



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM III.B OCTOBER 2023 COMMITTEE OF BAR EXAMINERS**

**DATE:** October 13, 2023

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

**FROM:** Lisa J. Cummins, Principal Program Analyst, Examination Development

**SUBJECT:** Action on Modifying the First-Year Law Students' Examination to Eliminate Essay Questions, Resulting in an All-Multiple-Choice Exam

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### **EXECUTIVE SUMMARY**

At its August 2023 meeting, the Committee of Bar Examiners (committee) received a presentation from psychometrician, Roger Bolus, Ph.D., highlighting the findings from his report entitled, "Profiling the Immediate and Longer-Term Outcomes of the California First-Year Law Students' Examination" (April 26, 2022; updated September 13, 2023. See Attachment A). One of Dr. Bolus's key findings was that the overall reliability and predictive validity of the First-Year Law Students' Examination (FYLSX) would be improved if the essay section of the exam were eliminated completely, leaving the exam multiple-choice only.

The committee has the authority to determine the format, scope, topics, content, questions, grading process, and passing score for the FYLSX.

Dr. Bolus's full report is attached to this agenda item for the committee's review. Consistent with the recommendations of that report, the committee is asked to approve modification to the format of the FYLSX to eliminate the essay section. The result will be an exclusively multiple-choice exam.

At a future meeting, the committee will be asked to authorize a process to establish the appropriate passing score for the modified FYLSX.

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## BACKGROUND

The California First-Year Law Students' Examination (FYLSX) is administered twice each year in June and October. Pursuant to the authority delegated to it by the State Bar's Board of Trustees, the committee determines the examination's format, scope, topics, content, grading process, and passing score (*Admissions Rule 4.56*).

Currently, the FYLSX is comprised of a 4-hour essay section and a 3-hour multiple-choice section. It covers the topics of contracts, criminal law, and torts. The exam contains:

- 4 Essay Questions
- 100 Multiple-Choice Questions

The essay questions are submitted by law professors and other qualified drafters nationally and then selected and edited by a member of the State Bar's Examination Development and Grading (EDG) Team. Oversight for the final selection and editing of the essay questions is provided by State Bar staff. Essay questions are not reused; a new set of questions must be developed for each administration of the exam. After administration of the exam, that same EDG Team member who selects and edits the essay questions also supervises a team of 12 graders (3 for each essay question) and then performs reappraisal on the examination answers designated by the State Bar's psychometrician for that phase of grading.

Question drafters receive a flat rate for initially drafting the essay questions and are eligible for additional compensation if their questions are selected for use on an exam. EDG Team members are paid hourly for the selection and editing of the essay questions and then a flat rate for supervising the grading. Each grader is paid a flat rate for grading. The psychometrician is paid a flat rate for work done on each FYLSX, which includes scaling of the essay section to the multiple-choice, determination of which applicants move on to reappraisal, and other services.

In 2022, the State Bar requested psychometrician Roger Bolus, Ph.D., to conduct a study and prepare a report tracking the population and performance of applicants who have sat for the FYLSX. The study was designed to provide a broad historical perspective on the composition of the student population, their performance (both in terms of test scores and passage rates), and their eventual outcomes on the California Bar Examination (CBX). The study was also designed to offer insights into the structural aspects of the FYLSX, including its composition, scoring, and decision rules regarding passage. The analyses were conducted with the objective of evaluating the feasibility of reducing the testing burden on applicants and improving the efficiency of administering the exam, while simultaneously maintaining the exam's reliability and validity. The result is Dr. Bolus's report entitled, "Profiling the Immediate and Longer-Term Outcomes of the California First-Year Law Students' Examination" (April 26, 2022; updated September 13, 2023), attached to this agenda item. Dr. Bolus highlighted the key findings from this report in his presentation to the committee at its August 2023 meeting.

## DISCUSSION

Dr. Bolus's study looked at data from FYLSX administrations between June 2020 and October 2021. This agenda item highlights some of the key findings of the psychometric analysis of the performance of 34 separate cohorts of first-time FYLSX takers beginning in June 2020 and extending through October 2016. Ending the FYLSX study cohort at October 2016 provided a sufficient follow-up period to track these examinees through subsequent attempts to pass the CBX.

In short, the report reached the following conclusions regarding the FYLSX:

- Performance on the FYLSX is a strong indicator of CBX performance.
- The scores from the Essay section were only weakly related to CBX scores.
- The reliability and predictive validity of the FYLSX would be most improved by eliminating the Essay section completely.

### Key Data

There was a strong relationship between FYLSX and CBX performance, with the scores on the Multiple-Choice section correlating much more strongly with CBX scores than the scores on the Essay section. This finding suggests that the Essay scores on the FYLSX not only added little to the predictive value of the FYLSX, but may actually reduce it.

In his report, Dr. Bolus notes that the reliability of the Multiple-Choice scores have been consistently quite high (averaging .89). These levels come close to meeting the upper reliability standards of a high-stakes examination and are comparable to a 100-item version of the current Multistate Bar Examination administered on the CBX.

The relatively low reliability of the Essay section, in tandem with the high reliability of the Multiple-Choice section suggests that the overall reliability of the FYLSX and its predictive validity could be improved by either more heavily weighting the Multiple-Choice section (relative to the Essay section) or possibly eliminating the Essay section completely, which would achieve the most improvement in reliability and predictive validity.

Dr. Bolus also concluded that this change could be made without adverse impact on any particular group of applicants. Regarding the current format of the FYLSX, Dr. Bolus found that, after controlling for initial FYLSX performance, no differences were observed between males and females in the likelihood of eventually passing the exam. Blacks were somewhat less likely to pass than the other racial/ethnic groups; however, there was insufficient data to determine the root cause of that difference. Overall, there were minimal to no differential impacts on FYLSX performance attributable to group membership, after other factors were taken into consideration.

To investigate whether changes to the format or scoring of the FYLSX would have an adverse impact on the overall FYLSX passage rates or a differential impact on selected demographic groups, Dr. Bolus conducted additional simulations and compared outcomes. A series of tests conducted for gender, racial/ethnic group, and law school type indicated that none of the specific groups benefited more from the changes than any other group.

### Qualitative Issues

Dr. Bolus notes that “some have argued that writing is an essential legal skill and should be assessed in any examination process related to a 1L curriculum.” Some members of the committee may instinctually feel the same. However, the Essay section is only weakly related to bar exam scores and from a psychometric standpoint, a major reason for the weak relationship is the relatively low reliability of the Essay section.

If including an Essay section on the FYLSX is considered by the committee to be essential, an alternative to eliminating the essays altogether would be to adjust its relative weighting. To evaluate the impact of changing scoring weights of the respective sections, Dr. Bolus examined two alternative scoring schemas. In each schema, the Multiple-Choice section was given more weight than the Essay section. In the first, the weighting was 2/3 to 1/3 and in the second, the weighting was 3/4 to 1/4. Under the 3/4 Multiple-Choice weighting scheme, the average reliability was .90, in the upper levels of reliability standards for a high-stakes examination.

### Key Impacts of an All-Multiple-Choice FYLSX

- Eliminate the cost of developing four new essay questions twice each year for each administration of the exam
- Eliminate the cost of grading applicants’ answers to the essay questions
- Eliminate the reappraisal phase of grading, since pass/fail decisions would be based solely on multiple-choice scores, which involve no subjectivity in scoring
- Reduce the testing burden on applicants by limiting testing time to one-half day
- Reduce the time it takes for applicants to receive their results from the exam
- Allow the possibility of administering the exam more than two times per year

On the strength of Dr. Bolus’s study findings and report, staff proposes and recommends that the committee approve modification of the First-Year Law Students’ Examination to eliminate the essay section from the exam, while retaining the multiple-choice section. The result will be an all-multiple-choice exam.

## **FISCAL/PERSONNEL IMPACT**

The proposal would reduce the cost of developing, administering, and grading of the First-Year Law Students' Examination.

- At a high level, costs for acquiring the questions, editing the questions, grading the answers, and the services of a psychometrician are roughly \$100,000 per year.

In addition, there would be cost savings attributable to shorter exam administration time and other factors.

## **RECOMMENDATION**

It is recommended that the committee approve revising the format of the First-Year Law Students' Examination to eliminate the essay section, making the examination an all-multiple-choice exam.

It is also recommended that the committee direct staff to engage the State Bar's psychometrician and take any additional steps necessary to effectuate the modification of the First-Year Law Students' Examination to an all-multiple-choice exam.

## **PROPOSED MOTION**

Should the Committee of Bar Examiners agree with the staff recommendation, the following motion would be appropriate:

**MOVE** that the format of the California First-Year Law Students' Examination be changed to an all-multiple-choice examination.

**FURTHER MOVE** that staff be directed to engage the State Bar's psychometrician and take any additional steps necessary to effectuate the modification of the First-Year Law Students' Examination to an all-multiple-choice examination.

## **ATTACHMENT LIST**

- A. "Profiling the Immediate and Longer-Term Outcomes of the California First-Year Law Students' Examination" (April 26, 2022; updated September 13, 2023)