

Can You Get Extra Time, And How Exactly Is The California Bar Exam Graded? What *Every* Bar Applicant Should Know.

An interview with Zachary D. Wechsler, former attorney member of the California Committee of Bar Examiners.

CLSJ: Before we get into specifics, tell us a little bit about yourself and the aspect of your law practice that focuses on California Bar Exam consultations.

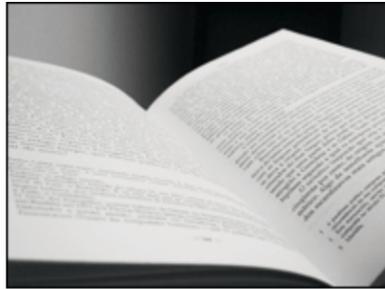
ZDW: I needed testing accommodations when I applied to take the bar exam and the accommodations were granted, at least in part. What I learned however, was that the testing accommodations application was far more difficult than the exam. A few years later, while working at the Office of the Attorney General in the California Department of Justice ("DOJ"), a friend advised me that the Committee of Bar Examiners had an opening for the young-attorney slot. She was aware that I had needed testing accommodations when I took the bar and thought my voice would provide a unique perspective to the Committee. I applied for the open position and I was appointed to a four-year term. Attorney members are only permitted to serve one term on the Committee. For each of those four years, I served on the sub-committee for Testing Accommodations. I chaired the sub-committee for two of those years. Incidentally, I served on the sub-committee for Moral Character for three years. In that capacity, I participated in at least one hundred Moral Character hearings.

At the DOJ, I worked in the Employment, Regulation and Administration section of the Civil Law Division, my practice included both Administrative Law and Employment litigation, including defending the State against claims of disability discrimination and failure to provide reasonable accommodations.

I left the DOJ to open my own practice at the end of 2003. My term on the Committee expired in September 2004. After a proper

interregnum to avoid any appearance of a conflict of interest, I began consulting with and representing applicants who needed assistance when applying for testing accommodations or responding to requests from the sub-committee on moral character.

CLSJ: Let's take testing accommodations first. ADD and



Dyslexia are the most common learning disabilities—or, at least the most well known. Are there any others?

ZDW: ADD and Dyslexia are common diagnoses because the results of a diagnostic exam can be more easily quantified and explained than a more esoteric claim. The sub-Committee has seen purported diagnoses for virtually every possible condition. I have seen had applicants who have claimed the bar exam made them nervous and thus they requested extra time, or applicants whose doctors have diagnosed applicants as . . . well, as "stupid." To accommodate that learning disability, applicants have requested permission to take their notes or outlines into the exam. As far as I know, those requests were not granted. More important than a particular label, applicants need to find doctors who are qualified to perform scientifically valid tests demonstrating specific processing problems. The doctor

then must provide proof that the accommodations sought are essential to accommodate for the disability.

CLSJ: Is it true that a candidate has a better chance of receiving extra time on the California Bar Exam if there were given such extra time in law school?

ZDW: I am glad you asked that question, because that is the common belief. And, to a point, it is incorrect. Law schools have their own set of standards and their own reasons for granting accommodations. And the Bar has its own set of standards. There are many applicants who approach the Bar, application in hand, expecting the same accommodations they have been granted in school. Those applicants can be in for a big surprise.

The advice I give all clients is simple: Assume nothing! As soon as you believe you might need testing accommodations for the bar exam, apply. Many times the sub-committee's experts will request additional information before offering an opinion. Procrastination is not an accommodated disability.

CLSJ: Does the California Committee of Bar Examiners entertain the notion of a learning disability being diagnosed later in life? For example, someone who grew up in a poor household without any financial resources might not have been diagnosed with ADD as a child, for obvious reasons. Sounds unfair if this candidate is going to be penalized for not having a "documented" history.

ZDW: Obviously, a student whose family has economic resources, can afford early diagnoses. It has been said that 110% of the students at Beverly Hills High School have been diagnosed with learning disabilities. But they stand more of a

chance of being granted testing accommodations than your hypothetical impoverished candidate. Let's examine the evidence. A student with a learning disability is going to have had a long record pointing to a disability whether or not a diagnosis was made. Of course you need to take other factors into consideration. For example, it is possible that some students who learned English as a second language might have a history similar to that of an individual with a learning disability. But there is generally a record evidencing a problem, regardless of the timing of a diagnosis.

It is possible that a diagnosis can be made later in life, particularly where the record has evidence of processing problems in childhood. But the sub-committee is generally skeptical when an individual presents a new diagnosis for a learning disability after the successful completion of college or law school, where no accommodations were requested or given, or where a diagnosis is made after the third or fourth administration of the CBX.

CLSJ: While we have you here, any insight into how the California bar exam is actually graded?

ZDW: I have often heard applicants complain that if only their exam had been read by a different reader, they would have passed. Let me explain briefly the calibration process. It should inspire confidence. Of course, that is small solace to an individual whose grade falls just short of a pass. But wherever a line is drawn, some will fall just short of the pass.

Before any question or performance test is put in the bar exam, a member of the Board of Reappraisers rewrites the question and tests it, sometimes for years, before it is ready to be approved by the Committee. Each Reappraiser works on only one question at a time. Now the members of the Board of Reappraisers are individuals with extensive experience, not only reading

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the exam, but in practicing law. These reappraisers may be sitting judges, clerks to justices on the Supreme Court, and the like. Once questions have been given, a team of readers, usually about 30 or so, is assigned to grade it. The Reappraiser supervises them. And here's what happens: Each reader submits his or her outline and complete essay to the reappraiser. That provides a general guide as to what a good answer should contain. Then, about six weeks after the administration of the exam, the first calibration session is held. Each question has one reappraiser and about 30 readers assigned.

In the session, the readers' answers are discussed, and a general point value for particular issues is established. The group then reads another 10 sample essays together, and each reader and the reappraiser explains the basis for his or her grade. Then, the readers are given another package of sample essays to take home. They grade those essays. Next, those essays and grades are returned for a statistical analysis. At that point, there is a second calibration session. All 30 readers and the reappraiser each the 10 essays that had been returned to reach a consensus as what point values should be given to particular items in the answer. Another 10 essays are read in the calibration session during which the readers and reappraiser apply their analyses and refine their judgments. At the end of the session, another 10 sample essays are handed out for the readers to evaluate at home. Once again, the grades assigned by each reader to each essay is calibrated and a third calibration session is held. This session further refines the disparities between the readers. Adjustments in point value might be tweaked. And only then, when the readers each can read the same essay and give the same result, are they given their 600 - 700 essays to grade.

To pass the examination in the first phase of grading an applicant must have a total scaled score (after one reading) of at least 1466 out of 2000 possible points. Those with total scaled scores after one reading below 1390 fail the examination. If the applicant's total scaled score is at least 1390 but less than 1466 after one reading, that applicant's examination is read a second time by a different set of readers. If the applicant's averaged total scaled score after two readings is 1440 or higher, that applicant passes the examination. If the total averaged scaled score is less than 1412, that applicant fails the examination. If after two readings the averaged total scaled score is at least 1412 but less than 1440, or if the applicant received a single read scaled score of more than 1440 but less than 1466, that applicant's examination is automatically sent to reappraisal where a member of the Board of Reappraisers determines whether the examination as a whole merits a pass.

Mr. Wechsler is a former Deputy Attorney General for the State of California. He received his J.D., cum laude, from Loyola Law School. Besides consulting with and representing bar applicants, his practice includes general civil law, litigation, business and administrative law, appeals and writs. He is a mediator for the Los Angeles County Superior Courts and provides ADR and mediation to private parties. For further information, please contact his office at (310) 642-4600 or email him at zdww@zdwlaw.com.

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How To Read And Write Bar Exam Essay Questions

by **Mary Campbell Gallagher, J.D., Ph.D.**



In the essay questions, the bar examiners put you behind the desk of your own busy solo practice on Main Street. Through your door walk clients who need wills, and ones who ask to be incorporated. They ask: He didn't keep his word about converting to my religion, so do I have grounds for annulment or divorce? or: He hasn't delivered the widgets, so do I have to pay him? They pose the problems of daily practice. I have spent eighteen years teaching candidates for the bar examination how to write the essay part of the exam, and I have read bar exam questions from all of the jurisdictions that release them. Regardless of the jurisdiction, the first thing for the bar candidate to learn to listen for is the client's question. It is usually the last line of the page, the so-called "call of the question" or "interrogatory." It is the question with which the client walks through the door: Do I have to pay? or the trial lawyer's question: Will the court dismiss the complaint?

I. READING: The first rule for writing a bar exam essay is therefore a rule for reading: Read the interrogatory first, and read it with care. The bar examiners see every candidate as potentially practicing unsupervised. Find out what the practitioner's problem is, the law practice problem to be solved. Act like a practitioner, not a law student. Find out the client's question first. Don't put your head down at the top of the page and snuffle through the fact pattern crying "Issue! Issue!" Analyze the interrogatory and divide it into its component questions.

Interrogatories vary from state to state, but there are patterns. Here is a typical example: What are the rights and liabilities of the parties? This interrogatory about "rights" and "liabilities" may not sound as though it has anything to do with trials, but it is often shorthand for: What causes of action ("rights") does each plaintiff have, and what remedies are available?

Make sure, first, not to skip any possible parties. Does the fact pattern concern a check lost in the mail? Don't forget the United States Postal Service as a party. Second, be careful to set out the basic principles of law underlying each cause of action of each party. (For example: Under the common law of contracts, a contract requires offer, acceptance and consideration.) Pay particular attention to remedies.

II. WRITING: List the major principles of law needed to answer each part of the question and write the answer by applying those rules to the facts. The bar examiners want to know whether the bar candidate can use basic principles of law to solve typical practitioner's problems. It follows that for each part of the interrogatory on the bar exam there are one or more rules of law that competent practitioners will apply. Is the client concerned because a carpenter has failed to perform? Competent practitioners first find out whether the client and the carpenter have an enforceable contract. They apply the basic rule for contract formation: Under the common law, a

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