

MINNESOTA BOARD OF LAW EXAMINERS' COMPETENCY STUDY

Brief History of Licensure in Minnesota

Current Examination and Anticipated Changes to Examination

Uniform Bar Examination

- ▶ 2 Multi-state Performance Tests (MPT)
- ▶ 6 Multi-state Essay Examination (MEE)
- ▶ 200 Multiple Choice Questions (MBE)
- ▶ Minnesota cut score – 260 (on scale of 400);
 - ▶ UBE range: 260-280

Subjects

- ▶ Business Associations (Agency and Partnerships; Corporations; and Limited Liability Companies)
- ▶ Conflict of Laws
- ▶ Constitutional Law
- ▶ Contracts (including contracts under the Uniform Commercial Code (UCC))
- ▶ Criminal Law and Procedure
- ▶ Evidence
- ▶ Family Law
- ▶ Federal Civil Procedure
- ▶ Real Property
- ▶ Secured Transactions under the UCC
- ▶ Torts
- ▶ Trusts and Estates (Decedents' Estates; Trusts and Future Interests)

Testing Task Force

- ▶ January 2018 – NCBE appointed Testing Task Force to retain outside consultants to undertake a comprehensive, three-year study of the Uniform Bar Examination (UBE)
- ▶ Purpose: to ensure the bar examination appropriately tests skills new lawyers are expected to have and knowledge new lawyers are expected to know

Phase I

- ▶ ACS Ventures, LLC, a psychometric consulting firm, facilitated listening sessions
- ▶ November 2018 and June 2019
- ▶ Themes Identified

Phase II

- ▶ Nationwide Practice Analysis Survey
- ▶ 14,848 lawyers
 - ▶ 3,153 newly licensed lawyers (NLL)
 - ▶ 11,693 non-newly licensed lawyers
- ▶ Designed to collect data on skills and knowledge necessary for NLL
- ▶ Minnesota:
 - ▶ Court authorized Board to send survey to all active status lawyers in Minnesota; MSBA assisted in distribution of survey in weekly newsletter
 - ▶ 803 completed the survey (5.7% of the responses received.)

Top Skills, Abilities, and Other Characteristics

- ▶ Written/Reading Comprehension
- ▶ Critical/Analytical Thinking
- ▶ Written Expression
- ▶ Identifying Issues
- ▶ Integrity/Honesty

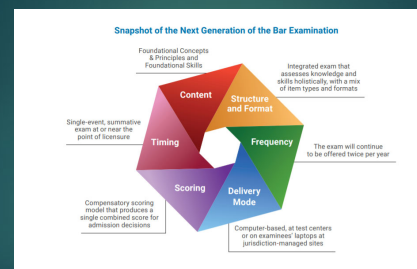
Tasks – 2019 Practice Analysis

- ▶ Research secondary authorities
- ▶ Schedule meetings
- ▶ Negotiate or facilitate resolutions
- ▶ Research administrative regulations, rules, and decisional law
- ▶ Identify issues
- ▶ Inform client about the status
- ▶ Consult with colleagues
- ▶ Research statutory and constitutional authority
- ▶ Develop strategy
- ▶ Interview clients and witnesses

Phase III

- ▶ Blueprint Development Committee (BDC)
 - ▶ 17 practicing lawyers in 13 jurisdictions
 - ▶ 14 female; 10 people of color
 - ▶ BDC recommended 7 skill domains, 103 representative tasks, 11 knowledge areas
 - ▶ Weight of exam: 30-40% skills; 60-70% knowledge
- ▶ Test Design Committee (TDC)
 - ▶ 11 educators, 9 bar examiners, 6 bar administrators, 2 justices
 - ▶ 10 female panelists; 7 people of color panelists
 - ▶ Analyzed structure, assessment methods, administration, score interpretation, accessibility and fairness

Recommendations



<https://nextgenbarexam.ncbex.org/wp-content/uploads/TF-Next-Gen-Bar-Exam-Recommendations.pdf>

Impact on Examination

- ▶ Estimated first administration: July 2026
 - ▶ Integrated exam
 - ▶ MBE, MPT, MEE, and UBE as currently known no longer test products
- ▶ Additional focus on skills: legal research and writing, issue spotting and evaluation, negotiation and dispute resolution, client counseling and advising, client relationship and management
- ▶ Eliminates family law, trusts and estates, and secured transactions
- ▶ Subject matter outlines amended to focus on core issues

12 Building Blocks – IAALS (2020)

- ▶ 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 matter
- ▶ 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

What are we studying?
Why are we studying it?
What is the scope?

Baseline Criteria

1. Ensure that members of the bar are worthy of public trust with regard to their professional competence.
2. Evaluate applicant's ability to satisfy the Essential Eligibility Requirements under Rule 5A of the Rules for Admission to the Bar, including:
 - ▶ an understanding of threshold knowledge in core subjects;
 - ▶ an understanding of legal processes and sources of law;
 - ▶ an ability to reason, recall complex factual information, and integrate that information with complex legal theories;
 - ▶ the ability to determine the importance of the information to the overall client matter;
 - ▶ the ability to communicate with a high degree of clarity and organization;
 - ▶ the ability to interact effectively with clients; and
 - ▶ the ability to conduct legal research;

Baseline Criteria

3. Accounting for diversity in the age, race, ethnicity, gender, geographic location, and practices of applicants and the clients who rely on Minnesota lawyers for their legal needs.
4. Ensuring equal access to the practice of law and working to eliminate inequitable barriers to the practice of law on the basis of socio-economic status, race, gender, disability status, etc.
5. Law student and lawyer well-being.
6. Evaluating feasibility in terms of scalability, flexibility, and costs and resources required for implementation: e.g., to applicants, law schools, administration, the bar, regulators, MBE staff, etc.

Baseline Criteria

7. Ability of law schools to implement, the flexibility of curriculum and any ABA Accreditation concerns
8. Reliability of standards to determine meaningful, objective, and consistent results.
9. Available data regarding prior use of method/particular model
10. Other considerations raised by key stakeholders

Working Group 1

- ▶ Supports multiple pathways to licensure
- ▶ Based on what is known so far, recommends the NextGen examination as one pathway.
 - ▶ While the proposed changes to the examination appear to be positive, it still is a standardized test.
 - ▶ Lawyering abilities are difficult to measure in a standardized test.
 - ▶ NextGen appears to be an improvement in testing foundational skills, but the prototype of the new exam has not yet been released.
- ▶ A benefit of adopting the NextGen is that will continue to allow portability into other jurisdictions.

Working Group 2

- ▶ Recommends developing a curricular pathway that would allow law students to be licensed upon graduation.
- ▶ The recommendation includes the creation of minimum competence standards to certify curricular and experiential pathways at each of the Minnesota law schools.

Working Group 3

- ▶ Recommends the development of the Minnesota Supervised Practice Pathway for licensing.
- ▶ Under this program, graduates would complete lawyering tasks under the supervision of a licensed attorney for a specified number of hours of practice and submit documentation of those tasks through a portfolio of work to the Board to demonstrate minimum competence.