



## **POLICY REGARDING ELIGIBILITY, RECRUITMENT, AND SELECTION OF SUBJECT MATTER EXPERTS FOR LEGAL ACCURACY REVIEW**

To ensure the legal accuracy of the multiple-choice questions developed for the California Bar Examination and instill confidence in the public about the quality of the questions, the Committee of Bar Examiners directs that an additional review be conducted by paid subject matter experts (SMEs) retained by the State Bar to review the questions for legal accuracy. SMEs may also perform additional expert review tasks on an as-needed basis.

### **ROLE OF SUBJECT MATTER EXPERTS**

After content validation panels review draft multiple-choice questions to ensure the questions appropriately test for minimum competence to practice law, do not exhibit any bias, are clearly written, are cohesive in style with other questions, and accurately test the intended legal issue, SMEs will conduct an open-book review of the questions and answer choices for legal accuracy. SMEs will cite the legal source supporting their determination of the legal accuracy, and if they believe that a question or answer choice is incorrect, explain what is incorrect. SMEs will not draft or revise questions or answers, in whole or in part.

SMEs may also perform additional tasks, on an as-needed basis, where a SME's expertise would aid the review of vendor-developed materials, such as evaluating some essay questions for legal accuracy or reviewing study guide materials.

### **ELIGIBILITY CRITERIA FOR SUBJECT MATTER EXPERTS**

To prevent conflicts of interest, mitigate risks of copyright infringement and other legal claims, and ensure exam security and integrity, the committee establishes the following eligibility criteria for SMEs:

1. The SME must not have an immediate family member who will take either of the two California Bar Examinations immediately following the beginning of their engagement with the State Bar as a SME. An "immediate family member" includes a spouse or domestic partner, children (including adoptive or stepchildren), siblings (including half- or stepsiblings), parents (including stepparents), grandparents, grandchildren, and in-laws.
2. The SME must not have a close personal relationship with someone who will take either of the two California Bar Examinations immediately following the beginning of their engagement with the State Bar as a SME. A "close personal relationship" is a relationship other than an immediate family member that would or may be perceived

to interfere with or influence the SME. This includes, but is not limited to, a significant other (boyfriend, girlfriend, or partner), close friends, roommates, co-participants in study groups, subordinate employees, and mentees.

3. The SME must not have been engaged in commercial activities related to bar exam preparation in the two years immediately preceding their engagement with the State Bar as a SME. The SME also must not engage in such activities while participating as a SME. Prohibited commercial activity includes a broad set of compensated activities outside of regular academic employment including, but not limited to, publishing books or other bar preparation materials, paid lecture series, or selling course content. Work performed solely in a faculty capacity for an academic institution is not considered commercial activity for the purposes of this restriction.
4. The SME must not have performed work either directly or indirectly, including volunteer work, for, or had an independent contractor relationship with, the National Conference of Bar Examiners (NCBE) at any time in the year immediately preceding their engagement with the State Bar as a SME, including work relating to the NextGen Bar Exam through AccessLex or any other entity. The SME also must not perform such work while participating as a SME.
5. The SME must be able to represent that participating in this review process would not violate any agreement the SME may have entered into with NCBE relating to the use of NCBE's intellectual property or with any bar preparation company relating to the use of its intellectual property. The SME must not enter into any agreement with the NCBE or any bar preparation company relating to the use of its intellectual property while participating as a SME.
6. The SME must be an active licensee in at least one state in which they are licensed and be in good standing in any state in which they are licensed and must not have any pending disciplinary charges before an attorney disciplinary board or committee. Any public attorney disciplinary history shall be reviewed by staff in consultation with the Chair of the committee to determine if any such history is disqualifying.
7. The SME must agree to promptly disclose any change in circumstances that could create a real or perceived conflict of interest or otherwise impact their eligibility under the criteria above during the course of their engagement with the State Bar.

## **RECRUITMENT, SELECTION, AND RETENTION OF SUBJECT MATTER EXPERTS**

Whenever necessary to ensure a sufficient number of SMEs are available to conduct legal accuracy reviews of multiple-choice questions or other discrete expert review tasks, the State Bar shall conduct a broad solicitation of law school faculty and retired California judges and justices.

Because the SMEs' primary responsibility is to review multiple-choice questions which do not test California-specific law, recruitment for SMEs will target faculty across the country and will seek applications from faculty affiliated with law schools approved by the

American Bar Association's Council of the Section of Legal Education and Admissions to the Bar (ABA-approved) or accredited by or registered with the committee.

Submitted applications will be reviewed by staff for compliance with eligibility criteria and staff will make initial recommendations to the Chair of the committee. The final selection of SMEs who meet the established criteria will be approved by the Chair. The SMEs will be selected on the basis of subject matter expertise, experience, and the criteria listed above. Selections will be made without regard to race, color, religion, sex (including gender identity or expression and sexual orientation), national origin, age, disability status, genetic information, or any other characteristic protected by law.

The Chief of Admissions or their designee, in consultation with the committee Chair, will determine whether to extend an offer to enter into an initial agreement with a SME.

SMEs will be retained for each of the thirteen subjects tested on the bar exam (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) for a total of 39 SMEs. SMEs for the seven subjects tested in the multiple-choice portion of the bar exam will participate in regular review of multiple-choice questions and related materials. SMEs for subjects tested only in the written portion of the exam will be called upon as needed.

If a SME no longer meets the eligibility criteria or otherwise becomes unable to fulfill their duties, this is grounds for the State Bar to terminate the agreement with the SME, following consultation between the Chair and the Chief of Admissions or their designee.

#### **ADVERTISING/PUBLICITY**

SMEs shall not advertise or engage in any publicity about their roles as having served as a SME with the State Bar or the committee or otherwise achieved some sort of expertise associated with the development of exam questions, without prior written consent from the State Bar.