



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

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Cal Northern School of Law

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

Dean Martin Pritikin
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Dean Brian Purtill
Empire College School of Law

Dean Matthew Reynolds
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Dean Lisa Hutton
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Dean Filomena Yeroshek
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