



October 24, 2023

The State Bar of California  
180 Howard St.  
San Francisco, CA 94105

*Re: Opposition to Proposed Alternative Pathway to State Bar Licensure*

The Board of Directors of California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (“CASE”) opposes the proposal to establish an alternative pathway to licensure separate from the traditional bar exam. CASE is the exclusive representative of State Bargaining Unit 2, pursuant to Government Code section 3520.5. We represent more than 5,000 attorneys, judges and other legal professionals employed by the State of California in approximately 110 different departments, agencies, boards and commissions.

CASE is opposed to the proposal to allow individuals entry into the practice of law without taking the bar exam, and the specific proposal for the “Portfolio Bar Exam” or PBE, has a variety of specific problems that will jeopardize the quality of legal professionals in California and damage the integrity of the profession.

CASE believes that admission to the Bar by way of traditional examination is important to ensure a baseline level of competence for those individuals entering the profession. As every lawyer can attest, successful passage of the bar exam, in and of itself, does not make a person ready to practice law. Most recent admittees to the bar need a substantial period of mentorship, training, and guidance before they are truly competent. However, mandating that everyone start their legal career from the same starting point, i.e., passage of the bar exam, will ensure that new admittees all have the same basic knowledge and understanding of legal principles so that the training and mentorship they receive can be properly contextualized and integrated with the knowledge they already have.

While CASE is certainly open to discussions about modifying the bar exam, the topics it should cover, and the manner of its administration, there can be no doubt that bypassing the exam altogether will lead to new admittees who lack knowledge of the basic principles that all lawyers need to understand as they embark on their career. This will inevitably result in poor quality representation, longer-than-necessary remedial training, and a loss of credibility for the profession in the eyes of the public.

As to the specific aspects of the proposed alternative PBE pathway, the material provided by the State Bar on its website reveals a number of additional problems with the proposal.

The proposal is unclear as to whether PBE participants will have to graduate from law school. The proposal calls for PBE candidates “to successfully complete law school courses in the nine doctrinal

subjects that the BRC recommended,” but does not otherwise specify whether PBE candidates must actually graduate from an accredited law school. The language seems to suggest that the curricular requirements for PBE candidates are, and will be, less than full completion of an approved course of study at an accredited law school. This means that not only will PBE candidates not have to study to pass the traditional bar exam, but they also won’t even have the same educational coursework as other, traditional bar admittees. This disparity will further complicate their integration into the profession, as a lack of a sufficient base of knowledge will impede all subsequent training and mentoring.

Additionally, the proposed contents of the portfolio that will be evaluated or graded suffer from a fatal flaw: the materials submitted by PBE candidates will not be proctored in the way the traditional bar exam is, so there is no assurance that the portfolio materials submitted by a PBE candidate are the actual work product of the candidate, as opposed to some other party. In other words, even if a PBE candidate submits impeccable materials as part of their portfolio, the system will allow for people to attain licensure even if they did not actually do the work that their portfolio purports to reflect. Anyone can write an essay (including a computer using artificial intelligence) and any employer who has an interest in getting their employee fully licensed may be incentivized to “assist” with the preparation of portfolio materials. In short, there is simply no way to ensure that the portfolio represents the actual work product of the candidate.

Similarly, the grading of the portfolios seems to be designed to lead to inequitable results. The proposal recommends that there be no restrictions on practice areas for PBE candidates. As a result, the types of materials submitted as part of a portfolio will vary widely. Unlike a traditional bar exam, where every participant is faced with the same legal issue and can be graded fairly in relation to all other test-takers, the portfolios will by definition vary substantially from candidate to candidate. As just one example of the inevitable inequity, one PBE candidate may submit documents relating to negotiations over a contract, while a second may submit materials relating to negotiations over a criminal plea bargain, while a third may submit materials relating to a corporate merger or acquisition. While all of these are “negotiations” in the broadest sense, the variation in complexity, subject matter, and exposure makes it impossible to evaluate these equally. Conversely, the traditional bar exam ensures that all participants are graded on the same criteria.

Finally, CASE notes that the proposal is overly optimistic in believing that the PBE can be effectuated without legislative action. The proposal accurately notes that Business and Professions Code section 6060, subdivision (g) requires that licensees “[h]ave passed the general bar examination given by the examining committee.” However, the proposal also opines that the novel PBE would be deemed to be a “general bar examination” within the meaning of the statute. This opinion seems hard to square with the fact that the statute uses the definite article “the” immediately preceding the phrase “general bar examination.” This strongly suggests the Legislature contemplated only one general bar examination, not several alternatives. After all, the statute refers to passing “the general bar examination” not passing “one of several general bar examinations.” Moreover, section 6060 has been amended many times over the years, including three times in the last five years and approximately a dozen times since its original enactment. Each amendment operates as a new

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legislative enactment, in the context in which it occurred. This is important, because each time the Legislature has amended and re-enacted the general bar examination requirement, it has done so in the context of the traditional bar exam that has been administered for decades. The notion that the Legislature contemplated something that is almost the exact opposite of the traditional bar exam is untenable. As a result, this proposal will either need legislative authorization, or it will operate under a cloud of legal uncertainty, creating a group of second-class licensees who may have their status revoked at some point in the future if the statutory basis for PBE is ever challenged.

For the foregoing reasons, CASE is opposed to the proposal and respectfully requests it be tabled until further input from stakeholders has been considered.

Sincerely,

CASE Board of Directors