

BAR EXAM NEWS

The Nevada Bar Exam Study: Findings

BY DAVID FAIGMAN, DEAN, UC LAW SAN FRANCISCO;
AND RICHARD TRACHOK, CHAIR, NEVADA BOARD OF BAR EXAMINERS

Several studies over the years have attempted to define the skills and characteristics that determine lawyer competency. The most influential study was conducted in 2011 by University of California, Berkeley Professors Marjorie Schultz and Sheldon Zedeck. The Shultz/Zedeck study identified 26 lawyering effectiveness factors, which they grouped into eight thematic categories, along with hundreds of behavioral examples to illustrate different levels of performance within each factor. A survey of 9,555 alumni asked them to rate how illustrative the behavioral examples were of the performance level. The survey found that there was general agreement on how well the examples aligned with each level of effectiveness.

There is no study correlating performance on the MBE, the bar exam itself, and the recognized skills considered necessary for the practice of law. The Nevada Board of Bar Examiners coordinated with UC Law San Francisco (formerly Hastings) and Accesslex to develop a study to determine what association exists, if any, between performance on the bar exam and those characteristics found to be essential to the successful practice of law.

Each state's bar exam, including Nevada's, is the only measure determining whether an applicant exhibits the minimum competence to practice law. A premise underlying the bar exam is that the higher the score, the more qualified a candidate is to practice law. The Nevada study tested the premise that a higher score on the bar exam would result in higher ratings on the evaluations. This premise, as well as political concerns, also led each state to adopt differing "cut scores" on the MBE, delineating minimal competence. For instance, New York has an MBE "cut score" of 133, Nevada 138, and

California 139. California reduced its cut score from 144 to 139 in 2020.

The Nevada Study focused on those Nevada attorneys with between one and five years of experience; there were 1,414 lawyers as of the start date. A robust 37 percent of attorneys within this pool participated in the study. Supervising attorneys, peers, and judges completed the evaluations. The survey also included a self-evaluation component.

The evaluating judges, supervising attorneys, and the survey respondents were asked to evaluate the attorneys' abilities across five key areas:

- Ability to use analytical skills, logic, and reasoning to approach problems and to formulate conclusions and advice;
- Understanding of legal concepts and utilizing sources and strategies to identify issues and derive solutions;
- Ability to identify relevant facts and issues in a case;
- Ability to generate well-organized methods and work products; and
- Ability to write clearly, efficiently, and persuasively.

The Nevada Study results indicate that the basic assumption associating scores on the exam with minimal competence was not borne out by the data. The Nevada Study found that the MBE scores in the survey group have a "negligible, although positive," relationship with ratings of lawyering effectiveness. The same held true for both the Nevada essay and Multistate Performance Test questions for the sample group. The judicial evaluations indicated a modest correlation between the scores on these two written portions of the bar exam and ratings of lawyering effectiveness.

So, what do the study results tell us? Quite simply, we have mistakenly placed our reliance on the bar exam as

the sole means to determine minimum competence to practice law. Yet the bar exam is the only tool we currently use to determine whether law school graduates possess the competence needed to practice law.

The Nevada Supreme Court formed the Nevada Commission to Study the Administration of the Bar Examination and Licensing of Attorneys to look at alternate methods of determining minimum competence. On February 13, 2023, the commission submitted its report to the court, suggesting a three-prong approach to licensing in Nevada:

- 1) A foundational subject exam similar to the MBE, or in the alternative, the certification of law school content and grades in the seven foundational subjects;
- 2) Successful completion of a one-day Nevada Performance Test exam, testing basic lawyering abilities analyzing facts, statutes, and cases, similar to the Nevada Performance Test currently offered in the bar exam; and
- 3) Supervised practice.

The court created two task forces to make implementation recommendations on law school certification of the foundational subjects and the supervised practice components. The court issued its order creating the task forces on April 19, 2023. <https://caseinfo.nvsupremecourt.us/document/view.do?csNameID=63512&csIID=63512&deLinkId=897537&onBaseDocumentNumber=23-12141>.

Each task force was directed to report back to the court in April 2024.

Nevada is seeking a more reliable means of assuring both law school graduates and the public at large that those licensed to practice law are competent to handle routine legal matters. As the only profession or trade in the

X A M

country that does not require some form of training or apprenticeship to practice, it is incumbent on both the law schools and the profession to do a better job of assuring the public that licensed practitioners have the skills to handle routine legal matters.

DAVID FAIGMAN is the chancellor and dean, William B. Lockhart Professor of Law, and the John F. Digardi Distinguished Professor of Law at the University of California College of the Law, San Francisco. The Nevada Bar Study was the result of Faigman's collaboration with Richard Trachok over the last few years, including participating in ongoing debate about the effectiveness of the bar exam and where to set the MBE cut score.

RICHARD TRACHOK is senior counsel in the Gaming & Administrative Law Practice at McDonald Carano. In addition to chairing the Nevada Board of Bar Examiners, he is currently a lecturer at the University of California, Berkeley School of Law.

SEE ALSO:

Nevada Lawyer magazine:

- https://www.nvbar.org/wp-content/uploads/NevadaLawyer_Nevada-Bar-Exam-Study.pdf (November 2019).
- https://nvbar.org/wp-content/uploads/NevadaLawyer_Aug2021_Nevada-Bar-Study_Participants.pdf (August 2021).

DISTRICT COURTS

Chio, Reynolds Ceremonially Sworn-In to District Court Bench

Judges Danielle K. Chio and Jacob A. Reynolds were ceremonially sworn in at an investiture on June 6. Investitures are formal ceremonies with significant symbolism, as new judges publicly swear an oath to uphold justice.



Chio was appointed by Governor Joe Lombardo to the district court. She is the first woman of Hawaiian ancestry to serve on the district court bench in Nevada. Prior to taking the bench, her service included work as the Las Vegas deputy city attorney, where she handled battery domestic violence and DUI cases. In 2005, she joined the Clark County District Attorney's Office. She served in the Special Victim's Unit and the Gang Unit, where she was promoted to team chief.

Prior to becoming a judge, Reynolds worked in-house at Switch Ltd. as special litigation counsel. He successfully took to jury trial the largest antitrust case in Nevada history valued at \$400 million. He also served as the chief legal officer of Scholer & Sons, LLC, which took him to Brazil and Uruguay. His cases have been before the U.S. Supreme Court and Nevada Supreme Court, as well as the U.S. Ninth, Tenth, and Eleventh Circuit courts, as well as the federal circuit.

First Judicial District Court Amends Local Rules of Practice

Judges James T. Russell and James E. Wilson of the First Judicial District Court filed a petition in the Nevada Supreme Court seeking to amend the Rules of Practice for the First Judicial District Court.

On April 24, the court published an order in ADKT 0606 approving the proposed amendments as set forth in Exhibit A. The amendments were effective 60 days from the date of the order.

Las Vegas Justice Court Establishes Resort Corridor Court

The Las Vegas Township Justice Court issued Administrative Order (AO) 23-04, establishing a Resort Corridor Court. The court consists of a single department that is assigned a docket of all criminal cases where the alleged offense was committed within the Resort Corridor.

The Resort Corridor is identified as Metro Area Command Sectors A1, A2, A3, A4, M1, M2, M3, and M4. Cases in which a defendant is charged with a criminal offense that occurred within the Resort Corridor shall automatically be assigned to the department assigned to the Resort Corridor Court unless an exception is identified as noted in the order.