



Nevada Bar Study: Participants Needed in September

BY RICHARD TRACHOK, ESQ.;
CHAIR, NEVADA BOARD OF BAR EXAMINERS

A casualty of the pandemic lockdown, the Nevada Bar Study was suspended shortly after the February 2020 launch. The exam itself was modified to allow a remote format. As a leader in the country, we were able to administer the exam fully online without any of the problems experienced by many of our sister states.

The primary change to the August 2020 and February 2021 exams was the omission of the Multistate Bar Examination (MBE). This adjustment was necessary to allow the exam to be offered remotely, as the National Conference of Bar Examiners would not allow states to offer the MBE remotely until October 2020. Omitting the MBE for both the July and February exams kept Nevada law graduates on track and provided the Nevada Supreme Court and the Board of Bar Examiners with very useful data.

Now, via the Nevada Bar Study, we seek to learn whether the MBE is a valid measure of minimum competence; we seek to determine the validity of the exam. As a licensing body seeking to protect the public

interest by licensing only competent individuals, we require a test that is a valid measure of minimum competence.

We need 30 to 50 percent of lawyers from the potential pool of 500 lawyers who are targets for the study. We anticipate commencing a “soft launch” of the survey on September 9, 2021, with a full launch planned for September 23, and completion of the study December 22.

The data generated from the surveys will be validated and analyzed. We anticipate that the initial draft report should be completed in mid-April 2022. The final report will be made available to each participant, the court, and the bar at large. All participants will receive CLE credits.

As mentioned in the November 2019 *Nevada Lawyer* article, “Nevada Bar Exam Study – The MBE – Predictor of What?,”¹ the goal of the Nevada Bar Study is to measure validity of the exam. Specifically, the study is designed to assess what relationship, if any, exists between performance as a beginning lawyer and performance on the MBE. It will also help us determine the relevance, if any, of performance on the essay questions (which approximates what we do as lawyers: analyze facts and write an intelligent solution to a problem), and performance in law school.

The MBE serves two functions: 1) it tests knowledge and 2) it serves as a “reliability” metric. While testing knowledge, the MBE also measures ability to do well on standardized multiple-choice tests.

The former is a measure of minimum competence and the latter, not so much. As a tool to ensure reliability, the MBE serves a useful function. Using a set of questions from exam to exam, the range of MBE scores on any given exam can be used to scale the essay questions to maintain reliability among each question on a given bar exam and from bar exam to bar exam. In other words, scaling to the MBE balances out results between easy and difficult questions within an exam and from one bar exam to the next.

The basic lawyering skills and knowledge that will be evaluated in the study were first identified by Berkeley Professors Marjorie Shultz and Sheldon Zedeck in 2011 developing lawyering effectiveness factors. These factors include intellectual and cognitive factors, knowledge of the law, research, communications, planning and organizing, conflict resolution, client and business relations, working with others, and character.

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The Nevada Bar Study seeks participation from those Nevada lawyers who passed the bar exam within the last five years, including attorneys who took the traditional exam and those who took the remote bar exam in August 2020. Each lawyer will receive a general explanation of the study, including the security measures in place to ensure confidentiality. The study questionnaire will request basic data on each lawyer such as demographics, work history as a lawyer, date of law school graduation, and practice experience. In addition, each lawyer will be asked to identify two supervisors and two peers who are able to evaluate the attorney's lawyering skills and knowledge.

The peers and supervisors will be asked to rate the attorney's performance on the skills and characteristics listed above. I encourage the reader to review the November 2019 article for a summary of the security procedures. Participation in the study is voluntary, but all precautions will be undertaken to ensure protection of participants' data. The survey can be completed on either your mobile device or your computer.

The primary benefits of this study will accrue to the legal profession and our clients. The study will illuminate whether the MBE portion of the bar exam predicts lawyering effectiveness and, if not, may help shape reforms to the bar exam.

I know each of us are overloaded as we catch up from working remotely and move to in-person hearings and meetings. I would ask that each of you consider taking part in this survey. The data generated will be invaluable to improve the licensing process. While many of us may think that new entrants to the profession should face the same challenges we faced to gain entry to the practice of law, our true focus should be a more valid measure of minimum competence.

The bar exam is the only licensing test used in the U.S. at this time to determine minimum competence to practice law. We must make sure that we are using the most valid data possible in designing and administering the bar exam. Few will argue against the proposition that the written portion of the bar exam tests those skills that lawyers use every day. The unanswered question, and what this study attempts to address, is the relationship between the MBE and lawyering skills and knowledge.

ENDNOTE:

1. https://www.nvbar.org/wp-content/uploads/NevadaLawyer_Nevada-Bar-Exam-Study.pdf



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