

The Nevada Plan— Nevada’s Comprehensive Licensing Examination

BY RICHARD TRACHOK, ESQ.

The Nevada Supreme Court and the Board of Bar Examiners (BBX) have been studying attorney licensing for more than five years. This study commenced with the Nevada Multistate Bar Examination (MBE) study in 2018, where newly licensed attorneys’ job performance was evaluated and compared to both MBE scores and bar exam essay scores. The study’s purpose was to determine if there was a correlation between bar exam scores and job performance. The results indicated that there was a slight, yet measurable, correlation between MBE scores, essay scores, and the job performance evaluations.

In response to COVID-19 pandemic restrictions, Nevada was the first state to offer a remote bar exam in August 2020. The National Conference of Bar Examiners (NCBE) refused remote administration of the MBE for the July 2020 exam administration, and Nevada, not wanting to delay the bar exam, omitted it.

The Nevada bar exam was offered remotely through February 2022, except for the July 2021 exam, which was administered in-person, in the standard format. Except for the August 2020 exam, which consisted of eight essay questions and a two-and-a-half hour Nevada Performance Test (NPT), the remote Nevada bar exam consisted of seven one-hour long essay questions and two, two-hour NPT problems.

As we studied the data generated, it became clear that the attorney licensing system bore further study. On March 9, 2022, the court created the Bar Licensing Commission to study alternatives to the current bar exam system for attorney

licensing. The commission members were Richard M. Trachok II, chair; the Hon. Lidia Stiglich; Dean Erwin Chemerinsky; Dean David Faigman; Dean Joan Howarth; Ann Morgan; and Ryan Works.

The commission submitted its recommendations to the court on February 13, 2023. A summary of the commission’s recommendations was included in the July 2023 issue of *Nevada Lawyer* magazine. It can be found here: https://nvbar.org/wp-content/uploads/NevadaLawyer_July2023_News-Bar-Exam-Study-Findings.pdf. The commission requested that the court form two separate task forces to study the testing component and a supervised practice component for attorney licensing.

The two task forces submitted their recommendations to the court on April 1. The report, Nevada’s Comprehensive Licensing Examination, recommends a three-prong step for licensing in Nevada: a Foundational Law Examination, a Nevada Lawyering

Performance Examination, and a Supervised Practice Program. Each will be discussed in turn.

Foundational Law Examination

This 100-question, closed-book, multiple-choice examination will test on what are considered the foundational concepts drawn from the areas of the law tested on the MBE: contracts, torts, civil procedure, evidence, constitutional law, real property, and criminal law/procedure. This examination will be offered four times a year. Just like the Multistate Professional Responsibility Exam (MPRE), this test will be offered at remote testing centers nationwide. Students successfully completing their third semester of law school will be eligible to sit for the exam. Twenty general principles and the dozens of subprinciples for each subject will be published on the State Bar of Nevada’s website. The exam will test these principles and rules.

This recommendation seeks to examine these foundational law subjects



close to the time the law student has studied them in law school. The materials will not only be fresher, but it will give the potential bar applicants an indication if they have mastered the subjects while still in law school. Those failing the exam will still have the opportunity to rely on the law school resources to help master the subjects, or failing the exam may signal to the student that they might not have the skills necessary to pass the bar exam.

By offering the exam four times per year, after the third semester those failing students will have the opportunity to retake the exam without putting their professional lives on hold awaiting the next offering of the bar exam six months later. A student would be able to successfully complete this portion of the licensing exam prior to graduation from law school. For those not wanting to take the exam during law school, it can be taken after graduation.

Nevada Lawyering Performance Exam

Nevada’s bar exam includes two Nevada Performance Test problems. The problems require the applicants to perform lawyering tasks such as

writing advocacy memos, bench briefs, or demand letters, to mention a few. The problems include a file with the facts of the case and a library of the relevant case and statutory authority. In other words, this portion of the exam focuses on lawyering skills as opposed to memorization.

The performance exam would be an in-person, one-day exam offered shortly after conclusion of the spring and fall law school semesters. Because this exam does not require memorization of the law, the typical two-month study period would not be necessary, nor would a bar review course be necessary. The exam would include three, two-hour performance problems.

Supervised Practice Program

The Supervised Practice Program is both unique to the licensing process in Nevada and the cornerstone. Currently, the successful completion of the bar exam is all that is required to represent clients in Nevada. Ours is the only profession or trade in the country that does not require some form of residency or apprenticeship. Those graduates working for agencies or firms that have

structured training programs have the opportunity to learn how to practice law. For the rest, it is trial and error, at the client’s expense.

A bar applicant can satisfy this

requirement in law school by enrolling in an approved practice externship or clinic, or through pro bono work as part of a law firm clerkship. All law schools today offer excellent supervised externship and clinic programs where students learn the basic skills of representing real clients. This requirement will signal Nevada’s focus on practical lawyer training in law school.

Those students who have not enrolled in clinical programs will be required to successfully complete 60

hours of supervised practice in qualified legal aid programs throughout the state. This program will provide much-needed support to all of Nevada legal aid organizations. The evaluation criteria for successful completion of the program will be prepared by the Board of Bar Examiners and the court. The results will likewise be monitored by the Board of Bar Examiners.

With this plan, Nevada’s Comprehensive Licensing Examination, the time currently spent taking a bar review course and studying to pass the bar exam could be used to satisfy this requirement. For those not wanting to immediately satisfy this requirement, opportunities would be offered year-round. Those lawyers practicing in other states would not be required to satisfy the supervised practice requirement provided basic criteria is met.

Just as currently required, only graduates of American Bar Association accredited law schools or the functional equivalent would be eligible for admission to the bar.

Attorney licensing is undergoing a reevaluation nationwide. I would say the impetus was the pandemic and what we have learned about professional licensing testing. Many of our assumptions proved illusory. Nevada is ahead of other states in considering research-based licensing that includes rigorous testing and supervised practice. Nevada’s Comprehensive Licensing Examination focuses on the basic legal principles required for minimum competency, the lawyering skills necessary to practice and the actual lawyering skills, including client relations, required to protect the public in Nevada.

The Nevada Supreme Court has issued an order inviting public comments in ADKT 0594 regarding the administration of the Nevada Bar Exam. Comments are due by 5 p.m. on Friday, August 16, 2024, and may be submitted to nvscclerk@nvcourts.nv.gov.



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