the "Study Guide Services") that provide

basic information about the content of the exam’s multiple choice questions and include subject matter outlines of the tested subjects.

WHEREAS, this Agreement sets forth the terms and conditions upon which Contractor will provide the Testing Services and Study Guide Services (collectively, the “Services”) to the State Bar.

WHEREAS, Contractor agrees to perform the Services on the terms and conditions set forth herein. Contractor is a subsidiary of Kaplan North America, LLC (“Contractor’s Parent”), a Delaware limited liability company, which is a guarantor of Contractor’s obligations to State Bar under this Agreement, as provided in Exhibit A.

WHEREAS, in entering into this Agreement, the Parties acknowledge that the State Bar and Contractor are not forming a partnership or other business venture and the purpose of this Agreement is solely intended to support the State Bar’s important public mission of administering the Bar Exam with integrity. To that end, Contractor acknowledges that it will not market or advertise its services to the State Bar, except as provided herein.

WHEREAS, in entering into the Agreement, Contractor acknowledges that “protection of the public” is the highest priority for the State Bar of California in exercising its licensing function. (Business & Professions Code § 6001.1).

NOW, THEREFORE, in consideration of covenants and agreements herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1 - SERVICES

1.1 Testing Services. Beginning with the February 2025 Bar Exam administration and concluding with the July 2029 Bar Exam administration, Contractor agrees to perform the Testing Services in accordance to the State Bar’s requirements as described below.

1.1.1 February 2025 Bar Exam. To allow sufficient time for the State Bar to conduct content validation, the following services are required in advance of the February 2025 Bar Exam administration:

1.1.1.1 Contractor shall deliver to the State Bar by no later than [REDACTED], a total of [REDACTED] multiple choice questions, inclusive of [REDACTED] questions in each of the seven (7) legal subjects currently tested on the multiple choice portion of the Bar Exam: Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts (“Seven Subjects”).

1.1.1.2 Contractor shall deliver [REDACTED] additional separate batches of multiple choice questions: [REDACTED] by [REDACTED] [REDACTED] by [REDACTED] and [REDACTED] by [REDACTED]. Each batch will consist of questions covering the Seven Subjects in approximately equal

numbers. To clarify, Contractor shall have delivered a total of [REDACTED] multiple choice questions to the State Bar by [REDACTED] which are comprised of the Seven Subjects.

1.1.2 July 2025 Bar Exam and Beyond.

1.1.2.1 July 2025 Bar Exam. Contractor shall deliver [REDACTED] separate batches of [REDACTED] multiple choice questions each with [REDACTED] questions in each of the Seven Subjects, to the State Bar no later than the following three dates: [REDACTED]

[REDACTED] To clarify, Contractor shall have delivered a total of [REDACTED] multiple choice questions to the State Bar by [REDACTED] for use on the July 2025 bar exam.

1.1.2.2 February 2026 Bar Exam through July 2029 Bar Exam. At least twelve (12) months prior to each Bar Exam administration between February 2026 and July 2029, the State Bar shall notify Contractor in writing of the number of multiple choice questions and, if any, essay questions and PTs for each Bar Exam administration. Contractor shall design and prepare all Test Materials in accordance with the State Bar's requirements. All multiple choice questions and, if any, essay questions and PTs shall be provided to the State Bar at least six (6) months prior to each successive Bar Exam. The State Bar shall provide Contractor with its request for a minimum of [REDACTED] and a maximum of [REDACTED] multiple choice questions for each such Bar Exam administration. For each of the February 2026 and July 2026 Bar Exam administrations, the State Bar will require [REDACTED] essay questions in each of the Thirteen Subjects listed in Section 1.1.4 and [REDACTED] PTs, for a total of [REDACTED] items for the year 2026, in order to build the written item bank. In each subsequent Bar Exam administration, the State Bar will require [REDACTED] essay questions in each of the Thirteen Subjects listed in Section 1.1.4 and [REDACTED] PTs, for a total of [REDACTED] items per year.

1.1.3 Multiple Choice Questions. The multiple choice questions prepared for each Bar Exam shall not result in substantial modification to the training or preparation required for passage of the Bar Exam and shall test the Seven Subjects, shall rely on the legal concepts set forth in subject matter outlines provided by the State Bar, and shall be substantially in the basic form of fact patterns, prompts, and four possible answers. The State Bar will provide Contractor with its library of subject matter outlines, at least [REDACTED] multiple choice questions that previously appeared on the First-Year Law Students' Examination, and prior essay questions and PTs previously appearing on the Bar Exam (collectively, "State Bar Resources"). Contractor may use such materials when drafting the multiple choice questions, along with any other materials it deems appropriate provided such use would not violate any other provision of this Agreement or infringe on a third party's copyright.

1.1.4 Essay Questions and PTs. The essay questions shall not result in substantial modification to the training or preparation required for passage of the Bar Exam and shall test the following thirteen (13) legal subjects: Business Associations, Criminal Law and Procedure, Remedies, Civil Procedure, Evidence, Torts, Community Property, Professional Responsibility,

Trusts, Constitutional Law, Real Property, Wills and Succession, and Contracts (“Thirteen Subjects”). The essay questions and PTs shall test the legal concepts set forth in subject matter outlines provided by the State Bar. The State Bar will provide specific content and style parameters and guidelines to be incorporated into such questions in accordance with the process described below. The State Bar will also provide Contractor with subject matter outlines, sample multiple choice questions that previously appeared on the First-Year Law Students’ Examination, and prior essay questions and PTs previously appearing on the Bar Exam. Contractor may use such materials when drafting the essay questions and PTs, along with any other materials it deems appropriate provided such use would not violate any other provision of this Agreement or infringe on a third party’s copyright.

1.1.5 Requirements for All Questions. All Test Materials shall comply with the following requirements, standards, and prohibitions:

1.1.5.1 Test Materials must be new, unique, and unexposed to anyone outside of Contractor prior to delivery to the State Bar, including customers and users of any of Contractor’s products or services. Test Materials may be generated or reviewed by a subcontractor in accordance with Section 3.4.

1.1.5.2 Test Materials must be original and not duplicates, clones, or variants of existing materials.

1.1.5.3 Contractor shall not pretest Test Materials on any third parties.

1.1.5.4 Contractor shall provide the following information with each question: (1) model answer and reference to the tested legal principle in order for State Bar to verify each answer’s accuracy (a citation to case law or statute is not necessary); (2) grading rubric for essay questions and PTs; and (3) the legal subject tested by the question.

1.1.5.5 Contractor shall not use artificial intelligence in a manner that violates the provisions of Article 18.

1.1.5.6 Test Materials must demonstrate content alignment with subject matter outlines provided by the State Bar for question development.

1.1.5.7 Test Materials must conform to State Bar guidelines provided, or as revised from time to time in writing, by the State Bar.

1.1.5.8 Contractor shall adhere to industry practices for preparing multiple choice questions (e.g., the current edition of “Developing and Validating Multiple Choice Items” by Thomas Haladyna).

1.1.5.9 The State Bar will provide Contractor with its library of subject matter outlines, at least [REDACTED] multiple choice questions that previously appeared on the First-Year Law Students’ Examination, and prior essay questions and

PTs previously appearing on the California Bar Exam. Contractor may use such materials when drafting the multiple choice, essay and PT questions, along with any other materials it deems appropriate provided such use would not violate any other provision of this Agreement or infringe on a third party's copyright.

1.1.5.10 Contractor shall ensure that personnel (including employees, agents, and subcontractors) involved in any way in the conception, development, drafting, and/or other creation of any Work Product as defined in Article 9 (collectively, the "Creators") will not have access, *i.e.*, a reasonable possibility of viewing, any materials created by the National Conference of Bar Examiners ("NCBE"), a non-profit corporation headquartered in Wisconsin, including but not limited to the NCBE's questions, exams, test blueprints, or subject matter outlines in which NCBE possesses Intellectual Property Rights subject to protection under State or federal law ("NCBE Materials"). Contractor shall take affirmative steps to satisfy this requirement, which shall include but are not limited to issuing protocols and monitoring compliance to ensure that: (1) no Creators have access to any NCBE Materials at any time during the Term of this Agreement; (2) any person who has access to any NCBE Materials, such as one acting in a supervisory role, shall not be a Creator; (3) Creators do not review, refer to, copy, or otherwise use any NCBE Materials; and (4) Creators contemporaneously document and maintain records of their independent creation of all Work Product.

1.1.5.11 Contractor shall deliver the Test Materials to the State Bar in an electronic format and secure delivery method as specifically requested by the State Bar.

1.1.6 State Bar Evaluation of Test Materials. State Bar shall review all Test Materials in accordance with the industry standard practice of content validation, upon delivery and promptly return comments to Contractor. Contractor shall address any comments identified by the State Bar and return a corrected version of the Test Materials that addresses such comments to the State Bar within thirty (30) calendar days of receipt of the State Bar's comments, except for the February 2025 cadence described in 1.1.1.2 whereby the accelerated schedule will require the revisions back within ten (10) calendar days of receipt. If necessary, the same comment resolution process shall be repeated until the State Bar is satisfied with the Test Materials.

1.2 Study Guide Services. In addition to the Testing Services, Contractor shall deliver two study guides in electronic form to the State Bar in accordance with the requirements of this section: (i) the Student Guide designed for Bar Exam test takers; and (ii) the Faculty Guide designed for law school faculty.

1.2.1 Student Guide. Contractor shall prepare and deliver to the State Bar an official Student Guide on the first, third and fifth years for that respective calendar year's two Bar Exam administrations during the Term. The State Bar shall distribute the Student Guide to all Bar Exam test takers. The Student Guide's content shall consist of a total of twenty-five (25) multiple choice questions covering the Seven Subjects. The Student Guide shall bear the name of the State Bar and shall not include Contractor's name or logo on any portion of the document, except that Contractor may acknowledge its preparation of the Student Guide in the manner described in

Article 11. The questions in the Student Guide shall comply with the provisions of Section 1.1.5. above and shall be substantially different than the questions in the Test Materials for each Bar Exam, meaning that the fact patterns and prompts must be substantially different even if the legal concepts and principles are the same. Contractor shall deliver a draft of the Student Guide to the State Bar for review and approval no later than November 1 for the February Bar Exam administration and the July Bar Exam administration, on the first, third and fifth years and shall address any comments identified by the State Bar. Contractor shall return a corrected version of the Student Guide to the State Bar within thirty (30) days of receipt of the State Bar's comments. If necessary, the comment resolution process shall be repeated until the State Bar is satisfied with the Student Guide.

1.2.2 Faculty Guide. Contractor shall prepare and deliver to the State Bar the Faculty Guide for use by law faculty beginning with the fall semester, 2024. Thus, this guide must be delivered no later than September 30, 2024. The Faculty Guide shall be substantially similar in form and content to the Student Guide, except that the multiple choice questions shall be substantially different from the Student Guide's multiple choice questions. Contractor shall update the Faculty Guide at least once during the Term, but may choose to do so more frequently at its discretion.

1.2.3 Form of Study Guides. Contractor shall deliver the Student Guide and Faculty Guide in the manner and times set forth in this section and in a form provided by the State Bar to Contractor in writing. Such forms may include PDF or Microsoft Word.

1.3 Standard of Performance. Contractor shall perform the Services in accordance with the generally accepted professional standards of practice and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently performing similar Services under similar conditions.

1.4 Change Orders. Either Party may request reasonable changes to the scope of Testing Services and Study Guide Services, project schedule or timeline, or any other Contractor obligations under this Agreement after the Effective Date by submitting a written request ("Change Order Proposal"). Any acceptance of the Change Order Proposal must be in writing and executed by the Parties, and such written and executed instrument ("Change Order Amendment") will state the Parties' agreement to enter into such Change Order Amendment to this Agreement. Contractor shall not proceed with any changes to its obligations unless first documented in a Change Order Amendment executed by both Parties.

ARTICLE 2 - TERM OF AGREEMENT

2.1 Term. The term of this Agreement shall commence on August 9, 2024, provided the Board of Trustees of the State Bar has approved this Agreement by that date, or on such later date that the Board of Trustees has approved this Agreement and it has been executed by the State Bar ("Effective Date"), and shall continue in full force and effect until 11:59:59 pm Pacific Time on December 31, 2029 ("Expiration Date", together with the Effective Date, the "Term") unless terminated earlier in accordance under Article 10.

2.2 Extension of Term. Any extensions or renewal of the Term, inclusive of Contractor's preparation of Test Materials and Study Guides for Bar Exam administrations beyond July 2029, shall be subject to a written agreement between Contractor and the State Bar. If the Parties renew the Term, the terms and conditions during such extension or renewal term shall be the same as the terms and conditions in effect immediately prior to such renewal or extension, unless otherwise agreed to in writing by the Parties. If the Parties fail to renew or extend this Agreement, then, unless sooner terminated in accordance with its terms, this Agreement shall terminate on the Expiration Date.

2.3 Time of the Essence. The Parties agree that time is of the essence with respect to performance of each term and deadline under this Agreement.

ARTICLE 3 - RELATIONSHIP OF THE PARTIES

3.1 Independent Contractor. The Parties agree that Contractor is an independent contractor and not an associate, employee, agent, joint-venturer, or partner of the State Bar. Nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee between the State Bar and Contractor or Contractor's assistant, employee, or agent of Contractor. Neither Contractor nor its employees or agents shall perform any acts that might lead others to believe that they are representatives of the State Bar, except as to the performance of the Services. Contractor has no authority (and shall not hold itself out as having authority) to bind the State Bar and Contractor shall not make any agreements or representations on the State Bar's behalf without its prior written consent. Neither Party shall control or direct the manner or means by which the Party, or its employees, agents or subcontractors ("Representatives"), will perform the obligations of this Agreement. The Parties agree that the Services performed are outside the usual course of the State Bar's business.

3.2 Contractor Capabilities. Contractor represents that its parent company, which has organized Contractor for the purpose of performing this Agreement, is or through its affiliated companies customarily engaged in an independently established trade, occupation, or business of the same nature as the Services performed hereunder.

3.3 Furnish Labor and Equipment. Unless otherwise provided in this Agreement, Contractor shall furnish, at its own expense, all labor, tools, equipment, and materials necessary to perform the Services. Contractor may, at Contractor's own expense, retain or employ such assistants, employees, or personnel as Contractor deems necessary to perform the Services and such individuals will be Contractor's employees. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants, employees, or personnel, including workers' compensation coverage as required, all federal, state, and local income taxes, unemployment and disability insurance, Social Security, or other applicable withholdings.

3.4 Subcontractors. State Bar may advise Contractor as to preferences or guidelines for Contractor's subcontractors, but does not have a right to review, refuse or replace Contractor's staff or subcontractors, except that if cause for concern or disqualification is

presented by State Bar, Contractor must review State Bar’s objection in good faith and may take appropriate action in Contractor’s discretion.

3.5 State Bar Benefits and Tax Withholdings. Contractor is not eligible to participate in any vacation benefits, group medical or life insurance, disability benefits, retirement benefits, or any other fringe benefits or benefit plans offered by the State Bar to its employees. The State Bar will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes. The State Bar will not be responsible for making any insurance contributions, including for unemployment, disability, or workers’ compensation insurance on Contractor’s behalf.

ARTICLE 4 - COMPENSATION

4.1 Annual Fee. Except as provided in Article 10, during the Term, for the Services satisfactorily rendered pursuant to this Agreement, the State Bar will pay Contractor an annual fee (“Annual Fee”) according to the following schedule.

Year	Annual Fee
Year 1	One Million Nine Hundred Fifty Thousand U.S. Dollars (\$1,950,000)
Year 2	One Million Eight Hundred Thousand U.S. Dollars (\$1,800,000)
Year 3	One Million Six Hundred Fifty Thousand U.S. Dollars (\$1,650,000)
Year 4	One Million Five Hundred Thousand U.S. Dollars (\$1,500,000)
Year 5	One Million Three Hundred Fifty Thousand U.S. Dollars (\$1,350,000)

4.2 Invoices; Schedule. Contractor will prepare and send to the State Bar invoices for the Annual Fee according to the following schedule:

Delivery Year	Examination Period	Invoice	Percentage of Annual Fee
Year 1	Feb & July 2025	12/1/2024	50%
Year 1	Feb & July 2025	3/2/2025	50%
Year 2	Feb 2026	8/15/2025	25%
Year 2	Feb 2026	10/15/2025	25%
Year 2	July 2026	1/15/2026	25%
Year 2	July 2026	3/15/2026	25%
Year 3	Feb 2027	8/15/2026	25%
Year 3	Feb 2027	10/15/2026	25%

Year 3	July 2027	1/15/2027	25%
Year 3	July 2027	3/15/2027	25%
Year 4	Feb 2028	8/15/2027	25%
Year 4	Feb 2028	10/15/2027	25%
Year 4	July 2028	1/15/2028	25%
Year 4	July 2028	3/15/2028	25%
Year 5	Feb 2029	8/15/2028	25%
Year 5	Feb 2029	10/15/2028	25%
Year 5	July 2029	1/15/2029	25%
Year 5	July 2029	3/15/2029	25%

4.3 The State Bar will pay all undisputed payments within thirty (30) calendar days after the State Bar’s receipt of Contractor’s invoice. Invoices shall include at least the following information: (i) the date(s) upon which the Services were performed or completed, as applicable; and (ii) a summary description of the Services performed. Each invoice submitted will reference the appropriate State Bar purchase order number SBC240389. Notwithstanding the above, if this Agreement terminates prior to expiration of the Term pursuant to Article 10, all outstanding invoices shall become immediately due.

4.4 Total Compensation. The total compensation for all the Services performed shall not exceed Eight Million Two Hundred Fifty Thousand U.S. Dollars (\$8,250,000) for the Term.

ARTICLE 5 - WARRANTIES AND REPRESENTATIONS

5.1 Qualifications. Contractor warrants that Contractor and its personnel, employees, and subcontractors have the education, qualifications, expertise, experience, and ability necessary to perform the Services in a diligent, timely, professional, and workmanlike manner consistent with the highest industry standards for similar services.

5.2 Legal Compliance. Each Party warrants and represents that it has, or it will obtain in a timely manner before the commencement of the performance of the Agreement, all permits, licenses, registrations, or approvals necessary or applicable to delivery of its obligations.

5.3 Title to Work. Contractor warrants that the State Bar will receive good and valid title to all Work Product, as defined in Article 9, free and clear of all encumbrances and liens of any kind.

5.4 Good Standing. Contractor represents and warrants that it has been duly organized, is validly existing and in good standing under the laws of the jurisdiction of its

organization, and is duly qualified to do business in and is in good standing in the State of California.

5.5 Qualifications. State Bar warrants that its personnel, employees, and subcontractors involved in the Services have the education, qualifications, expertise, experience, and ability necessary to administer the bar exam Work Product provided by Contractor in a diligent, timely, professional, and workmanlike manner, and grade bar exams thereof, consistent with applicable law.

ARTICLE 6 - INDEMNITY

6.1 Indemnification Obligation

6.1.1 Indemnification. An indemnifying Party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the indemnified Party, including its parent companies, Board or Board of Trustees, commissions, committees and subentities, officers, directors, agents, attorneys, employees, successors, licensees, members, volunteers, and assigns and their respective boards, officers, directors, agents, attorneys, employees, and partners (as the same may be constituted from time to time, hereinafter referred to as the "Indemnified Party") from and against any and all third party claims, demands, damages, debts, liabilities, losses, obligations, costs, expenses, liens, judgments, awards, penalties, fines, actions, or causes of action (including but not limited to reasonable attorneys' fees, costs, and expenses), whether or not litigation is actually commenced (collectively, "Losses"), arising out of or in connection with any: (i) breach by the Indemnifying Party of this Agreement, including any warranty or representation; (ii) breach or potential breach of data security or privacy; (iii) gross negligence or willful act by the Indemnifying Party or its employees, agents, or subcontractors related to the performance of this Agreement, or (iv) claims of alleged defects of administration, grading or bias of the bar exam by exam takers for which State Bar shall be the Indemnifying Party. The foregoing indemnification and hold harmless obligation of an Indemnifying Party shall not apply to the extent that any such Losses arise out of the sole actions or omissions or willful misconduct of the Indemnified Party as established by final court decision or agreement of the Parties. Consistent with Article 17, it is the express agreement of the Parties not to provide indemnification for actual or alleged intellectual property infringement.

6.1.2 Costs and Expenses. Each Party shall be liable to the other for all costs (including but not limited to reasonable attorneys' fees, costs and expenses) incurred by such Party for the purposes of enforcing this indemnity provision.

6.1.3 Legal Counsel. The State Bar may, at its option, designate its Office of General Counsel as an equal participating counsel in any litigation wherein the State Bar is defended by Contractor. Contractor may, at its option, designate its in-house counsel as an equal participating counsel in any litigation wherein the Contractor is defended by State Bar.

6.1.4 Indemnification Cap. Each Party's maximum liability under this Article 6 shall not exceed a total of One-Million Six-Hundred Fifty-Thousand Dollars (\$1,650,000).

6.2 Indemnification Procedures.

6.2.1 Notice of Claims and Lawsuits. If any third-party claim is commenced against any Party entitled to indemnification under this Article, the Party against whom the claim is made ("Indemnified Party") will promptly give written notice thereof to the other Party ("Indemnifying Party"), and the Indemnifying Party shall immediately assume the defense of such claim with counsel mutually acceptable to both Parties. The failure of the Indemnified Party to provide notice to the Indemnifying Party under this section does not relieve the Indemnifying Party of any liability that the Indemnifying Party may have to the Indemnified Party. The Indemnified Party shall cooperate, at the sole cost of the Indemnifying Party, in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial, and defense of such claim, and in any appeal arising therefrom; provided, however, that the Indemnified Party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial, and defense of such claim, and any appeal arising therefrom. The Indemnifying Party shall coordinate the defense of any third-party claim with the Indemnified Party, including any investigation and trial, and any appeal therefrom. The Indemnifying Party shall not enter into a settlement of any claim that involves a remedy other than the payment of money by the Indemnifying Party without the prior written consent of the Indemnified Party. If the Indemnifying Party does not assume an immediate defense of a claim that the Indemnifying Party is obligated to defend, the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Indemnifying Party.

6.2.1.1 Selection of Counsel. Notwithstanding anything to the contrary in this Article, an Indemnified Party may select its own legal counsel to represent its interests in any matter arising under this Agreement. The Indemnifying Party shall:

6.2.1.2 Reimburse the Indemnified Party for its reasonable costs and attorneys' fees as they are incurred, upon presentation of an itemized statement of such costs and fees; and

6.2.1.3 Remain responsible to the Indemnified Party for any Losses indemnified under Section 6.1.1, in accordance with the terms of this Agreement.

ARTICLE 7 - INSURANCE

7.1 Type and Limits of Insurance. During the Term of this Agreement, Contractor shall maintain and keep in full force and effect at Contractor's own cost and expense, the following insurance policies from insurer(s) authorized to provide insurance in the State of California, for the joint benefit of Contractor and the State Bar:

7.1.1 Professional Liability Insurance coverage with a minimum limit of Eight Million Dollars (\$8,000,000). Such professional liability insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A-VII. The policy shall include the duty to defend. If a "claims made" policy is used, it shall be endorsed to provide an extended reporting period of not less than three (3) years. The effective date of the policy shall not be later than the

Effective Date herein. The policy shall be applicable to all rights granted to the State Bar pursuant to this Agreement, all Work Product provided to the State Bar, and all uses made thereof by Contractor and/or the State Bar pursuant to this Agreement, insuring against liabilities relating to this Agreement.

7.1.2 Commercial General Liability Insurance coverage having a combined single limit of not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage liability, Four Million Dollars (\$4,000,000) annual aggregate, and Two Million Dollars (\$2,000,000) for products/completed operations. Such commercial general liability insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.1.3 Workers' Compensation Insurance coverage if Contractor has one (1) or more employees as defined by the State of California, coverage as required by applicable California state law and federal statutes covering liability for injuries to all persons employed by the insured in the conduct of its operations, together with employer's liability insurance in the amount of One Million Dollars (\$1,000,000) for each accident and One Million Dollars (\$1,000,000) policy limit for bodily injury by disease. Such workers' compensation insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.1.4 Privacy Security Liability/Cyber Insurance coverage for a minimum limit of Eight Million Dollars (\$8,000,000) per claim and annual aggregate. Such privacy security liability/cyber insurance will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.1.5 Umbrella Liability Insurance. coverage with a general aggregate limit of Five Million Dollars (\$5,000,000.00) and a per occurrence limit of at least Five Million Dollars (\$5,000,000.00). Such umbrella liability insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.2 Certificates and Endorsements. Within fifteen (15) calendar days of the Effective Date, Contractor shall deliver to the State Bar offices at 845 S. Figueroa St., Los Angeles, CA 90017 Attn: Procurement, certificates of insurance, together with original endorsements, evidencing compliance with the requirements in this Article. Contractor shall provide prompt written notice to the State Bar if there are any cancellations or lapses, reductions in coverage or coverage limit, or other material changes to the insurance policies. If Contractor fails to secure and maintain the required insurance policies as set forth in this Article, the State Bar may, in its sole discretion, purchase the required insurance coverage and Contractor shall reimburse the State Bar for all the associated costs, including any administrative costs incurred in securing such coverage.

7.3 Waiver of Subrogation. Contractor waives and releases all claims and all rights of recovery against the State Bar for any loss, injury, or damage arising from any claim that: (i) is of the type that is required to be insured against under the terms of this Agreement, regardless of whether such insurance coverage actually exists; or (ii) is actually insured against under any insurance policy carried by Contractor, regardless of whether such insurance is required hereunder. To the extent permitted by law, Contractor's waiver and release will apply

irrespective of the cause or origin of the claim, including the negligence or intentional misconduct of the State Bar, or of any person acting at the direction or under the control of the State Bar. Contractor agrees that the foregoing waiver will be binding upon its respective insurance carriers, and (except for any insurance policy that provides that the insured thereunder may effectively waive subrogation without further action on the part of the insured) Contractor shall obtain endorsements or take such other action as may be required to effect such insurer's waiver of subrogation under each such policy.

7.4 Waiver of Coverage. The State Bar agrees to waive any Automobile Liability Insurance requirements since Contractor represents that it will not use any vehicle or mobile equipment to perform the Services under this Agreement.

ARTICLE 8 - CONFIDENTIALITY

8.1 Confidential Information. "Confidential Information" of either Party means any information, technical data, trade secrets or know-how (whether disclosed before or after the Effective Date of this Agreement), including, but not limited to information relating to records, documents, data, notes, analyses, compilations, studies, processes, plans or other information provided by the disclosing Party, which may include but is not limited to business practices, products, services, projections, forecasts, providers, employees, personnel, board members, volunteers, contractors, customer lists, human resources, personal information, technical data, computer object or source code, research, inventions, processes, designs, drawings, engineering, marketing, finance, operations, policies, procedures, board members, leadership, management, legal and regulatory affairs, licensees (former and current), applicants, and relationships with third-parties or other information of a confidential or proprietary nature which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Confidential Information does not include information that: (a) is or becomes a part of the public domain through no act or omission of its owner or owner's Representatives; (b) is lawfully disclosed to recipient or recipient's Representatives by a third-party without restrictions on disclosure; (c) was in a Party or Party's Representatives' lawful possession, as established by documentary evidence, prior to the disclosure by the disclosing Party or (d) is a public record, not exempt from disclosure pursuant to the California Public Records Act, Government Code Section 7920.000 et seq. To clarify, State Bar's Confidential Information shall include all Test Materials and Study Guides, including preliminary notes, memoranda, and other Work Product as defined below. Each Party and its Representatives shall have access to the other Party's Confidential Information on a need-to-know basis.

8.2 Obligation to Maintain Confidentiality. Excluding licenses of Exposed Materials granted to Contractor in Article 9 and the State Bar's provision of the Test Materials and Study Guides to their intended audiences (e.g., test takers, law students, law professors, etc.) and to persons authorized by the State Bar to review or evaluate the Test Materials and Study Guides (including the State Bar's psychometricians) and administer the Bar Exam, each Party agrees to maintain in strictest confidence Confidential Information of the other Party, whether provided orally, in writing, electronically or in any other form or medium, or that the Party or Party's

Representatives may otherwise receive access thereby. Contractor shall be responsible for compliance with all confidentiality obligations herein by its subcontractors, agents, and any other person or entity providing services or support to Contractor in connection with this Agreement.

8.3 Safeguarding Confidential Information. Excluding licenses of Exposed Materials granted in Article 9, each Party shall safeguard and shall take all necessary steps to protect Confidential Information. Each Party shall only use and disclose Confidential Information to its Representatives necessary to perform or receive the Services pursuant to this Agreement. A Party shall notify the other Party immediately of any unauthorized use, access, or disclosure of Confidential Information and take all commercially reasonable steps to prevent further use, access, or disclosure.

8.4 Unauthorized Disclosure. Excluding licenses of Exposed Materials granted in Article 9, each Party shall not disclose Confidential Information or permit it to be disclosed, in whole or part, to any third-party without the prior written consent of the owner. If any person or entity requests by a subpoena or court order any information or materials relating to this Agreement which is within the possession, custody, or control of a Party or Party's Representatives, that Party shall promptly inform the other Party of such request and cooperate to the extent the owner objects or moves to quash such request or subpoena. Notwithstanding any contrary provision contained herein, either Party may disclose Confidential Information to the extent that such disclosure is required by law or regulation, or is pursuant to a valid order of a court of competent jurisdiction or an authorized governmental authority; provided that the disclosing Party: (a) immediately notifies the owner in writing of the disclosure request and to the extent not prevented from doing so by an applicable government authority, provides the owner a copy of the order by the applicable court or governmental authority so the owner may seek a protective order or another appropriate remedy; (b) cooperates with the owner if it seeks a protective order or other appropriate remedy preventing or limiting disclosure; and (c) seeks confidential treatment of any Confidential Information required to be disclosed before disclosure, and attorney's eyes only treatment for highly sensitive information for which the owner believes attorneys' eyes only treatment is appropriate. If the owner cannot obtain a protective order, another appropriate remedy, or otherwise fails to quash the legal process requiring disclosure, the disclosing Party will work with the owner to disclose the requested Confidential Information only to the extent required by such law, regulation, or order.

8.5 Additional Remedies for Unauthorized Disclosure. Each Party acknowledges that irreparable harm can result to the Parties and to third-parties by disclosure or threatened disclosure of Confidential Information that cannot be adequately relieved by monetary damages alone. Accordingly, a Party may seek equitable remedies including a temporary or permanent injunction or other equitable relief from any court of competent jurisdiction, without the necessity of showing actual damages and without the necessity of posting any bond or other security. The equitable relief will be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief. If the Party incurs any loss or liability arising out of disclosure or use of any Work Product or Confidential Information by any one or more of either Party or its agents or representatives other than as authorized herein, that disclosure or use will

be deemed to have been by the Party for purposes of determining whether the Party breached any of its obligations under the Agreement.

ARTICLE 9 - INTELLECTUAL PROPERTY RIGHTS

9.1 Intellectual Property Rights Defined. For purposes of this Agreement, the term "Intellectual Property Rights" means know-how, inventions, patents, patent rights, and registrations and applications, renewals, continuations and extensions thereof, works of authorship and art, copyrightable materials and copyrights (including, but not limited to, titles, computer code, designs, themes, concepts, artwork, graphics and visual elements, and methods of operation, and any related documentation), copyright registrations and applications, renewals and extensions thereof, mask works, industrial rights, trademarks, service marks, trade names, logos, trademark registrations and applications, renewals and extensions thereof, derivative works, trade secrets, rights in trade dress and packaging, publicity, personality and privacy rights, rights of attribution, authorship, integrity and other similarly afforded "moral" rights, and all other forms of intellectual property and proprietary rights recognized by the U.S. laws, and other applicable foreign and international laws, treaties and conventions.

9.2 Work Product. Contractor recognizes and agrees that all rights, titles, and interests, including all Intellectual Property Rights, which may be prepared, procured, or produced in whole or in part in, or resulting from, the Services rendered by Contractor pursuant to this Agreement, including, without limitation, any and all deliverables, research, proposals, materials, reports, plans, other writings, and other work product (collectively referred to as "Work Product"), including all Intellectual Property Rights, are "works made for hire" for the benefit of the State Bar. Accordingly, all rights, titles, and interests shall vest in the State Bar as the author and as the sole and exclusive copyright owner of the Work Product. To the extent that any Work Product may not, by operation of law, vest in the State Bar or any Work Product may not be considered "works made for hire," in consideration of the mutual promises contained in this Agreement, Contractor hereby irrevocably assigns and transfers (by way of future assignment and transfer when necessary), in perpetuity, without separate compensation, to the State Bar all of the rights, titles, and interests in the Work Product that Contractor or its Representatives may have or may hereafter acquire in the Work Product, in the United States of America and throughout the world, in all mediums now known or hereafter invented, free of any encumbrances or liens, and hereby assigns any and all such rights, including renewals and extensions of each such copyright(s) that may be secured under the laws now or hereafter. All rights granted or agreed to be granted to the State Bar hereunder shall vest in the State Bar immediately and shall remain so vested whether this Agreement expires or is terminated for any or no cause or reason. At the State Bar's request and expense, Contractor will execute, during and after the Term, all further actions including execution and delivery of documents reasonably required to perfect the foregoing rights in the State Bar. In the event Contractor fails to execute any documents within thirty (30) days of the State Bar's written request, Contractor appoints the State Bar as its attorney-in-fact to execute such documents on Contractor's behalf. Contractor hereby waives or transfers any and all moral rights, including without limitation any right to attribution, identification, integrity, disclosure, authorship or any other rights that may be known

as “moral rights,” or limitation on a subsequent modification that Contractor or its Representatives has or may have in the Work Product or any part thereof. Following delivery of the Work Product to State Bar, all subsequent actions taken with respect to the Work Product, such as duplication, publication or otherwise, are actions taken by the State Bar.

9.3 Contractor’s Employees, Agents, and Subcontractors. At all times throughout the Term, Contractor will ensure that it has and will maintain appropriate agreements in place (and Contractor will provide the form of said agreements to the State Bar upon request) with all of its Creators which: (i) provides transfer of Creator’s Intellectual Property Rights to Contractor; (ii) is consistent with the rights being granted by Contractor to the State Bar under this Agreement; and (iii) contains a waiver by the Creator of any claim against Contractor in respect of any moral rights owned by each such person to all and any Work Product created by them and provided to Contractor.

9.4 Limited License to Nevada. The State of Nevada’s Board of Bar Examiners (“Nevada”) has expressed interest in using the Test Materials for the 2025 Nevada bar exam. State Bar reserves the right to license the Test Materials to Nevada for use in the February and July 2025 Nevada bar exams. If said license is provided to Nevada by State Bar, then Contractor shall be entitled to market such license in accordance with the terms of Section 11.4. For clarity, this section and Agreement shall not be construed to require Contractor to restrict its test prep or bar exam prep business in the State of Nevada. Any and all communications or data transmissions with Nevada regarding such a prospective limited license shall be handled by State Bar and Contractor shall have no obligations to communicate nor transmit materials directly with Nevada. State Bar further assumes all security obligations, risks and damages that may be incurred in licensing and sharing any Test Materials or Work Product with Nevada.

9.5 Prohibition of Licenses to Other States. The Parties acknowledge the State Bar’s ownership of the Test Materials, in addition to the limited license to Nevada described above; however, the Parties further contractually agree that the State Bar shall not license the Test Materials to any other third party (other than Nevada in the February and July 2025 bar exams) during the Term of the Agreement.

9.6 Licenses of Test Materials; Covenant Not to Sue.

9.6.1 Exposed Materials. Following each Bar Exam administration, State Bar shall designate certain of the Test Materials that have been used on a Bar Exam as “Exposed Materials,” with the number and specific questions to be designated by the State Bar at its sole discretion. Contractor agrees it cannot itself or authorize others to use or otherwise exploit any Work Product or Test Materials, except in the limited circumstances provided in the following sections. Once certain Test Materials have been designated by State Bar as Exposed Materials, they shall remain Exposed Materials.

9.6.2 License to Use Exposed Materials in Guides. State Bar herein provides Contractor a no-cost, perpetual, non-exclusive, and irrevocable license to use Exposed Materials for preparation of and use in Student Guide(s) and Faculty Guide(s) during the Term.

9.6.3 Sublicense of Exposed Materials to Contractor's Parent. Following the Term of this Agreement, State Bar herein provides to Contractor a no-cost, perpetual, non-exclusive, and irrevocable license, that can be transferred or otherwise sublicensed to Contractor's Parent only and no other third parties, for Contractor's Parent to reproduce, distribute, publicly display or create derivative works from the Exposed Materials on bar exam preparation products and materials prepared by and/or distributed by Contractor's Parent. To clarify, said sublicense to Contractor's Parent does not authorize Contractor's Parent to further sublicense the Exposed Materials to any other third parties, nor further reproduce, distribute, publicly display, create derivative works from, or otherwise exploit any non-exposed Work Product nor non-exposed Test Materials. The terms of this section, namely the Sublicense to Contractor's Parent, shall survive any termination of this Agreement.

9.6.4 Covenant Not To Sue; License To Cross-Check Test Materials. Since Contractor is the creator of Test Materials as works made for hire owned by State Bar with the prospect of copyright registration, the Parties seek to prevent circumstances where Contractor, in the process of providing similar bar exam preparation services for other bar exam jurisdictions, could be in the position of alleged infringement of State Bar's Testing Materials through the creation of test materials for other states ("Other States' Test Materials"), being that the Other States' Test Materials necessarily would be created through the same legal entity, with the same personnel, using the same Contractor resources (of course, excluding State Bar Resources). Therefore, provided: (a) that Contractor does not refer to, review, copy or otherwise utilize any of State Bar Resources in the creation of Other State's Test Materials, except as authorized by the QA License (as defined below), and (b) that Contractor does not "literally infringe" (that is, copy verbatim or create an exact duplication of) any of State Bar's Test Materials, then State Bar herein agrees and covenants not to sue, or otherwise initiate copyright infringement claims against Contractor for Other State's Test Materials ("Covenant Not To Sue"). To further reduce the possibility of literal infringement occurring by coincidence, State Bar herein provides Contractor a no-cost, perpetual, non-exclusive, and irrevocable license ("QA License") solely to maintain an internal-only database of historical Test Materials as a means to cross-check and prevent any identical work product as between Test Materials and Other States' Test Materials. Said QA License cannot be transferred, transmitted nor otherwise provided in any form to Contractor's Parent, nor any other third party. The terms of this section, namely the Covenant Not To Sue and the QA License, shall survive any termination of this Agreement.

9.7 No Transfer of Title in and to Contractor's Pre-Existing IP. Notwithstanding the foregoing, the State Bar acknowledges that independent of this Agreement, Contractor has created, acquired, or otherwise has rights in and may, in connection with the performance of this Agreement, employ certain intellectual property, including, without limitation, various concepts, ideas, methods, methodologies, procedures, processes, know-how, or techniques (collectively, "Pre-Existing IP"). The State Bar and Contractor intend that Contractor's interests in or title to such Pre-Existing IP will remain vested in Contractor. Contractor represents that none of the Work Product delivered to the State Bar will contain Pre-Existing IP.

9.8 No Transfer of Title in and to State Bar's Pre-Existing IP. As between Contractor and the State Bar, the State Bar is, and will remain, the sole and exclusive owner of all rights, titles, and interests in and to any documents, specifications, data, know-how, methodologies, software, Confidential Information and other materials provided or made accessible to Contractor by the State Bar ("State Bar Materials"), including all Intellectual Property Rights therein. Contractor has no right or license to reproduce or use any State Bar Materials except solely during the Term to the extent necessary to perform Contractor's obligations under this Agreement. All other rights in and to the State Bar Materials are expressly reserved by the State Bar. Contractor has no right or license to use the State Bar's trademarks, service marks, trade names, logos, symbols, or brand names, other than those authorized under Section 11.5.

ARTICLE 10 - TERMINATION OF AGREEMENT

10.1 Termination for Cause. The State Bar may terminate this Agreement with cause based upon Contractor's breach of any terms of this Agreement, including Contractor's uncured material failure to comply with the standards of performance and all requirements pertaining to the preparation of Test Materials as set forth in Section 1.1.5, upon thirty (30) calendar days' written notice to Contractor, or based upon the assertion or filing of claims against Contractor or the State Bar relating to this Agreement. Contractor's sole compensation will be for that portion of the Services satisfactorily performed by Contractor to the date of termination then due pursuant to the Agreement; provided, however, the State Bar will withhold an amount reasonably expected to address the State Bar's costs and expenses arising out of the breach of this Agreement. Contractor will not be paid for any services associated with any work or service which was not authorized by the State Bar pursuant to this Agreement.

10.2 Termination without Cause. The State Bar may terminate this Agreement and avoid accrual of an Annual Fee for the fourth and/or fifth years of the Term, in its sole discretion, with or without cause and for any reason, provided that sufficient written notice is provided to Contractor. Sufficient written notice to avoid accrual of Annual Fees for both the fourth and fifth years during the Term must be received by Contractor prior to 11:59:59 pm Pacific Time on February 28, 2027; and, such early termination shall incur an early termination fee payable to Contractor of Seven Hundred Twelve Thousand Five Hundred U.S. Dollars (\$712,500) in lieu of the Annual Fees representing the fourth and fifth years (i.e., \$2,850,000) that would otherwise become due. Alternatively, sufficient written notice to avoid accrual of the Annual Fee for the fifth year only during the Term must be received by Contractor prior to 11:59:59 pm Pacific Time on February 28, 2028; and, such early termination shall incur an early termination fee payable to Contractor of Three Hundred Thirty Seven Thousand Five Hundred U.S. Dollars (\$337,500) in lieu of the Annual Fee of the fifth year (i.e., \$1,350,000) that would otherwise become due.

10.3 Termination for Bankruptcy. This Agreement will terminate automatically in the event of the bankruptcy or insolvency ("Bankruptcy") of either Party. In the event of Contractor's Bankruptcy, Contractor's sole compensation will be for that portion of the Services satisfactorily performed by Contractor to the date of termination then due pursuant to the Agreement.

10.4 Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any terms of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, other specific potential disasters or catastrophes, such as epidemics, pandemics, or quarantines, or explosions; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national, regional, or local emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; or (i) shortage of adequate power or transportation facilities. The Impacted Party shall give notice within seven (7) days of the Force Majeure Event to the other Party, stating the period of time the Force Majeure Event is expected to continue, and describing the impact on performance of the Services and other obligations under the Agreement. Notwithstanding the preceding sentence, if either Party's performance is affected by any Force Majeure Event, either Party may terminate this Agreement by written notice to the other Party, without any penalty, liability, or any other costs or damages, whatsoever.

10.5 Obligations of Contractor Upon Expiration, Cancellation, Termination or Request. Upon expiration, cancellation, or termination of this Agreement, or at any other time upon the State Bar's written request, Contractor shall, within twenty-one (21) calendar days after such expiration, cancellation, termination, or written request:

10.5.1 deliver to the State Bar and, to the extent not otherwise assigned herein, assign all rights of ownership, including Intellectual Property Rights, in and to all Test Materials and Study Guide Materials (whether complete or incomplete) and Work Product and all materials, equipment, and other property provided for Contractor's use by the State Bar;

10.5.2 deliver to the State Bar all tangible documents and other physical media received from the State Bar, including any copies, containing, reflecting, incorporating, or based on the Confidential Information; and

10.5.3 upon request, certify in writing within one month to State Bar that Contractor has complied with the requirements of this section.

10.6 Obligations of Contractor Upon Expiration, Cancellation or Termination. Upon expiration, cancellation, or termination of this Agreement, Contractor shall, within twenty-one (21) calendar days after such expiration, cancellation or termination:

10.6.1 permanently erase all the Confidential Information from Contractor's computer and phone systems in accordance with Section 15.12; and

10.6.2 upon request, certify in writing within one month to the State Bar that Contractor has complied with the requirements of this section.

10.7 Obligations of State Bar Upon Expiration, Cancellation or Termination or Request. Upon expiration, cancellation, termination of this Agreement, or at any other time upon the Contractor's written request, State Bar shall, within twenty-one (21) calendar days after such expiration, cancellation, termination or written request:

10.7.1 deliver to the Contractor and, to the extent not otherwise licensed herein, all rights to the exposed Test Materials and Study Guide Materials in accordance with this Agreement; and

10.7.2 upon request, certify in writing within one month to Contractor that State Bar has complied with the requirements of this section.

ARTICLE 11 - CONFLICT OF INTEREST, ETHICS, AND BUSINESS LIMITATIONS

11.1 Conflicts of Interest. Each Party represents that it is not currently aware of any facts that create a potential or actual conflict of interest, including offering or providing any incentive, directly or indirectly, to any member of the other Party's Board or Board of Trustees, officers, directors, and employees or consultants involved in the making of this Agreement in order to secure or influence the performance of this Agreement. Each Party agrees to promptly disclose to the other any situation that may arise during the term of this Agreement that is reasonably likely to result in a conflict of interest.

11.2 Additional Conflicts of Interest Requirements. Contractor understands and acknowledges that the State Bar is a public corporation, and as such, the organization and its Board of Trustees, officers, directors and employees are subject to various rules, laws and regulations relating to conflict of interests, gifts, honoraria and travel or other payments. Accordingly, Contractor acknowledges and agrees that Contractor shall, and ensure that any Contractor personnel assigned to provide the Services under this Agreement, comply with the following additional requirements:

11.2.1 Contractor and Contractor's personnel must comply with all applicable federal, state, and local laws and regulations pertaining to conflicts of interest laws, including without limitation State Bar's Conflict of Interest Code available <https://www.calbar.ca.gov/Portals/0/documents/Conflict-of-Interest-Code-State-Bar.pdf>, filing of Statement of Economic Interests (Form 700) (if applicable), the California Political Reform Act (Government Code Section 81000 et seq.), Government Code Section 1090 et seq. and/or common law conflict of interest laws (collectively, the "Conflicts of Interest Laws").

11.2.2 During the term of this Agreement, Contractor shall not perform any work for State Bar or any another person, entity or business, which would: (i) result in an actual or potential conflict of interest under the Conflict of Interest Laws; (ii) require Contractor to abstain from any decision under this Agreement or prospective services of the Vendor its affiliate companies pursuant to the Conflict of Interest Laws and/or (iii) violate the Conflict of Interests Laws. Contractor represents that it is not now aware of any facts, which violate any of these provisions and the Conflict of Interest Laws.

11.2.3 Contractor understands that, if this Agreement is made in violation of Government Code Section 1090 et seq., the entire Agreement is voidable and Contractor will not be entitled to any compensation for Services performed pursuant to this Agreement and Contractor will be required to reimburse State Bar any sums paid to Contractor. Contractor further understands that, in addition to the foregoing, Vendor may be subject to criminal prosecution for a violation of Government Code Section 1090.

11.3 Disclosure of Conflicts of Interest. If Contractor hereafter becomes aware of any facts that might reasonably be expected to either create a conflict of interest under the Conflict of Interest Laws or violate the provisions of this Article 11, Contractor shall immediately make full written disclosure of such facts to State Bar. Full written disclosure shall include, without limitation, identification of all persons, entities and businesses implicated and a complete description of all relevant circumstances. Vendor shall submit any disclosures required by this Article 11 to the address in Article 13 (Notices), with a copy to the attention of the General Counsel.

11.4 Prohibition on California Bar Exam Preparation Business.

11.4.1 Contractor, any of its subsidiaries, Contractor's Parent, its subsidiaries, and its parent companies and their subsidiaries, must cease offering or advertising test preparation materials and courses specific to the California Bar Exam or offer courses advertised as preparation for the California bar exam by October 1, 2024 and throughout the Term, subject to 11.4.2 below. This means that such entities may only offer or advertise test preparation materials and courses specific to other states' bar exams.

11.4.2 Contractor's Parent and its subsidiaries (other than Contractor) may continue to provide test preparation materials and courses for other nationwide or state bar exams, provided that the questions in the Test Materials, Student Guide and Faculty Guide for any California Bar Exam are not included in out-of-state test preparation materials and courses or used elsewhere. Contractor's Parent may also continue to provide nationwide test preparation materials and courses as part of Contractor Parent's "PMBR" program, provided that Contractor's Parent does not market PMBR directly to California law schools. Contractor's Parent shall display a prominent disclaimer on the front page of its PMBR website notifying potential consumers that PMBR is not intended as a resource to prepare for the California Bar Exam. Moreover, throughout the term of the Agreement, Contractor agrees to the following prohibitions: (i) no personnel assigned to prepare the Test Materials shall be assigned to prepare or teach PMBR course materials or have access to PMBR course materials; (ii) no personnel assigned to prepare or teach PMBR course materials shall be assigned to prepare the Test Materials; and (iii) Contractor shall not provide any Work Product nor Testing Materials, directly or indirectly, to personnel assigned to prepare or teach the PMBR course materials. The Confidentiality provisions in this Agreement shall be applicable to, and enforced against, any separate entity that exerts control over and/or operates PMBR.

11.5 Marketing and Advertising. The State Bar seeks to avoid any perception that test takers will obtain an unfair advantage in the Bar Exam by obtaining other products and services from Contractor that will provide inside information about test or essay questions.

11.5.1 In recognition of this important interest, when marketing, advertising or making public statements, Contractor shall not: (i) represent in any manner that its relationship with the State Bar constitutes a “partnership,” “exclusive partnership,” or any other business relationship outside the scope of this Agreement; (ii) represent in any manner that the State Bar has endorsed, sponsored, approved, or otherwise supported products or services provided by Contractor, its subsidiaries, or any of its parent companies and their subsidiaries; or (iii) use the State Bar logo for any purpose, except as authorized herein.

11.5.2 Notwithstanding the foregoing, the State Bar and Contractor from time to time may come to mutual understanding of pre-approved marketing, advertising or public statements that fulfill the conditions of Section 11.5.1.

11.5.3 Notwithstanding the foregoing, the State Bar consents to Contractor disclosing any disclosures required by law such as a public company’s SEC filings.

11.6 Restrictions During Term Only. This Article 11 shall be effective only through the Term of this Agreement. If/when this Agreement expires, cancels or otherwise terminates, all such limitations and restrictions recited in this Article 11 shall become null or otherwise unenforceable.

ARTICLE 12 - COMPLIANCE WITH LAWS

Contractor, and its personnel, employees, and subcontractors shall comply with all applicable laws, ordinances, and regulations adopted or established by federal, state, or local governmental bodies or agencies, including but not limited to the provisions of the Fair Employment and Housing Act (California Government Code, section 12900 et seq.) and any applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.), ADA/ADAAA, and section 508 of the Rehabilitation Act. Contractor shall include the non-discrimination and compliance provisions of this Article in all subcontracts for the performance of work under the Agreement.

ARTICLE 13 - NOTICES

Unless otherwise specifically stated in this Agreement, any notices to be given by either Party to the other must be in writing and delivered either personally, by express mail, or electronic transmission, with a copy sent by regular mail to the address set forth below. If notice is given by personal delivery or express mail, a courtesy copy shall also be provided by electronic mail.

<p>THE STATE BAR OF CALIFORNIA</p> <p>Attn: Procurement 845 S. Figueroa St. Los Angeles, CA 90017</p> <p>WITH COPIES TO</p> <p>General Counsel: gc@calbar.ca.gov</p> <p>Executive Director: executivedirector@calbar.ca.gov</p>	<p>KAPLAN EXAM SERVICES, LLC</p> <p>Attn: Chief Financial Officer 1515 W. Cypress Creek Road Fort Lauderdale, FL 33309</p> <p>WITH COPIES TO</p> <p>CFO: jdervin@kaplan.edu</p> <p>Legal Department: knalegal@kaplan.com</p>
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Each Party may change the notice address appearing above by giving the other Party written notice in accordance with this Article.

ARTICLE 14 - AUDIT

The State Bar reserves the right to have an independent audit conducted of Contractor's compliance with the terms of this Agreement, if the State Bar reasonably believes such audit is necessary to ensure confidentiality, or financial or program accountability or integrity. Contractor shall retain all records associated with the Services performed for a period of four (4) years from the expiration, cancellation, or termination of this Agreement.

ARTICLE 15 - DATA SECURITY

15.1 Network Security. Contractor agrees at all times to maintain network security that, at a minimum, includes network firewall provisioning, intrusion detection, and regular (annual) third party vulnerability assessments. State Bar reserves the right, upon fifteen (15) business days' notice to Contractor, to have a third-party perform a vulnerability assessment at its own expense. Contractor agrees to maintain network security that conforms to generally recognized industry standards and best practices.

15.2 Application Security. Contractor agrees at all times to provide, maintain and support its Software and subsequent updates, upgrades, and bug fixes such that the Software is, and remains secure from those vulnerabilities.

15.3 Data Security. Contractor agrees to protect and maintain the security of Test Materials, Confidential Information, Work Product, and any and all other information or data exchanged between the parties, or otherwise made accessible to Contractor by the State Bar (collectively "Data" in this Section 15) with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority (e.g., Microsoft notifications, etc.). Unless otherwise agreed to in writing by the State Bar or as provided herein, Contractor shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantially

similar to the security controls identified in the current version of NIST Special Publication 800-53, and that is designed to: (a) ensure the security and confidentiality of the Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of the Data; and, (e) ensure that all employees, agents, and subcontractors of Contractor comply with all of the foregoing.

15.4 Data Storage and Backup. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by an agent of the State Bar with designated Data, security, or signature authority. Contractor agrees to store all State Bar backup Data stored as part of its backup and recovery processes in encrypted form, using no less than 128 bit key. Any and all cloud based storage of Data shall comply with ISO/IEC 27001, or successor provision(s).

15.5 Encryption. All State Bar Data must be rendered unusable, unreadable, or indecipherable to unauthorized individuals. Without limiting the generality of the foregoing, Contractor shall encrypt all workstations, portable devices (such as mobile, wearables, tablets,) and removable media (such as portable or removable hard disks, floppy disks, USB memory drives, CDs, DVDs, magnetic tape, and all other removable storage media) that store State Bar Data in accordance with Federal Information Processing Standard (FIPS) 140-3. All mobile devices storing State Bar Data must be managed by a Mobile Device Management system. All workstations/Personal Computers (including laptops, 2-in-1s, and tablets) will maintain the latest operating system security patches, and the latest virus definitions. Virus scans must be performed at least monthly.

15.6 Data Transmission. Contractor agrees that any and all transmission or exchange of system application and/or other Data with the State Bar and other parties shall take place via secure means, e.g., HTTPS, FTPS, SFTP, or equivalent means. Contractor shall encrypt, end-to-end, State Bar Information transmitted on networks outside of Contractor's control with Transport Layer Security (TLS) or Internet Protocol Security (IPSec) at a minimum cipher strength of 128 bit or an equivalent secure transmission protocol. All Data, Work Product, Test Materials, Confidential Information, and all other deliverables hereunder shall be comprised by Contractor as structured data for transmission purposes, using a standardized format acceptable to the State Bar.

15.7 Data Re-Use. Contractor agrees that any and all Data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement. State Bar Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor further agrees that no Data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other persons or interested parties except on a case-by-case basis as specifically agreed to in writing by a State Bar officer with designated data, security, or signature authority.

15.8 Data Encryption. Contractor agrees to store all State Bar backup Data, as applicable, as part of its designated backup and recovery processes in encrypted form, using a commercially supported encryption solution. Contractor further agrees that any and all Data defined as personally identifiable information under current legislation or regulations stored on any portable or laptop computing device or any portable storage medium is likewise encrypted.

15.9 Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting State Bar Data that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

15.10 Notification of Breach. In addition to Contractor's responsibilities under the law, Contractor shall immediately upon discovery, but in no case more than twenty-four (24) hours after discovery, report to the State Bar of California in writing (i) any Breach of Security involving the State Bar Data, or (ii) any use or disclosure of State Bar Data other than the Permitted Uses (each, a "Report"). Contractor shall fully cooperate with the State Bar with respect thereto. Each Report shall include, at a minimum: (i) the nature of the unauthorized use or disclosure, (ii) the State Bar Data used or disclosed, (iii) who made the unauthorized use and received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure; and, (vi) any other information, including a written report, as reasonably requested by the State Bar of California.

15.11 Incident Response Plan. Contractor shall have a written incident response plan, to include prompt notification to the State Bar of California in the event of a security or privacy incident, as well as best practices for responding to a breach of the State Bar Protected Information and Data. Provider agrees to share its incident response plan upon request. Upon the occurrence of any actual or suspected unauthorized use or disclosure of State Bar Protected Information and Data. Contractor shall take reasonable steps to minimize or mitigate the risk of harmful or potentially harmful effects resulting from said actual or suspected unauthorized use or disclosure.

15.12 Contractor Obligations for Subcontractors. Contractor shall be responsible for compliance with all data security obligations herein by its subcontractors, agents, and any other person or entity providing services or support to Contractor in connection with this Agreement.

ARTICLE 16 - ASSIGNMENT

16.1 Prohibition on Assignments. Contractor shall not assign or otherwise transfer this Agreement to any third-party without the prior written consent of the State Bar.

ARTICLE 17 - COST SHARING OF ANY COPYRIGHT INFRINGEMENT LITIGATION

17.1 Cost Sharing Commitment and Conditions. If the NCBE initiates one or more claims for copyright infringement (the "Covered Claims") regarding Work Product or Test Materials created within the scope of this Agreement, against one Party or both Parties in a court of

competent jurisdiction, the Parties shall equally share ("Cost Sharing"), that is pay fifty percent (50%) of, the combined total of: (a) reasonable defense costs solely relating to the Covered Claims and (b) any damages awarded by the court solely relating to the Covered Claims, up to the amount set forth in Section 17.1.4.

17.1.1 Each Party shall have a right to choose and engage its own counsel at its own expense until reimbursement is requested pursuant to Section 17.4.

17.1.2 Claims other than NCBE copyright infringement (e.g. breach of any licensing agreement between Contractor's Parent and NCBE, third-party claims regarding administration or grading of the bar exam, non-NCBE copyright infringement, etc.) shall not be considered part of the Covered Claims and are not subject to such cost sharing.

17.1.3 No final judgment nor finding by the court is required for such Cost Sharing.

17.2 Cost Sharing If Covered Claims are Settled. If Covered Claims are resolved pursuant to a settlement agreement between one or more Parties and NCBE, then the Parties agree to Cost Sharing of reasonable defense costs and settlement costs incurred to defend and settle the Covered Claims.

17.2.1 Named parties in Covered Claims shall not be required to have consent from non-parties to the Covered Claims.

17.3 For a Party to benefit from such Cost Sharing with the other Party, whether through a lawsuit or through settlement, there must not be any judgment or finding by the court that its conduct violated any term of this Agreement with respect to such conduct contributing to the alleged copyright infringement. This means a Party shall not be entitled to Cost Sharing if there is any judgment or finding by a court that the Party engaged in any willful infringement.

17.4 Timing of Invoice for Shared Costs. If all conditions in Section 17.1 or Section 17.2, and Section 17.3 are satisfied, a Party shall be entitled to Cost Sharing reimbursement from the other Party within sixty (60) days of such a request in writing to the other Party and presentation of an itemized statement of such costs and fees. If both Parties have been named in Covered Claims and both have respectfully expended defense costs or incurred damages or settlement costs respectively, such reimbursements may be offset by amounts owed to the other Party.

17.5 Reasonable Defense Costs and Damages Defined. For purposes of this Article 17, "reasonable defense costs" means reasonable attorneys' fees, expert witnesses retained by such attorney(s), and documented court costs reasonably incurred by the Party in the defense of the Covered Claims. "Reasonable defense costs" do not include time or expenses associated with the Party's own employees, including their labor or services. For purposes of this Article 17, the term "damages" means actual, statutory or other damages (e.g. lost profits), including attorneys fees or costs of prevailing party that may be awarded to the NCBE, but does not include punitive, treble or increased damages that may be imposed on a finding of willfulness.

17.6 Cost Sharing Cap. Neither Party's maximum liability for Cost Sharing in this Article 17 shall not exceed a total of Six-Million, Seven-Hundred Fifty-Thousand Dollars (\$6,750,000).

17.7 Reservation of Rights. Notwithstanding anything in this Article 17, each Party reserves all of its rights to enforce its rights under this Agreement, including the representations and warranties under Article 5 and indemnification under Article 6, and any and all other rights provided by law.

ARTICLE 18 - USE OF ARTIFICIAL INTELLIGENCE

18.1 Contractor warrants and represents that it (including its Representatives) shall not use artificial intelligence ("AI") in a manner that causes or may cause a dilution of Intellectual Property Rights for, or in any way preclude the copyrightability or State Bar copyright ownership of, any Work Product, Test Materials, or individual test item, including any stimulus, stem, and response options. Without limiting the generality of the foregoing, Contractor warrants and represents that (a) it shall not use AI in a manner that does not conform to the US Copyright Office Guidance (https://copyright.gov/ai/ai_policy_guidance.pdf) (or any update, amendment, or new guidance) regarding the requirements for copyrightability and ownership; (b) the elements of authorship in any Work Product, Test Materials, and individual test item (the literary expression and any elements of selection, arrangement, etc.) shall be conceived, executed, and actually formed by humans, not the AI; (c) any use of AI tools shall be solely to enhance limited elements of existing human-created Work Product, and any AI contributions shall be the result of human original mental conception; (d) any AI-generated content shall be de minimis; and (e) any use of AI shall not require the State Bar to exclude or disclaim any content from any copyright registration application for any Work Product.

18.2 Contractor further warrants and represents that it shall ensure that any AI tools or systems that it (including its Representatives) may use, are closed to any third party, and that it shall not use or authorize any third party to use any Work Product or drafts thereof for purposes of AI training or development of machine learning language models (LLMs), or to reproduce or otherwise exploit any Work Product.

18.3 Contractor shall (i) bear all risk and responsibility should any Work Product be deemed ineligible for copyright protection due to use or incorporation; and (ii) indemnify, defend, and hold harmless the State Bar from and against any and all third party claims, defenses, demands, damages, debts, liabilities, losses, obligations, costs, expenses, liens, judgments, awards, penalties, fines, actions, or causes of action (including but not limited to reasonable attorneys' fees, costs, and expenses), whether or not litigation is actually commenced, arising out of or in connection with any claim that the Work Product is not the intellectual property of the State Bar due to use or incorporation of AI or with any alleged breach of these warranties and representations.

18.4 Contractor shall disclose the extent and nature of its use of AI in connection with the creation of any Work Product, in writing prior to delivery of any affected Work Product. Contractor shall maintain records documenting Contractor's use of AI in connection with the

creation of the Work Product, for not less than four (4) years following termination or expiration of this Agreement, and shall provide such records to the State Bar upon its request.

ARTICLE 19 - GENERAL PROVISIONS

19.1 **Entire Agreement.** This Agreement, together with any attachments or appendices attached hereto, supersedes any and all other agreements, either oral or written, which may exist between the Parties with respect to the subject matter hereof, and contains all of the covenants and agreements between the Parties as of the Effective Date of this Agreement. By signing below, each Party acknowledges that no agreements, statements, or promises outside of those expressly set forth in this Agreement will be binding on the Parties.

19.2 **Governing Law/Jurisdiction/Venue.** This Agreement is deemed to have been made and entered into by the Parties at San Francisco, California, and will be governed and construed according to the laws of the State of California, without giving effect to any conflict of laws principles that would cause the laws of any other jurisdiction to apply. Contractor agrees to bring any action or proceeding to enforce this Agreement only in the appropriate state court located in the City and County of San Francisco, California or the County of Los Angeles, California. Contractor irrevocably submits to the exclusive jurisdiction of these courts and waives the defense of inconvenient forum to the maintenance of any action or proceeding in such venue. Nothing contained in this Agreement, including, but not limited to, Article 17 or Article 8, constitutes a waiver of the State Bar's sovereign immunity or any individual's good faith, official, or otherwise applicable immunities.

19.3 **Waiver.** No waiver of a breach, failure of any condition, right, or remedy contained in or granted by the provisions of the Agreement will be effective unless and until it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing so specifies.

19.4 **Modifications.** No amendment, alteration, or variation of the terms of this Agreement will be valid unless made in writing and signed by both Parties.

19.5 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which, will constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email, or any other reliable means will be effective for all purposes as the delivery of a manually executed original counterpart. Either Party may maintain a copy of this Agreement in an electronic form. The Parties further agree that a copy produced from the delivered counterpart or electronic form by any reliable means (for example, photocopy, facsimile, or printed image) will be considered an original in all respects.

19.6 **Electronic Signature.** The Parties acknowledge and agree that this Agreement may be executed by an electronic signature (digital, encrypted, or any other form), which will be

considered an original and manual signature for all purposes and will have the same force and effect as an original and manual signature. Without limitation, an “electronic signature” will include faxed versions of an original signature, electronically scanned, and transmitted versions (e.g., via pdf) of an original signature, or transmittal via any other electronic means, and will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

19.7 Titles. The titles used are not a part of this Agreement and are included solely for convenience and have no bearing upon and do not in any way limit the application of the terms and conditions of this Agreement.

19.8 Severability. If any phrase, sentence, clause, or provision in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being affected, impaired, or invalidated in any way.

19.9 Survival. The provisions of Articles 5, 6, 8, 9, 10.5-10.7, 14, 15, 17, 18, and 19 (Warranties and Representations, Indemnity, Confidentiality, Intellectual Property Rights, Termination of Agreement, Conflict of Interest, Audit, Data Security, Cost Sharing of any Copyright Infringement Litigation, Use of Artificial Intelligence, and General Provisions) will survive the cancellation, termination, or expiration of this Agreement.

19.10 Disputes. In the event of a dispute, each Party will continue with its responsibilities under this Agreement, including but not limited to, continuing to provide the Services, unless and until the other Party instructs otherwise in writing.

19.11 Authority to Contract. Each Party represents and warrants that it has full power to enter into and perform its respective obligations under this Agreement and that the person signing this Agreement has been properly authorized and empowered to enter into this Agreement. Each Party acknowledges that it has read and understands this Agreement and will be bound by it.

19.12 Attorneys’ Fees. The prevailing party in any legal action brought for breach or to enforce any provision of this Agreement, shall be entitled to receive reasonable attorneys’ fees, experts’ costs, and all costs of suit.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

<p>THE STATE BAR OF CALIFORNIA, a public corporation</p> <p>DocuSigned by: By: <u>Leah Wilson</u> 5C1D881F4D5F436...</p> <p>Print: <u>Leah Wilson</u></p> <p>Title: <u>Executive Director</u></p> <p>Date: <u>8/9/2024 2:54 PM PDT</u></p> <p>Signed by: By: <u>Brandon Stallings</u> 41045772D71F4B9...</p> <p>Print: <u>Brandon Stallings</u></p> <p>Title: <u>Chair, Board of Trustees</u></p> <p>Date: <u>8/9/2024 2:57 PM PDT</u></p>	<p>KAPLAN EXAM SERVICES, LLC a Delaware limited liability company</p> <p>DocuSigned by: By: <u>Greg Marino</u> 77DD2B4F16947C...</p> <p>Print: <u>Greg Marino</u></p> <p>Title: <u>Chief Executive Officer</u></p> <p>Date: <u>8/9/2024 4:51 PM PDT</u></p>
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EXHIBIT A – GUARANTOR AGREEMENT

**GUARANTOR AGREEMENT
BETWEEN
KAPLAN NORTH AMERICA, LLC
AND
KAPLAN EXAM SERVICES, LLC**

This guarantor agreement ("Guarantor Agreement") is executed by Kaplan North America, LLC ("Guarantor"), a Delaware limited liability company having a principal place of business at 1515 W. Cypress Creek Road, Fort Lauderdale, FL 33309, in favor of The State Bar of California ("State Bar"), a California public corporation having a principal place of business at 180 Howard Street, San Francisco, CA 94105 with respect to the obligations of Kaplan Exam Services, LLC ("Contractor"), a Delaware limited liability company having a principal place of business at 1515 W. Cypress Creek Road, Fort Lauderdale, FL 33309, under that certain bar exam test materials preparation services agreement (as may be modified, "Agreement") executed between Contractor and the State Bar.

RECITALS

WHEREAS, Guarantor wholly owns Contractor, which is a newly formed subsidiary of Guarantor.

WHEREAS, State Bar requires reassurance and a guarantee from Guarantor that Contractor, as a new company, can and shall financially and otherwise fulfill all its obligations of the Agreement.

WHEREAS, it is in the interest of Contractor that said guarantee be provided by Guarantor.

WHEREAS, State Bar would not enter into the Agreement without this Guarantor Agreement from Guarantor, and Guarantor as owner of the Contractor, will materially benefit from the Agreement; consequently, by its execution and delivery of this Agreement, Guarantor desires to induce State Bar to execute the Agreement and State Bar is relying on this Guarantor Agreement in executing the Agreement.

NOW, THEREFORE, in consideration of covenants and agreements herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

Guarantor hereby unconditionally guarantees to State Bar the full and prompt performance of Contractor's financial and other obligations (the "Obligations") under the Agreement and agrees to provide funds to Contractor sufficient to enable Contractor to perform the Obligations.

Guarantor's obligations under this Guarantor Agreement are absolute and unconditional, and should Contractor not be capable of fulfilling any financial or other obligation of the Agreement, Guarantor shall provide all unfulfilled financial and other Obligations to the Contractor, such that Contractor can and shall fulfill its Obligations to State Bar, without any defense or offset.

Upon the occurrence of any default, breach of performance or unfulfilled financial or other obligation by Contractor under the Agreement, Guarantor shall provide cure, financial support or other support to fulfill the Obligation and assure Contractor is in good standing with State Bar.

Any act of State Bar, or its successors or assigns, consisting of a waiver of any of the terms, covenants or conditions of the Agreement, or the giving of any consent to any manner or thing relating to the Agreement, or the granting of any indulgences or extensions of time to Contractor, may be done without notice to Guarantor and without releasing Guarantor from any of its obligations hereunder. No delay on the part of State Bar in exercising any right hereunder or under the Agreement shall operate as a waiver of such right or of any other right of State Bar, nor shall any delay, omission or waiver on any one occasion be deemed to be a bar to or a waiver of the same or any other right on any further occasion.

The obligations of Guarantor hereunder shall not be released by State Bar's receipt, application or release of any security given for the payment, performance or observance of any term, covenant or condition in the Agreement contained on Contractor's part to be paid, performed or observed, nor by any modification of the Agreement, regardless of whether Guarantor consents thereto or receives notice thereof. The liability of Guarantor hereunder shall in no way be affected by, and Guarantor hereby waives any defense arising by reason of: (a) the release or discharge of Contractor in any creditor's receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of (i) the liability of Contractor or the estate of Contractor in bankruptcy or (ii) any remedy for the enforcement of Contractor's liability under the Agreement resulting from the operation of any present or future provision of the Bankruptcy Code or other statute or from the decision of any court; (c) the rejection or disaffirmance of the Agreement in any such proceedings; (d) the assignment or transfer of the Agreement by Contractor; (e) any disability or other defense of Contractor; (f) the cessation from any cause whatsoever of the liability of Contractor under the Agreement; (g) the exercise by State Bar of any of its rights or remedies reserved under the Agreement or applicable law; or (h) any amendment, modification, renewal, extension, termination or any other change in the terms of the Agreement.

Guarantor may be joined in any action against Contractor in connection with said Obligations of Contractor and recovery may be had against Guarantor hereunder without first taking any action whatsoever against Contractor or its successors and assigns, pursuing any other remedy or applying any security State Bar may hold, and Guarantor hereby waives all right to assert or plead at any time any statute of limitations as relating to the Agreement or the obligations of Guarantor hereunder and waives any and all surety or other defenses in the nature thereof including, without limitation, any provision of law requiring State Bar to proceed first against Contractor. Guarantor further waives any defense arising by reason of: (a) any act or omission of Contractor or others which directly or indirectly results in or aids the discharge of any of the Obligations guaranteed hereunder by operation of law or otherwise; (b) the forbearance by State Bar from the strict and timely enforcement of any of its rights under the Agreement; or (c) any defense to liability under this Guarantor Agreement based upon Guarantor's inability to exercise any right of subrogation to the rights of State Bar against Contractor. Guarantor waives any right to enforce

any remedy that Contractor now has or may hereafter have against any person, and waives any benefit of, and any right to participate in, any security, now or hereafter held by Contractor or State Bar. Guarantor's obligations hereunder shall not be affected by any right of setoff or any counterclaim, and Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guarantor Agreement and of the existence, creation, or incurring of new or additional Obligations, and all other notices and demands of any kind and description now or hereafter provided for by any statute or rule of law. Guarantor specifically agrees that Guarantor shall not be released from liability hereunder by any action taken by Contractor or State Bar. Guarantor further expressly waives all rights and benefits which might otherwise be available to Guarantor under California Civil Code Sections 2787 to 2855, or any other applicable laws, including any provisions which would require State Bar to proceed first against Contractor or any assignee or subcontractor of Contractor prior to enforcement of Guarantor's obligations under this Guarantor Agreement.

Until all the terms, covenants and conditions in the Agreement on Contractor's part to be paid, performed and observed, are fully paid, performed and observed, Guarantor (a) shall have no right of subrogation against Contractor by reason of any payments or acts of performance by Guarantor hereunder; and (b) subordinates any liability or indebtedness of Contractor now or hereafter held by Guarantor to Contractor's Obligations to State Bar under the Agreement.

Guarantor hereby agrees to deliver to State Bar such financial statements of Guarantor as may be reasonably requested by State Bar.

This Guarantor Agreement shall apply to the Agreement and any extension, renewal, modification or amendment thereof. In the event this Guarantor Agreement shall be held ineffective or unenforceable by any court of competent jurisdiction or in the event of any limitation of Guarantor's liability hereunder, other than as expressly provided herein, then Guarantor shall be deemed to be the Contractor under the Agreement with the same force and effect as if Guarantor were expressly named as a joint and several party thereto with respect to the Obligations of Contractor thereunder hereby guaranteed.

This Guarantor Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to declare or enforce any rights or obligations under this Guarantor Agreement may be commenced by State Bar in a state court of general jurisdiction of the City and County of San Francisco or the County of Los Angeles in the State of California. Guarantor hereby consents to the jurisdiction of such Court for such purposes, and agrees that any notice, complaint or legal process so delivered shall constitute adequate notice and service of process for all purposes and shall subject Guarantor to the jurisdiction of such court for purposes of adjudicating any matter related to this Guarantor Agreement.

Guarantor shall pay to State Bar, without demand, any and all costs and/or expenses, including, without limitation, attorneys' fees and costs and court costs that State Bar expends or incurs in collecting or compromising the Obligations guaranteed hereunder or in enforcing this Guarantor Agreement against Guarantor, whether or not suit is filed, expressly including, without limitation,

all court costs and attorneys' fees incurred by State Bar in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving the Guarantor as the insolvent or bankrupt party which in any way affects the exercise by State Bar of any of its rights or remedies hereunder.

Notices to Guarantor shall be addressed to the address for Guarantor set forth in the first paragraph above, or to such other address designated by Guarantor to State Bar in writing. Under no circumstances shall State Bar be obligated to give Guarantor any notice not specifically required to be given by State Bar pursuant to this Guarantor Agreement.

Guarantor represents and warrants to State Bar that (a) the Agreement indirectly confers substantial and material benefits to Guarantor; (b) there are no actions, suits or proceedings pending, or to the knowledge of Guarantor threatened, against or affecting the Guarantor which could have a material adverse effect on the ability of the Guarantor to honor the Obligations guaranteed hereunder, or involving the validity or enforceability of this Guarantor Agreement, at law or in equity, and Guarantor, to the best of its knowledge after due investigation, is not in default or in violation with respect to, or operating under or subject to, any order, writ, injunction, decree or demand of any court or any governmental authority; (c) Guarantor is not insolvent (as such term is defined in the Bankruptcy Code of 1978, 11 U.S.C. Section 101, et seq., as amended) and will not be rendered insolvent by execution of this Guarantor Agreement or the consummation of the transactions contemplated hereby; and (d) Guarantor has no counterclaims, offsets or defenses with respect to this Guarantor Agreement.

Guarantor warrants and agrees that each of the waivers set forth in this Guarantor Agreement is made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law.

Nothing contained in this Guarantor Agreement constitutes a waiver of the State Bar's sovereign immunity or any individual's good faith, official, or otherwise applicable immunities.

This Guarantor Agreement shall constitute the entire agreement of Guarantor with State Bar with respect to the subject matter hereof.

IN WITNESS WHEREOF, Guarantor has executed this Guarantor Agreement concurrently with the execution and delivery of the Agreement.

KAPLAN NORTH AMERICA, LLC a Delaware limited liability company	
By:  77DD2B4E16847C	Date: 8/9/2024 4:51 PM PDT
Greg Marino, Chief Executive Officer	

EXHIBIT 25

Committee of Bar Examiners Meeting September 30, 2024

RESOLUTION OF THE COMMITTEE OF BAR EXAMINERS APPROVING MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

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.

VOTE

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

Motion carried.

I hereby certify that the foregoing is a full, true and correct copy of the resolution adopted by the Committee of Bar Examiners at its meeting held on September 30, 2024, by teleconference.



Devan McFarland, Committee Secretary

EXHIBIT 26

Term Sheet: Meazure Learning Administration of California Bar Examination

This Term Sheet (“Term Sheet”) summarizes the key terms of an agreement currently being negotiated by and between The State Bar of California (“State Bar”), a public corporation having a principal place of business at 180 Howard Street, San Francisco, CA 94105, and ProctorU, Inc. d/b/a Meazure Learning, a Delaware Corporation (“Meazure Learning”), having a principal place of business at 7901 Jones Branch Drive, #330, McLean, VA 22102, for the development of the platform and administration of the California Bar Examination in 2025. This Term Sheet is intended to set forth the key provisions and requirements relating to the exam delivery upon which both parties agree and is subject to negotiations of remaining terms of such agreement.

Exam Administration

1. Examinations will be administered for standard test takers during the following two-day testing windows: February 25-26, 2025, and July 29-30, 2025.
2. Meazure Learning will develop, deliver and implement a platform according to the terms herein and as specified in the agreement for online item banking, examination delivery, and live remote proctoring.
3. Meazure Learning will administer the examinations remotely via secure live remote proctoring, and in-person at available test center locations as well as pop-up locations according to the terms in the agreement.
4. Meazure Learning has the capacity to deliver all of the examinations (approximately 13,500 annually – 4,500 in February and 9,000 in July) via its remote online platform and will provide spaces for up to 30% of exams taken in person at available test center locations or via pop-up locations, as applicable.

Testing Accommodations

1. The State Bar will receive and process testing accommodation applications in accordance with the State Bar rules and inform Meazure Learning as to each applicant’s approved accommodations.
2. Meazure Learning shall provide the approved accommodations at its test centers and via its online platform.

Customer Service and Technical Support

1. Meazure Learning will provide an online mechanism for applicants to schedule their exams, which will include options for in-person and online exams.
2. Meazure Learning will provide customer service support to applicants seeking additional help with the scheduling.

3. Meazure Learning will provide skilled information technology (IT) technicians capable of addressing unexpected technical issues that could adversely affect administration of each Examination.
4. Meazure Learning will provide technical support to exam takers before, during, and after the exam administration via live chat, telephone, and email and strive to achieve average wait times identified in the agreement.

Meazure Learning Online Platform Requirements

1. Meazure Learning will establish minimum system requirements for examinees that will be communicated in advance to the State Bar.
2. Except in the case where a security or other critical update is required to maintain minimally required Service Level Agreements (“SLA” or “SLAs”) for its customers (each a “Critical Update”), Meazure Learning shall not update, re-code, refresh or otherwise achange the Meazure Learning platform during an examination, or 48 hours prior to the exam. If such Critical update is required, Meazure Learning will notify the State Bar and ensure sufficient technicians are available to support examinees.
3. Meazure Learning will ensure that its platform is fully operational and provides uninterrupted service levels at the standards as set forth in the agreement during examinations.

Testing Center Requirements

1. Meazure Learning will ensure that all in-person test centers will maintain the minimum environmental conditions as specified in the agreement.
2. All test centers shall be compliant with the Americans with Disability Act and other State Bar examinee accommodation requirements.

Proctor Requirements

1. Meazure Learning will ensure that its Proctors are fully trained in the State Bar’s examination rules and protocols intended to prevent cheating incidents, prohibited and allowed items, implicit bias, and customer service.
2. In the online administration of the exam, Meazure Learning will provide a ratio of one live remote proctor for every four test takers.

Security

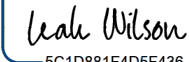
1. Meazure Learning will comply with all data security requirements as set forth in the agreement that are intended to prevent hacks and data breaches and will promptly respond in the unlikely event that a breach occurs.

- 2. Meazure Learning shall comply with all confidentiality requirements set forth in the agreement to protect highly sensitive information involved in State Bar examinations, including examinee information and examination questions.

This Term Sheet is not intended to and shall not be deemed to be a binding contract or an offer to enter into a contract and will not create any right or obligations on either party based on any legal or equitable theory including the right to continue any negotiations. Only a subsequent formal written agreement executed and delivered by both parties will bind the parties as to any matter discussed herein. Neither State Bar nor Meazure Learning will be entitled to rely on this Term Sheet or on any representations made with respect to the transactions described herein unless such representations are in writing and are expressly incorporated in a subsequent formal written agreement.

If this Term Sheet accurately reflects your understanding, please sign below to indicate your acceptance.

THE STATE BAR OF CALIFORNIA, a public corporation

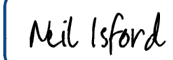
By: 
5C1D881E4D5F436

Print: Leah Wilson

Title: Executive Director

Date: 10/4/2024 | 11:44 AM PDT

ProctorU, Inc. d/b/a Meazure Learning, a Delaware Corporation

By: 
0C20D022FD654E...

Print: Neil Isford

Title: Chief Customer Officer

Date: 10/4/2024 | 12:37 PM PDT