FIRST YEAR REPORT

Prepared by
Hon. Cynthia L. Martin, Chair
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BACKGROUND AND OVERVIEW

The validity of the bar examination is of paramount importance to the National Conference of Bar Examiners (NCBE). NCBE has a research and testing staff that are continually conducting studies and monitoring examination scores to ensure that the scores validly reflect the competencies needed by the newly licensed lawyer. In 2012, NCBE completed a comprehensive job analysis to help ensure the continued validity of the bar examination.1 Subsequently, NCBE reviewed its current products for alignment with the key competencies identified in the job analysis and explored the feasibility of adding new content areas such as Civil Procedure and Research Skills. Civil Procedure was added to the MBE in February 2014; the assessment of Research Skills proved infeasible at the time. NCBE also had its drafting committees review the content specifications for their content areas, and several committees revised their specifications for better alignment with the results of the job analysis. However, the practice of law has continued to evolve. Accordingly, in October 2017, NCBE’s Board of Trustees authorized the formation of a Testing Task Force. The Task Force was directed to conduct a three-year study, guided by best practices in the testing industry,2 to ensure that the bar examination continues to test what is necessary for competent entry-level legal practice in a changing profession.

In October 2017, NCBE’s Board of Trustees authorized the formation of a Testing Task Force.

NCBE’s Board of Trustees officially constituted the Task Force and, effective January 1, 2018, charged it as follows:

The Task Force shall undertake a future-focused study to identify the knowledge, skills, and abilities (KSAs) that a minimally competent, newly licensed lawyer should be expected to demonstrate, and make recommendations to the Board for how best to assess these KSAs by a valid and reliable examination and/or other methods and how best to deliver the examination. Ultimately, the goal is for the Task Force to determine what constitutes the set of fundamental lawyering skills needed at the point of licensure and recommend method(s) for effectively and practically assessing them.

The following members were appointed to the Task Force:

- Hon. Cynthia L. Martin, Chair (Missouri)
- Hulett H. “Bucky” Askew (Georgia)
- Diane F. Bosse (New York)
- David R. Boyd (Alabama)
- Michele A. Gavagni (Florida)
- Judith A. Gundersen (NCBE President and CEO)
- Anthony R. Simon (Mississippi)
- Timothy Y. Wong (Minnesota)

In addition, the 2017–2018 NCBE Board Chair, the Honorable Rebecca White Berch from Arizona, served as an ex officio member of the Task Force during her term.

The Task Force is staffed by NCBE’s:

- Kellie R. Early, Project Director
- Joanne E. Kane, Ph.D., Technical Lead
- Danielle M. Moreau, Project Manager
- Mark A. Albanese, Ph.D., ex officio
FIRST STEPS

The Task Force began its work by engaging in a broad discussion of its charge. Members agreed that the work of the Task Force should be approached with a view toward future collaboration with legal educators, bar admitting authorities, bar associations, and legal employers, as each plays a role in ensuring that newly licensed lawyers (NLLs) would benefit from the input of acknowledged experts in the field. 

The Task Force identified two overarching principles by which its work should proceed:

(i) The process used to identify the competencies NLLs should possess should presume a blank slate, unencumbered by the current bar examination or by preconceived notions of what can or should be assessed on a bar examination.

(ii) Meaningful, open-minded, transparent, and genuine outreach to interested stakeholders throughout the Task Force’s work is essential.

In connection with the first principle, the Task Force agreed to gather and review existing studies and publications addressing the knowledge, skills, and abilities (KSAs) required of NLLs. The Task Force also agreed that its work related to the first principle would benefit from the input of acknowledged experts in the field of identifying and assessing KSAs for professional licensure testing programs. Two such experts were identified. Both are authorities in their fields with numerous publications on topics in testing and educational measurement.

The Task Force also provided for ongoing consultation and information sharing with the NCBE Testing and Research Department through direct staffing by Joanne Kane, Ph.D., Associate Director, and Mark Albanese, Ph.D., Director, serving ex officio. In addition, NCBE’s Technical Advisory Panel (TAP)—composed of five nationally recognized measurement experts, including one of the Task Force’s expert advisers—is available to provide technical and psychometric guidance to the Task Force. In September 2018, the TAP reviewed the Task Force’s research methodology and expressed its approval. The TAP will be consulted as appropriate during the Task Force’s work.

In connection with the second principle, the Task Force identified relevant groups and organizations to include in the Task Force’s stakeholder outreach initiatives.
INTERPRETATION OF THE TESTING TASK FORCE’S CHARGE

A review by the Task Force of relevant studies and publications was enlightening and underscored an evolution toward competency-based training and assessment in legal education and employment. That evolution highlighted the importance of not only a thorough and defensible future-focused practice analysis to identify the KSAs expected of NLLs in a changing profession, but also a corresponding thorough and defensible evaluation of whether and how those KSAs should be assessed on a bar examination. Related to that discussion, the Task Force considered whether the study should rely upon the 2012 job analysis or whether a new practice analysis should be undertaken.

The Task Force determined that a new practice analysis would be most helpful for systematically determining, in a future-focused manner, the KSAs required of NLLs in a changing profession.

As a result, the Task Force committed to a research methodology conducted by third-party consultants that approaches with a clean slate the determination of the KSAs required of NLLs, and whether, how, and when those KSAs should be assessed on the bar examination.

The Task Force also concluded that it was essential to the integrity of its research to secure meaningful, widespread stakeholder input in order to build a sense of community with others who are similarly interested in public protection, and who are thus similarly involved in educating and assessing NLLs.

Having reached these critical decisions about how it would interpret and fulfill its charge, the Task Force also concluded that an effective communication strategy was essential to afford meaningful opportunities for stakeholder input and to ensure transparency of its work. The Task Force felt that its communications with stakeholders should convey its genuine desire to produce a comprehensive and scientifically defensible body of research that could be used not only by NCBE, but by other stakeholders invested in educating and assessing NLLs. The Task Force agreed that its communication strategy needed to effectively convey the empirical, comprehensive, collaborative, and transparent manner in which it intends to undertake its work. The Task Force agreed that it needed to develop a stand-alone website and explore the use of social media platforms.

An official announcement about the Task Force’s formation and the intended scope of its work was made at the NCBE Annual Bar Admissions Conference in April 2018, and a press release was subsequently issued.
THE RESEARCH METHODOLOGY

Preparing to choose a research consultant

The next step was to choose a research consultant to conduct the Task Force’s study. Staff members prepared and delivered a request for proposal to three consultants. Each consultant was asked to propose a research methodology for (i) conducting a clean-slate assessment of competencies that NLls should possess and (ii) determining whether and how the identified competencies could be validly and reliably tested on a high-stakes licensure examination. Each consultant was informed of the critical importance of securing stakeholder input as a part of its research.

The Task Force also met with one of its expert advisers, who described research methodologies used by other professional organizations that had similarly studied the KSAs required of newly licensed professionals. The adviser confirmed that based on his experience, the three-year time frame for the Task Force’s work was realistic, albeit ambitious, so long as the end of the three-year timeline marked the point at which recommendations are made and not the point at which recommendations are implemented.

After receiving the consultants’ research proposals, the Task Force discussed them, as well as reviews of the proposals prepared by NCBE’s testing and research staff and by the Task Force’s expert advisers. Two consultants, American Institutes for Research (AIR) and ACS Ventures LLC (ACS), were subsequently invited to in-person interviews in June 2018.

Following these interviews, the Task Force discussed the possibility of using both of the research consultants as part of a three-phase research methodology. ACS is a psychometric consulting firm with considerable strength in test design. AIR is an industrial organizational psychology firm with considerable strength in developing and conducting practice analyses. The relative strengths of the consultants aligned naturally with the Task Force’s commitment to identify the KSAs required of NLls and secure meaningful stakeholder input before proposing to the NCBE Board of Trustees any recommended changes to the bar examination.

The use of two separate primary research consultants would have the advantages of drawing on the professional strengths of both consultants and separating the stakeholder engagement component from the practice analysis.

A dual-consultant approach

Task Force members asked their expert adviser to share his thoughts on the proposed multiphase/multi-consultant research methodology. He agreed with the proposed dual-consultant approach and division of duties between the two consultants. In August 2018, the Task Force made the final decision to use both AIR and ACS as its research consultants, pursuant to the three-phase research methodology it had been considering. AIR and ACS were consulted. They both agreed with the approach and committed to a cooperative working relationship.

In August 2018, the Task Force made the final decision to use both AIR and ACS as its research consultants.

The Task Force met with AIR and ACS in September 2018 to discuss the work expected from each consultant by phase and areas where their work would need to be coordinated. The Task Force’s expert adviser also attended the meeting to provide advice.
Three research phases

The three-phase research methodology discussed by the Task Force would proceed as follows.

**PHASE ONE** would be conducted by ACS and would focus on stakeholder outreach and engagement via a series of listening sessions. This phase would serve the purpose of gathering data of relevance to developing recommendations about the bar examination of the future as well as the equally important purpose of listening to stakeholders, which is consistent with the Task Force’s genuine desire to be transparent and collaborative.

**PHASE TWO** would be conducted by AIR and would involve a full-scale, future-focused practice analysis designed to identify the KSAs and other personal characteristics required of NLLs in a changing profession. The practice analysis would be distributed to NLLs and experienced lawyers. This phase would also include a linkage exercise, through which subject matter experts would link the KSAs to specific tasks and rate the importance of each KSA to performing the tasks. AIR would analyze the results of the linkage exercise so that the KSAs that are most important for performing the most critical tasks would be identified.

**PHASE THREE** would be conducted by ACS and would marry the research from Phase One with the results of the practice analysis and linkage exercise from Phase Two. During Phase Three, ACS would work with the Task Force to develop bar exam program redesign options (considering attributes such as number of components, the domains each component would cover, the expected relationship among the components, etc.) representing the revised framework indicated by the practice analysis. ACS would research the benefits and challenges associated with each option, resulting in recommendations to the Task Force. The Task Force would submit the recommendations to the NCBE Testing and Research Department and the NCBE TAP for their assessment of the recommendations. The Task Force would amalgamate the feedback into a final document that would be submitted to the NCBE Board of Trustees. Subject to NCBE Board approval to proceed with the plan described in the document, with ACS as lead consultant, the Task Force would engage in an iterative process to design the test components to be included in the program redesign. NCBE’s Testing and Research Department and the TAP would be consulted for relevant expertise as various options were considered. The test design part of Phase Three would involve making decisions about the format, administration, and scoring strategy for each test component and would result in a structured plan for the development, delivery, and maintenance of each test.

Establishing a timeline

A timeline for all three phases of the study was agreed upon. Phase One of the research was scheduled to begin immediately and to continue through at least June 2019. Phase Two of the research was also scheduled to begin immediately and to be completed by March 2020. Phase Three of the research is scheduled to begin in February 2020 and to be completed by September 2020. Each of the research phases imposes an obligation on the consultants to produce agreed-upon deliverables, including technical and public-facing reports. (See Study Timeline on the following page.)
STAKEHOLDER ENGAGEMENT—PHASE ONE OF THE RESEARCH

Working from its stakeholder chart, the Task Force began identifying groups and organizations from whom it wanted to secure input as a part of Phase One of the research. The Task Force has worked, and continues to work, to schedule listening sessions facilitated by ACS at conferences and other gatherings of these stakeholders.

During the listening sessions, ACS poses broad questions to elicit responses and interaction. Generally, ACS facilitates discussion of participants’ views about the current bar examination, both positive and negative; about what a bar examination of the future might look like; and about cautions NCBE should keep in mind as it explores modification of the bar examination. After each focus group or listening session, ACS produces a written summary capturing the input from the group. The summaries do not attribute comments to any particular participant but do include (where available) a list of the names of the people who participated. Summaries of the listening sessions have not yet been published to avoid influencing input from participants in future focus groups or listening sessions.

Around 30 stakeholder engagement/listening sessions have been conducted or are scheduled at the following events.

<table>
<thead>
<tr>
<th>EVENT</th>
<th>LOCATION</th>
<th>DATE</th>
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<tbody>
<tr>
<td>CBAA Fall Meeting</td>
<td>Denver, CO</td>
<td>November 2018</td>
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<tr>
<td>AALS Annual Meeting</td>
<td>New Orleans, LA</td>
<td>January 2019</td>
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<tr>
<td>UBE Forum</td>
<td>San Antonio, TX</td>
<td>January 2019</td>
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<tr>
<td>ABA Midyear Meeting</td>
<td>Las Vegas, NV</td>
<td>January 2019</td>
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<tr>
<td>LSAC/NCBE Legal Educators Conference</td>
<td>Albuquerque, NM</td>
<td>February 2019</td>
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<tr>
<td>Annual Bar Admissions Conference</td>
<td>San Francisco, CA</td>
<td>May 2019</td>
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<tr>
<td>Association of Academic Support Educators Conference</td>
<td>Seattle, WA</td>
<td>May 2019</td>
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<tr>
<td>ABA Deans Workshop</td>
<td>Denver, CO</td>
<td>June 2019</td>
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The Task Force is scheduling virtual listening sessions with members of the ABA Young Lawyers Division and the Diversity and Inclusion Section. ACS will also prepare a survey instrument to secure additional input from stakeholders. The survey instrument will likely be distributed in the summer of 2019.

PREPARATORY WORK FOR THE PRACTICE ANALYSIS—PHASE TWO OF THE RESEARCH

AIR began Phase Two of the research with an environmental scan, during which it reviewed relevant information about external conditions, forces, facts, or other influential factors regarding what the future jobs of NLLs will look like. The Task Force’s resource bibliography and NCBE’s 2012 job analysis were provided to AIR as a part of the environmental scan. Based on the environmental scan, AIR began developing an initial list of tasks performed by NLLs and the KSAs and other personal characteristics needed to perform those tasks.

AIR developed a schedule to conduct focus groups of NLLs and those who supervise NLLs. These sessions centered on changes in and the future direction of the profession. The focus group feedback assisted AIR in refining its initial list of tasks, KSAs, and other personal characteristics as it prepared to develop a future-focused practice analysis. Three in-person focus groups were scheduled in Chicago for February and March 2019, and one virtual focus group was scheduled for April 2019.

AIR’s practice analysis survey will be distributed beginning in June 2019 and will remain open through at least July 2019 and potentially be extended through August 2019. It will require survey respondents to provide ratings on job tasks, KSAs, and other personal characteristics that will help determine the criticality of each to entry-level practice.

FIRST YEAR AT A GLANCE

| October 2017 | Testing Task Force Authorized |
| January 2018 | Testing Task Force Appointed |
| March 2018 | Request for Research Consultant Proposals |
| June 2018 | Research Consultant Interviews |
| August 2018 | AIR and ACS Selected as Research Consultants |
| September 2018 | Timeline for Study Established |
| November 2018 | Stakeholder Listening Sessions Begin |
**THE COMMUNICATION STRATEGY**

The Task Force’s website, [www.testingtaskforce.org](http://www.testingtaskforce.org), went live in June 2018. It is regularly updated as the Task Force’s study progresses. The website contains information about the composition of the Task Force and restates its charge and mission. It also includes the Task Force’s research plan and timeline, a calendar and registration for upcoming events, blog posts, and other information such as a timeline of key milestones in NCBE’s testing program from the conception of the MBE starting in 1969 to appointment of the Task Force in 2018.

In addition, people can
- subscribe on the website at [www.testingtaskforce.org](http://www.testingtaskforce.org) to receive updates on the Task Force’s study;
- communicate with the Task Force via email at taskforce@ncbex.org; and
- follow the Task Force on LinkedIn at company/testing-task-force, on Twitter at @ncbetaskforce, and on Facebook and Instagram at /testingtaskforce.

The Task Force proactively discusses the transparency of the study at each of its meetings and is already contemplating when and how its research should be publicly released and disseminated.

**CONCLUSION**

The Testing Task Force’s first year has been productive and purpose driven. The Task Force has made a genuine effort to comprehensively study the bar examination in an unencumbered and empirically sound manner. A full-fledged commitment to stakeholder engagement has been, and will continue to be, a foundational underpinning of the Task Force’s work. Public protection demands collaboration between NCBE, legal educators, bar admitting authorities, state bar associations, and legal employers in identifying, instilling, and assessing the KSAs that should be possessed by NLLs. The Task Force will continue its study mindful of the fact that the bar examination is an important component, but only one important component, along the continuum of admitting competent and ethical NLLs to the practice of law.

**NOTES**

2. See, e.g., *Handbook of Test Development* (2nd ed. 2016), Thomas M. Haladyna and Steven M. Downing, editors.
3. The term “newly licensed lawyer” refers to a lawyer who has been in practice from 1 to 5 years.
4. The terms “practice analysis” and “job analysis” both can be used to describe the process of identifying the responsibilities performed by those working in an occupation or profession, but “practice analysis” is typically used to describe the broader type of job analysis conducted for licensing and credentialing programs. See *Handbook of Test Development*, p. 145.