

THE TESTING COLUMN

THE NCBE JOB ANALYSIS: A STUDY OF THE NEWLY LICENSED LAWYER

by Susan M. Case, Ph.D.

The purpose of the bar examination is to determine the extent to which would-be lawyers have the requisite knowledge and skills to serve as newly licensed practitioners. NCBE develops three examinations that are used by jurisdictions as components of their bar examinations. These are administered twice a year. (NCBE develops a fourth examination, the Multistate Professional Responsibility Examination, which is administered separately.) At every test development meeting, NCBE staff and content experts discuss whether what we are testing represents the knowledge and skills that newly licensed lawyers need in order to do their jobs competently.

Analyzing exam content in light of the purpose of the exam is an analysis of the content validity of the exam. The match between exam content and job requirements is typically analyzed using a technique called job analysis. Job analyses are routinely undertaken by professions that develop exams used for licensure. Medicine, for example, has undergone several job analyses over the past decades; other professions undergo these studies every few years.

In 2011 and 2012, Applied Measurement Professionals Inc. (AMP) conducted a job analysis of the legal profession at the request of NCBE. The purpose of the study was to describe the job activities of a newly licensed lawyer in sufficient detail to provide a job-related and valid basis for the development of the licensing examinations offered by NCBE. The study first involved developing lists of job-



related tasks, knowledge domains, skills, and abilities. The lists were developed with the assistance of NCBE's Long Range Planning Committee and other content experts, and via phone interviews with lawyers (both newly licensed and experienced) and job logs completed by newly licensed lawyers. The lists of job-related tasks were reviewed by various groups, modified as appropriate, and used to develop a survey.

The survey was distributed to a diverse group of lawyers from across the country who had been in practice from one to three years. Despite a low return rate, statistical analyses indicated that the results were reliable (consistent), and that additional responses, even from different subgroups of the sample, would yield very similar results.

NCBE'S JOB ANALYSIS SURVEY

The survey was divided into four sections: Knowledge Domains, Skills and Abilities, General Tasks, and Specific Practice Area Tasks. In addition, background information was obtained from the respondents. All respondents were asked to complete the Knowledge Domains, Skills and Abilities, and General Tasks sections, but each respondent was asked to complete only whatever portion of the Specific Practice Area Tasks section that was pertinent to the aspects of the law in which he or she worked.

Each section was subdivided into areas to reflect the specific tasks, knowledge, skills, or abilities that

had been deemed pertinent to that section. (For example, the Skills and Abilities section was subdivided into 36 skills, such as written communication, critical reading and comprehension, issue spotting, etc.) For each area, respondents were asked to answer the following question: **Considering importance and frequency, how significant is this entry to your performance as a newly licensed lawyer?, where 4 = Extremely significant, 3 = Quite significant, 2 = Somewhat significant, 1 = Minimally significant, and 0 = Not performed/not expected.**

THE SURVEY RESULTS

Selected survey results are shown in the tables on pages 54–56. In the tables, the column labeled “Average significance” is simply the average of the responses on the significance scale of one to four explained above. The column labeled “Percent performing” indicates the percentage of respondents who indicated that they used that knowledge area in their practice.

Knowledge Domains

The Knowledge Domains section included 86 areas. The 25 most highly rated domains are listed in the table on page 54.

Skills and Abilities

The Skills and Abilities section included 36 skills, all listed in the table on page 55, most of which were rated between extremely significant and quite significant.

General Tasks

The General Tasks section included 43 tasks. These were divided into Management of Attorney-Client Relationship and Caseload, Communications, Research and Investigation, and Analysis and Resolution of Client Matters—each of which is shown in the table on page 56.

Specific Practice Area Tasks


The Specific Practice Area Tasks sections covered 13 major areas of the practice of law. The percentages

of lawyers who practiced in each of these areas are listed in the table on page 54.

WHERE WE GO FROM HERE

The job analysis is a critical first step in this effort to study the content validity of the examinations. Committees that write test questions will be reviewing the job analysis results and comparing them with the knowledge and skills that are currently being assessed by our examinations. A separate initiative is under way to develop model material that might assess important skills that are not currently being assessed.

There is by necessity a long period of time between identifying needed changes to the bar exam and implementing those changes. The only scheduled change is the addition of Civil Procedure to the MBE in February 2015 (a change that was already under way prior to the job analysis study; see News and Events, page 61); additional changes would require many years for development.

Every organization that develops examinations for licensure is obligated to assess whether it is testing the knowledge and skills needed by newly licensed professionals; the goal is to include these areas in the licensing exam in order to protect the public. Modifying our tests to assess certain skill areas rated as highly significant (e.g., oral communication) may be difficult—or, in some cases, impossible—but other skill areas are worthy of our effort to incorporate them into what is assessed in the bar exam. 

Survey results follow on pages 54–56.

NOTE

1. The full report, *A Study of the Newly Licensed Lawyer*, is available on the NCBE website at http://www.ncbex.org/assets/media_files/Research/AMP-Final-2012-NCBE-Newly-Licensed-Lawyer-JAR.pdf.

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NCBE JOB ANALYSIS SURVEY RESULTS

| Knowledge Domains with Highest Significance Ratings | | |
|------------------------------------------------------------|--------------------|--------------------------------------------------------------|
| Average Significance | Percent Performing | Knowledge Domain |
| 3.08 | 86% | Rules of Civil Procedure |
| 3.06 | 88% | Other Statutory and Court Rules of Procedure |
| 3.01 | 81% | Rules of Evidence |
| 2.95 | 87% | Professionalism |
| 2.91 | 89% | Research Methodology |
| 2.91 | 84% | Statutes of Limitations |
| 2.83 | 93% | Rules of Professional Responsibility and Ethical Obligations |
| 2.83 | 86% | Statutory Interpretation |
| 2.73 | 81% | Document Review /Documentary Privileges |
| 2.67 | 84% | Contract Law |
| 2.50 | 61% | Tort Law |
| 2.50 | 54% | Criminal Law |
| 2.47 | 54% | Rules of Criminal Procedure |
| 2.40 | 71% | Other Privileges |
| 2.38 | 49% | Personal Injury Law |
| 2.34 | 70% | Agency Procedural Rules |
| 2.33 | 67% | Law of Business Organizations |
| 2.32 | 71% | Administrative Law and Regulatory Practice |
| 2.31 | 62% | Principles of Electronic Discovery |
| 2.30 | 56% | Real Property Law |
| 2.29 | 76% | Constitutional Law |
| 2.27 | 49% | Practice Management |
| 2.26 | 57% | Basic Accounting |
| 2.23 | 52% | Family Law |
| 2.21 | 46% | Wills, Probate and Estate Planning |

| Specific Practice Area Tasks | |
|---------------------------------------------|--------------------------------------|
| Area of Practice | Percentage Who Practice in This Area |
| Administrative | 21 |
| Business Organizations | 20 |
| Civil Litigation | 43 |
| Commercial | 12 |
| Criminal | 18 |
| Debtor/Creditor Relations | 11 |
| Employment | 11 |
| Environmental Law/Natural Resources | 4 |
| Family | 13 |
| Immigration | 5 |
| Intellectual Property | 7 |
| Real Estate | 10 |
| Wills, Trusts, Estate Planning, and Probate | 12 |

NCBE JOB ANALYSIS SURVEY RESULTS (*continued*)

| Skills and Abilities | | |
|-----------------------------|---------------------------|-------------------------------------------------------------|
| Average Significance | Percent Performing | Skills and Abilities |
| 3.77 | 100% | Written communication |
| 3.67 | 99% | Paying attention to details |
| 3.60 | 99% | Listening |
| 3.58 | 99% | Oral communication |
| 3.58 | 99% | Professionalism |
| 3.56 | 99% | Using office technologies (e.g., word processing and email) |
| 3.55 | 98% | Critical reading and comprehension |
| 3.55 | 97% | Synthesizing facts and law |
| 3.54 | 99% | Legal reasoning |
| 3.46 | 99% | Knowing when to go back and ask questions |
| 3.46 | 99% | Organizational skills |
| 3.44 | 99% | Working within established time constraints |
| 3.44 | 99% | Interpersonal skills |
| 3.43 | 98% | Issue spotting |
| 3.31 | 98% | Decisiveness |
| 3.30 | 99% | Answering questions succinctly |
| 3.29 | 89% | Judgment |
| 3.28 | 99% | Computer skills |
| 3.26 | 98% | Electronic researching |
| 3.26 | 95% | Diligence |
| 3.24 | 94% | Advocacy |
| 3.22 | 96% | Fact gathering and evaluation |
| 3.15 | 97% | Consciousness of personal and professional limitations |
| 3.13 | 96% | Planning and strategizing |
| 3.10 | 96% | Information integrating |
| 2.98 | 97% | Working collaboratively |
| 2.97 | 87% | Negotiation |
| 2.93 | 96% | Resource management |
| 2.92 | 91% | Interviewing |
| 2.87 | 74% | Courtroom presence |
| 2.85 | 95% | Creativity |
| 2.84 | 86% | Attorney client privilege - document reviewing |
| 2.71 | 68% | Trial skills |
| 2.67 | 95% | Legal citation |
| 2.31 | 44% | Jury selection |
| 2.27 | 91% | Non-electronic researching |

(Continued on page 56)

NCBE JOB ANALYSIS SURVEY RESULTS (*continued*)

| General Tasks | | |
|--------------------------------------------------|--------------------|-------------------------------------------------------------------------------------------|
| Average Significance | Percent Performing | Management of Attorney-Client Relationship and Caseload |
| 3.40 | 95% | Identify issues in case |
| 2.86 | 76% | Establish attorney-client relationship |
| 2.86 | 78% | Establish and maintain calendaring system |
| 2.59 | 88% | Analyze application of rules of professional conduct and related law |
| 2.52 | 36% | Establish and maintain client trust account |
| 2.51 | 67% | Evaluate potential client engagement |
| 2.22 | 50% | Terminate attorney-client relationship |
| 2.11 | 60% | Draft engagement letter |
| 2.05 | 49% | Draft initial report and budget for client |
| 1.99 | 57% | Draft disclosure of potential conflict of interest and waiver |
| Communications | | |
| 3.49 | 89% | Supervising attorney |
| 3.48 | 88% | Client |
| 3.42 | 83% | Court |
| 3.33 | 88% | Counsel for other party |
| 3.22 | 93% | Non-lawyer staff |
| 2.85 | 83% | Government agency |
| 2.80 | 69% | Prospective client |
| 2.48 | 62% | Investigator |
| 2.43 | 56% | Law enforcement |
| Research and Investigation | | |
| 3.42 | 96% | Conduct electronic legal research |
| 3.38 | 95% | Research statutory authority |
| 3.31 | 96% | Research regulations and rules |
| 3.19 | 89% | Research judicial authority |
| 3.10 | 86% | Conduct document review |
| 3.04 | 77% | Interview client and client representatives |
| 2.91 | 83% | Conduct fact investigation |
| 2.75 | 69% | Interview witness |
| 2.70 | 92% | Research secondary authorities |
| 2.58 | 61% | Obtain medical records |
| 2.54 | 58% | Conduct transaction due diligence activities |
| 2.53 | 81% | Request public records |
| 2.38 | 69% | Investigate the background of opposing party |
| 2.29 | 85% | Research legislative history |
| 2.16 | 48% | Investigate the scene of the incident |
| Analysis and Resolution of Client Matters | | |
| 3.46 | 97% | Analyze law |
| 3.20 | 87% | Advise client |
| 3.13 | 87% | Develop strategy for client matter |
| 2.93 | 77% | Negotiate agreement |
| 2.81 | 86% | Draft memo summarizing case law, statutes, and regulations, including legislative history |
| 2.79 | 72% | Negotiate dispute |
| 2.60 | 65% | Draft demand letter |
| 2.54 | 76% | Draft legal opinion letter |
| 2.53 | 80% | Draft case summary |