



# The State Bar of California

## The Practice of Law in California: Findings from the California Attorney Practice Analysis and Implications for the California Bar Exam

**Final Report of the  
California Attorney Practice Analysis  
Working Group**

# DRAFT

**April 20, 2020**

## Executive Summary

In 2018 the State Bar established the California Attorney Practice Analysis (CAPA) Working Group, with members appointed by the Supreme Court, and charged it with overseeing and providing guidance on a practice analysis study, and using the results of the study as the basis for providing recommendations on exam content. Practice analysis refers to “the systematic collection of data describing the responsibilities required of a professional and the skills and knowledge needed to perform these responsibilities.” The purpose of the practice analysis study overseen by the CAPA Working Group was to gauge alignment between the content of the California Bar Exam (Bar Exam, Exam, or CBX) and the practice of law in California.

The Working Group held its kick-off meeting in October 2018 with the support of a grant from the AccessLex Institute. Scantron, a consulting firm, was hired to design and execute the study. The Working Group endorsed the collection of data on attorney practices along two principal dimensions:

- what attorneys do as reflected in daily tasks; and
- what knowledge attorneys use to perform those tasks.

A subgroup of the CAPA Working Group (the Practice Analysis Panel) was created to draft detailed task descriptions and to construct a taxonomy of legal topics. The resulting list of 13 competencies (consisting of 110 discrete tasks) and 19 legal topics (expanded into 114 subtopics) was used to collect data on attorney practice using two different, complementary, survey methods – a traditional survey of ratings based on recollection of experience, and an Experience Sampling Method capturing data on attorneys’ work in real time.

After analyzing and discussing the findings from the surveys as well as analyses provided by State Bar staff, the CAPA Working Group came to a consensus on several recommendations relating to the content of the Bar Exam.

**Recommendation One:** As the State Bar of California engages in further and continuous study of the Bar Exam, it is recommended that the State Bar adopt the construct statement utilized by the working group to define the general scope of the Bar Exam and utilize the “first three years of practice” as the definition of “entry-level.” The construct statement is as follows:

The California Bar Examination assesses legal knowledge, competency areas, and professional skills required for the entry-level practice of law and the effective, ethical representation of clients.

**Recommendation Two:** Based on study results indicating the most frequent legal topic areas for entry level attorneys and due to the need to reduce the current repetition in testing skills, it is recommended that the following eight legal topics be adopted for a new Bar Exam content outline:

- Administrative Law and Procedure
- Civil Procedure
- Constitutional Law
- Contracts
- Criminal Law and Procedure

- Evidence
- Real Property
- Torts

As noted, the recommendation reduces the number of legal topics from 13 to eight. Although the idea of the potential advantages of reducing the number of legal topics tested, in particular to de-emphasize memorization, was a consideration of the Working Group, the recommendation to reduce the number of legal topics tested is grounded on the results of the study. The empirical findings revealed that the varied practices of entry-level attorneys in California encompass a broad array of distinct legal topics, not all of which could possibly be tested. Based on the data, the Working Group identified a set of core legal topics that would provide a sound basis for testing the fundamental skills of issue spotting and legal analysis that would not be repetitive and that would be sufficient to assess minimum competency for the entry level practice of law across the broad range of practice areas identified in the survey.

**Recommendation Three:** Based on the survey data of the competencies and professional skills necessary for entry-level attorneys, the Working Group identified six broad areas as the most relevant competencies and recommends these be assessed by the Bar Exam:

- Drafting and writing;
- Research and investigation;
- Issue-spotting and fact-gathering;
- Counsel/advice;
- Litigation; and
- Communication and client relationship

The first five of these are specific competences that were highly related as essential to the practice of law in the survey; the sixth Communication and client relationship was constructed by the Working Group from three other competencies that were also highly rated (Establishing the client relationship, Maintaining the client relationship and Communication) and deemed by the Working Group to be interrelated. The Working Group concluded that assessing these core competencies shown by the data to be essential to the entry-level practice of law, along with testing the core group of legal topics, would ensure a more reliable, documented link between actual practice and bar exam content.

## Introduction

In 2017 the State Bar completed two studies specifically related to the California Bar Examination (CBX or Exam): a standard setting study to evaluate whether the pass score was set appropriately to reflect the minimum competence of an entry-level attorney, and a content validation study to evaluate whether the topics covered on the Exam aligned with the knowledge, skills, and abilities required of entry-level attorneys.<sup>1</sup>

While these studies represented important milestones in comprehensively assessing two critical elements of the CBX, the scope of the studies and the conclusions they reached were constrained by several factors. One of the most important constraints related to the content validation study which relied heavily on a national survey of practicing attorneys conducted by the National Conference of Bar Examiners (NCBE) in 2012. The national focus of the NCBE study – while appropriate for the NCBE’s purposes – lacked California-specific content for the evaluation of the written component of the CBX.

To remedy this, in 2018 the State Bar sought consulting support from specialists in the fields of psychometrics and practice analysis to conduct a study to describe the practice of law in California for entry level attorneys, evaluate the link between Exam content and current legal practice, and use that information to create a Blueprint – an outline of content coverage across legal topics and job responsibilities – for future Exam development and selection of Exam topics and question items.

The Board of Trustees of the State Bar created the California Attorney Practice Analysis (CAPA) Working Group to guide the consultant’s work and recommend legal topics and competencies to include on the CBX. The Supreme Court appointed members of the Working Group to ensure broad representation across the spectrum of attorney practice and demographics in California.

This Executive Report of the CAPA Working Group begins with a discussion of *practice analysis*, the centerpiece of the work overseen by the CAPA Working Group. It then describes the formation of the CAPA Working Group, its charge, and activities. The remainder of this Report describes the findings of the practice analysis. It explains recommendations of the CAPA Working Group regarding legal topics and job responsibilities to include on the Exam, and concludes by making recommendations for a process to move forward and incorporate the findings of the practice analysis into the future design, development, and administration of the CBX.

## Practice Analysis

Practice analysis, sometimes referred to as job analysis, refers to “the systematic collection of data describing the responsibilities required of a professional and the skills and knowledge needed to perform these responsibilities.”<sup>2</sup> Practice analysis conducted for the purpose of licensure adds an additional dimension to this definition by focusing on the knowledge, skills, and abilities (KSAs) of people *at the entry level* of a profession.

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<sup>1</sup> For a summary of these reports, see Report to the Supreme Court of the State of California Final Report on the 2017 California Bar Exam Studies, December 1, 2017, <http://www.calbar.ca.gov/Portals/0/documents/reports/2017-Final-Bar-Exam-Report.pdf>

<sup>2</sup> See “Practice Analysis: Building the Foundation for Validity,” Joan E. Knapp and Lenora G. Knapp, in *Licensure Testing: Purposes, Procedures, and Practices*, James C. Impara, editor, 1995.

Documentation of entry-level job KSAs is essential for all professions that use testing to confer licenses on new members because exams need to accurately assess the actual practice of the profession. Without this type of analysis, there is no connection between the content of an exam and the practice of the licensees. Moreover, these studies need to be updated periodically as changes over time in the practice of a given profession could easily drift away from the content of the licensing exam.<sup>3</sup>

While practice analysis is common to all licensing exams, the specifics of each profession create unique challenges for documenting actual practice. For the legal profession in California, the domains of law, practice settings, and tasks performed by attorneys across the state are vast. And, distinguishing between the totality of work that attorneys perform and the work that an entry-level attorney should know requires careful analysis.

Practice analysis relies heavily on the empirical study of actual practitioners. The only certain way comprehensively to capture the broad scope of work performed by attorneys for the purpose of understanding the knowledge, skills and abilities necessary to the practice of law is to ask them in a methodologically rigorous manner. In the summer of 2018 the State Bar issued a Request for Proposals, seeking consulting services from a vendor with the technical ability and capacity to conduct just such a study of attorney practice.

In the process of evaluating the vendors, the State Bar considered not only vendor experience in conducting practice analysis studies in a broad range of professions but also their flexibility in considering innovative methods. The State Bar submitted a grant application to the AccessLex Institute to fund the study, with the key element of the application centered on a proposal to collect real-time data on attorney practice using a survey method called Experience Sampling Method (ESM). The AccessLex Institute awarded the grant in the summer of 2018, around the same time when Scantron was selected as the vendor due to its expertise on a full range of psychometrics services, as well as their enthusiasm in the cooperative effort to test the new ESM approach along with more established traditional method.

## The CAPA Working Group

In the fall of 2018 the State Bar sought nominations for membership in the CAPA Working Group. The Supreme Court then appointed a group of attorneys from the nominees who were broadly representative of the legal profession and key stakeholders to serve on the Working Group. CAPA Working Group members included attorneys from most geographic regions of the state, those who work in private and public practice, attorneys in large and small firms, Deans from California law schools, two judges, a representative of the California State Legislature and an out-of-state representative who previously served as the Chair of the Board of the National Conference of Bar Examiners. The Chair of the State Bar Board of Trustees was appointed to serve as the Chair of the CAPA Working Group. (See Appendix A.)

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<sup>3</sup> A recent amendment by the Supreme Court to California Rule of Court 9.6(b) , understanding the need to periodically update practice analyses, mandates the State Bar “conduct an analysis of the validity of the bar examination at least once every seven years.” Validity is commonly used in the social sciences to refer to the linkage between *a concept* and *the measures* used to describe and evaluate that concept. In the case of the CBX, practice analysis is needed to assess how accurately the questions on the exam – the measures – capture the KSAs necessary to practice law in California at an entry level of proficiency – the concept.

At the Working Group's first meeting, Scantron recommended the creation of a smaller, more focused group to further develop the broad conceptual categories and lists of legal topics and attorney responsibilities that would be used to collect survey data on attorney practice. A Practice Analysis Panel (Panel) was created in January, 2019 with membership designed, as with the Working Group as a whole, to reflect a broadly diverse attorney population. (See Appendix B.)

During a three day meeting in March 2019, the State Bar and Scantron facilitated large and small group discussions with the Panel. An instructional booklet was provided to Panel members with a description of the target audience for the CBX and definitions of key terms that needed to be categorized in order to capture the data on attorney practice in a survey. The Panel agreed upon the following structure for the survey design:

- *Areas of responsibility* are the major responsibilities or duties that comprise the practice of law. Included within areas of responsibility are *competencies*, which are more focused responsibilities that may be carried out within an area of responsibility;
- A *task statement* defines an activity that elaborates on an area of responsibility. The set of task statements for a particular area of responsibility offers a comprehensive and detailed description of that responsibility;
- *Legal topics* are major subject areas in law. They may be augmented with more specific topics, or *subtopics*, that offer detail about the broader legal topics.<sup>4</sup>

The outline for the survey created by the Panel establishes four broad areas of attorney responsibility, 13 competencies associated with those responsibilities, and 110 tasks associated with those competencies. The outline also identifies 19 legal topics and 114 subtopics. Scantron conducted a crosswalk analysis comparing this outline with similar outlines developed by the National Conference of Bar Examiners (NCBE) and other organizations to ensure that the categories of legal topics and attorney responsibilities used by the CAPA comprehensively captured the practice of law in California. The crosswalk analysis confirmed the comprehensive coverage of the CAPA survey.

The full CAPA Working Group reviewed the outline and the crosswalk analysis in April 2019 and approved these to serve as the foundation for data collection. Table 1 shows the areas of responsibilities and their corresponding competencies and Table 2 shows the legal topics recommended by the Panel. The subtasks associated with each competency and the subtopics associated with each legal topic are provided in Appendix C

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<sup>4</sup> In its technical report, Scantron refers to responsibilities and legal topics as performance and content domains, respectively.

**Table 1: Areas of Responsibility and Competencies**

Area of Responsibility	Competencies
Establishing and Maintaining Relationships	<ul style="list-style-type: none"> <li>• Establishing the client relationship</li> <li>• Maintaining the client relationship</li> <li>• Communicating with others</li> </ul>
Practice Management and Administration	<ul style="list-style-type: none"> <li>• Practice management</li> <li>• Case or matter management</li> <li>• Supervision and collaboration</li> </ul>
Factual and Legal Analysis	<ul style="list-style-type: none"> <li>• Issue spotting and fact gathering</li> <li>• Research and investigation</li> <li>• Drafting and writing</li> </ul>
Resolutions	<ul style="list-style-type: none"> <li>• Counsel/advice (via conversation, in-person, or by telephone)</li> <li>• Negotiation and closing</li> <li>• Alternative Dispute Resolution</li> <li>• Litigation</li> </ul>

**Table 2. Legal Topics**

Administrative Law and Procedure	Family Law
Business Associations	Finance (includes bankruptcy)
Civil Procedure	Legislation
Constitutional Law	Professional Responsibility
Contracts	Real Property
Criminal Law and Procedure	Secured Transactions
Employment	Securities
Environment and Land Use	Tax
Estate Planning, Trusts, and Probate	Torts
Evidence	

### Survey Design, Administration, and Analytical Decisions

Once the categories for data collection were established, the Working Group focused on the development of a survey to capture empirical data on the practice of law in California. To serve the purpose of the CAPA Working Group, the survey needed to capture a number of different pieces of information about areas of responsibility and legal topics including:

- the *frequency* with which attorneys practice in specific areas of responsibility and legal topics;
- the *criticality* of proficiency in tasks and legal topics in attorney practice;
- the *performance expectation*, that is, whether the performance of a particular task was expected of entry-level attorneys or was considered appropriate only to more experienced attorneys.

The CAPA Working Group also evaluated the relative merits of conducting a traditional practice analysis survey (Traditional Survey) and conducting a survey using the Experiential Sampling Method (ESM) and concluded that both would be used. In traditional practice analysis surveys, respondents are asked to recall their experience working in different legal domains and on different tasks during the previous 12 months. The respondents are asked to rate the frequency with which they worked in the different areas and tasks and, for the CAPA, would also be asked to rate the criticality of the work. Given the broad scope of attorney practice that needs to be covered, a survey like this typically takes at least 40 minutes to an hour to complete.

ESM, in contrast, is based on short, web-based surveys delivered by email at random times during the work day. Rather than capture information that attorneys recall from the previous 12 months, ESM asks attorneys to report what they are working on in the moment that they receive the survey. The speed with which ESM surveys can be completed – no more than 2-3 minutes – allows for attorneys to respond to multiple surveys per day. The aggregation of that data, collected from a large sample of attorneys, creates a large, statistically robust sample of detailed data on attorney practice.

In addition to the benefit of capturing data on attorney practice in real time, there are further methodological benefits of the ESM. This method also allows for the collection of more detailed data related to legal domains and responsibilities because the respondent is only answering questions related to the work that is taking place at that particular moment. While it would be unrealistic to expect attorneys to recall all of the tasks that they performed over the previous year, the ESM allows for a respondent to provide information directly related to the tasks they were performing at the time of responding to the survey. So, for example, attorneys responding to the ESM who indicated that they were engaged in the competency of “Drafting and Writing” were then given further options to select such as “Drafting pleadings, motions, statements, or briefs” and “Drafting correspondence.”

Both the Traditional and ESM Surveys asked respondents to rate the criticality and performance expectations of the competencies and legal topics associated with their legal work using a five-point scale. And both surveys used branching logic to direct respondents only to rating scales that applied to the competencies and legal topics that they worked on. The ESM survey differed slightly from the traditional survey in that it captures a *frequency* of task performance and usage of legal topic based on actual responses: the observed distribution of responses can be used as the actual distribution without needing attorneys to estimate the frequency with which they work in particular competencies or on specific legal topics. The ESM also included an additional scale to measure depth of knowledge (DOK) of legal topics. As a measure of cognitive complexity involved in applying knowledge, ranging from simple recall of factual information to higher level analysis and synthesis of more complex concepts, the DOK data provides another dimension related to the work of entry-level attorneys. For a summary of each rating scale see Table 3.

Pilot surveys based on the initial categories approved by the Working Group were administered to over 500 practicing attorneys in June 2019 for the purpose of assessing survey functionality and clarity. Improvements and modifications to the surveys were made based on this beta testing.



**Table 3. Rating Scales**

Construct	Traditional Survey	Experience Survey Method
<b>Frequency:</b> How frequently the attorney performed the work activity or applied the legal topic in their practice  ✓ competencies ✓ legal topics	“On average, how frequently did you perform this work activity or apply the legal topic in your practice during the past 12 months?”  1 = Never 2 = Rarely (once per year) 3 = Sometimes (once per month) 4 = Often (once per week) 5 = Repeatedly (daily)	Frequency was computed as the total number of times respondents report performing competencies or using legal topics
<b>Criticality:</b> The degree of harm (legal, financial, psychological, or emotional) that may result for clients and/or the general public if an attorney is not proficient.  ✓ competencies ✓ legal topics	“What degree of harm may result to clients and/or the general public if an attorney is not proficient in [competencies and legal topics]?”  1 = No harm at all 2 = Minimal harm 3 = Moderate harm 4 = Substantial harm 5 = Extreme harm	“What degree of harm may result if you are not proficient in performing the task related to [competency]”
<b>Performance Expectations:</b> Point in legal careers attorneys were first expected to perform the competency.  ✓ competencies	“When were you first expected to perform this task?”  1 = 0 to 6 months of practice 2 = 7 to 12 months of practice 3 = Years 2 to 3 of practice 4 = Years 4 to 5 of practice 5 = After the fifth year of practice	“At what point in your legal career were you expected to first perform this task?”  1 = First year 2 = Second year 3 = Third year 4 = After third year
<b>Depth of Knowledge:</b> Cognitive activity performed that demonstrates level of knowledge required when performing the competency.  ✓ legal topics	N/A	“What level of knowledge of [legal topic] is required when performing the task?”  1 = Recall from memory 2 = Understand 3 = Apply 4 = Analyze 5 = Synthesize/Evaluate

## *Sampling*

In addition to the Traditional and ESM Survey formats being administered pursuant to CAPA, the project sampling strategy accounted for a concurrent practice analysis being conducted by the National Conference that the State Bar had agreed to provide the necessary support and collaboration. Because there are over 190,000 active, licensed attorneys in California, the CAPA Working Group determined that it did not need to choose between the two survey methods. Instead, the practice analysis could use both methods to capture data on the legal profession. This would allow for the Working Group to realize the benefits of each method and even provide for cross-validation of findings. Prior to selecting samples of attorneys to participate in one of the two surveys, however, the CAPA Working Group was notified that the National Committee of Bar Examiners was conducting its own practice analysis survey and was seeking participants from California, opening the opportunity for further cross-validation.

To accomplish the goal of administering all three surveys in a manner that would allow for cross-validation of results, the State Bar divided the pool of active, licensed California attorneys into three groups of approximately 63,000 each. Potential survey participants were randomly assigned to one of the three groups – one for the NCBE survey, another for the Traditional Survey, and a third to the ESM Survey.

Responses to the two CAPA Working Group Surveys were originally scheduled to be completed by August 26, 2019. To improve the survey response rate, that deadline was extended for a week, through September 3, 2019. The response rate for the traditional survey was 8 percent with 5,100 respondents, while the ESM survey's response rate was higher at 18 percent (11,090 respondents). However, because participants in the ESM survey had the opportunity to respond to the survey up to three times a day during their assigned survey week, the ESM survey yielded over 74,000 responses on attorneys' daily activities.

## *Synthesizing Data from the Traditional and ESM Surveys*

The CAPA Working Group held three in person meetings and a conference call in the fall of 2019 to review the survey results and formulate their recommendations for a California Bar Exam Blueprint. Scantron prepared all results so that each survey's results could be compared against one other. Detailed findings of all of the results reviewed by the Working Group are available in the Scantron report.

The results generated extensive discussion which resulted in the Working Group making key decisions regarding the most effective way to review the findings, especially when results across the surveys were inconsistent.

- First, the Working Group decided to rely upon criticality ratings from the Traditional Survey in their evaluation of the importance attorneys attached to their work - whether in performing a task or using certain knowledge. This decision was based on the Working Group's assessment that the Traditional Survey's format allowed respondents to evaluate survey items within the larger context of an attorney's work. The Working Group determined that this context was valuable and, ultimately, a more accurate assessment of criticality, even if it might overestimate the criticality of the legal matters being handled;
- Second, the Working Group concluded that the ESM survey's estimates of the frequency of competencies and legal topics used by entry-level attorneys in their practice were more

accurate than those generated by the Traditional Survey. Indeed, the narrow range of the five-point scale used in the Traditional Survey provides very little variation to assess differences in frequency of competencies and legal topics. In contrast, the ESM survey shows the actual variance in frequencies to allow for a more reliable assessment of often quite substantial differences across categories;

- Finally, the Working Group agreed to combine data from the two surveys into standardized composite measures for the purpose evaluating and selecting competencies and legal topics for the CBX content outline.<sup>5</sup> To combine the results from both surveys, the data were transformed to equivalent measures in which the mean value of each survey was set to 10, and one standard deviation was set to 5. The frequency and criticality data were transformed to a standardized scale first, and a single composite score was then created by averaging the two scores. Based on this single composite score, an item with a high score indicates that entry-level attorneys not only considered it important but performed or used it frequently.<sup>6</sup>

## Findings from the CAPA Surveys

The following section describes the findings from the CAPA surveys and the Working Group’s evaluation of those findings using the scales described above to answer the following questions:

- What defines an “entry-level” attorney?
- What are the competencies expected of entry-level attorneys and how critical is proficiency in these competencies to the successful practice of law?
- What legal knowledge is required to perform those competencies?<sup>7</sup>

### “Entry-level Attorneys” – Practitioners with Fewer than Three Years’ Experience

While the bar examination is designed to ensure the minimum competence of entry-level attorneys, some determination needs to be made as to *how long* an attorney can practice and still be considered “entry level.” In practice analysis studies, practitioners with fewer than three years of experience are generally considered “entry level” and data collection focuses on this group.

The CAPA study invited all active attorneys to participate in the survey to evaluate empirically the question of entry-level attorney practice. By collecting data on samples of all active attorneys, the CAPA surveys allowed for the evaluation of response patterns in relation to years of practice. All attorneys who participated in the study were asked when in their careers they were expected to be able to perform specific tasks. With data on the actual years of practice of the respondent attorneys, the CAPA study was able to compare these responses to practice data reported by attorneys at different points in their careers.

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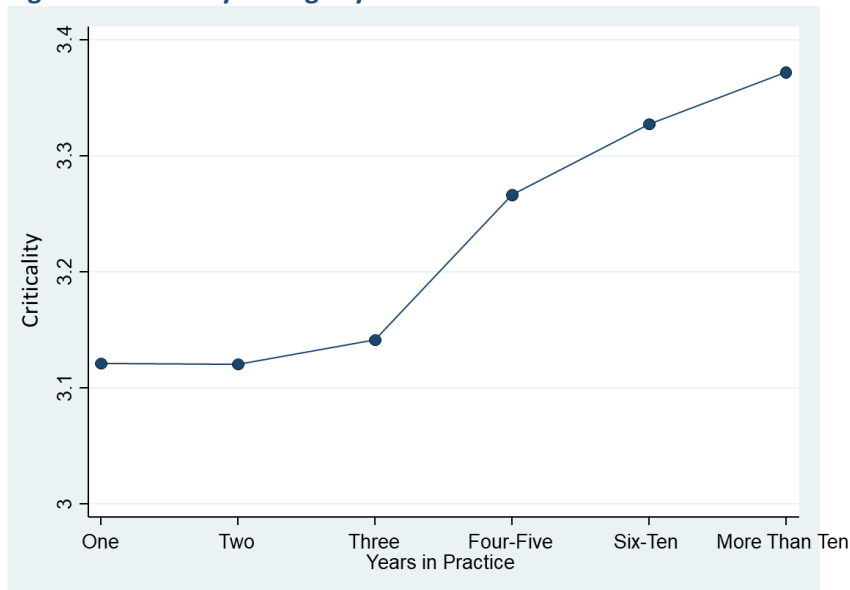
<sup>5</sup> Data from the two surveys were weighted equally in the composite measure.

<sup>6</sup> The calculation of the composite scores is explained in more detail in the Scantron report.

<sup>7</sup> Although data were collected at the level of 110 tasks shown in Appendix A to document the practice of law in California, for purposes of developing an exam outline – a Blueprint – it is sufficient to analyze the data at the level of the broader categories of 13 competencies and 19 legal topics. The more granular task and subtopic descriptions will be useful at a later stage when developing detailed test specifications.

Figure 1 shows the relationship between attorneys' years of practice and their assessment of the *criticality* of their work. Criticality is defined as the potential harm to the client if the attorney lacks the competence to perform the specified task. Attorneys in their first three years of practice rated the criticality of their tasks at similar levels. As attorneys gained 4 to 5 years of experience, the criticality ratings began to rise at small but continual increments.<sup>8</sup>

**Figure 1. Criticality Ratings by Years of Practice**

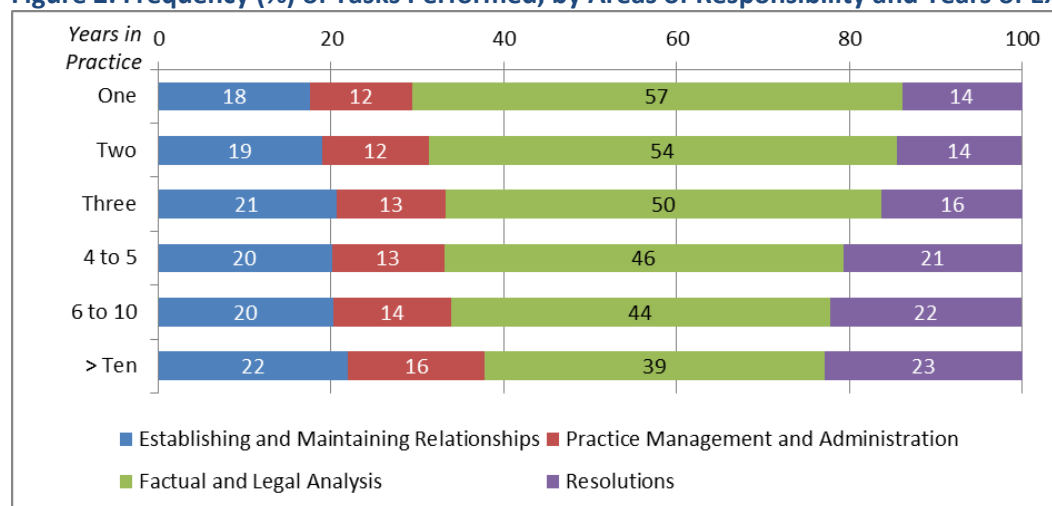


Analysis of the *tasks* performed by attorneys reveals gradual shifts of responsibilities as attorneys gain more experience. Figure 2 shows that tasks related to Factual and Legal Analysis account for a larger proportion of the time of newer attorneys – half or more of the time of attorneys in their first through third year of practice. The amount of time devoted to Factual and Legal Analysis and only declines to less than 50 percent in the fourth year of practice. As the amount of time devoted to Factual and Legal Analysis declines, the amount of time spent on Resolution, Establishing Relationships, and Practice Management and Administration increases.

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<sup>8</sup> Findings from the ESM survey.

**Figure 2. Frequency (%) of Tasks Performed, by Areas of Responsibility and Years of Experience**



### *Recommendation One: Language and Definitions for Future Bar Exam Studies*

The findings regarding criticality ratings and frequency of tasks performed by new attorneys supports the use of the first three years to define the experience of an entry level attorney. The data show that the competencies expected of attorneys in their third year are very similar to the competencies expected in their first year, lending support to the use of a three year period for the definition of entry-level. The results reported below focus on entry-level attorneys.<sup>9</sup>

After delineating empirically the definition of entry-level attorney within the first three years of practice, the Working Group developed a construct statement for the bar exam as a framework for further defining the minimum competency for entry-level attorneys, as following:

The California Bar Examination assesses legal knowledge, competency areas, and professional skills required for the entry-level practice of law and the effective, ethical representation of clients.

The working group's creation of the construct statement, followed by the deliberation and decision on the legal topics and competencies that are considered important for the bar exam, was instrumental in defining minimum competency for entry-level attorneys. At a more detailed level the term minimum competency needs further refinement so that it can be operationalized for different aspects of the bar exam such as the grading rubric and standard setting.

### **Toward a California Bar Exam Blueprint**

While the findings from the surveys were critically important to the final deliberations of the Working Group, the scores alone, were not dispositive. In addition to the data from the CAPA surveys, the Working Group considered other relevant factors including whether the content might be better

<sup>9</sup> For complete survey results, see the Scantron technical report.

delivered and assessed as part of a new attorney's mandatory continuing legal education, or whether a topic was foundational to an understanding of the law, itself, even if not directly, frequently used.

Consideration of these additional factors led to the exclusion of some topics that the data, alone, might have indicated belong on the Blueprint. Conversely, these same value considerations led to the inclusion of topics that the data, alone, might not have suggested belong on the Blueprint.

### *Recommendation Two: Legal Topics*

Table 4 shows the results of the data analysis of legal topics. These results are a composite of the results of the Traditional and ESM surveys, described above. Using Civil Procedure as an illustration of how the composite score works, a review of Table 4 shows that entry-level attorneys reported a frequency using Civil Procedure almost three standard deviations above the mean frequency for legal topics on the ESM survey (recalling that the composite scores set each of the individual scores to a mean of 10 with a standard deviation of 5), and entry-level attorneys rated Civil Procedure at almost one and a half standard deviations above the mean criticality ranking on the Traditional Survey.

The average of these two scores, weighted equally, gives Civil Procedure a composite score of 20.7. Compared to an item with a composite score near the mean value of 10, such as Constitutional Law at 9.6, Civil Procedure's composite ranking is higher by more than 2 standard deviations, an indication of significant difference between the two legal topics as far as entry-level attorneys' practice is concerned both in frequency and criticality.

**Table 4. Standardized and Composite Ratings for Legal Topics**

Legal Topic	Standardized Frequency – ESM Survey	Standardized Criticality – Traditional Survey	Composite
Civil Procedure	24.1	17.3	20.7
Professional Responsibility	9.6	19.4	14.5
Torts	13.3	15.2	14.2
Contracts	17.1	11.0	14.1
Evidence	10.0	17.3	13.6
Employment	15.4	11.0	13.2
Criminal Law and Procedure	11.7	13.1	12.4
Family Law	9.8	13.1	11.4
Administrative Law and Procedure	11.8	8.9	10.4
Constitutional Law	6.1	13.1	9.6
Estate Planning, Trusts, and Probate	10.0	6.8	8.4
Real Property	10.1	4.7	7.4
Environment and Land Use	5.6	8.9	7.2
Legislation	8.2	4.7	6.5
Business Associations	7.8	4.7	6.3
Tax	5.6	6.8	6.2
Finance (includes bankruptcy)	5.2	6.8	6.0

Securities	4.7	4.7	4.7
Secured Transactions	3.8	2.6	3.2

*Note: Sorted in descending order by the composite rating.*

The Working Group met several times to consider and discuss these empirical findings in the context of their collective understanding of the legal profession. All members of the Working Group were in agreement that the legal topics currently tested on the Bar Exam are important, as are the legal topics not currently tested but included in the two surveys. However, the charge of the Working Group was to provide recommendations as to content for the California Bar Exam, and the Working Group determined that fewer topics, not additional ones, should be tested specifically on the Bar Exam.

Although the idea of the potential advantages of reducing the number of legal topics tested, in particular to de-emphasize memorization, was a consideration of the Working Group, the recommendation to reduce the number of legal topics tested is grounded on the results of the study. The empirical findings revealed that the varied practices of entry-level attorneys in California encompass a broad array of distinct legal topics, not all of which could possibly be tested. Based on the data, the Working Group identified a set of core legal topics that would provide a sound basis for testing the fundamental skills of issue spotting and legal analysis, not be repetitive, and be sufficient to assess minimum competency for the entry level practice of law across the broad range of practice areas identified in the survey.

The initial threshold for inclusion in the recommended topics for testing was a composite score of 10 or higher. Five of the eight topics recommended both met that threshold and are already currently tested. After much discussion and debate, the consensus of the Working Group was to include two topics currently tested that did not meet the threshold and one final legal topic area (Administrative Law and Procedure) that did meet the composite threshold but is not currently tested. Specifically, the Working Group made determinations as to the specific topics to recommend for testing or removal.

The Working Group's recommendation is to INCLUDE:

- **Civil Procedure, Contracts, Criminal Law & Procedure, Evidence and Torts** – These five legal topics met the threshold composite score and are already being currently tested on the Bar Exam. In addition, these areas were affirmed as foundational by the Working Group.
- **Constitutional Law and Real Property** – While these topics ranked below the average of 10 on the composite scale, the Working Group agreed that Constitutional Law and Property are foundational and core knowledge for an understanding of the American system and common law. While fewer practitioners may specifically practice in these areas, the Working Group agreed that knowledge of constitutional and property rights is essential to the entry-level practice of law and the effective, ethical representation of clients.
- **Administrative Law and Procedure** – This topic met the threshold composite score. Administrative Law and Procedure covers a broad and diverse area of practice, encompassing procedures and regulations in professional licensing, unemployment insurance benefits, social security and retirement benefits, discrimination, labor and employment, workers' compensation, immigration appeals, securities, zoning, and many other regulatory issues. Administrative Law and Procedure also defines the scope of judicial review and establishes uniformity in the rulemaking process. Given these characteristics, the Working Group agreed

that Administrative Law and Procedure is a topic that is both foundational and practical, and thus should be tested on the bar exam.

Despite these topics meeting the composite score threshold, the Working Group's recommendation is to EXCLUDE:

- **Professional Responsibility** – While the Working Group acknowledged that ethics and professional duties to clients are as foundational as other topics indicated above, the Working Group agreed that the need for new attorneys to be competent in the area of ethics could be better addressed outside of the Bar Exam format. Currently all State Bar applicants must receive a passing score on the Multi-State Professional Responsibility Exam (MPRE) prior to licensure, and all State Bar applicants must have earned a passing grade in at least one course in ethics that addresses the model rules of professional conduct while in law school. In addition, the Working Group is aware of the New Attorney Training Program adopted by the State Bar in early 2018, which requires four hours of legal ethics training for new attorneys during the first year of their practice. The MPRE and course requirement, already in place, are more focused and dedicated assessments of an entry level attorney's knowledge of ethics and rules of professional conduct.
- **Employment Law, Family Law/Community Property and Business Associations** – The Working Group had a lengthy discussion about the inclusion or exclusion of these legal topics. As indicated by the composite score, many practitioners are engaged in aspects of employment law and family law, and while the score was lower for Business Associations, we know many entry level attorneys are working in and for business law firms. The Working Group determined however, that these areas are also largely a specialized practice and recommends alternatives to testing these topics on the Bar Exam including the possibility of specialized licenses, CLE courses, or coursework while in law school. The Working Group recommends further evaluation to determine alternative measures to ensure minimum competency in these areas.
- **Remedies, Trusts & Wills** – Based on the lower composite scores and the fact that concepts within Remedies and Trusts & Wills frequently blend with Contracts, Torts and other legal topics, the Working Group determined these topics could be removed from the testing topics.

In sum, the Working Group reached a consensus on recommending eight legal topics for the Blueprint, shown in Table 5. Compared to the legal topics included in the current CBX scope, also shown in Table 5, the recommended Blueprint for legal topics reduces the total number of topics from 13 to 8. Seven of the eight topics recommended by the Working Group are already included among the 13 current topics; one new legal topic is added – Administrative Law and Procedure; and six of the current legal topics on the CBX are recommended to be removed.



**Table 5. Legal Topics on California Bar Exam and Recommended by CAPA Working Group**

13 Legal Topics Tested on Current Bar Exam	8 Legal Topics Recommended by CAPA Working Group	Result of Recommendation
Civil Procedure	Civil Procedure	Retain
Constitutional Law	Constitutional Law	Retain
Contracts	Contracts	Retain
Criminal Law and Procedure	Criminal Law and Procedure	Retain
Evidence	Evidence	Retain
Real Property	Real Property	Retain
Torts	Torts	Retain
	Administrative Law and Procedure	Add
Business Associations		Remove
Community Property		Remove
Professional Responsibility		Test via MPRE, mandated course in law school, Mandatory legal education in year 1 after being licensed
Remedies		Remove
Trusts		Remove
Wills and Succession		Remove

### *Recommendation Three: Competencies and Professional Skills*

Following the review of legal topics, the Working Group evaluated the composite scores for competencies shown in Table 6.

Unlike the decision making process for legal topics which required both the evaluation of composite scores and various policy and other considerations, the composite scores for competencies were deemed sufficient to guide the decision process in selecting relevant competencies expected of entry-level attorneys. There were no competencies that were rated low on the composite score that were considered essential to the practice of law, nor were there any highly ranked competencies that the Working Group determined might be amenable to treatment outside of the CBX.

There were, however, some competencies that were closely related to one another functionally, that the Working Group determined could be grouped together. Thus, the Working Group determined that Communication, Establishing Client Relationship, and Maintaining Client Relationship should be bundled together into a single, broader category. It is also recognized that, at least using the traditional testing method, some competencies are more amenable to traditional forms of testing than others. The Working Group discussed at length the challenges of testing these competencies using the traditional Bar Exam format and testing methods. Drafting and Writing, Research and Investigation, Issue Spotting and Fact Gathering have been tested using the current Performance Test. However, the Working Group agreed that new testing formats would be needed to more effectively test these competencies, in particular, Communication and Client Relationships.

Table 6. Standardized and Composite Ratings for Competencies

Competency	Standardized Frequency – ESM Survey	Standardized Criticality – Traditional Survey	Composite
Drafting and writing	24.0	15.5	19.7
Research and investigation	14.6	12.8	14.0
Litigation	9.7	16.8	13.1
Issue-spotting and fact-gathering	10.0	15.8	12.8
Communicating	10.7	11.2	11.1
Counsel/advice	7.5	13.2	10.3
Maintaining client relationship	8.3	11.1	9.8
Negotiation and closing	6.5	9.9	8.4
Case or matter management	8.4	7.6	8.1
Establishing client relationship	6.7	6.7	6.7
Practice management	6.2	3.0	4.6
Supervision and collaboration	7.4	0.9	4.0

*Note: Sorted in descending order by the composite rating.*

The final list of competencies recommended by the Working Group for consideration in the CBX blueprint is as following:

- Drafting and writing
- Research and investigation
- Issue-spotting and fact-gathering
- Counsel/advice
- Litigation
- Communication and client relationship including:
  - Establishing the client relationship
  - Maintaining the client relationship
  - Communication

## How the CAPA results compare with the recent NCBE study

The National Conference of Bar Examiners (NCBE) launched its practice analysis study in 2018, about the same time as the launch of the CAPA study. Data collection for its survey was also completed in the fall of 2019. The two surveys share many similarities in both survey design and findings.<sup>10</sup> There are also

<sup>10</sup> See NCBE report: [https://testingtaskforce.org/wp-content/uploads/2020/03/TestingTaskForce\\_Phase\\_2\\_Report\\_031020.pdf](https://testingtaskforce.org/wp-content/uploads/2020/03/TestingTaskForce_Phase_2_Report_031020.pdf).

important differences, especially with regard to project scope and how the survey results are analyzed and synthesized to inform next steps.

## **Survey Design**

NCBE's survey invited participation from all US licensed attorneys that fall into one of the following two categories:

- Newly licensed lawyers (termed "NLLs" in the report) who have been licensed for three years or less;
- Experienced attorneys who have had direct experience supervising NLLs.

Out of more than 30,000 participants who accessed the survey, the survey received valid responses from 3,153 NLLs and 11,693 non-NLLs, for a total of 14,846 responses.

The survey questions were phrased slightly differently for the two different groups. NLLs were asked to provide their ratings (frequency, criticality, etc.) on various questions according to their own practice experience. Experienced attorneys were asked to provide their assessments based on their experience directly supervising NLLs. The purpose of this design is to obtain two sets of responses on the same questions, allowing for comparisons of the responses between NLL's self-assessment in relation to what might be deemed more experienced assessment from non-NLLs. The survey findings are presented in the report with both responses side by side, most of time showing highly correlated results.

## **Organizing Framework of Survey and Comparability of Findings**

As described above, the CAPA survey questions were organized into two major categories: tasks that the attorneys perform and knowledge and skills required to perform those tasks. NCBE's survey consists of four dimensions, as organized in the following categories:

- 179 tasks, grouped into 4 categories;
- 77 items for knowledge areas, without another layer of classification;
- 36 items for skills, abilities, and other characteristics (termed SAOs); and
- 24 items for technology.

The different organizing framework used in the two studies naturally produced survey questions that vary in specificity and comparability in the description of tasks and knowledge areas. For example, one task under the Competency area of Research and Investigation in the CAPA study is "Research laws and precedents." In NCBE's survey, in contrast, there are several task statements that would fit this single CAPA task, but given more specificity as to the different research activities, including:

- Research case law;
- Research statutory and constitutional authority;
- Research secondary authorities; and
- Research administrative regulation, rules, and decisional law

Table 7 shows the top ten rated tasks from the two studies. Ranking for the CAPA study was derived from the composite scores derived from the Traditional Survey's criticality rankings and the ESM

Survey's percentage frequency distribution. NCBE's ranking was based on a metric of percent performed. Despite the different granularity in describing the tasks and the different metrics in how they are measured, the two lists of ten items share the relatively high ratings given to a cluster of research-related activities for entry-level attorneys.

**Table 7. Top Ten Rated Tasks from CAPA and NCBE Practice Analysis Study**

CAPA Composite (ESM Frequency and Traditional Criticality)	Ranking
Draft pleadings, motions, statements, or briefs.	1
Research laws and precedents.	2
Review the documents collected.	3
Review relevant records and documents.	4
Identify legal and factual issues.	5
Edit drafts or documents.	6
Prepare for trial (e.g., subpoenas, exhibits, motions in limine, jury instructions).	7
Advise the client regarding the benefits, risks, and consequences of a course of action.	8
Calendar deadlines.	9
Communicate with opposing counsel or parties.	10
NCBE (Percent Performed)	
Identify issues in client matter including legal, factual, or evidentiary issues.	1
Research case law.	2
Interpret laws, rulings, and regulations for client.	3
Research statutory and constitutional authority.	4
Evaluate strengths and weaknesses of client matter.	5
Evaluate how legal document could be construed.	6
Develop specific goals and plans to prioritize, organize, and accomplish work activities.	7
Conduct factual investigation to obtain information related to client matter.	8
Research secondary authorities.	9
Consult with colleagues or third parties regarding client matters.	10

Table 8 looks at the treatment of legal topics: 77 items in the NCBE study, referred to as “knowledge area” compared to 19 legal topics evaluated in the CAPA study. NCBE's ranking was based on the average importance rating included in its report while the CAPA ranking was derived from the same composite score described above and used in the Working Group deliberations. It should be noted that gaps in the NCBE rank order, for example rankings from 5 to 9, result from knowledge areas in the NCBE survey that do not have direct, corresponding items in the CAPA list for legal topics.<sup>11</sup> A few items referring to the same subject matter but using different terminology were matched to facilitate the comparison. Criminal Law and Procedure was treated as a single item in CAPA but listed separately in the NCBE survey.

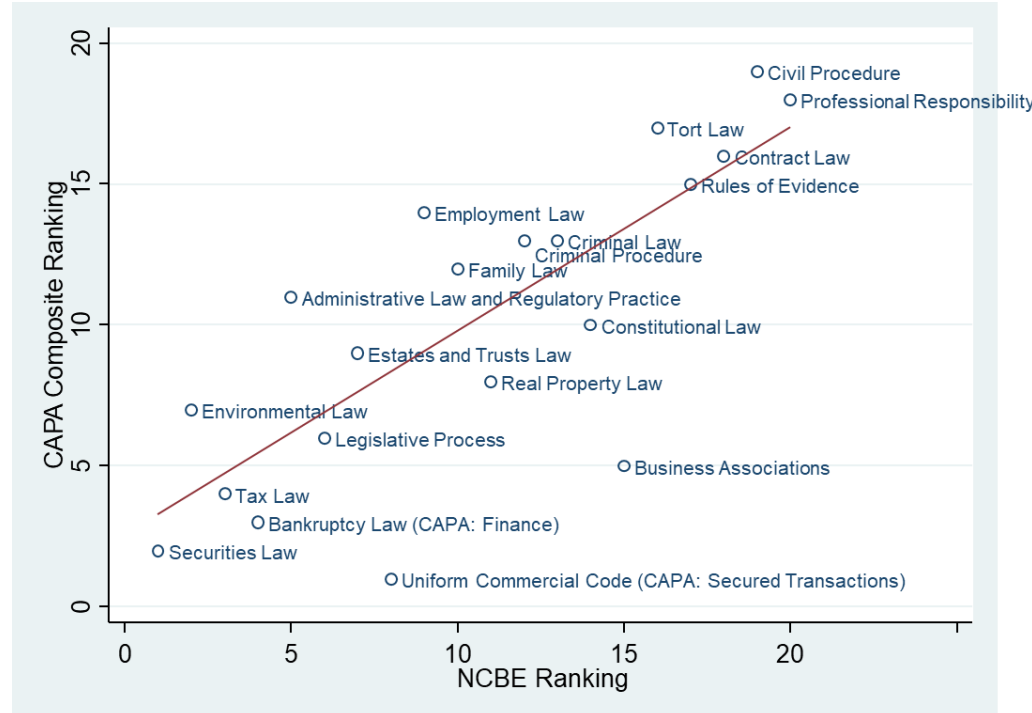
<sup>11</sup> The missing NCBE items are Legal Research Methodology (ranked 5), Statutes of Limitations (6), Local Court Rules (7), Statutory Interpretation Principles (8), Sources of Law (9).

**Table 8. Comparison between CAPA and NCBE Practice Analysis Study on Legal Topics**

NCBE Knowledge Areas	NCBE Ranking (Mean Importance)	CAPA Composite Ranking
Civil Procedure	2	1
Professional Responsibility	1	2
Tort Law	10	3
Contract Law	3	4
Rules of Evidence	4	5
Employment Law	22	6
Criminal Law	15	7
Criminal Procedure	16	7
Family Law	21	8
Administrative Law and Regulatory Practice	32	9
Constitutional Law	13	10
Estates and Trusts Law	25	11
Real Property Law	17	12
Environmental Law	54	13
Legislative Process	27	14
Business Organization Law (CAPA: Business Associations)	11	15
Tax Law	47	16
Bankruptcy Law (CAPA: Finance)	46	17
Securities Law	56	18
Uniform Commercial Code (CAPA: Secured Transactions)	24	19

To further assess the degree of correlation between the CAPA and NCBE rankings, Figure 3 transformed the rank orders slightly, first by eliminating the gaps in NCBE's ranking, and then reversing the numerical orders for both so that items with higher ranking is located at a higher position (Civil Procedure's number 1 ranking transformed to 19, for example). With the exception of a few items misaligned, the results from the two surveys reveal a remarkable correlation (correlation coefficient of 0.77).

**Figure 3. Highly Correlated Rankings in Legal Topics from CAPA and NCBE Results**



## Conclusion

The detailed, robust data from two surveys conducted under the guidance of the CAPA Working Group provides an empirical foundation for reaching consensus on the legal topics that should be covered on the CBX as well as the competencies expected of entry-level attorneys. This work will be invaluable for ensuring that the Exam is adapted to reflect the current practice of law in California.

## Appendix A. CAPA Working Group Members

Alan Steinbrecher	State Bar of California Board of Trustees	Chair
Robert Brody	Committee of Bar Examiners	Member
Shanae Buffington	Employment Development Department	Attorney
Sarah Cassady	Young, Minney & Corr, LLP	Associate Attorney
Margie Estrada	California Senate Judiciary Committee	Chief Counsel
Stephen Ferruolo	University of San Diego School of Law	Dean
Jackie Gardina	Santa Barbara and Ventura College of Law	Dean
David George	Geosyntec Consultants, Inc.	Corporate Counsel
Sylvia Kennedy	Senior Adults Legal Assistance (SALA)	Senior Staff Attorney
Judge Cindee Mayfield	Mendocino Superior Court	Judge
Dr. Justin McCrary	Columbia Law School	Professor
Gregory Murphy	National Conference of Bar Examiners	Trustee (former)
John Palmer	Orrick	Partner
Judge Glen M. Reiser	Ventura Superior Court	Judge (Ret.)
Emily Scivoletto	UC Davis School of Law	Senior Assistant Dean
Dr. Aaron Taylor	AccessLex Institute	Senior Vice President

## **Appendix B. Practice Analysis Study Panel Members**

Robert Bailey	Keri Klein	Laura Palazzolo
Robert Barrett	Lydia Liberio	Yan Shrayberman
Shanae Buffington	Kwixuan Maloof	Sheniece Smith
Stephen Ferruolo	Sean McCoy	Sabrina Thomas
Dustin Johnson	Laura Nelson	Marcus Wiggins



## Appendix C. List of Competencies, Tasks, Legal Topics, and Subtopics

The State Bar has designed a two-way framework to link performance in practice to content. **Areas of Responsibilities** are the major responsibilities or duties that characterize the practice of law. For each of the four areas of responsibility there are three competencies. **Legal Topics** are major topics in law. They are augmented with more specific topics, or subtopics, that offer detail about the legal topic.

Areas of Responsibility	Legal Topics
Establishing and Maintaining Relationships <ul style="list-style-type: none"><li>• Establishing the client relationship</li><li>• Maintaining the client relationship</li><li>• Communicating with others</li></ul>	Administrative Law and Procedure Business Associations Civil Procedure Constitutional Law Contracts
Practice Management and Administration <ul style="list-style-type: none"><li>• Practice management</li><li>• Case or matter management</li><li>• Supervision and collaboration</li></ul>	Criminal Law and Procedure Environment and Land Use Estate Planning, Trusts, and Probate Evidence Family Law Finance
Factual and Legal Analysis <ul style="list-style-type: none"><li>• Issue spotting and fact gathering</li><li>• Research and investigation</li><li>• Drafting and writing</li></ul>	Labor and Employment Legislation Professional Responsibility Real Property Secured Transactions
Resolutions <ul style="list-style-type: none"><li>• Counsel/advice (via conversation, in-person or by telephone)</li><li>• Negotiation and closing</li><li>• Alternative Dispute Resolution</li><li>• Litigation</li></ul>	Securities Tax Torts

On the following pages are the tasks that attorneys perform when they work in one of the competency domains. Overall, there are 117 tasks that apply to attorneys in any practice area.

## **Establishing and Maintaining Relationships**

### **Establishing the client relationship**

1. Identify the client(s)
2. Assess potential conflicts of interest
3. Manage conflicts throughout representation
4. Determine the client's goals and expectations
5. Evaluate competence to represent the client's interests
6. Manage referrals to and from other attorneys
7. Define the scope of the attorney-client relationship
8. Explain the client's obligations and responsibilities
9. Manage third-party involvement in representation of the client(s)
10. Document the engagement (e.g., engagement letter, arbitration agreement, fee agreement, conflict waiver)
11. Document the decision to decline representation

### **Maintaining the client relationship**

1. Update the client(s) throughout the matter
2. Respond to client inquiries
3. Resolve disputes with clients
4. Document termination of the representation

### **Communicating with others**

1. Determine disclosure or notice obligations
2. Determine confidentiality obligations
3. Communicate with opposing counsel or parties
4. Communicate with other interested persons (e.g., media, regulatory bodies, insurers)
5. Manage communications with other interested persons (e.g., media, regulatory bodies, insurers)
6. Communicate with witnesses, consultants, or experts
7. Manage communications with witnesses, consultants, or experts

## **Practice Management and Administration**

### **Practice management**

1. Determine necessary staffing
2. Manage staff members
3. Comply with State Bar licensing and reporting requirements
4. Create the practice's budget
5. Manage the practice's finances
6. Manage client trust accounts
7. Manage appropriate insurance coverage
8. Manage IT requirements and resources
9. Manage service vendors
10. Market the practice in compliance with requirements relating to attorney advertising
11. Manage files and records
12. Maintain calendar

**Case or matter management**

1. Establish the budget for the case or matter
2. Calendar deadlines
3. Record time spent on the case or matter
4. Manage client billing

**Supervision and collaboration**

1. Seek advice from senior attorney(s)
2. Delegate tasks
3. Oversee delegated tasks
4. Define expectations and scope of responsibilities between co-counsels

**Factual and Legal Analysis****Issue-spotting and fact-gathering**

1. Interview the client
2. Obtain documents and evidence from the client
3. Obtain public information about the client and the matter
4. Review the documents collected
5. Identify legal and factual issues
6. Identify other persons with relevant information or interests
7. Prepare a summary of the interview and initial assessment of the client

**Research and investigation**

1. Determine governing laws
2. Research laws and precedents
3. Consult with attorneys who have more experience or expertise
4. Evaluate exemplars, forms, and models
5. Search for relevant records and documents
6. Review relevant records and documents
7. Determine the need for non-attorney consultants or experts
8. Confer with non-attorney consultants or experts
9. Interview persons with possibly relevant information or interests
10. Prepare internal working analysis of the case or matter

**Drafting and writing**

1. Draft correspondence
2. Use exemplars, forms, and models
3. Draft pleadings, motions, statements, or briefs
4. Draft formal legal instruments (e.g., liens, claims, title documents, estate or incapacity plans, settlement agreements)
5. Draft discovery requests or responses
6. Draft legal memoranda
7. Draft contracts and other transactional documents
8. Redline transactional documents
9. Edit drafts or documents

## Resolutions

### **Counsel/Advice**

1. Advise the client regarding the benefits, risks, and consequences of an issue and/or course of action
2. Advise the client about behavioral expectations
3. Advise the client on specific legal questions and rules
4. Document communications and advice given to the client
5. Conduct necessary follow up

### **Negotiation and Closing**

1. Explain the terms, conditions, and status of negotiations
2. Coordinate the roles and authority of participants in negotiations
3. Participate in negotiations
4. Represent the client in mediation of transactional disputes
5. Coordinate closing of a transaction

### **Alternative Dispute Resolution**

1. Evaluate options for alternative dispute resolution
2. Evaluate potential neutrals
3. Communicate with neutrals
4. Prepare for alternative dispute resolution proceedings
5. Represent the client in alternative dispute resolution proceedings

### **Litigation**

1. Analyze jurisdictional issues
2. Analyze proper venue and statute of limitations
3. Research local rules
4. Identify parties' legal names and capacities
5. Comply with statutory notice and service requirements
6. Analyze discovery needs
7. Develop discovery plan
8. Implement discovery plan
9. Analyze e-discovery requirements and obligations
10. Instruct the client regarding the preservation of evidence
11. Instruct the client regarding the production of evidence pursuant to discovery requests
12. Review evidence for production
13. Prepare for depositions
14. Prepare witnesses to testify
15. Attend depositions
16. Review preliminary hearing record
17. Review deposition transcripts
18. Summarize deposition transcripts
19. Determine motion strategy and file relevant motions
20. Appear at hearings
21. Prepare for trial (e.g., subpoenas, exhibits, motions in limine, jury instructions)
22. Appear at trial
23. Prepare post-trial motions

24. Appear at post-trial hearings
25. Evaluate potential appeal
26. File notice of appeal

The legal topics address topics in law about which attorneys are expected to be knowledgeable, depending on the area of practice in which they are engaged. There are 19 legal topics, each includes a number of subtopics as listed on the following pages. Within each subtopics are listed several major sources related to the subtopic.

## **Administrative Law and Procedure**

### **Rule Making**

1. Administrative Procedure Act
2. California Code of Regulations
3. Code of Federal Regulation
4. Case law

### **Interpretation**

1. Case law
2. Agency precedential decisions and opinions

### **Regulatory Enforcement**

1. Administrative Procedure Act
2. California Code of Regulations
3. Code of Federal Regulation
4. Case law

### **Agency Claims and Hearings**

1. Administrative Procedure Act
2. California Code of Regulations
3. Code of Federal Regulation
4. Case law
5. Agency precedential decisions and opinions

### **Judicial Review and Appeals**

1. Administrative Procedure Act
2. California Code of Regulations
3. Code of Federal Regulation
4. Case law

## **Business Associations**

### **Types of Business Entities**

1. California Corporations Code

### **Formation and Governing Documents**

1. California Corporations Code

### **Stock, Membership Interests**

1. California Corporations Code

### **Governance**

1. California Corporations Code
2. Case law

### **Fiduciary Duties**

1. California Corporations Code
2. Case law

### **Corporate Powers, Ultra Vires**

1. California Corporations Code
2. Case law

### **Limitations of Liability/Piercing Corporate Veil**

1. California Corporations Code
2. Case law

### **Merger and Acquisition, Dissolution, Winding Up**

1. California Corporations Code
2. Case law

## Civil Procedure

### Jurisdiction

1. California Code of Civil Procedure
2. Rules of Court
3. Federal Rules of Civil Procedure
4. Case law

### Pleadings

1. California Code of Civil Procedure
2. Rules of Court
3. Federal Rules of Civil Procedure
4. Case law

### Motions

1. California Code of Civil Procedure
2. Rules of Court
3. Federal Rules of Civil Procedure
4. Case law

### Discovery

1. California Code of Civil Procedure
2. Rules of Court
3. Federal Rules of Civil Procedure
4. Case law

### Trials

1. California Code of Civil Procedure
2. Rules of Court
3. Federal Rules of Civil Procedure
4. Case law

### Appeals

1. California Code of Civil Procedure
2. Rules of Court
3. Federal Rules of Civil Procedure
4. Case law

### Enforcement of Judgments

1. California Code of Civil Procedure
2. Enforcement of judgments law
3. Case law

## Constitutional Law

### First Amendment

1. U.S. Constitution
2. Case law

### Fourth Amendment

1. U.S. Constitution
2. Case law

### Fifth Amendment

1. U.S. Constitution
2. Case law

### Sixth Amendment

1. U.S. Constitution
2. Case law

### Eighth Amendment

1. U.S. Constitution
2. Case law

### Commerce Clause

1. U.S. Constitution
2. Case law

### Separation of Powers

1. U.S. Constitution
2. Case law

### Federalism

1. U.S. Constitution
2. Case law

### Due Process and Equal Protection

1. U.S. Constitution
2. Case law

### Sovereign Immunity

1. U.S. Constitution
2. Case law

## Contracts

### Offer and Acceptance

1. Uniform Commercial Code
2. California Civil Code
3. Common law

### Modification, Amendment, Novation

1. Uniform Commercial Code
2. California Civil Code
3. Common law

### Performance

1. Uniform Commercial Code
2. California Civil Code
3. Common law

### Interpretation

1. Uniform Commercial Code
2. California Civil Code
3. Common law

### Consideration

1. Uniform Commercial Code
2. California Civil Code
3. Common law

### Enforceability

1. Uniform Commercial Code
2. California Civil Code
3. Common law

### Breaches and Remedies

1. Uniform Commercial Code
2. California Civil Code
3. Common law

### Effectiveness, Term, and Termination

1. Uniform Commercial Code
2. California Civil Code
3. Common law

## Criminal Law and Procedure

### Crimes (e.g., person, property)

1. California Penal Code

### Criminal Procedure

1. Federal constitution
2. State constitution
3. Statutory law
4. Case law

### Sentencing

1. California Penal Code
2. Federal constitution
3. State constitution
4. Statutory law
5. Case law

### Pre-Trial Writs

1. Federal constitution
2. State constitution
3. Statutory law
4. Case law

### Plea Negotiation

1. Federal constitution
2. State constitution
3. Statutory law
4. Case law

### Trial

1. Federal constitution
2. State constitution
3. Statutory law
4. Case law

### Appeal and Post-Trial Writs

1. Case law



## Environment and Land Use

### Due Diligence for Acquisition

#### Environmental Impact Statements

1. California Environmental Quality Act & Guidelines
2. National Environmental Policy Act & Guidelines
3. Case law implementing relevant statutes

#### Eminent Domain

1. Code of Civil Procedure
2. Constitutional Takings Doctrine (5<sup>th</sup> Amendment)

#### Remediation

#### Regulatory Compliance

#### Hazardous Waste and Toxic Substances Control and Remediation

1. Resource Conservation and Recovery Act

2. Comprehensive Environmental Response, Compensation, and Liability Act
3. Porter-Cologne Act
4. Toxic Substances Control Act
5. California Hazardous Waste Control Act
6. Proposition 65
7. Oil Pollution Act

#### Entitlements

1. Public records
2. Planning and Zoning Laws (local and state)
3. California Coastal Act
4. California Environmental Quality Act
5. Clean Water Act section 404
6. California Public Trust Doctrine

#### Water Rights

1. Clean Water Act
2. Clean Air Act

## Estate Planning, Trusts, and Probate

### Estate Planning

1. California Probate Code
2. Internal Revenue Code
3. Revenue and Taxation Code
4. California Family Law Code

### Guardianship and Probate Conservatorship

1. California Probate Code

### Administration of Trusts

1. California Probate Code
2. Internal Revenue Code
3. Revenue and Taxation Code
4. California Family Law Code

### Administration of Decedents' Estates

1. California Probate Code
2. Internal Revenue Code
3. Revenue and Taxation Code
4. California Family Law Code

### Nonprobate Transfers

1. California Probate Code
2. Internal Revenue Code
3. Revenue and Taxation Code
4. California Family Law Code

## Evidence

### Admissibility

1. Federal rules of evidence
2. Evidence Code
3. Case law

### Privileges

1. Federal rules of evidence
2. Evidence Code
3. Case law

### Documents

1. Federal rules of evidence
2. Evidence Code
3. Case law

### Burdens and Presumptions

1. Federal rules of evidence
2. Evidence Code
3. Case law

## Family Law

### Division of Property

1. California Family Law Code
2. Common law

### Support

1. California Family Law Code
2. Internal Revenue Code

### Custody

1. California Family Law Code
2. California Penal Code

3. Welfare and Institutions Code
4. Probate Code, Division 4

### Adoption

1. California Family Law Code

### Domestic Partnership

1. California Family Law Code

### Marriage and Dissolution

1. California Family Law Code

## Finance

### Principles of Finance and Valuation

1. GAAP
2. Uniform Commercial Code
3. California Financial Code
4. California Commercial Code
5. California Corporations Code
6. State statutes and regulations

### Capital Structure

1. Internal Revenue Code
2. Securities law
3. Securities Act of 1933
4. Securities and Exchange Act of 1934
5. Investment Advisors Act of 1940

### Financial Instruments

1. Uniform Commercial Code
2. California Financial Code
3. California Commercial Code

### Fixed Income Markets

1. Securities and Exchange Act
2. Securities Act of 1933
3. Internal Revenue Code

### Bankruptcy

1. Bankruptcy Code

### Securities and Securities Markets

1. Securities and Exchange Act of 1934
2. Securities Act of 1933

### Financial Reporting and Disclosure

1. GAAP
2. Federal statutes and regulations
3. State statutes and regulations
4. Securities law
5. Securities Act of 1933
6. Securities and Exchange Act of 1934
7. Governmental Accounting Standards Board
8. Financial Accounting Standards Board
9. Public Company Accounting Oversight Board guidance documents
10. International Accounting Standards Board

### Fraud, Corruption, and Regulatory Risk

1. GAAP
2. Federal statutes and regulations
3. State statutes and regulations
4. Case law

## Labor and Employment

### Classification of Employee

1. Statutes
2. Case law
3. Regulations

### Wage and Hour

1. Statutes
2. Case law
3. Regulations

### Discrimination and Harassment

1. Statutes
2. Case law
3. Regulations

### Hiring and Termination

1. Statutes
2. Case law
3. Regulations

### Human Resource Policies

1. Statutes
2. Case law
3. Regulations

### Labor Organizations

1. Statutes
2. Case law
3. Regulations

## Legislation and Government

### Legislative Process

1. California Constitution
2. Lobbying Disclosure Manual

### Legislative History

1. Westlaw
2. Lexis

### Lobbying

1. Lobbying Disclosure Information Manual
2. Political Reform Act
3. Fair Political Practices Commission Regulations

4. Fair Political Practices Commission Advice Letters and Commission Opinions
5. Conflict of Interest Code Exemptions

### Constitutional Bases

1. California Constitution
2. U.S. Constitution

### Government

### Municipal Law

## Professional Responsibility

### Competence

1. American Bar Association Model Rules
2. California Rules of Professional Conduct
3. Business and Professions Code
4. Common law tort of negligence
5. Statutory standards of care

### Confidentiality

1. American Bar Association Model Rules
2. California Rules of Professional Conduct
3. Business and Professions Code
4. Evidence Code
5. Code of Civil Procedure

### Conflicts of Interest

1. American Bar Association Model Rules

2. California Rules of Professional Conduct
3. Business and Professions Code

### Fees, Billing, and Trust Accounting

1. American Bar Association Model Rules
2. California Rules of Professional Conduct
3. Business and Professions Code

### Advocacy

1. American Bar Association Model Rules
2. California Rules of Professional Conduct
3. Business and Professions Code
4. Rules of Court

## Real Property

### Estates, Easements, and Future Interests

1. California Civil Code
2. California Probate Code
3. Common law
4. Case law

### Landlord Tenant

1. California Civil Code
2. Common law
3. Statutory law
4. Rent stabilization orders

### Conveyances

1. California Civil Code
2. Common law

### Title

1. Common law
2. Statutory law

## Secured Transactions

### Real Property Liens

1. California Civil Code

### Personal Property Liens

1. Uniform Commercial Code

### Enforcement and Foreclosure

1. California Civil Code
2. Uniform Commercial Code

## Securities

### Definition of Security

1. Case law

### Public Offerings

1. Federal statutes and regulations

### Exemptions and Private Offerings

1. Federal statutes and regulations
2. Blue sky laws

### Securities Markets and Professionals

1. Federal statutes and regulations

### Insider Trading

1. Federal statutes and regulations
2. Case law

### Reporting and Regulatory Compliance

1. Federal statutes and regulations
2. Case law

## Tax

### Income Taxation

1. Internal Revenue Code
2. California Revenue and Taxation Code

### Corporate and Partnership Taxation

1. Internal Revenue Code
2. California Revenue and Taxation Code

### Property Taxation

1. Internal Revenue Code
2. California Revenue and Taxation Code

### Estate and Gift Taxation

1. Internal Revenue Code

## **Torts**

### **Negligence**

1. California Civil Code
2. Common law

### **Intentional Torts**

1. California Civil Code
2. Common law

### **Strict Liability**

1. California Civil Code
2. Common law

### **Products Liability**

1. California Civil Code
2. Common law

### **Remedies**

1. California Civil Code
2. Common law