



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.examsoft.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