**Sample Comment Letter:**

**[Deadline is January 31, 2023]**

**[Online submission portal is here,** [**https://fs22.formsite.com/sbcta/lugsi3zlk9/index.html**](https://fs22.formsite.com/sbcta/lugsi3zlk9/index.html)**]**

January [\_\_], 2023

*Via Portal and Staff Email*

Ruben Duran

Chair

Brandon N. Stallings

Vice-Chair

Mark Broughton

Hailyn Chen

José Cisneros

Juan De La Cruz

Gregory E. Knoll

Melanie M. Shelby

Arnold Sowell Jr.

Mark W. Toney, Ph.D.

Trustees

Board of Trustees

State Bar of California

180 Howard Street

San Francisco, CA 94105

CC: Louisa Ayrapetyan

Board of Trustees Staff Contact

[Louisa.Ayrapetyan@calbar.ca.gov](mailto:Louisa.Ayrapetyan@calbar.ca.gov)

Devan McFarland

Committee of Bar Examiners Staff Contact

[Devan.McFarland@calbar.ca.gov](mailto:Devan.McFarland@calbar.ca.gov)

RE: Proposed Amendments to the Rules of the State Bar, With “High-Level Framework,” Pertaining to Testing Accommodations on the State Bar– **OPPOSE**

Dear Chair Duran, Vice-Chair Stallings, and Trustees Broughton, Chen, Cisneros, De La Cruz, Knoll, Shelby, Sowell, and Toney:

**[Introduction]** I am writing on behalf of [ORGANIZATION. DESCRIPTION OF ORGANIZATION. INCLUDE WHY YOUR ORGANIZATION CARES ABOUT LAWYERS WITH DISABILITIES]. We **OPPOSE** the proposed amendments to the rules of the State Bar, with the “high level framework.” We urge the Board of Trustees to adopt an alternative proposal that includes the principles stated herein.

**[Commitment to diversity in legal profession and eliminating access barriers] [**ORGANIZATION] is committed to promoting diversity in the legal profession, and to eliminating unnecessary bias and barriers that exclude qualified individuals with disabilities. A diverse bar with lawyers of all backgrounds and statuses facilitates access to justice, improves legal services, offers role models, and promotes public confidence. A legal profession that includes, welcomes, and licenses qualified lawyers with disabilities including disabled people of color is better equipped to serve the varied people and communities who live and work in California, including indigent people.

**[Barriers continue to exclude disabled people from the legal profession]** Despite the critical importance of a diverse and inclusive legal profession, unnecessary barriers continue to exclude disabled people from becoming licensed California attorneys. As the State Bar itself has reported, only five percent of California attorneys report having a disability, a fraction of the proportion of disabled people in the state population (about one in five). This mismatch ultimately leads to disparities in the California judiciary: only 18 state court judges (two percent of all California judges) identify as having a disability.

**[Testing accommodations are a necessary and accepted means for including people with disabilities in the legal profession]** Many people with disabilities require reasonable accommodations, such as extended time, to take high-stakes exams. Testing accommodations allow the individual to demonstrate the knowledge and abilities measured by the exam. Without such accommodations, the resulting scores reflect the effects of disability and are not a valid reflection of aptitude, knowledge, or abilities. Testing accommodations do not confer an unfair advantage but instead provide an equal opportunity. Today, decades after the enactment of the Americans with Disabilities Act and other disability rights laws, testing accommodations are a regular, recognized, and accepted part of our educational and professional systems, including in K-12 education through IEPs and Section 504 plans, college, the LSAT, and law school. The ready provision of testing accommodations on the LSAT, achieved through the protracted *DFEH v. LSAC* litigation, systemically reformed the pipeline for the legal profession nationwide and opened the doors to law school for disabled people. Testing accommodations are an effective and necessary means for including people with disabilities including disabled people of color in the legal profession.

**[The State Bar regularly denies requests for testing accommodations on the bar exam]** Despite this accepted understanding of the role of testing accommodations, many law graduates with disabilities report that their requests for testing accommodations on the bar exam are denied in whole or in part without a legitimate basis. Denials occur even when candidates submit proof that they have received similar testing accommodations in the past, such as in high school, on the SAT, in college, on the LSAT, in law school, on the MPRE, and in other similar settings. Denials occur even when candidates submit detailed and expensive neuropsychological, psychoeducational, and other medical testing and assessment required by the State Bar. Denials often occur shortly before the scheduled exam, with no opportunity for reconsideration, even when a candidate timely submits an accommodation request with complete supporting documentation. These unnecessary denials upend the plans and expectations of law school graduates who access educational and professional programs with testing accommodations. The resulting exclusion of qualified candidates is harmful not only to the affected individuals but also to the legal profession and communities served by the profession across the state.

**[The current proposal is a step backward]** According to State Bar staff, the proposal to be considered by the Board of Trustees is intended to reform and streamline State Bar testing accommodations rules and procedures and is “guided heavily” by the standards for testing accommodations set out by the U.S. Department of Justice (DOJ) and the *DFEH v. LSAC* litigation. Despite this stated intent, the proposal not only fails to meet these minimum standards, but also embeds eligibility criteria for testing accommodations that would screen out many qualified candidates. If implemented, the proposal would cause the State Bar to exclude even more qualified disabled candidates from accessing testing accommodations. It would hinder the goals of elimination of bias, professional diversity, and access to justice.

The proposal should be **REJECTED**, and the Board of Trustees should adopt an alternative proposal that includes the following:

[Include in your comment letter all below points or select the points you want to include.]

**[The rules should require timely responses to accommodation requests]**

The rules should commit the State Bar to respond to requests for testing accommodations in a timely manner, such that test takers can register with their nondisabled fellow applicants, respond to any request for any additional information requested, and complete any review procedures needed, in time to take the test in the same testing cycle. With about seven weeks between the registration deadline and the bar exam, a response from State Bar staff within two weeks of receipt is necessary. A two-week response window leaves five weeks before the bar exam, a period which is necessary for the candidate to complete further steps, such as communications with State Bar staff, collection of any additional information, and the filing and processing of any appeal.

A two-week response window also allows applicants who request their accommodations early (weeks or months before the registration deadline) an opportunity to exhaust all review options and know their final approved testing accommodations prior to embarking on test preparation, typically an eight to ten-weak endeavor. This knowledge allows candidates to make informed plans about test preparation, which might include taking time off from work, hiring a tutor, enrolling in a preparation class, and taking timed practice exams.

The existing and proposed rules make no such commitment to timeliness. Instead, the proposed rules eliminate and extend existing deadlines for State Bar responses. Rule 4.84 & Proposed Rule 4.84 (six-month ahead recommendation); Rule 4.88(A) (60 days, longer than time between registration deadline and exam); Proposed Rule 4.88(B) (60 days with later start event), (B) (eliminating timing commitment for six-month ahead candidates).

**[The rules should retain an option for an independent review of accommodation denials]** The rules should retain the option for candidates to seek an independent review of denials of accommodations request with the Committee of Bar Examiners. This right is critical given the long history of accommodation denials by the State Bar staff. The proposed rules eliminate this procedural right. Proposed Rule 4.90(E).

**[The rules should allow a candidate an appropriate period of time to seek review]** The rules should allow the candidate up to 30 days to seek an independent review of denial of testing accommodations. The current and proposed rule require that the candidate file an appeal within ten days. Rule 4.90(A) & Proposed Rule 4.89(A). Many candidates secure additional supporting documentation to include with their request for review, and ten days is too short a period to meet with qualified professionals to obtain such documentation.

**[The rules should make clear that candidates may seek more than one review]** The rules should also make clear that any candidate may seek more than one review of the denial of a request for testing accommodations. Such review is appropriate and necessary in various contexts, such as when the candidate obtains additional documentation, there is a back and forth with State Bar staff that results in a partial grant of accommodations, or there is another subsequent development. Further, each new test cycle should also include the option of a new request(s) for review of any accommodation denials. The language of the proposed rule suggests that any additional or subsequent review is precluded, even if the applicant has additional information to provide or circumstances have changed. *See* Proposed Rule 4.90(C).

**[The proposal should commit the State Bar to more and more diverse consultants]** The proposal should commit the State Bar to increasing in number and diversify in expertise its pool of expert consultants that review and evaluate requests for testing accommodations. Leadership and personnel matter as much as written rules and procedures. For many years, the State Bar has relied upon a small group of longtime reviewers who have developed and applied a grudging and skeptical approach to testing accommodations. These reviewers are poorly situated to implement the substantial reforms needed here. The Consent Decree in the *DFEH v. LSAC* litigation included such a requirement, but there is no such provision in the State Bar’s proposal.

**[The proposal should commit the State Bar to training and retraining]** Staff and consultant reviewers should be trained and directed to approach the process with the presumption that the testing accommodation request is justified. *DFEH v. LSAC*, Best Practices Report, <https://calcivilrights.ca.gov/LegalRecords/final-report-of-the-best-practices-panel/>; 2015 U.S. Dist. LEXIS 104751, at \*45 (N.D. Cal. Aug. 7, 2015). Our profession has many vacancies, particularly in the legal services sector. We need more qualified lawyers. Preventing candidates from becoming licensed by denying them necessary and accepted testing accommodations is unlawful and harmful. The State Bar should end its “zero sum game” mindset and commit to the swift and ready grant of all requests for commonly used testing accommodations that are supported by reasonable documentation.

**[The rules should require that the State Bar automatically grant candidates the same testing accommodations that they previously received on standardized tests]**

The rules should require that the State Bar automatically grant candidates the same testing accommodations that they have previously received on (or been approved for) prior standardized tests such as the SAT, LSAT, MPRE, and other states’ bar exams. The rules should state that, in such cases, the candidate is only required to submit proof of the prior approval, and a certification that they continue to experience the same limitations and need the same accommodations. If the person is seeking additional accommodations than they previously received, then staff should automatically grant the prior accommodations, and review the additional accommodations under the below-described standards.

The proposed rules contain no such provisions. A “high-level framework” that is not part of the formal rules proposal (and thus subject to staff amendment at any time) purports to adopt an automatic grant approach, but it is riddled with extensive, complex, and unworkable exceptions, including:

* no grant if prior approval is more than five years ago;
* no grant if prior approval is within five years but based on an automatic grant outside the five years;
* no grant of more than 50 percent extra time (unless severe visual impairment);
* no grant of a private room;
* no grant if the prior approval is not the “most recently approved” of a category of standardized tests (in other words, no grant if there was previously a grant but then a denial);
* no grant if the prior approval was for a list of standardized tests such as the LSAT, GMAT, or SAT, but the candidate *subsequently* takes or has been denied accommodations on the First-Year Law Students' Exam, the Legal Specializations Exam, the MPRE, or the California State Bar; and
* additional unnecessary and harmful exceptions.

“High-Level Framework" at Section I(A)(1)(a), (b), (d), (2), (B)(1)(a)(2), (b), (c)(ii), (e), (D). These convoluted exclusions do not match the U.S. Department of Justice or LSAC standards and will continue to exclude many test takers with longstanding accommodations for standardized tests. The overlapping restrictions inaccurately characterize double time as “exceptional” and improperly presume that people grow out of their disabilities.

**[The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school]** The rules should also require that the State Bar automatically grant candidates the same testing accommodations that they previously received in college or law school. *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*53. This will provide equal opportunity for disabled candidates who were diagnosed later in life or who did not have access to educational assessments, such as older candidates and candidates without personal or family resources, and/or who attended colleges and law schools that did not require or rely heavily on standardized testing. The proposed rules include no provision on how the State Bar should treat such prior accommodations. The “high-level framework,” not part of the formal rules proposal, states only that the State Bar will “consider” such prior accommodations, with no commitment as to how it will do so. “High-Level Framework” at Section II(A)(6). This is inadequate.

**[The rules should require that the State Bar give deference or more weight to the documentation of a qualified professional who has individually assessed the applicant compared to the opinion of a consultant]** The rules should require that the State Bar give more weight to the documentation of a qualified professional who has individually assessed the candidate as compared to the opinions of a consultant who has not personally assessed the candidate but has only done a paper review. The proposed rules include no provision on the weight to be given such documentation. The “high-level framework” states that the State Bar “shall give great weight to documentation provided by a qualified professional who has made an individualized assessment of the candidate.” Section II(A)(5). This statement is appropriate but does not say how much relative weight the State Bar should give such documentation. The rules should commit to giving deference or *more* weight to the documentation provided by the qualified professional who has individually assessed the candidate as compared to the opinions of a reviewing consultant. U.S. DOJ, Testing Accommodations (2014), <https://www.ada.gov/regs2014/testing_accommodations.html>; *DFEH v. LSAC*, Best Practices Report; 2015 U.S. Dist. LEXIS 104751, at \*46.

**[The rules should limit required supporting documentation to that which is “reasonable, limited, and narrowly tailored to the information needed”]** The rules should limit any supporting documentation required to that which is “reasonable, limited, and narrowly tailored to the information needed.” The “high-level framework” appropriately states that required supporting documentation should be “reasonable, limited, and narrowly tailored to the information needed,” and that applicants and qualified professional(s) should have “flexibility in the type and source of the supporting documentation.” Section II(A)(1), (3). However, that standard is not contained in the proposed rules, and the framework and proposed forms are not at all clear as to whether the State Bar will continue to require “comprehensive evaluation reports” as it does now for certain disabilities. These comprehensive reports cost thousands of dollars and are not covered by insurance. The rules should clearly state that the State Bar is no longer requiring comprehensive evaluation reports with underlying test results.

**[The proposal should include an assessment of leadership.]** The State Bar should assess its leadership and chain of command for reviewing and evaluating requests for testing accommodations. Any implementation of new standards for reviewing and deciding requests for testing accommodations requires leaders who are wholeheartedly committed to disability equality, and who embrace testing accommodations as a core component of equal opportunity. This is a key lesson from the LSAC litigation. While many changes were adopted on paper at the time of the Consent Decree, and more through the Best Practices Report and related litigation, these changes were not truly implemented until the LSAC was subject to a motion for contempt and the LSAC leadership transitioned.

\* \* \* \* \* \*

For the reasons stated in this letter, [ORGANIZATION] **OPPOSES** the rules changes and associated “high-level framework.” The Board of Trustees should adopt an alternative proposal that moves the State Bar forward into prevailing standards for disability access and inclusion. If adopted, the proposal would mark a substantial step backwards.

Sincerely,

[Your Name

Job Title

Organization]