



The State Bar of *California*

**Blue Ribbon Commission on the
Future of the Bar Exam
Report and Recommendations**

February 27, 2023

EXECUTIVE SUMMARY

Section to be completed after February 27 meeting

RECOMMENDATIONS ADOPTED

Section to be completed after February 27 meeting

INTRODUCTION

HISTORICAL CONTEXT FOR THE WORK OF THE BLUE RIBBON COMMISSION

In February 2017, the Supreme Court of California called on the State Bar to undertake a “thorough and expedited study” of the pass rate for the California Bar Exam (CBX) to include “identification and exploration of all issues affecting California bar pass studies.” The State Bar undertook four separate studies to explore the bar exam, culminating in the *Final Report on the 2017 California Bar Exam Studies*, submitted to the Supreme Court on December 1, 2017.¹ As detailed in the *Final Report*, the State Bar conducted the following studies to understand whether the CBX, as administered, was a good tool to assess whether candidates met the minimum competence required of entry-level lawyers, and to explore causes of the declining pass rate²:

- *Recent Performance Changes on the California Bar Examination: Insights from CBE Electronic Databases*
- *Performance Changes on the California Bar Examination Part 2: New Insights from a Collaborative Study with California Law Schools*
- *Law School Exam Performance Study*³
- *Standard Setting Study for the California Bar Exam*
- *Content Validation Study for the California Bar Exam*

This effort represented the most in-depth analysis of the CBX in some time. In fact, after a series of changes that were enacted throughout the 1970s and 1980s, the structure and **passing** score for the CBX remained in place since 1987. The only change occurred thirty years later when, in July 2017, the CBX was reduced from a three-day to a two-day format, and the relative weighting of the essay/performance test and Multistate Bar Exam (MBE) portions of the exam were adjusted in response. However, at no time previously in the State Bar’s

¹ Available at: <https://www.calbar.ca.gov/Portals/0/documents/reports/2017-Final-Bar-Exam-Report.pdf>

² These bar exam studies may be accessed at: <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/California-Bar-Examination-Studies>

³ This study was referenced in the final report but was not completed until 2018.

history had either a formal standard setting or content validation study been conducted to inform exam content and grading modifications.⁴

Despite the historic nature of that work, it became clear that additional research was needed to ensure the reliability, validity, and fairness of the CBX; the Board of Trustees directed State Bar staff to undertake that research in its January 2018 update to the State Bar’s 2017–2022 Strategic Plan.⁵ Four separate studies were completed in response to this directive:

- *The Practice of Law in California: Findings from the California Attorney Practice Analysis and Implications for the California Bar Exam* (referred to as the CAPA Report)
- *Differential Item Function Analysis Report*
- *Review of the California Bar Examination Administration and Related Components*
- *A Report on the Phased Grading of the California Bar Examination.*⁶

The CAPA Report is most relevant for purposes of the work of the Blue Ribbon Commission (BRC).

The California Attorney Practice Analysis Working Group (CAPA Working Group) was formed to address a major deficiency in the initial set of studies conducted by the State Bar—specifically that, reacting to the direction of the Supreme Court and the short timeline for completion of the efforts, the content validation study relied heavily on a slightly dated national survey of practicing attorneys to determine what content should be covered on the exam.⁷ A practice analysis is a “systematic collection of data describing the responsibilities required of a profession and the skills and knowledge needed to perform these responsibilities.” Use of the 2012 national study, it was determined, might not have provided the State Bar with sufficient information to understand what knowledge, skills, and abilities are required for an entry-level

⁴ This background is derived from the 2017 *Final Report* and the agenda item presented to the Board of Trustees on September 6, 2017, titled Decision and Action on Recommendation from Committee of Bar Examiners re California Bar Examination Pass Line – Return from Public Comment, accessible at: <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000019981.pdf>.

⁵ The Admissions Objectives in Goal 2 of the Strategic Plan were amended to add the following objectives: Objective “b. After the results of the February 2019 Bar Exam are published, evaluate the results of the two-day exam. [Objective] c. No later than June 30, 2019, conduct a California-specific job analysis to determine the knowledge, skills, and abilities for entry-level attorneys. Upon completion, conduct a new content validation study.”

⁶ See a discussion of each of these reports in *Report on and Approval of Recommendations Regarding the California Bar Exam Studies, Report to the Board of Trustees of the State Bar of California*, May 14, 2020, available at: <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000025918.pdf>. The CAPA report contained in the agenda item was labeled draft. The final report is available at: <https://www.calbar.ca.gov/Portals/0/documents/reports/2020/California-Attorney-Practice-Analysis-Working-Group-Report.pdf>.

⁷ This survey was conducted by the National Conference of Bar Examiners.

lawyer in California. The CAPA Working Group oversaw the process for evaluating gauging “alignment between the content of the CBX and the practice of law in California.”⁸

The primary data collection vehicle for CAPA’s work was a practice analysis survey. Over 16,000 participants respondents provided roughly 74,000 survey responses. After extensive analysis of the data, comparison with the findings from a practice analysis survey conducted simultaneously by the National Conference of Bar Examiners (NCBE), and debate among working group members, the CAPA Working Group adopted the following key recommendations:

- Adopt the following construct statement to define the general scope of the bar exam: “The California Bar Examination assesses legal knowledge, competency areas, and professional skills required for the entry-level practice of law and the effective, ethical representation of clients.” The working group also recommended that entry-level defined as within the first three year of practice.
- Adopt the following eight legal topics for a new bar exam content outline:
 - Administrative Law and Procedure
 - Civil Procedure
 - Constitutional Law
 - Contracts
 - Criminal Law and Procedure
 - Evidence
 - Real Property
 - Torts
- Focus the bar exam on the following skill areas:
 - Drafting and writing
 - Research and investigation
 - Issue-spotting and fact-gathering
 - Counsel/advice
 - Litigation
 - Communication and client relationship

Commented [NA1]: Comment: There should be a civility component addressed in the new Bar Exam. Adding a civility component will ensure that law school and bar test preparation courses dedicate more time and commitment to this very important subject in law practice.

I have been threatened many times by opposing counsel at deposition.

Opposing counsel use confidential settlement discussions to engage in harassment, including taunting and sexual harassment.

This is a serious issue.

THE FORMATION OF THE BLUE RIBBON COMMISSION ON THE FUTURE OF THE CALIFORNIA BAR EXAM

The May 2020 report to the State Bar Board of Trustees discussing the CAPA Report recommendations concluded: “The results of the CAPA study, in conjunction with the concurrent parallel undertaking by the NCBE, suggest the need for consideration of significant policy issues, including a foundational question of whether or not California will continue to

⁸ CAPA Report, p. 3.

develop its own bar exam. This question . . . will require a longer-term, deliberative planning process.” The Board agreed and directed staff to move forward on partnering with the Supreme Court on the creation of a joint BRC on the Future of the California Bar Exam.⁹

On July 16, 2020, the Board adopted a draft charter, to be finalized in consultation with the Supreme Court, and proposed the composition of the BRC, including a total number of members and the category or appointing authority for each. Staff was directed to solicit nominations for submission to the Supreme Court for appointment.

BLUE RIBBON COMMISSION MEMBERS

On April 28, 2021, the Supreme Court announced the appointment of the 19-member BRC.

Member	Category Appointed to Fill
Justice Patricia Guerrero, Chair	Judges
Joshua Perttula, Vice-Chair	State Bar Board of Trustees
Susan Bakhshian	Law School Deans/Faculty
David Boyd	NCBE Testing Task Force
Alex Chan	Committee of Bar Examiners
Ona Dosunmu	California Lawyers Association
Charles Duggan	California Lawyers Association/Young Lawyer
Jackie Gardina	CAPA Working Group
Ryan M. Harrison, Sr.	Council on Access and Fairness
Dr. James Henderson	National Expert on Examinations
Esther Lin	Committee of Bar Examiners
Dr. Tracy Montez	Department of Consumer Affairs
Judge Glen Reiser (Ret.)	Judges
Natalie Rodriguez	Law School Deans/Faculty
Judge Kristin Rosi	Council on Access and Fairness
Emily Scivoletto	CAPA Working Group
Karen Silverman	Expert: Exam Software, Security, and Privacy
Mai Linh Spencer	Law School Deans/Faculty
Amy Williams	California Lawyers Association

Over time, two members rotated off the BRC:

- Justice Patricia Guerrero: Upon her appointment as Associate Justice of the Supreme Court of California (prior to her most recent appointment as Chief Justice of California), Justice Guerrero rotated off the BRC. Joshua Perttula was named Chair. A backfill appointment was not made.

⁹ Minutes, May 14, 2020, State Bar Board of Trustees Meeting, available at: <https://board.calbar.ca.gov/docs/agendaitem/public/agendaitem1000026246.pdf>.

- Ona Dosunmu: Upon transitioning from the role of Executive Director of the California Lawyers Association (CLA), Dosunmu rotated off the BRC. Jeremy Evans, President of the CLA, was named to replace Dosunmu. [Ms. Dosunmu left the BRC prior to the September 2021 meeting.](#)

The revised and current roster is as follows:

Member	Category Appointed to Fill
Joshua Perttula, Chair	State Bar Board of Trustees
Susan Bakhshian	Law School Deans/Faculty
David Boyd	NCBE Testing Task Force
Alex Chan	Committee of Bar Examiners
Charles Duggan	California Lawyers Association/Young Lawyer
Jeremy Evans	California Lawyers Association
Jackie Gardina	CAPA Working Group
Ryan M. Harrison, Sr.	Council on Access and Fairness
Dr. James Henderson	National Expert on Examinations
Esther Lin	Committee of Bar Examiners
Dr. Tracy Montez	Department of Consumer Affairs
Judge Glen Reiser (Ret.)	Judges
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CHARGE OF THE COMMISSION

The BRC was charged with “developing recommendations concerning whether and what changes to make to the California Bar Exam, and whether to adopt alternative or additional testing or tools to ensure minimum competence to practice law.” The formal charter notes that, “[w]hile its work will be grounded in . . . empirical findings of [various studies on the bar exam], the commission shall explore other issues to ensure that the exam is an effective tool for determining whether applicants are prepared to practice law ethically and competently at a level appropriate for an entry-level attorney including any information that may be gleaned from California’s experience with the temporary provisional licensure program to the extent that it is relevant to the commission’s charge.” The BRC was specifically directed to develop recommendations regarding:

- Whether a bar exam is the correct tool to determine minimum competence for the practice of law, and specifications for alternative tools should the BRC recommend that alternatives be explored and adopted.

Should the BRC recommend that California retain a bar exam for the purpose of determining minimum competency for the practice of law, the BRC will develop recommendations regarding the following:

- Whether there is sufficient alignment in the knowledge, skills, and abilities to be tested by the Uniform Bar Exam (UBE) with the knowledge, skills, and abilities required of entry-level California attorneys to argue in favor of its adoption by California.
- If adoption of the UBE is recommended, whether there should be supplementary content and skills tested or trained on to meet specific California needs, and if so, modalities for that testing or training.
- Revisions to the California Bar Exam if the UBE is not recommended for adoption, addressing:
 - Legal topics and skills to be tested: The BRC will recommend legal topics and skills to be tested on the bar exam and provide specifications for supplementary testing or training for topics not recommended for inclusion on the exam itself.
 - Testing format: In light of the legal topics and skills to be tested, the BRC will determine the testing format and design of the exam. The BRC will expressly consider whether the examination, including any of its subparts, should be administered online and/or in-person.
 - Passing score: The BRC will review the appropriateness of the current bar exam pass line and whether it should be changed.

INITIAL MEETINGS AND ADOPTION OF A MISSION STATEMENT

The BRC held its first meeting on July 6, 2021. During its first three meetings, the BRC educated itself on the current format of the bar exam, the purpose of professional licensure exams, the plans for the NCBE's NextGen Bar Exam, different test format and delivery options, the recommendations of the CAPA Working Group, and alternative approaches to ~~establishing~~assessing minimum competence. As a precursor to breaking off into two subcommittees, one to delve more in depth into the exam pathway and the other to explore options for bar exam alternatives, the BRC adopted a set of guiding principles in the form of a mission statement intended as an overlay to all future discussions. The mission statement ~~provides~~follows:

In carrying out its charge to develop recommendations concerning whether and what changes to make to the California Bar Exam, and whether to adopt alternatives or additional testing tools to ensure minimum competence to practice law, the Blue Ribbon Commission on the Future of the California Bar Exam is guided by the following principles:

- Admission to the State Bar of California requires a demonstration of knowledge, skills, and abilities currently required for the entry-level practice of law, otherwise referred to as minimum competence.
- Admission to the State Bar of California requires minimum competence in professional ethics and professional responsibility.
- Criteria for admission to the State Bar of California should be designed to ensure protection of the public.
- The recommended examination, or examination alternative, should be evidence-based.
- Fairness and equity of the examination, or examination alternative, should be an important consideration in developing the recommended approach. Fairness and equity include but are not limited to cost and the mode and method of how the exam or exam alternative is delivered or made available.
- The recommended examination, or examination alternative, should minimize disparate performance impacts based on race, gender, ethnicity, or other immutable characteristics.

In adopting these guiding principles, the Blue Ribbon Commission does not intend to outline all characteristics which are important to set the foundation for the successful practice of law and the protection of the public. Nonetheless, the Blue Ribbon Commission is committed to promoting the highest standards of integrity, civility, and professionalism in the legal profession, and its members will also be guided by these more general objectives.

The BRC, either as a whole or through its subcommittees, convened 17 times through the end of 2022 to gather information and develop recommendations to the State Bar of California Board of Trustees and the Supreme Court consistent with its charge. To avoid unnecessary confusion, this report refers only to the BRC regardless of whether the presentation was made to, and the discussions held by, the full BRC or one of its subcommittees. The only instances where a distinction is made between the BRC and a subcommittee is if the full BRC adopted a recommendation different than that presented by the subcommittee.

The remainder of this report describes the two main issues researched, analyzed, and debated over the course of the BRC's tenure: the use of a bar examination to establish minimum competence, and an alternative measure to assess minimum competence.

THE BAR EXAMINATION AS A MEASURE OF MINIMUM COMPETENCE

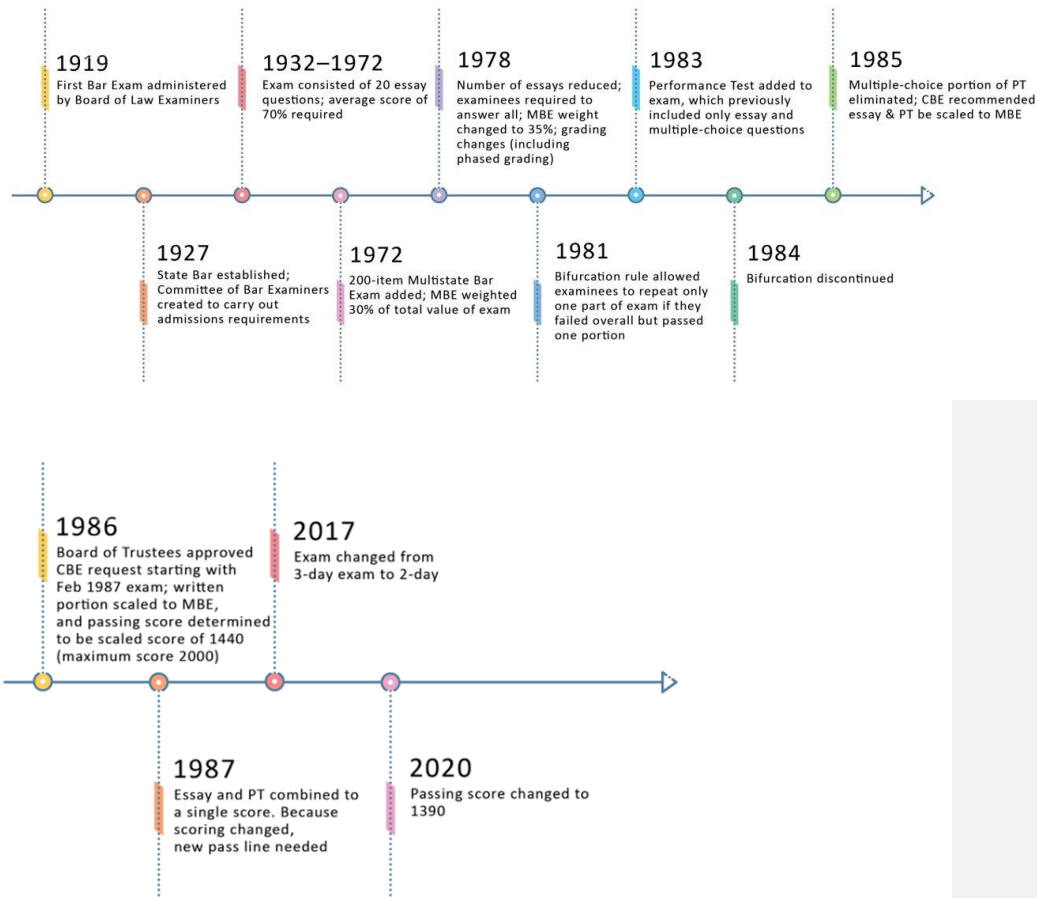
The BRC was tasked with determining whether a bar exam is the correct tool to assess minimum competence for the practice of law and whether to adopt an alternative, or

Commented [NA2]: Comment: As mentioned above, ways should be explored to test the subject of civility on the CBX.

additional testing or tools to ensure that minimum competence standards are is met and assessed. In carrying out this task, the BRC examined the current bar exam, recommendations to revise the knowledge, skills, and abilities tested on the bar exam, and efforts concurrently underway to revise the Uniform Bar Exam developed by the National Conference of Bar Examiners.

THE CURRENT CALIFORNIA BAR EXAMINATION

The State Bar administered its first bar examination in 1919. Over the 100-plus years of exam administration, only the 1970s and 1980s stand out as reflecting periods of exploration and change.



The Makeup and Administration of the Exam

The current bar examination is comprised of three components: five essay questions, one performance test, and 200 multiple-choice questions. The multiple-choice questions, known as the Multistate Bar Exam (MBE), are developed by the NCBE and used by California and nearly every other U.S. jurisdiction. The exam is generally administered over two days, with 12.5 hours of testing. The number of days and testing hours may be extended for applicants with disabilities who require additional time to have equal access to the exam. Day one consists of the California portion of the exam, also referred to as the written portion. On this portion of the exam, applicants must complete five one-hour essay questions and one 90-minute performance test. The MBE is administered on day two. Attorneys licensed in other U.S. jurisdictions for at

least four years are not required to sit for the MBE to become licensed in California; these attorney applicants must sit for and pass only the California portion of the exam.

There are 13 subjects tested on the California Bar Exam, ~~7~~seven of which are also tested on the MBE.¹⁰ The California bar exam is administered in-person, twice a year: in February and July. There are approximately 12 to 16 test centers made available across the state for each administration. During the pandemic, the State Bar administered the bar exam remotely. Because the NCBE owns the MBE, it establishes strict controls over how the exam may be administered. In response to the COVID-19 pandemic, The NCBE authorized remote delivery of the NCBE for the October 2020,¹¹ February 2021, and July 2021 Bar Exams. The NCBE did not authorize remote administration of the exam after July 2021, citing exam security and examinee equity concerns, so California was required to return to an in-person administration.

Who Are the Exam Takers?

The exam populations differ in February and July. February includes a larger proportion of repeat exam takers (67 percent) and typically comprises 5,000 exam takers. In July, approximately 8,700 sit for the exam, and the majority (70 percent) are first-time takers. Exam takers come from American Bar Association (ABA)-approved law schools in California, California law schools accredited by the Committee of Bar Examiners, California law schools registered with the State Bar of California, out-of-state law schools, and California's Law Office Study Program. Exam takers also include attorneys from other states, foreign-educated law students, and attorneys barred in other countries. The highest percentage of takers, 57.2 percent, are from California ABA law schools and California accredited law schools.

Between 2001 and 2020, the proportion of nonwhite applicants rose steadily, from roughly 30 percent in 2001 to over 50 percent in 2020. There has been a steady upward trend of female applicants since 2001; approximately 55 percent of first-time takers were female in 2020, up from 48 percent in 2001. Nonwhites represent close to 45 percent of applicants from out-of-state ABA and other law schools, including law schools accredited by or registered with the State Bar of California in the past 10 years, which is slightly higher than the proportion of nonwhites in California law schools (40 percent).¹²

¹⁰ The subjects tested on the written portion of the bar exam are: business associations, civil procedure, community property, constitutional law, contracts, criminal law and procedure, evidence, professional responsibility, real property, remedies, torts, trusts, and wills and succession. The MBE tests knowledge of: civil procedures, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts. A description of the scope of the topics is accessible on the State Bar's website at: <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/California-Bar-Examination-Scope>.

¹¹ The July 2020 bar exam was delayed due to the pandemic as states grappled with how to administer the exam early in the pandemic and the need—for most states—to transition, for the first time, to a remote delivery system.

¹² The State Bar of California began collecting disability and veteran status as part of the demographic questions in 2021. We are therefore unable to report trend data over 20 years.

The age of applicants differs significantly across school types—more so than the differences in race/ethnicity and gender. More than 80 percent of exam takers from ABA law schools (both from California and out-of-state) are under the age of 30, compared to less than 30 percent of those from California non-ABA law schools.

Passage rates on the CBX have declined steadily over the past decade. In his 2018 study, *Performance Changes on the California Bar Examination Part 2: New Insights from a Collaborative Study with California Law Schools*, psychometrician Roger Bolus found that between 2008 and 2016, the percentage of test takers passing the exam declined from 62 percent to 44 percent—a drop of 18 percentage points. He remarked: “The reasons for the decline have been subject to extensive debate. Some stakeholders have attributed the decline to changes in the examination itself, others have argued that changes in the qualifications and credentials of bar examinees may have contributed. Still others have suggested that additional factors explaining this decrease in pass rates may include changes in law school curriculums, or shifts in undergraduate educational practices or technology.” The study found evidence that systematic and measurable changes in student demographics and examinee credentials over the study period help explain some portion of the decline in bar scores and passage rates. Dr. Bolus notes, “Depending on the specific bar performance measure examined (i.e., passage rates vs. test scores), changes in the antecedent credentials and other characteristics account for between roughly 20 to 50 percent of the actual decline in bar performance during the period.”

Pass rates differ between first-time and repeat takers. Between 2001 and 2020, first-time takers in July had the highest pass rates on average, ranging from 54 to 74 percent. Repeat takers in July had the lowest pass rates, ranging from 13 to 42 percent. Within this same time period, when holding race constant, there are negligible differences in pass rates between male and female July takers from ABA law schools. The gap in pass rates between white and nonwhite applicants persisted throughout this period at around 15 percentage points for this same group of July takers from ABA law schools. Black and Hispanic/Latino exam takers have consistently passed at a lower rate than other racial and ethnic groups.

WHAT SHOULD BE TESTED: THE CALIFORNIA ATTORNEY PRACTICE ANALYSIS

A practice analysis, sometimes referred to as job analysis, is “the systematic collection of data describing the responsibilities required of a profession and the skills and knowledge needed to perform these responsibilities.” Data collected from a practice analysis are evaluated for the purpose of determining how to define the tasks performed and the underlying knowledge, skills, and abilities (KSAs) to perform those tasks required of people at the entry-level offor a profession. Documenting the tasks and KSAs required of entry-level professionals is an essential step in the development of any professional licensure exam. A practice analysis helps ensure there is a connection between the content of an exam and the actual practice of the licensees. As noted above, although the State Bar has administered the bar examination since 1919, no

California practice analysis had ever been initiated until the CAPA Working Group's formation in 2018.¹³

As the primary data collection vehicle, the CAPA Working Group developed two surveys that were launched concurrently. The traditional practice survey asked the survey **participant respondent** to recall their experience working in different domains during the past 12 months, while the Experiential Sampling Method survey comprised a short-real time inquiry into what **participants respondents** were working on at the moment they received the survey question, rather than recalling work history over the past 12 months. With over 16,000 **participants respondents** providing approximately 74,000 responses, the combined methods created a robust sample of detailed data on attorney practice. After an extensive analysis of survey results and taking into account expert observations about the state of legal practice in California, the CAPA Working Group identified the following eight legal areas as critical for demonstrating minimum competence: Civil Procedure, Torts, Contracts, Evidence, Criminal Law and Procedure, Administrative Law and Procedure, Constitutional Law, and Real Property. This represents a reduction of subject matters from the 13 currently tested on the bar exam.¹⁴ In addition to the subject areas (the knowledge), the practice analysis provided substantial insight into the skills and abilities required of entry-level attorneys. Based on that data, the CAPA Working Group recommended that the California bar exam assess the following competencies: drafting and writing, research and investigation, issue-spotting and fact-gathering, counsel/advice, litigation, establishing the client relationship, maintaining the client relationship and communication. Of these competencies, it was determined that only three are assessed by the current bar exam.

THE NATIONAL CONFERENCE OF BAR EXAMINER'S NEXT-GENERATION BAR EXAM

As California was beginning to explore needed changes to its bar exam, the NCBE began examining the Uniform Bar Exam (UBE).¹⁵ NCBE formed a testing task force and conducted its own updated practice analysis to assist in the development of **a new bar exam the Next Generation Uniform Bar Exam**, referred to as the NextGen **bar eExam**. The NCBE gathered stakeholder feedback in the initial phases of this study; this feedback guided many of its exam design decisions that reflect the following principles: greater emphasis should be placed on assessing lawyer skills that reflect real-world practice and the types of activities performed by

¹³ For further background on how the CAPA Working Group was formed, the full report can be found here: <https://www.calbar.ca.gov/Portals/0/documents/reports/2020/California-Attorney-Practice-Analysis-Working-Group-Report.pdf>

¹⁴ The application of observations in and about the practice of law resulted in, for example, keeping constitutional law in the top eight, even though survey results ranked this area lower, and determining that Professional Responsibility could be tested, taught, or otherwise assessed outside of the bar exam environment even though it ranked high in the survey results.

¹⁵ Although California uses only one NCBE testing instrument as part of its bar exam, the MBE, there are two other components many other states use: the Multistate Essay Exam (MEE) and the Multistate Performance Test (MPT). Together, these three components are referred to as the Uniform Bar Exam, or UBE.

newly licensed attorneys, the exam should remain affordable, fair, and accessible to applicants, and, for UBE jurisdictions, score portability ~~the ability to port scores~~ should be maintained.

The BRC discussed the NextGen bar exam on July 6, 2021; September 1, 2021; October 7, 2021; and February 8, 2022. In September 2021 the BRC evaluated the reasons for and against California adoption of the NextGen bar eExam.¹⁶

Some of the identified reasons for adopting the NextGen Exam included:

- NCBE’s use of professional test developers to design, develop, and pretest the exam, which helps ensure a high-quality product that is valid and reliable,
- Potential for UBE score portability—providing California bar exam takers the ability to have their exam scores recognized in other jurisdictions such that they can be admitted in those other jurisdictions without sitting for another bar exam ~~(sometimes referred to as “admitted on motion”)~~,
- NCBE’s plan to limit the test environment to third-party test centers, which would eliminate the complexity for California of contracting for and managing hotel sites,
- The KSAs derived from the NCBE attorney practice analyses are comparable to California’s, so the exam is likely to test the areas that entry-level attorneys need to know to practice effectively in California.

Arguments against adoption included:

- California would have greater flexibility in the policy considerations related to the exam if it did not adopt the NextGen bar exam, such as whether to test remotely or not, or whether to offer the exam more than twice a year.
- California-specific content will not be covered on the NextGen bar exam, nor would California have the ability to dictate or adjust the exam content (e.g., testing cultural competencies, or emphasizing administrative law or litigation). An example of California content that would not be included on the NextGen bar exam includes the California Code of Civil Procedure which is more complex, and contains more rules and sources of authority for rules, compared to other states.
- The NextGen bar new exam format will use item types that have never been used on a bar exam. The plan is for the NextGen bar exam to use realistic scenarios that are integrated as item sets, ~~unlike the current format that provides realistic scenarios in one~~

¹⁶ Subsequent to the BRC deliberations about NextGen adoption, additional decisions have been made about how the exam will be administered: the exams will be computer-based and administered at jurisdiction-managed facilities or at computer test centers managed by a suitable vendor. The exam may be reduced from a two-day exam to a one-day exam if the necessary validity and reliability can be maintained, but it will continue to be offered only twice per year.

component (the MPT). An *item set* will consist of a collection of test questions based on a single scenario or stimulus, where the questions pertaining to that scenario are developed and presented as a unit. Questions within this unit, may include multiple-choice, essay questions, or performance tasks.

- The NCBE has not yet clarified how the new exam would or could be administered in a manner that accommodates those who cannot test on a computer, but have made it clear that the exam will allow individuals to display their aptitude and that NCBE will provide materials based on jurisdiction determinations for candidates' needs.
- Given the current design plans for the NextGen bar eExam, the NCBE will eliminate the exam components currently used (the MPT, the MEE, and the MBE). Jurisdictions will be required to adopt the NextGen bar eExam as a whole or to develop their own exam. For California, the option to continue its current practice, that is, to procure the MBE and to continue developing the essays and performance tests, will no longer be a viable option once the NextGen bar exam is implemented.
- The BRC was never privy not able to view to NextGen bar exam sample questions of the NextGen bar exam; considerations about what the exam promised to address were based on what was known at the time.

Commented [NA3]: Comment: I disagree that this is an argument against using...they would pilot item format to ensure valid measurement.

As part of this discussion and relatedly, the BRC identified arguments in support of and against the development of a California-specific exam.

Arguments in favor included:

- The exam would test California law and allow precise alignment with the KSAs based on the CAPA recommendations.
- California would have the flexibility to develop a creative, innovative approach to exam delivery and frequency.
- California would no longer be beholden to the decisions of the NCBE for a portion (or all) of the exam.

Arguments that weighed against a California-specific exam included:

- The bar exam is currently scaled to the MBE (multiple choice) to ensure stability and consistency in performance across exams. It will be challenging to develop a psychometrically sound solution to ensure the continuing reliability and consistency of the exam independent of the NCBE (but the challenge is readily addressed through equating).
- Creating a California exam would require the development of a considerable bank of questions and could take significant time.
- Implementation of a California-specific exam would require continued assessments to ensure that the exam is measuring minimum competence.

Commented [NA4]: Comment: I do not like the idea of having an MBE portion of the exam that closely resembles what we have used in the past.

I advocate for a multiple choice portion of the exam that has a few longer stimulus questions and many questions predicated on the longer stimulus question--similar to what we see on the LSAT reading comprehension portion. But these would be questions designed to test understanding of law.

- The possibility for applicants to ~~transfer~~ ~~port~~ their exam scores ~~for admission in other jurisdictions~~ would not so readily exist.

DISCUSSION OF LICENSURE EXAMINATIONS

Before adopting a recommendation as to whether to transition to the NextGen ~~bar~~ exam or to develop a new California-specific exam, the BRC considered various issues in professional licensure, principally dealing with licensure examinations.

Purpose of Professional Licensure

Licensure is “the process by which an agency of government grants permission to persons to engage in a given profession or occupation by certifying that those licensed have attained the minimal degree of competency necessary to ensure that the public health, safety and welfare will be reasonably well protected.”¹⁷ Because there are many advantages that licensing provides, such as ~~protecting the public from unqualified and unscrupulous individuals~~, status and recognition, ~~and~~ economic power by restricting entry into a profession or occupation, ~~and protecting the public from unqualified and unscrupulous individuals~~, the licensing entity must adhere to guidelines and standards to ensure the integrity, validity, and fairness of any barrier to gaining entry to the profession or occupation.

With respect to attorney licensing in California, the State Bar grants applicants permission to engage in the practice of law by certifying that they have attained the minimum competence necessary to ensure that the public health, safety, and welfare will be reasonably protected. The California Bar Exam is developed in adherence to the Standards for Educational and Psychological Testing, standards that are widely used in the development of licensure exams.

Exam Formats, Question Types, and Delivery Modes—Impact on Accessibility, Fairness, and Performance

There are a wide variety of exam formats and question types that are used in licensure examinations. Determining what types of questions to use on an exam and what exam format should be used, such as testing through oral exam, written exam or simulation, requires examining the intent of the exam. Licensing exams must provide a reliable method for identifying practitioners who are able to practice safely and competently. These exams need to test on the tasks and knowledge required for entry-level practice. As set forth in its mission statement, the BRC was also committed to exploring whether certain question types or formats may be more fair or equitable or whether they may be more or less likely to lead to disparate performance based on race, gender, ethnicity, or other immutable characteristics.

¹⁷ Tracy A. Montez, PhD, Division Chief, California Department of Consumer Affairs, Presentation to the Blue Ribbon Commission, September 1, 2021, <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027964.pdf>.

Similarly, there are a variety of exam delivery options for the bar exam, paper-based, computer-delivered, oral exams, simulations, remotely delivered, at test centers, and open- and closed-book. The BRC also began an exploration of whether different delivery options could impact fairness and equity, the ability to access the exam, and whether the delivery methods were more or less likely to result in disparate performance.

In trying to ensure fairness, equity, and accessibility, the BRC also discussed the frequency of examinations. Exam formats, question types, and delivery methods that allow frequent or on-demand testing create a much more accessible option for exam takers. But if the exam were to remain structured as it is today, the administration of more frequent exams would create a significant burden. Among other things, in-person exams can be costly and require a significant amount of planning and resources making it extremely difficult to administer them more than twice a year; and the number of essay questions developed would need to be increased exponentially to maintain the exam's reliability and integrity. If the exam was delivered differently, or different question types or exam formats were used, these issues could be more easily addressed.

BAR EXAM RECOMMENDATION

Reflecting its consideration of both the content and exam modality issues raised during discussions regarding the NextGen and California-specific [bar](#) exams as well as professional licensure examinations more broadly, on February 8, 2022, the Exam Subcommittee adopted a motion that the full BRC recommend to the State Bar Board of Trustees and the Supreme Court pursuing a California-specific exam in lieu of the NextGen [bar eExam](#). The subcommittee ~~could~~ [did](#) not develop a consensus, ~~however~~, on specific aspects of the future California bar exam, such as whether it should be remote, or in-person, or whether California should adopt reciprocity. ~~As a result, the subcommittee did recommend further exploration of~~ ~~issues~~ such as reciprocity and portability and also endorsed the pursuing [State Bar](#)'s plan to test different modality issues and assess impacts on applicant performance. The subcommittee also recommended that staff continue to monitor the NCBE's progress on the development of the NextGen [bar eExam](#).¹⁸

The BRC discussed this recommendation at its March 2022 meeting. The BRC struggled with whether it had the necessary information or was in a position to recommend specifics on exam and question design. The BRC wanted to ensure that if California were to develop its own exam, the exam format and question design avoid potential [discriminatory](#) bias, meet universal design standards, result in an exam that is fair and [equitable](#) free of bias, while ensuring compliance with the Standards for Educational and Psychological Testing.

The BRC also grappled with developing recommendations regarding various exam administration issues, including remote versus in-person testing and open- versus closed-book formats. As a result, the BRC sought clarification about the scope and breadth of the recommendations the Supreme Court would find most useful if the BRC were to recommend a California developed bar examination. In response, the Supreme Court requested that the BRC identify:

- What specific knowledge (subjects) should be tested?
- Which skills should be tested?
- What percentage of exam should test knowledge versus skills?
- Do attorneys from other jurisdictions need to sit for the full exam?

On April 6, 2022, following the clarification from the Court about the anticipated scope of recommendations should the BRC recommend that California develop its own exam, the BRC rejected the idea of adopting the National Conference of Bar Examiner’s re-engineered Uniform Bar Examination (the NextGen [bar e](#)Examination). Factors that contributed to this decision included the potential for remote-testing and for open-book exams, which were options that would not be available on the NextGen [bar](#) exam, and the opportunity to be thoughtful and use available data to identify an exam format, question types, and delivery options consistent with the adopted mission statement of the BRC. In addition, the opportunity for innovation appeared to appeal to the BRC as well.

Following discussions about whether the list of subject matters identified by CAPA was complete, the BRC’s recommendation was that the exam test the KSAs previously recommended by the CAPA Working Group. The specific language of the motion adopted on by the BRC on April 6, 2022, was as follows:

RECOMMENDATION: In pursuing the use of a California-specific exam reflecting CAPA recommendations, it is recommended that the following eight legal topics be adopted for a new bar exam content outline¹⁹:

¹⁹ Time was dedicated to discussing the possibility of reevaluating some of the areas that were not included in CAPA’s recommended knowledge areas, in particular, whether business associations should be added. One member argued that knowledge of this subject matter was essential to the practice of law today, and that there was sufficient survey data to support including it as a bar exam topic. Members of the CAPA working group who also served on the BRC explained the rigor applied in finalizing the list of recommendations, such as criticality (the degree of harm—legal, financial, psychological, or emotional—that may result for clients and the general public if an attorney is not proficient in a specific area), frequency with which an attorney would be expected to performed the work activity or apply the legal topics in their practice, and the point in legal careers at which attorneys were first expected to perform that competency. The commission strongly supported adopting the knowledge areas as recommended by the CAPA Working Group. [The BRC also spent time discussing whether negotiation, remedies, and dispute resolution should be included as skills to be tested on a future bar exam, despite not being included](#)

Administrative Law and Procedure
Civil Procedure
Constitutional Law
Contracts
Criminal Law and Procedure
Evidence
Real Property and
Torts.

Commented [NA5]: Comment: Add civility.

RECOMMENDATION: It is further recommended that CAPA’s recommendations on skills be incorporated in the new exam:

Drafting and Writing
Research and Investigation
Issue-spotting and Fact-gathering
Counsel/Advice
Litigation;
Communication and Client Relationship; and
Negotiation and Dispute Resolution.

Commented [NA6]: Comment: Add civility.

RECOMMENDATION: It is recommended that in developing the exam, there should be a significantly increased focus on assessment of skills along with the application of knowledge and performance of associated skills for entry-level practice, de-emphasizing the need for memorization of doctrinal law. The precise weight of content knowledge versus skills should be determined after the development of the exam. The commission further recommends transparency on topics and rules to be tested, including the extent to which candidates are expected to recall such topics and rules or possess familiarity with such topics and rules.

In light of the fact that the members of the commission felt they lacked the expertise to make specific recommendations about the design of the exam that are psychometrically sound, satisfy testing standards, and the commission’s mission statement, the commission made an additional motion, not addressing a specific question posed by the Supreme Court but instead reflecting a set of overarching principles:

[within the CAPA recommendations. After considerable debate, the BRC voted to include negotiation and dispute resolution as skills to be incorporated on the new bar exam.](#)

RECOMMENDATION: If the Supreme Court adopts the Blue Ribbon Commission’s [recommendation to develop a California-specific exam](#), the State Bar of California, in consultation with subject matter experts in exam development and other specialists, shall be tasked to design an exam. The design shall be consistent with the guiding principles adopted by the Blue Ribbon Commission, including crafting an exam that is fair, equitable, and minimizes disparate performance impacts based on race, gender, ethnicity, disability, or other immutable characteristics.

The Supreme Court’s final question on whether attorneys from other jurisdictions need to sit for the full exam is addressed in the following section.

RECIPROCITY, COMITY, AND PORTABILITY: CAN I USE MY PASSING BAR EXAM SCORE FOR ADMISSION TO THE BAR OF ANOTHER STATE; CAN I BE ADMITTED TO PRACTICE IN CALIFORNIA BASED ON MY PASSING SCORE IN ANOTHER STATE?

The charge of the BRC included developing recommendations about what the requirements should be for licensing attorneys from other U.S. jurisdictions or other countries. The BRC initially focused on this issue in the context of a bar exam alternative, and whether such an alternative could be an option for attorney applicants from other jurisdictions or for foreign-educated applicants.

As the BRC’s conversations evolved and as it became clear that it would not reach consensus on an exam-alternative pathway, the BRC refocused the question on whether attorneys licensed in other jurisdictions should be obligated to sit for the bar exam in order to be licensed in California.

PORTABILITY

In jurisdictions that administer the Uniform Bar Examination, portability allows applicants to [transfer “port”](#) their scores [s](#) from one jurisdiction to another. Portability refers to the ability of examinees who take an exam, such as the UBE, to transfer that score to another jurisdiction to seek admission there. The concept of portability relies on the fact that the same exam is being administered in [all participating different](#) jurisdictions. Jurisdictions that allow portability [via the UBE](#) require that the applicant meet the minimum pass score of that jurisdiction. [All Most \(or all\) UBE jurisdictions](#) establish a maximum age of transferred score, varying between 25 months and five years, with 36 months (or three years) being the most common policy across the states. In some jurisdictions, applicants must also satisfy jurisdiction-specific exam requirements in addition to having a passing score. Because the BRC voted to recommend a California-specific exam versus implementing the NextGen [bar](#) exam, portability is likely not an option for California.

RECIPROCITY [\(or ADMISSION on MOTION\)](#)

Jurisdictions with reciprocity allow those licensed in one state to become licensed in another state without sitting for a bar exam. As the name implies, reciprocity requires that both states offer the same privileges to one another's attorneys. Today, in approximately 20 states, licensed attorneys are not required to sit for the exam and can be "admitted on motion." As described above, most states that offer reciprocity limit that reciprocity strictly to attorneys graduating from ABA law schools. Only a handful of states offer reciprocity to non-ABA law school graduates. California does not have reciprocal agreements with any other jurisdictions. California requires that all attorneys seeking licensure in the state sit for the California bar exam (at least the one-day exam).²⁰

One of the complicating factors with reciprocity in California is that nearly all jurisdictions in the U.S. and its territories require applicants for licensure to have a Juris Doctor (JD) from an ABA-approved law school; graduates from California-accredited and registered law schools are not eligible to sit for the bar exam in these jurisdictions. Most states will not recognize the state's non-ABA graduates.

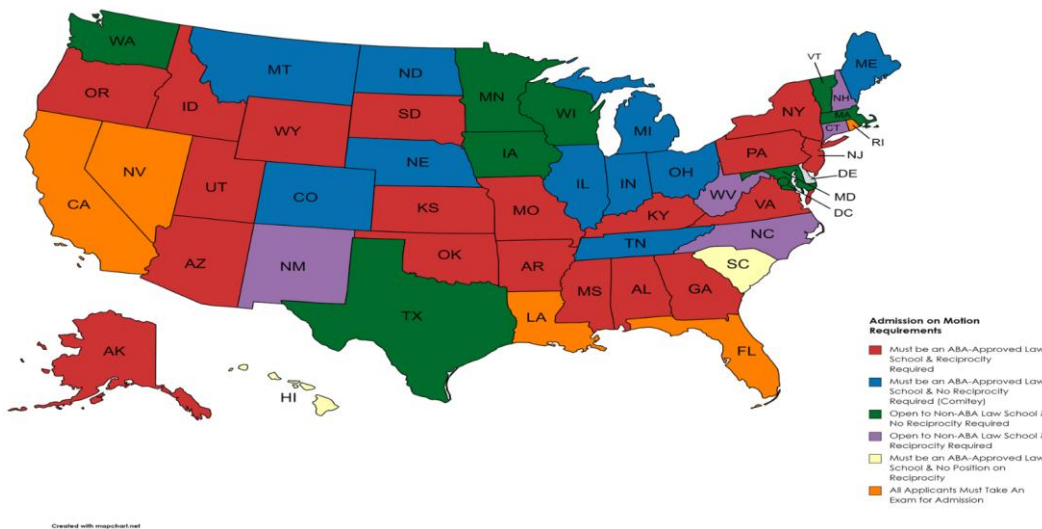
COMITY

Comity is largely the same as reciprocity, but it is one-way. Approximately 16 states permit attorney applicants the ability to be admitted on motion, despite the fact that the jurisdiction the attorney applicant comes from does not offer that privilege to attorneys licensed in their state. There are 10 states that allow admission on motion for attorney applicants who are graduates of ABA-approved law schools (in blue below). There are nine states that allow attorney applicants the ability to be admitted on motion even if they are graduates from other than ABA-approved law schools (in green below).

The map below identifies current comity or reciprocity policies around the country:

²⁰ [Business and Professions Code § 6062 imposes a four-year practice requirement for out-of-state attorneys to be able to take the \(one-day\) Attorney's exam, rather than sitting for the \(two-day\) General Bar exam.](#)

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RECOMMENDATION

In ways that are unlike many, if any, other states, California offers opportunities to both traditional and nontraditional students to qualify for admission to the bar. California allows applicants with a JD from law schools that are not accredited by the ABA to sit for the California bar exam. Applicants with JDs from law schools accredited by the State Bar of California²¹ or registered with the State Bar²² are not permitted to sit for the bar examination in most bar jurisdictions in the country.

Additionally, California is one of the few jurisdictions, along with Vermont, Washington, and Virginia, that allow law office study as a method for meeting the legal education requirements to qualify to sit for the bar exam. Law Office Study candidates who pass the bar and become licensed in California do not meet the educational requirements to sit for the bar examination in other states, nor to be admitted on motion.

While the BRC was generally of the view that attorneys licensed in other states should not be required to take the California bar exam to be licensed, no consensus could be reached on how they should have to demonstrate high standards of ethical and competent practice. The most likely approach would be to require a set number of years of practice without disciplinary

²¹ There are currently 17 California Accredited Law Schools operating in California.

²² There are currently 13 unaccredited, registered law schools in California.

action by their licensing jurisdictions. The BRC did not believe it was in a position to identify the “right” number of years, however.²³ Bar applicants are tested on ethical practice through the Multi-State Professional Responsibility Exam (MPRE). However, requiring licensed attorneys to take this exam may not be appropriate, given that they have demonstrated this through years of practice. Although the BRC struggled with the implications of any policy choice on law school graduates from non-ABA law schools in California, consensus was achieved on the following recommendation:

RECOMMENDATION: The Blue Ribbon Commission recommends that the Supreme Court revise the requirements for licensed, out-of-state attorneys to be admitted to California without sitting for the California Bar Exam. The Blue Ribbon Commission recommends that in establishing the requirements, the Supreme Court explore the minimum number of years of recent practice in another state to establish minimum competence, along with a demonstration of ethical and competent practice.

The BRC determined that additional information was needed to determine whether to make changes regarding foreign-educated applicants and foreign attorneys, who traditionally have lower exam pass rates. The BRC felt it would be important to analyze the impact of the new exam on foreign-educated applicants and foreign attorneys before making a decision. Therefore, the BRC recommended that no decision be made as to these applicants at this time.

RECOMMENDATION: The Blue Ribbon Commission recommends that the Supreme Court defer the decision to modify the admissions requirements for foreign attorneys and foreign-educated applicants until the new California Bar Exam has been implemented.

BAR EXAM ALTERNATIVE

As part of its charge, the BRC was asked to consider not just what the California bar exam of the future should look like, but also whether a bar exam is the correct or only tool to determine minimum competence to practice law in California. This required an examination of what a path to licensure that is not contingent on bar exam passage could look like.

To distinguish it from the pathway to licensure that is achieved by passing a traditional bar exam, the alternative tool to determine minimum competence was initially discussed as the “nonexam pathway.” However, this nomenclature turned out to be problematic in that it suggested that there would be no possibility for inclusion of an exam or any objective

Commented [NA7]: Comment: In your discussion of portability, reciprocity, and comity, the draft specifically states that “portability is likely not an option for California.” It then describes reciprocity and acknowledges the ABA only issue. But it does not explicitly state the Commission decided to not require reciprocity because of that issue. But it appears that the Commission’s recommendation is consistent with comity. Did the Commission specifically decide that reciprocity was off the table? It appears so based on the recommendation. I think it should be explicit. It leaves the reader unclear about whether the Commission rejected reciprocity. Obvious this is an issue that is important to me. I would love it if California said our accredited law school graduates who pass the bar exam are as competent as ABA accredited law school graduates – they did pass the bar and become licensed. Therefore, we will develop reciprocity agreements with states that accept ALL CA licensed attorneys. The Commission appears to have rejected this approach. If that’s the case, say it.

Commented [NA8]: Comment: Out of state attorneys who want to be admitted to practice in CA on motion should have a CA attorney vouch for their fitness to practice law in California.

Additionally, the attorney requesting admission should work with a CA attorney for at least one year so the sponsoring attorney will have a basis for providing such recommendation for admission.

Commented [NA9]: Comment from BRC member: A lot of time is spent explaining the bar exam alternative and showing data and information to support, only to end with that it was denied. Is it necessary to spend a significant amount of time on information to support the alternative? This section should be shortened and/or begin with a statement that it did not pass.

Commented [CA10]: Comment: I am deeply uncomfortable with the amount of discussion this report includes regarding a bar exam alternative, given that these alternate pathways were repeatedly rejected by the BRC.

More than 20 pages of the report cover, in detail, information that the Commission either rejected or dismissed an unworkable for California. There is considerable discussion of outside forces that wish for a non-exam pathway, but very little discussion of the reasons why the BRC discounted them. For example, as noted later, there is little to no discussion of the Ontario report, which details significant concerns with the articling process in Canada. There is no discussion of the harassment and discrimination faced by attorneys in that system; much of which is relevant to our decision-making.

The amount of real estate given to the bar exam alternatives makes it appear as if the Report is attempting to sway readers towards findings the Commission did not make. That strikes me as the antithesis of what the Report ought to be doing.

I suggest we limit or delete detailed discussion of non-exam pathways and increase the report’s content regarding the Commissioner’s objections. Very little space is given to the very specific critiques Commissioner’s had about these programs.

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assessment of minimum competence in such a pathway. As a result, the term “bar exam alternative” was adopted.²⁴

Like the exploration of bar exam format, analysis of bar exam alternatives was informed by the BRC’s adopted mission statement. The BRC’s consideration of a bar exam alternative was grounded in key questions, including:

- How would minimum competence be demonstrated?
- How could consistency across school types and Law Office Study programs be achieved?
- How would fairness and equity considerations be implicated as measured by questions of affordability and access?
- How would an alternative pathway scale in California?
- Would this pathway be applicable to all candidates seeking licensure?

To begin to answer these questions, the BRC heard from a prominent scholar in favor of bar exam reform: Deborah Merritt. Her presentation centered on [Building a Better Bar](#), a study and report that distilled minimum competence into 12 building blocks and made 10 recommendations for evidenced-based lawyer licensing based on those foundational components:

Commented [CA11]: Comment: Should this be moved to the “Discussion of Licensure Examinations” section?

²⁴ This terminology, too, has some critics who perceive “alternative” as coded language for an easier path to licensure.

12 Building Blocks

- The ability to act professionally and in accordance with the rules of professional conduct
- An understanding of legal processes and sources of law
- An understanding of threshold concepts in many subjects
- The ability to interpret legal materials
- The ability to interact effectively with clients
- The ability to identify legal issues
- The ability to conduct research
- The ability to communicate as a lawyer
- The ability to see the “big picture” of client matters
- The ability to manage a law-related workload responsibly
- The ability to cope with the stresses of legal practice
- The ability to pursue self-directed learning

10 Recommendations

- RECOMMENDATION ONE: Written exams are not well suited to assessing all aspects of minimum competence. Where written exams are used, they should be complemented by other forms of assessment.
- RECOMMENDATION TWO: Multiple choice exams should be used sparingly, if at all.
- RECOMMENDATION THREE: Eliminate essay questions from written exams and substitute more performance tests.
- RECOMMENDATION FOUR: If jurisdictions retain essay and/or multiple choice questions, those questions should be open book.
- RECOMMENDATION FIVE: Where written exams are used, provide more time for all components.
- RECOMMENDATION SIX: Candidates for licensure should be required to complete coursework that develops their ability to interact effectively with clients.
- RECOMMENDATION SEVEN: Candidates for licensure should be required to complete coursework that develops their ability to negotiate.
- RECOMMENDATION EIGHT: Candidates for licensure should be required to complete coursework that focuses on the lawyer’s responsibility to promote and protect the quality of justice.
- RECOMMENDATION NINE: Candidates for licensure should be required to complete closely supervised clinical and/or externship work.
- RECOMMENDATION TEN: A standing working group made up of legal educators, judges, practitioners, law students, and clients should be formed to review the 12 building blocks and design an evidence-based licensing system that is valid, reliable, and fair to all candidates.

In response to its charge, and after reflection on the research presented by Merritt, the BRC turned to a review of alternative licensure pathways under development or in place in other U.S. and international jurisdictions. Although all the models explored were different, there were common program elements, which can be categorized as follows:

- Law School Component: which includes incorporation of required doctrinal²⁵ and experiential education²⁶ during law school to provide the necessary exposure to the knowledge, skills, and abilities required to establish minimum competence.
- Supervised Practice Component: which could occur pre- or postgraduation (or a combination thereof) to help assess minimum competence based on the practice of law in a real-world setting and not simply an educational or test environment.
- Assessment Component: which could include a portfolio of work, a capstone project from law school, exams, or other methods to enable a regulator to objectively measure minimum competence.

Generally, the existing programs reviewed by the BRC included at least two of the three components.

Law School Component

As part of the BRC’s vetting of alternative pathways, several programs with a significant, or standalone, law school component as the basis for licensure were analyzed. The structure of this component varies significantly, from Wisconsin, which offers diploma privilege for all [eligible](#) law school graduates from [in-state eligible](#) institutions, to the selective Daniel Webster Scholars Program (DWS), which has distinct law school doctrinal and experiential requirements for participating scholars.

Daniel Webster Scholars Program, New Hampshire

The Daniel Webster Scholars Program launched in 2006 as a collaborative effort of the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association, and the University of New Hampshire School of Law to blend legal education with legal practice. Students are selected to participate in a two-year practice-based, client-oriented, educational program that includes special courses, clinics, externships, client-interviews, and in-person, one-on-one portfolio reviews with a New Hampshire bar examiner.

Unique curricular requirements

The small cohort of DWS scholars have a different law school curriculum than their fellow UNH law school peers; scholar participants are required to take the following courses:

²⁵ Foundational, related to black letter law (black letter laws are well-established legal rules that are, at the time of teaching, not subject to reasonable dispute).

²⁶ Putting legal theory into practice in a real-world environment.

Courses	Credits	Semester
DWS Pretrial Advocacy	4	Fall 2L
DWS Miniseries ²⁷	2	Spring 2L
DWS Negotiations & Dispute Resolution Workshop	3	Spring 2L
DWS Trial Advocacy	3	Spring 2L
DWS Business Transactions	3	Fall 3L
DWS Capstone - Advanced Problem Solving and Client Counseling	2	Spring 3L

Experiential Requirements

In the clinics, scholars hone critical skills with actual client interactions under the supervision of an attorney; there are three unique clinical options: criminal, intellectual property and transaction, and international technology transfer. The externships, or legal residencies, are work placements in government agencies, law firms, judicial chambers, nonprofit organizations, or corporations. At the end of each semester, there is a portfolio assessment and interview with an assigned bar examiner.

The program is [highly selective](#) and is limited to 24 students a year, which is roughly between 10 and 20 percent of the average number of exam takers.²⁸ Having established their competence through these avenues, successful scholars are not required to sit for the New Hampshire Bar Exam.

Oregon

Joanna Perini-Abbott, the Chair of the Oregon State Board of Bar Examiners, discussed with the BRC the two alternative pathways to licensure under development in Oregon. The Oregon Supreme Court, following the disruption to the bar exam in 2020, charged the Oregon State Board of Bar Examiners with establishing an Exam Task Force to make recommendations for pathways to licensure that did not require a bar exam. This task force looked to other U.S. jurisdictions, Canadian jurisdictions that require extensive “articling” or practice under a supervising attorney, and the aforementioned Daniel Webster Scholar Honors Program. The

²⁷ The Miniseries are short course modules that expose 2-L students to numerous areas of practice, including family law, conflicts of law, secured transactions, and negotiable instruments.

²⁸ Since 2016, over the two exams administered in a year, New Hampshire averages between 125 and 280 total exam takers. See <https://thebarexaminer.ncbex.org/statistics/>

task force advanced two recommended programs: an Oregon Experiential Pathway (OEP) and a postgraduation Supervised Practice Pathway (SPP). The OEP is modeled extensively on the DWS program and will include two years of special coursework, clinics, externships, and capstone review during law school assessed by the Oregon Board of Bar Examiners. The clinics and externships requirements are similar to the DWS program; the capstone component is still under development. The SPP program begins after law school and is highlighted in the section below describing post-law school supervised practice components.

The exact curricular requirements of the OEP are still in development with the Oregon Board of Bar Examiners and Oregon’s ABA law schools. However, there are three core pillars identified: (1) foundational courses beyond the first year, (2) experiential requirements, and (3) completion of a capstone project. Students would need to complete courses in each pillar to be eligible to submit their capstone project. (See Appendix B for additional information about the Oregon approach.)

Ontario, Canada

Representatives from several Canadian provinces presented on their licensing processes on several occasions. Two universities in Ontario include an “articling” or supervised practice period within the law school curriculum. The experiential training requirement is met during law school via what is called an Integrated Practice Curriculum (IPC). The Integrated Practice Curriculum includes a four-month work placement with an approved supervisor during the third year of law school.

Wisconsin

The Wisconsin Supreme Court permits graduates of ABA-accredited Wisconsin law schools (Marquette University Law School and the University of Wisconsin Law School) the ability to be licensed after graduation without taking the bar exam. Called diploma privilege, this path is open to all graduates without a modified curriculum. In order to be certified for admission to the Wisconsin Bar under diploma privilege, applicants must meet three degree requirements, all of which align with the curriculum at the two Wisconsin law schools: 1) be awarded a JD from a law school in Wisconsin fully approved by the American Bar Association; 2) satisfactorily complete the mandatory subject matter areas²⁹; 3) satisfactorily complete no fewer than 60 credits in elective subject matter areas³⁰.

²⁹ Constitutional law, contracts, criminal law and procedure, evidence, jurisdiction of courts, ethics and legal responsibilities of the legal profession, pleading and practice, real property, torts, and wills and estates.

³⁰ Administrative law, appellate practice and procedure, commercial transactions, conflict of laws, constitutional law, contracts, corporations, creditors’ rights, criminal law and procedure, damages, domestic relations, equity, evidence, future interests, insurance, jurisdiction of courts, legislation, labor law, ethics and legal responsibilities of the profession, partnership, personal property, pleading and practice, public utilities, quasi-contracts, real property, taxation, torts, trade regulation, trusts, and wills and estates.

While 32 states and the District of Columbia had historically offered diploma privilege³¹ at some point since the 1800s, only Wisconsin continues to offer this licensure option.³² (See Appendix C for additional information about the Wisconsin approach).

Postgraduation Supervised Practice Component

The second major component around which several bar exam alternatives are organized involves a period of practice, postgraduation, under the supervision of a licensed attorney. Programs like the Daniel Webster Scholars and Oregon’s OEP discussed above include clinics and externships in their law school curricula, but there is no requirement for postgraduate supervised practice to become licensed. Similarly, the IPC approach in place in Ontario, Canada, does not include a postgraduation supervised practice period. In the various postgraduation models examined, while the hours vary, the fundamental structure of postgraduate supervised practice is fairly consistent among jurisdictions with such requirements currently in place.

Canadian Provinces

All Canadian provinces require articling. Articling refers to the provision of experiential learning as a means of preparing someone for licensure; this involves supervised practice under a qualified, licensed lawyer. In Canada, the supervisor is referred to as the Principal, and the supervised practice period ranges from six to 12 months, depending on the province.

In some provinces, this supervised practice period is paired with an educational and assessment program, the Practice Readiness Education Program (PREP), which takes place concurrently. PREP is discussed in greater detail as part of the Assessment Component section below. Although the BRC heard directly from only Alberta, British Columbia, Ontario, and Erica Green, the manager of the Canadian Centre for Professional Legal Education (CPLED), the table below provides a high-level description of the different elements of the articling programs in all Canadian provinces.

Province	Articling length	Principal/law student responsibilities	PREP?
Alberta	12 months	The student organizes their placement(s), and the student may opt for a single placement or multiple short assignments to satisfy the 12-month requirement. There is also a new program assisting with placing	Yes

Commented [NA12]: Comment: COAF does not support a program where candidates are admitted to practice without first passing a minimum competency exam.

Commented [CA13]: Comment: If not all of these provinces were covered in the meetings, should they be included in the report

Commented [NA14]: Comment from BRC member: It seems like the information in this table could be summarized in a few sentences. Having the table gives a lot more emphasis to articling than may be needed

Commented [NA15]: Comment: Given that the BRC recommended against an alternative pathway to entry, why is there so much discussion about it in this report?

This section should be substantially reduced, or maybe even eliminated entirely.

³¹ California stopped granting diploma privilege in 1917.

³² The Utah, Washington, Oregon, Louisiana, and D.C. Supreme Courts did provide pandemic-related, limited-diploma privilege to 2020 graduates of ABA law schools.

		<p>students in articling positions when they have had to exit their placement due to harassment or discrimination.</p> <p>The Principal has to complete a certificate at the end of the placement verifying the work.</p>	
British Columbia	Nine months minimum	<p>The student organizes their own placement. The law society recommends they work with their law school career services.</p> <p>The Principal and the student submit a midterm and final report to the law society. There is no prescribed format for the reports.</p>	No; British Columbia has its own program called the Professional Legal Training Course (PLTC). This is a full-time, in person, ten-week course emphasizing practical skills training, ethics, practice management, and practice and procedure.
Manitoba	Full time for 52 weeks	<p>The student organizes their own placement.</p> <p>The Principal submits a midterm review and a final certification.</p>	Yes
New Brunswick	48 weeks minimum	<p>The student organizes their own placement.</p> <p>The Principal does a six-month assessment of the education plan created for the student, then a final certification of completion and evaluation.</p>	No; New Brunswick has its own bar admissions course taken concurrently while articling that combines in-person learning with mini exams. The course contains the following components: a. Sustainable Practice Course b. Intensive Skills Training c. Legal Knowledge Examination d. Professional Skills Examination e. Legal Practice Evaluation
Newfoundland	52 weeks	<p>The student organizes their own placement.</p> <p>The Principal completes a progress report and a final certificate of completion.</p>	No; Newfoundland has its own bar admissions course that is seven weeks long and those weeks count toward the 52 weeks required for articling. The course also includes six mini exams in family law, commercial law, civil procedure, criminal law, administrative law, and real estate/wills.
Northwest Territories (NWT)	One year	<p>The student organizes their own placement.</p> <p>The Principal creates an education plan for the student that is signed by both parties.</p>	The NWT does not have a bar admissions course. Instead, the NWT will accept courses from other provinces. Students must also pass an NWT statutes examination administered by the Law Society of the NWT.

Nova Scotia	12 months	<p>The student organizes their own placement. They are encouraged to work with their law schools to find placement.</p> <p>The Principal creates an education plan and completes a final report.</p>	Yes, and Nova Scotia additionally requires a one-day, cultural competence workshop.
Nunavut	12 months, must be continuous	<p>The student organizes their own placement.</p> <p>The Principal and student meet to complete a midterm and a final evaluation.</p>	Yes. Students must also pass the Nunavut statutes exam.
Ontario	Eight months minimum, except for those in the IPC program	<p>It is the student's responsibility to find placement, but the Law Society of Ontario offers a jobs board, and a mentorship program to candidates to help with placement.</p> <p>The Principal files an experiential training plan at the onset of the articling period and completes a certificate of service along with a record of experiential training at the conclusion.</p>	No. Ontario's assessment exams are described in detail under "Assessment Component."
Prince Edward Island (PEI)	12 months	<p>The student organizes their own placement.</p> <p>The Principal and the student are expected to revisit the competencies outlined on the articling checklist every three months.</p>	PEI conducts its own bar admissions course, which is an in person, six-week course offered in the fall of each year. Attendance is mandatory and completion of the course is a requirement prior to admission to the bar. These six weeks are included in the calculation of the one-year articling period.
Quebec	Six months	<p>The student organizes the placement.</p> <p>The Principal completes a midterm formative evaluation and a final summative evaluation.</p>	Quebec is unique in requiring four to eight months of participation in "École du Barreau," or Bar Exam School. That period includes coursework, exams and, more recently, clinics. Articling is completed after Bar Exam School, which is completed post law school.
Saskatchewan	12 months	<p>The student organizes the placement.</p> <p>Principals complete a midterm and a final report.</p>	Yes
Yukon Territories	12 months, continuous	The student organizes their own placement.	No; but the Yukon Territories use British Columbia's PLTC for admission.

		The Principal completes a midterm report, a final report, and an evaluation of competence.	
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Oregon

In addition to the Oregon Experiential Pathway (OEP), the Oregon Exam Task Force has recommended a postgraduation Supervised Practice Pathway (SPP). The SPP will require 1,000–1,500³³ hours of supervised practice after law school graduation, under a licensed attorney, and periodic work product portfolio review. While the details of the SPP have been deferred to an implementation committee, the tenets of the recommendation are as follows: 1) this pathway will be open to applicants from law schools outside Oregon; 2) applicants will find their own supervisors; 3) supervisors must have an active Oregon license, be in practice five to seven years, with at least two of those in Oregon; 4) supervisors will be required to have certification and training; 5) the Board of Bar Examiners will review non-privileged work product for minimum competence. (See Appendix B for additional information.)

Assessment Component

The third commonality that bar exam alternative models have, or that jurisdictions are considering, is an assessment component. As noted above, there are some who assume that alternative pathways to licensure that do not include a traditional bar exam completely lack any objective assessments of minimum competence. The information discussed by the BRC belies that assumption. The BRC explored various assessment possibilities for a bar exam alternative. Presentations specifically focused on Canadian models that have a robust history of alternative pathways to licensure.

Ontario

The BRC learned about **barrister and solicitor exams** given by the Law Society of Ontario which are a required part of the licensure process. The licensing examinations, which can be taken at any time, post-law school, during the licensing process, consist of a multiple-choice, open-book barrister examination and a self-study, multiple-choice, open-book solicitor examination.

Commented [CA16]: Comment: could we add pass rates

The barrister licensing examination assesses competencies in the following categories: Ethical and Professional Responsibilities; Knowledge of the Law (Ontario and Federal Legislation and Case Law); Establishing and Maintaining the Barrister-Client Relationship; Problem/Issue Identification, Analysis, and Assessment; Alternative Dispute Resolution; Litigation Process; and Practice Management Issues.

³³ The required number of hours for the SPP is still under consideration, as is whether any of the hours could be completed in law school.

The solicitor licensing examination assesses competencies in the following categories: Ethical and Professional Responsibilities; Knowledge of the Law (Ontario and Federal Legislation, Case Law, Policy, Procedures, and Forms); Establishing and Maintaining the Solicitor-Client Relationship; Fulfilling the Retainer; and Practice Management Issues.

The Law Society provides candidates with online access to the necessary materials to study for the licensing examinations. Candidates are permitted to print and mark up the materials and bring them to the examination testing area. Each licensing examination is four hours and 30 minutes in length and comprises 160 multiple-choice items. The licensing examinations are broken into sections, by area of law.

The PREP delivered by the Canadian Centre for Professional Legal Education and used to determine minimum competence to be “called to the Bar” in Alberta, Manitoba, Nova Scotia, and Saskatchewan, was also discussed repeatedly by the BRC as identified as having good models from which to draw. As noted above, the program is designed to be concurrently taken during the “articling” requirement (supervised practice). The components of this program are:

- **Skills Assessment** is the first element of PREP completed by students. This element consists of a benchmarking and training platform to assess skills and provide training to improve the quality of work in Word, Excel, PowerPoint, and Adobe Acrobat.
- **Foundation Modules (roughly 110 hours, online, quizzes at the end of each module)** This first phase of PREP, the Foundation Modules, includes online modules that combine self-directed study and interactive assessments with multimedia learning to provide a foundation in all of the identified competencies.
- **Foundation Workshops (five days, in person)** In the Foundation Workshops, students and facilitators engage in person in interactive workshops that include role-playing in the areas of interviewing, negotiating, and advocacy. They participate in simulations to learn to assess and maintain quality legal services. The focus of the workshops is on integrating knowledge and skills development in social environments, getting feedback from both peers and experienced lawyers, and applying what was learned in the Foundation Modules.
- **Virtual Law Firm (three months with a series of assignments related to each rotation)** Returning to the online environment, students put their foundational training to the test, working as lawyers in a virtual law firm, where they will manage cases in business law, criminal law, family law, and real estate. These transactions include interviewing simulated clients within a learning management system to allow assessors with practice area expertise, and practice managers to assess students’ skills, knowledge, and progress as they complete each task. Students receive coaching and mentoring from a practice manager for the duration of the practice rotations.

- **Capstone** The Capstone is the final phase of PREP. It is the phase in which students must demonstrate the competencies they have acquired throughout the program. The capstone is also used to determine whether a student has reached the necessary level of competency (Entry-Level Competence) to be called to the Bar. The Capstone is a four-day, 32-hour intensive simulation. Students must demonstrate Entry-Level Competence over all the competencies in the Capstone to be successful.

Blue Ribbon Commission Deliberations

Law School Component

The BRC debated about whether a bar exam alternative should begin in law school with doctrinal and experiential changes to the program of legal education, or if an alternative pathway should begin only after law school. Commissioners also discussed how California’s unique mix of ABA law schools, California-accredited law schools, California-unaccredited law schools, and Law Office Study (LOS) applicants might be able to successfully participate in an alternative pathway.

The BRC developed a series of related questions over which they deliberated extensively to determine how a law school component would further the BRC’s goals of fairness, equity, and accessibility:

- Would law schools offer one curriculum to all students that would be applicable to both exam and alternative pathways?
- If not, would schools opt to provide one or the other or both?
- When does the student opt in if both curricula exist at their school, and at what point do the two curricula diverge?
- Do all law school types and LOS have to offer an alternative pathway?
- Do all law school types and LOS get to offer an alternative pathway?
- Does the option to participate in the pathway get exercised by the student?
- Could law school participation be phased in?
- Could there be a cap on the number of participating students?
- Could volunteer law schools reflecting each law school type be identified to participate in a pilot?

The deliberations on the law school component focused on the overarching question—whether a bar exam alternative would begin during or post law school—but the narrower questions of student choice, school type, etc., were deferred.

Supervised Practice Component

Commented [NA17]: Comment: In the draft’s description of the charge to the Commission it specifically states that we were to learn from the PLL program. I could not find the PLL raised again. We did hear from participants in the PLL program and their supervisors. The State Bar also started to study the program, although data was not ready to be presented during our discussions. The Commission did discuss the PLL program as a potential pilot program although we never came to consensus on that recommendation. We also discussed how the State Bar crafted an exam + supervised practice alternative after the cut score changed. I think it is worth noting the PLL and the exam plus supervision pathways to licensure because they highlight that CA is experimenting with alternative pathways to licensure *now*. The Commissions recommendation, especially the one related to the simple exploration of an alternative pathway is currently underway.

The BRC discussed at length the idea of a supervised practice period as part of a bar exam alternative in California. In fact, for many commissioners, this topic presented the most challenging aspect of an alternative pathway. A number of fairness and equity concerns came to the fore in discussions around a California-supervised practice component, as reflected in the table below:

Table X. BRC Adopted Guiding Principles and Supervised Practice Concerns

Guiding Principles	Concerns
<ul style="list-style-type: none"> Criteria for admission to the State Bar of California should be designed to ensure protection of the public. 	<p>Would a supervised practice component be scalable in California?</p> <ul style="list-style-type: none"> Would there be enough supervisors to meet demand? Would the State Bar have the capacity to successfully monitor the program? Would the State Bar have the ability to conduct portfolio reviews in a timely and fair manner? How would supervisors be monitored for consistent quality of supervision?
<ul style="list-style-type: none"> Fairness and equity of the examination, or examination alternative, should be an important consideration in developing the recommended approach. (Fairness and equity include, but are not limited to, cost and the mode and method of how the exam or exam alternative is delivered or made available.) 	<ul style="list-style-type: none"> Would privileged applicants have an easier time finding a supervisor/easier access to a supervisor? Would applicants from lower socioeconomic backgrounds be unable to afford a lengthy supervised practice requirement? Would the quality of supervision vary to the extent that some applicants would be more prepared for any required assessment? Would the entire supervised practice period have to occur postgraduation? Should the length of the supervised practice period coincide with the length of time to get bar results after completion of law school?
<ul style="list-style-type: none"> Admission to the State Bar of California requires a demonstration of knowledge, skills, and abilities currently 	<p>How would work product in varied placements be assessed in a valid, fair, and reliable way?</p>

Commented [NA18]: Comment: Would supervising attorneys use their position of power to engage in discriminatory harassment and/or sexual exploitation against candidates who desire Bar admission after having invested hundreds of thousands of dollars for said opportunity?

required for the entry-level practice of law, otherwise referred to as minimum competence.	
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The BRC’s concerns were driven in part by a 2018 report from the Law Society of Ontario that outlined challenges in the articling program, specifically that the demand for articling positions surpassed the number of available supervisors. The report also highlighted the disparity in remuneration for candidates, the power imbalance that can lead to racial and gender discrimination and the inconsistency in articling experiences. The Canadian provinces reported similar issues with articling, and all were working on sourcing more or supervisors and adding additional training for them. Since the 2018 report, the Law Society of Ontario has landed on a policy to ensure minimum remuneration standards for all articling candidates.³⁴ (Appendix D)

The BRC received public comment on and discussed potential ways to limit, or pilot, participation in a supervised practice program to address some of the identified concerns. Claire Solot of the [Legal Services Funders Network](#) provided a suggestion ~~that may have intrigued some commissioners~~ to pilot a supervised practice program. The pilot would limit the supervisory placements to IOLTA funded legal services organizations. The participants would need to be committed to practicing public interest law.³⁵ Other suggestions for ensuring the availability of supervising lawyers included encouraging California-wide bar associations, as well as the California Lawyers Association, to work to match applicants and supervisors.

Based on the work being done to stand up an interim supervised practice program in Oregon,³⁶ Deborah Merritt provided the BRC with a suggested structure and sample tools for a supervised practice program:³⁷

1. Identify knowledge, skills, and abilities participants will need to demonstrate (for California, covered in the CAPA report).
2. Match skills, knowledge, and abilities to courses, exercises, and client interactions.
3. Provide ongoing feedback and independent assessment by the regulator.
4. Require submission of portfolios
 - a. Written work
 - b. Videos of activities such as client interviews
 - c. Logbooks

³⁴ <https://lso.ca/gazette/news/mandatory-minimum-compensation-for-experiential-tr>

³⁵ See Business & Professions Code sections 6210–6228.

³⁶ This is separate from the SPP. This program was designed to respond to an incident during the February 2022 Oregon Bar exam that created significant challenges for test takers to perform well on the exam.

³⁷ This material was presented to the BRC on June 9, 2022. See <https://board.calbar.ca.gov/Agenda.aspx?id=16704&tid=0&show=100032994>.

Commented [CA19]: Comment: I think it is important to be more specific here about the findings from Ontario. Specifically, I think we need to include their findings re:

1. The cost of this supervised practice program
2. The level of satisfaction with the program and how well prepared they felt after the program ended (i.e. Overall, 63% of candidates report feeling prepared to enter the practice of law, while 37% feel only somewhat prepared or not prepared to enter the practice)
3. The significant harassment and abuse candidates faced and reported. The fairness imbalance is key here. 18 percent of respondents who were currently articling had faced comments or conduct related to personal characteristics (age, ancestry, color, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, sex and/or sexual orientation) that was unwelcome and 16 percent felt that they had received differential or unequal treatment due to personal characteristics.²¹ - 21 percent of respondents who had completed articling indicated that they had faced comments or conduct relating to personal characteristics that were unwelcome and 17 percent felt that they had received different or unequal treatment relating to personal characteristics.
4. The very low salaries earned by these candidates.

For many Commissioners, this report shifted the discussion of bar alternatives. Given how much real estate this report gives to the bar exam alternative path, that was ultimately rejected by a majority of Commissioners, we ought to give equal time to those reports and findings that highlight flaws with a non-exam pathway. Failing to do so, I believe, skews the reports findings and lends credibility to a recommendation we did not make.

Commented [CA20]: Comment: Should there be more detail here on the problems Canadian provinces face with articling? The BRC heard from the Law Society of Ontario on multiple occasions regarding the demand for supervisors, along with the issues candidates faced presented in the 2017 survey – discrimination, differential treatment, and compensation. Alberta also noted candidate issues with discrimination and inconsistent experiences.

- d. Supervisor Assessments
 - e. Learning plan
 - f. Reflections
5. Have Bar examiners assess the portfolio to determine minimum competence based on evidence-based rubrics.
 6. Develop training for supervisors, examiners, and other raters
 7. Design with transparency in mind
 8. Meet all additional licensing requirements
 9. Implement periodic review

While open to hearing about suggested approaches to a supervised practice component, the BRC continued to express general and significant discomfort with this element and did not gain consensus on a structure, required number of hours, or potential pilot format.

Assessment Component

BRC deliberations over the assessment component for a potential alternative pathway centered on concerns of fairness, validity, and reliability.

Based on the BRC’s review of other jurisdictions’ practices, four primary assessment options were identified:

Choice A	Choice B	Choice C	Other models
Assessments are embedded in the coursework as part of an accredited pathway curriculum for all California law schools (ABA, California-accredited and registered).	A summative capstone/portfolio at the conclusion of the supervised practice period to be reviewed and scored by the regulator.	A California preparation program with online modules, in-person workshops, a simulated law firm, and an in-person capstone to be completed concurrently with the supervised practice period.	<ul style="list-style-type: none"> • Additional open-book assessment(s). • Mini exams. • Performance tests.

Choice A exists in the law school component, Choice B as part of the supervised practice component, Choice C was considered concurrent to supervised practice. Other models could be layered on to Choices A-C or used as standalone assessments.

Commented [CA21]: Comment: I believe this should be more strongly worded. There was significant discomfort with an alternative pathway and specifically with the supervised practice component. COAF members repeatedly discussed the power imbalance and the inequity students of color and others would face in trying to secure meaningful or adequate supervision. I don't believe "general" accurately reflects the level of concern Commissioners had.

Commented [CA22]: Comment: I would prefer more neutral language such as "concerns" as used in other parts of this report.

Choices B and C were the most popular in BRC discussions; there was significant interest in adding additional, possibly open-book, tests to the capstone/portfolio choice akin to the Ontario licensure process.

Recommendations Considered

After the extensive background on bar exam alternatives, a draft framework was developed, identifying seven options for possible bar exam alternative pathways, which paired different combinations of the law school curriculum, supervised practice, and assessment components.

The BRC easily narrowed the seven possible alternate pathways down to three for further consideration. (Attachment X)

Each of the three potential programs, reflected in Figures X-X below, had the following elements in common:

- Any pathway-related assessments would be designed and graded by the State Bar.
- Supervisors would be vetted and trained by the State Bar.
- Attorneys licensed through the alternate pathway would need to meet all the other requirements for licensure.

The three alternative pathway programs considered were:

Commented [NA23]: Comment: It's my understanding that the entire commission voted to not support any alternative pathway program. This, to me, is a false representation.

Option 1:³⁸



Law School

- No change to the program of legal education (no additional unit or course requirements), but the six experiential education units already required in ABA, California-accredited and California registered, unaccredited law schools designed to provide students the knowledge, skills, and abilities previously recommended by the commission as the KSAs the bar exam would test.



Supervised Practice

- A postgraduation, supervised practice period between 750–1,500 hours.



Assessment

- A summative capstone/portfolio at the conclusion of the supervised practice period to be reviewed and scored by the regulator.

Option 2:



Law School

- A bar exam alternative pathway, introduced during law school, with expanded doctrinal and experiential education requirements designed to provide students the knowledge, skills, and abilities previously recommended by the commission as the KSAs the bar exam would test. This option would increase the requirements and add a State Bar regulated curricular path (for California law schools) that would diverge at some point from the standard law school curriculum to cover additional externships, practica, simulations, and clinics.



Supervised Practice

- A postgraduation, supervised practice period between 750–1,500 hours .



Assessment

- A summative capstone/ portfolio at the conclusion of the supervised practice period.

³⁸ Students in unaccredited law schools must take at least six hours of practical skills training (Rule 4.240 (F)). This training can be part of a course, including an online course, or may take place in a clinic or internship. Students in California-accredited law schools must take at least six hours of practical skills training (Accredited Rule 4.160 (D)(2)(a)) and must offer them the opportunity to take at least 15 hours of practical skills training as part of their JD course (Accredited Rule 4.160 (D)(2)(b)). This training can be part of a course, including an online course, or may take place in a clinic or internship.

Option 3:



Law School

- No change to the program of legal education (no additional unit or course requirements), but the six experiential education units already required would be modified to meet the CAPA requirements for skills and abilities.



Supervised Practice

- A postgraduation, supervised practice period between 750–1,500 hours.



Assessment

- A California “PREP” program like the one used in several Canadian provinces with online modules, in-person workshops, a simulated law firm, and an in-person capstone to be completed concurrently with the supervised practice period.

After narrowing down the options to three, the BRC was asked to vote on whether to continue exploring an alternative pathway.

Initial Recommendation

Recommendation: The Blue Ribbon Commission recommends to the State Bar Board of Trustees and the California Supreme Court that California explore a bar exam alternative for licensure to practice law. It is recommended that this exploration of an alternative pathway have a significantly increased focus on assessment of knowledge, skills, and abilities for entry-level practice, de-emphasizing the need for memorization of doctrinal law. The precise elements of a bar exam alternative (including eligibility and time frame to completion) should be determined in consultation with experts, including psychometricians, to ensure the pathway is valid and reliable with a standard equivalent to the bar examination.

It is further recommended that the alternative pathway shall include the following elements:

Law School

Any applicant interested in availing themselves of the alternative pathway would need to complete at least six units of experiential coursework in law school that covers CAPA’s skills and abilities. However, serious consideration should be given

Commented [CA24]: Comment: Should all the recommendations include the vote tallies? (This has two similar comments)

Commented [CA25]: Comment: “Would this be better titled “Failed Recommendations Concerning Alternative Pathways”

Commented [CA26]: Comment: Use of the term “recommendation” makes it appear as though the Commission recommended something here; which it did not. I believe a more accurate word would be “Motion.” Indeed, motion is used later when it is made clear that this was rejected by the Commission.

In the alternative, may I suggest that you include prefatory language before outlining the language of the motion to make it clear that this was the first motion heard.

Commented [NA27]: Comment: When it comes to the bar exam alternative, I am curious whether placing the vote totals next to each recommendation would show the public how evenly divided the Commission was on this issue. I think it is also relevant that the discussion occurred over multiple meetings with changing composition of the Committee. I think public comment was also split during the debates.

Commented [NA28]: Comment from BRC member: We dedicated significant discussion to this and decided to not move forward with it. Why is this in a report regarding BRC “Recommendations”?

Alternative pathway stuff should be removed, or at most, reserved to a footnote.

to increasing this experiential education requirement.

Supervised Practice

- There shall be a post-law school supervised practice requirement. The exact number of hours required remains to be determined, with the goal of consistency with the exam timeline to licensure;
- Mandatory and structured supervisor training and oversight to be developed by the regulator shall be required in order to provide consistency in the supervised practice component and ensure that the supervision continues to emphasize the skills and abilities necessary for minimum competence;
- A to-be-determined percentage of supervised practice hours may occur during law school; and
- Equity, disparity, and cost issues must be taken into account.

Assessment

- Summative assessment may include a capstone/portfolio, simulated in-person assignments, and/or a written exam component.
- Scoring and grading must be valid, reliable, and conducted by the regulator.

This motion did not secure sufficient votes for passage. Also failing to secure sufficient votes were four separate motions that also sought to authorize further exploration of a bar exam alternative pathway. These four separate, voted-on motions were:

1. **RESOLVED**, that the Blue Ribbon Commission recommends to the State Bar Board of Trustees and the California Supreme Court that California explore a bar exam alternative for licensure to practice law. It is recommended that this exploration of an alternative pathway have a significantly increased focus on assessment of knowledge, skills and abilities for entry-level practice, de-emphasizing the need for memorization of doctrinal law. The precise elements of a bar exam alternative (including eligibility and time frame to completion) should be determined in consultation with experts, including psychometricians, to ensure the data about the pathway indicates it is valid and reliable with a standard equivalent to the bar examination. In conformity with the guiding principles of the Blue Ribbon Commission, equity, disparity, and cost issues should be considered in this exploration.
2. **RESOLVED**, that the Blue Ribbon Commission recommends in addition to the previously adopted recommendations of the Blue Ribbon Commission to adopt a California-specific bar exam, the Blue Ribbon Commission recommends to the State Bar Board of Trustees and the California Supreme Court that California explore an

alternative pathway to licensure, addressing the guiding principles adopted by the BRC in October 2021, that assesses the same knowledge, skills, and abilities of the revised bar exam once the exam’s assessment format has been decided to ensure protection of the public.

3. **RESOLVED**, that the Blue Ribbon Commission recommends in addition to the previously adopted recommendations of the Blue Ribbon Commission to adopt a California-specific bar exam, the Blue Ribbon Commission recommends to the State Bar Board of Trustees and the California Supreme Court that California explore an alternative pathway to licensure, addressing the guiding principles adopted by the BRC in October 2021, that assesses the same knowledge, skills, and abilities of the revised bar exam to ensure protection of the public.
4. **RESOLVED**, that the Blue Ribbon Commission recommends to the State Bar Board of Trustees and the California Supreme Court that California does not adopt a bar exam alternative for licensure to practice law. It is further recommended that a bar exam alternative be revisited in the future, if necessary, after the implementation of a revised California bar exam.

A motion was also made to halt consideration of an exam alternative pathway, at least until after the new bar exam is implemented. That motion³⁹ failed as well.

Given that the BRC was unable to secure a majority vote on any of the motions presented, the BRC is not prepared at this time to advance a recommendation on a bar exam alternative pathway to the State Bar Board of Trustees or the California Supreme Court.

The Future of Attorney Licensure in California

The recommendations contained in this report could fundamentally alter the way applicants for admission to the bar are examined. The discussions, explorations, and recommendations for the exam pathway included ideas such as:

- Shifting the focus from one that is at least perceived to be on rote memorization to one based on skills and abilities that are more reflective of the practice;
- Consideration of different types of exam questions, including simulations of depositions or client interviews, or direct examinations;

³⁹ The motion read: The Blue Ribbon Commission recommends to the State Bar Board of Trustees and the California Supreme Court that California does not adopt a non-exam pathway for licensure to practice law. It is further recommended that a bar exam alternative be considered after the implementation of a revised California bar exam.

Commented [NA29]: Comment: This should be removed from the report.

- Exploration of more frequent testing opportunities than the current twice-yearly administration of the bar exam;
- Allowing the use of “open book” testing;
- Delivering the exam remotely;
- Addressing fairness and equity issues by keeping the exam costs reasonable;
- Developing a California-based exam based on the CAPA recommendations; and
- Departing from reliance on the NCBE would allow flexibility and independence to deliver the exam in a manner that suits our constituents and that would permit innovation when testing for minimum competence.

While the BRC was able to generate a recommendation regarding the California bar exam, members remained deadlocked in relation to exploration of a bar exam alternative. The BRC was able to winnow options to consider in crafting a bar exam alternative to three, and the groundwork laid in establishing these options may be useful in the future.

Commented [NA30]: Comment: I remember the majority being not in favor of this alternative exam pathway.

DISSENTING OPINIONS

Submitted by Susan Bakhshian:

I wish to dissent on the failure to recommend further exploration and adoption of exam alternatives. The Commission’s failure to reach consensus on exam alternatives followed discussions that included inaccurate information, imagined fears, and blatant protectionism. No credible facts or data were offered to support categorical opposition to all exam alternatives. I encourage the California Supreme Court and the California State Bar and Board of Trustees, to establish a future commission to investigate, evaluate, and implement exam alternatives to accomplish the Court’s goals, build on the work done here, and further this Commission’s mission.

Submitted by Alex Chan:

The BRC Report and Recommendation (“Report”) notes that the Commission pared down the number of possible bar exam alternatives from seven to three. It then suggests that these remaining options are viable alternatives ready for immediate implementation. Because these options do not address diversity, equity, and inclusion (“DEI”), or achieve fairness and accessibility, I dissent.

As the Report states, the Commission considered, at length, three different options for possible bar exam alternatives, each having a different combination of program components but they all have one design element in common—a post-law school supervised practice program. This supervised practice program, however, has several fundamental flaws that have been omitted from discussion in the Report.

First, the Report omits to discuss the financial burden that must be borne by applicants in order to participate in the supervised practice program. As the Law Society of Ontario Paper (the “Ontario Paper”) points out, the “licensing” cost for each applicant participating in the articling program is \$4,710 (exclusive of taxes). *Options for Lawyer Licensing, A Consultation Paper, Law Society of Ontario, Professional Development & Competence Committee (May 24, 2018), at 12.* For the State Bar, this cost is also necessary to cover administration-related expenses ranging from overheads (e.g., hiring additional staff for training supervisors) to compliance (e.g., engaging examiners or regulators for evaluating program compliance).

While the State Bar has not communicated to the Commissioners on whether it would ultimately bear the full cost of operating the supervised practice program (if implemented), the State Bar’s current budget woes seem to suggest shifting some, if not all, of the operating costs for the supervised practice program to the applicants. With the State Bar already drawing from its reserves to cover this year’s budget shortfall, along with rising inflation and ever-growing costs to operating the State Bar (including increasing salaries to its staff to offset the soaring cost of living), the true cost of participation in the supervised practice program would be so overwhelming as to leave many law graduates with heavy debt (that is, assuming *arquendo* they could even take on the debt).

Even if the State Bar were to increase its annual bar dues (which remains a hot button issue and is subject to legislative debate and approval) and to subsidize portions of the program using this additional funding, it is difficult to imagine a scenario in which applicants would pay nothing for their participation. For those applicants in the marginalized communities and underserved populations or who are financially strained, this financial burden, however slight, is a significant barrier to entry to the legal profession.

Second, the Law Society of Ontario (“LSO”) observed significant challenges in implementing its articling program, including, *inter alia*, significant inadequacies in or non- existence of remuneration, limited availability of supervised attorneys, power imbalance between applicants and supervisors, and repeated instances of sexual harassment and racial/gender discrimination. In one example, LSO observed that 21% of applicants who had completed the articling program experienced discrimination or received differential treatment based on their personal characteristics (be it age, color, race, disability, and the like). *Ontario Paper at 11.* In another example, LSO observed that given the candidates’ need to complete their supervised practice requirement, some employers, leveraging their position of power, either did not pay the candidates or did so minimally. This observation is also backed by survey data. In one survey (“Pathways Evaluation”), LSO observed that 30% of candidates did not receive any compensation during their work placement. *Ontario Paper at 10.* In another survey (“Articling Survey”), 10% of the respondents reported that they were paid less than \$20,000. *Id.*

Some Commissioners, at the behest of legal services organizations, suggest restricting participation in the supervised practice program as if this capacity-limiting approach would alleviate or mitigate the aforementioned concerns. For example, the Report points to limiting participation by those applicants who are steadfast in pursuing their careers in public interest law or working for legal aid services or IOLTA-funded organizations.

I agree that certain exceptions must be instituted for the public interest sector as one meaningful way to expand our continuing efforts to increasing legal access and representation by the most vulnerable in our communities. Legal aid is so fundamental to achieving equal access to justice that priority must be considered and given to the underrepresented groups. But limiting participants to the public interest sector, on its own and without more, would not resolve (and in some instances, would even exacerbate) the fundamental concerns so carefully observed in the Ontario Report—many applicants in the equality-seeking populations have faced, are facing, and will still face pay inequity, abuse of power, and workplace harassment and discrimination, even in the nonprofit world.

For some Commissioners who are strong proponents of the supervised practice program, they view California as a “leader”—one that must chart a new path in the modern age without a bar exam. But as Thomas Edison put it succinctly, “a vision without execution is hallucination.” Here, the supervised practice program—a “vision” with no established infrastructure in place to guarantee or ensure the ultimate success of its components—would only exacerbate, not lessen, the fairness, accessibility, diversity, equity, and inclusion crises that have long plagued the legal industry. The supervised practice program, in its empty shell, would put applicants in greater harm if these core issues are brushed aside and not given serious consideration.

This is not to say that the supervised practice program has no place in our future—it does.

With the National Conference of Bar Examiners (“NCBE”) debuting the NextGen bar exam and phasing out the Multistate Bar Exam (“MBE”) in 2026, the State Bar has at least three years to secure the necessary funding, solidify the program components, and engage all stakeholders and supervisors for the supervised practice program as an optional replacement for the MBE portion of the California bar exam. Applicants could be given a choice of participating in the supervised practice program (in which case, their performance in the program would be weighted equally as their essays and performance tests) or accepting a new grading scale focused only on the essay and performance test portions (which is only natural with the MBE becoming obsolete in 2026, unless the State Bar decides to design its own multiple-choice exam to replace the MBE). In doing so, those applicants without the necessary financial or networking resources are not disproportionately alienated. Obviously, this example is non-limiting and there

are other means by which to enhance the supervised practice program without adversely impacting fairness, accessibility, or DEI.

If and when the infrastructure for the supervised practice program is established, off the ground and beyond its infancy, more appropriate discussions can be held to consider formally replacing the California bar exam in its entirety with the supervised practice program. But until then, more work needs to be done to ensure the successful implementation of the program.

Shooting arrows in the dark, however, would do nothing to protect the public or applicants.

With no less than twenty-six (26) California bar associations questioning the integrity, reliability and objectivity of the supervised practice program (which the Report also omits)¹ the Commission (or the next court-appointed working group) should earnestly endeavor to working with legal practitioners across the Sunshine State and perfecting the “fine prints” of the program (i.e., if and when the program gains judicial approval)—which the Commission regrettably has not done. These practicing attorneys play key roles in the supervised practice program. Without their supervision or agreement to supervise, the supervised practice program is likely dead on arrival. The Commission cannot ignore their concerns in the same way it cannot discount comments from other stakeholders, including applicants and legal aid organizations.

I remain hopeful that the Commission can work together to improving the lives of many while resolving various design and implementation challenges inherent in a bar exam alternative.

Submitted by Ryan M. Harrison, Sr.

R. M. Harrison, Sr. - DISSENTING OPINION

February 14, 2023

Commissioner Ryan M. Harrison, Sr.’s, Dissenting Opinion to the Draft Blue Ribbon Commission’s Report and Recommendations (“Draft Report”).

I dissent to the Draft Report as written because I believe it misrepresents the general consensus of the Commission, particularly with respect to the Commission’s opinions regarding (1) the proposed alternative pathway to licensure program, (2) the Commission’s opinion regarding civility in the practice of law, (3) the Commission’s opinion regarding adopting the Next Generation Uniform Bar Exam (UBE), and (4) the Commission’s consensus regarding the need for

¹Letter from Ms. Ann I. Park, President of Los Angeles County Bar Association, sent on behalf of twenty-five California Bar Associations (Oct. 10, 2022); Letter from Ms. Oyango A. Snell, CEO and Executive Director of the California Lawyers Association (Oct. 11, 2022).

the next California Bar Exam to better reflect, and provide minimum competency testing for, the practice of law in California.

I assert my dissent as the immediate past Chair of the California State Bar's Council On Access and Fairness ("COAF"), a sub-entity of the California State Bar established through direct, focused, and purposeful legislative intervention based upon the dire need for the Bar to foster and implement programs designed to diversify the legal profession. I also assert my dissent as the immediate past president of the Wiley Manuel Bar Association of Sacramento County and a participant on the board of the California Association of Black Lawyers.

The Commission's Opinions Regarding the Alternative Pathway to Licensure

My participation in Blue Ribbon Commission ("BRC") meetings has given me the general impression that most of the members of the BRC are in stark opposition to an alternative pathway to licensure.¹

Specific to COAF's opinions in this regard, COAF is concerned that such program will perpetuate the issues of lack of diversity in the profession COAF specifically seeks to remedy. COAF BRC representatives, Judge Kristin Rosi and I preserved our concern on the record that such a pathway program will likely only be accessible to a certain class of privileged individuals seeking alternative entry.

Additionally, I vigorously asserted that the power dynamic an attorney will have over a candidate who seeks profession entry via this alternative program will create a situation ripe for significant abuse, in particular for diverse individuals, individuals of lower socioeconomic status, those suffering from disability, and female candidates. During presentation, the BRC learned of such abuse issues demonstrable in the Canadian exemplar.

These concerns of substantial abuse and exploitation are expressed in addition to the other concerns voiced by other BRC members about ensuring programmatic quality control and oversight.

¹ I note that, as opposed to the paid BRC and State Bar staff present for the purpose of providing guidance and support, the formally appointed members of the BRC were volunteers with career obligations that, on occasion, conflicted with the substantial time commitment required to be present for day-long meetings. As attorneys, our time does not always belong to us and may be determined by the court or our clients. Naturally, many appointed members were not present for critical votes. Therefore, the record of formal BRC votes may not accurately reflect the overall opinion(s) of commission members.

The Commission’s Opinion Regarding Civility in the Practice of Law

Both the President of the California Lawyers Association (“CLA”),² Jeremy Evans, and I, expressed strong support for including in the revised Bar Exam a function to test civility in the practice of law. No BRC member, that I recall, voiced an objection to this idea. This idea goes beyond merely referencing civility in a mission statement. It goes to actually testing it on the exam itself.

I served on the 2022 California Judges Association (“CJA”) and the CLA Joint Civility Task Force (“Task Force”). The Task Force is deeply concerned with the diminishing level of civility in the legal profession and seeks to promulgate its importance.

I am of the personal opinion that the Task Force would also appreciate a function of testing civility in the practice of law on the California Bar Exam. For example, just last week, I was violently threatened by an opposing counsel³ during a witness deposition (“You don’t know me, you better watch your back!”) as she also communicated racialized “dog whistles” designed to instigate an emotional response from me while on the record. This was her strategy to throw me off my game—e.g. to be threatening and racist, nothing about that facilitates justice. For another example, only six months ago, I witnessed an opposing counsel (who was clearly intoxicated) brazenly sexually harass my mentor (a female attorney of more than 20 years’ experience and equity partner of an AmLaw 100 national firm) because he knew he was afforded legal protection for secrecy in confidential settlement negotiation communications under Evidence Code section 1152.

Simply put, attorneys feel as if they have license to threaten, abuse, and sexually harass without fear of censorship or reprisal. This needs to stop immediately as it undermines confidence in the rule of law and in the legal profession. Lawyers are the guardians of democracy, and democracy can only survive through the currency of credibility. Incivility in the profession constitutes an insidious threat to the credibility of our national concept of liberty proffered through democratic and legal integrity. Given our current state of political affairs, widespread faith in democracy is waning and it is the prerogative of us, the officers of court, to fortify resiliency in our national concept and restore to it the meaning it rightly deserves.⁴

During the BRC meetings, staff experts opined that law school curricula and bar exam preparation material will militate to exert more significant focus on areas anticipated to be tested on the

² CLA is the trade association for all lawyers in the state of California.

³ An attorney with more than 20 years of experience.

⁴ In other words, lay people resent attorneys and view us as *the* problem, not the cure to problems. We are generally regarded as a threat to democratic liberty, not the guardians of it. If people stop believing in our system, they will resort to violence to resolve their disputes. The January 6, 2021, US Capitol Insurrection is a perfect example of this.

exam. The best way to promulgate the importance of maintaining civility in the profession, and to imprint this imperative upon candidates for entry for years to come, is by having some testing mechanism for civility included in the exam.

In short, the President of all California lawyers, Mr. Evans, and past COAF Chair and Task Force member, myself, among other BRC members, agree that the BRC should recommend testing concepts of civility in the California Bar Exam.

The Commission's Opinion Regarding Adopting the Next Generation Uniform Bar Exam

The BRC came out in strong opposition to the Next Gen UBE, namely because there was no actual product to consider. The National Committee of Bar Examiners served up nothing but high-flying conjecture and innuendo about what they *hope* the Next Gen UBE exam will look like. There was no material information presented for the BRC to consider. The BRC is not supportive of the Next Gen UBE.

Personally, I am supportive of an alternative to the MBE that does not contain dynamic subject stimulus questions that change with each question presented; but rather asks multiple questions pursuant to one, longer set stimulus fact pattern. My recommendation is that the Bar Exam present questions designed to tease out knowledge of law that resemble the types of test questions in the Reading Comprehension section of the Law School Admissions Test (LSAT). Of course, these questions would not test reading comprehension, they would test well settled legal principles. But the issue of having to mentally shift gears and reset one's frame of mind to an entirely new conceptual fact pattern for each and every question will be abated, as it creates unnecessary and unreasonable mental exhaustion not reflective of current practice of law.

The MBE, as it is currently delivered, is an unnecessary litmus test that borderlines on hazing a candidate for Bar admission.

The Commission's Consensus Regarding the Need for the Bar Exam to Better Reflect, And Provide Minimum Competency Testing for, California Law Practice

The California Attorney Practices Analysis Report's ("CAPA Analysis") ultimate conclusion was mentioned repeatedly during the BRC's deliberations in multiple meetings, if not all of them. The singular conclusory statement repeated *ad nauseum* was ***a better job must be done in gauging "alignment between the content of the Bar Exam and the practice of law in California."*** (Emphasis added.)

It is my belief, as a litigator and trial attorney, that the Bar Exam is far more difficult than actual law practice. In this sense, I cannot stress enough that if the Bar Exam is made to "better align with the practice of law" the functional impact of that alignment is that the test will become easier to pass and more candidates, especially diverse candidates, will successfully enter the

profession.⁴⁵ To this end, any final Bar Exam product that does not accomplish this result ought to be considered an utter failure.

In commitment to the rule of law and confidence in the legal profession.

⁴⁵ Facilitating more diversity in the legal profession is not just an issue of fairness; it is an issue of public safety, and it is essential to further promote democratic ideals to strengthen our national creed. When our citizenry come to see and believe that the arbiters of justice resemble them, know them, and understand their culture, confidence in the legal profession and in our legal system will increase and thereby diminish criminal vigilantism (e.g. violent crime) and civil injustice.

APPENDICES