The State Bar
of California

OPEN SESSION
AGENDA ITEM O-201
JUNE 2020
COMMITTEE OF BAR EXAMINERS

DATE: June 19, 2020

TO: Members, Committee of Bar Examiners

FROM: Lisa J. Cummins, Program Manager III, Examinations

SUBJECT: Consideration of Final Report Prepared for the California Attorney Practice Analysis (CAPA)

EXECUTIVE SUMMARY

Requesting Committee to receive and file final report of the California Attorney Practice Analysis Working Group, dated May 11, 2020.

BACKGROUND

In 2018, the State Bar established the California Attorney Practice Analysis (CAPA) Working Group to oversee a practice analysis study to gauge alignment between the content of the California Bar Exam (CBX) and the practice of law in California. The members of the group, appointed by the California Supreme Court, began their work in October 2018.

DISCUSSION

The attached final report of the CAPA Working Group, entitled "The Practice of Law in California: Findings from the California Attorney Practice Analysis and Implications for the California Bar Exam," is the culmination of the group's important work.

RECOMMENDATION

It is recommended that the final report of the CAPA Working Group be received and filed; and that the Committee approve the following motion:

MOVE that the final report of the California Attorney Practice Analysis Working Group, entitled "The Practice of Law in California: Findings from the California Attorney Practice Analysis and Implications for the California Bar Exam," dated May 11, 2020, be received and filed.

ATTACHMENT LIST

A. Report entitled "The Practice of Law in California: Findings from the California Attorney Practice Analysis and Implications for the California Bar Exam"

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

May 11, 2020

Table of Contents

EXECUTIVE SUMMARY

In 2018, the State Bar established the California Attorney Practice Analysis (CAPA) Working Group to oversee a practice analysis study to gauge alignment between the content of the California Bar Exam (CBX) and the practice of law in California. Practice analysis refers to the systematic collection of data describing the responsibilities required of a profession and the skills and knowledge needed to perform these responsibilities. The Working Group used the results of the study to recommend changes on exam content set forth below.

With members appointed by the California Supreme Court, the Working Group held its initial meeting in October 2018. The AccessLex Institute provided grant funding for the research and the State Bar retained Scantron, a consulting firm, 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.

The Working Group created the Practice Analysis Panel to draft detailed task descriptions and to construct a taxonomy of legal topics. The Panel produced a list of 13 competencies (consisting of 110 discrete tasks) and 19 legal topics (expanded into 114 subtopics) that was used to collect data on attorney practice through 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 reviewing the findings from the surveys, as well as analyses provided by State Bar staff, the Working Group came to a consensus on several recommendations relating to the content of the bar exam. These recommendations are independent from the question of test format with respect to validity and reliability. As a blueprint outlining what should be tested on the bar exam, appropriate test format will need to be addressed in subsequent steps implementing the recommendations.

Recommendation One: As the State Bar of California continues to review the content of the bar exam, it is recommended that the State Bar adopt the construct statement created 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 Exam 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 and important legal topic areas for entry-level attorneys, and the Working Group's perspective that testing

should also include foundational areas of the law, 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

This recommendation would reduce the number of legal topics to be tested on the bar exam from thirteen to eight. 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. After reviewing the data regarding both the tasks performed and knowledge used by entry-level attorneys, the Working Group identified a set of broadly defined core legal topics according to two considerations: the topics are either reflected in the data as frequently used and important in practice, or they are viewed as conceptually core legal topics that are required in the performance of fundamental legal skills, such as issue spotting and legal analysis.

Recommendation Three: 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 competencies that are highly related to the practice of law. Collectively, survey results identified these competencies as essential. The sixth competency, 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 a combination of recommendations two and three—assessing both competencies shown by the data to be essential to the entry-level practice of law, and testing the core group of legal topics—would ensure a reliable, documented link between actual practice and bar exam content.

INTRODUCTION

In 2017, the State Bar completed two studies related to the bar 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 bar exam aligned with the knowledge, skills, and abilities required of entry-level attorneys.[1]

While these studies represented important milestones in comprehensively assessing two critical elements of the bar exam, the scope of the studies and the conclusions reached were constrained by several factors. One of the most important constraints was 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 bar exam.

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 bar 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 bar exam development.

The Board of Trustees of the State Bar created the Working Group at about the same time. The Supreme Court appointed members of the Working Group to ensure broad representation across the spectrum of attorney practice and demographics in California. With Scantron retained as the project consultant, the Working Group guided the study to arrive at recommendations regarding legal topics and competencies to include on the bar exam.

This Executive Report of the Working Group begins with a discussion of *practice analysis*, the centerpiece of the work overseen by the Working Group. It then describes the formation of the Working Group, its charge, and activities. The remainder of this report describes the findings of the practice analysis. It explains recommendations of the Working Group regarding legal topics and job responsibilities to include on the bar 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 exam.

---

[1] 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

PRACTICE ANALYSIS

Practice analysis, sometimes referred to as job analysis, refers to "the systematic collection of data describing the responsibilities required of a profession and the skills and knowledge needed to perform these responsibilities."[2] Practice analysis conducted for the purpose of licensure adds another dimension to this definition by focusing on the knowledge, skills, and abilities (KSAs) of people *at the entry-level* of a profession.

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 documented 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.[3]

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. In addition, distinguishing between the totality of work that attorneys perform and the KSAs an entry-level attorney should possess requires careful analysis.

Practice analysis relies heavily on the empirical study of actual practitioners. The only certain way to comprehensively capture the broad scope of work performed by attorneys for the purpose of understanding the KSAs necessary for the practice of law is to ask them about their practice 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 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 on a broad range of professions, but also 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 around a proposal to collect real-time data on attorney practice using a survey method called the Experience Sampling Method (ESM). The AccessLex Institute awarded the grant in the summer of 2018, around the same time that Scantron was selected as the vendor due to its expertise on a full range of psychometrics services.

---

[2] Knapp, Joan E., and Lenora G. Knapp. "4. Practice Analysis: Building the Foundation for Validity" in *Licensure Testing: Purposes, Procedures, and Practices,* ed. James C. Impara (Lincoln, NE: Buros, 1995), 93-116.

[3] A recent amendment by the Supreme Court to California Rule of Court 9.6(b) mandates that 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 bar exam, practice analysis is needed to assess how accurately the questions on the exam, or the measures, capture the KSAs necessary to practice law in California at an entry-level of proficiency—the concept.

THE CAPA WORKING GROUP

In the fall of 2018, the State Bar sought nominations for membership in the Working Group. Using those nominations, the Supreme Court then appointed a group of attorneys who were broadly representative of the legal profession, and key stakeholders to serve on the Working Group. 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 Chair of the Board of the NCBE. The Chair of the State Bar Board of Trustees was appointed to serve as the Chair of the Working Group (See Appendix A).

At the Working Group's first meeting, Scantron recommended the creation of a smaller 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. The 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 bar exam 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 components of the survey:

- *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; and
- *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.[4]

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 NCBE and other organizations to ensure that the categories of legal topics and attorney responsibilities used by the CAPA survey comprehensively captured the practice of law in California. The crosswalk analysis confirmed the comprehensive coverage of the CAPA survey.

---

[4] In its technical report, Scantron refers to responsibilities and legal topics as performance and content domains, respectively.

The 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.

Table 1. Areas of Responsibility and Competencies

Area of Responsibility	Competencies
Establishing and Maintaining Relationships	- Establishing the client relationship - Maintaining the client relationship - Communicating with others
Practice Management and Administration	- Practice management - Case or matter management - Supervision and collaboration
Factual and Legal Analysis	- Issue spotting and fact gathering - Research and investigation - Drafting and writing
Resolutions	- Counsel/advice (via conversation, in person, or by telephone) - Negotiation and closing - Alternative Dispute Resolution - Litigation

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. To serve the purpose of the 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; and
- the *performance expectation*, which is whether the performance of a particular task was expected of entry-level attorneys or was considered appropriate only to more experienced attorneys.

The Working Group also evaluated the relative merits of conducting a traditional practice analysis survey (Traditional Survey), as well as a survey using the Experiential Sampling Method (ESM), and concluded that both should 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 CAPA, would also be asked to rate the criticality of the work. Given the broad scope of attorney practice, a survey like this typically takes at least 40 to 60 minutes to complete.

In contrast, ESM is based on short, web-based surveys delivered by email at random times during the workday. 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 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 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 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. 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 work using a five-point scale; both surveys used branching logic to direct respondents only to rating scales that applied to the competencies and legal topics on which they worked. 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 the need for respondents 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 the 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
Frequency: 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.
Criticality: The degree of harm (legal, financial, psychological, or emotional) that may be inflicted upon 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]?"	"What degree of harm may result if you are not proficient in performing the task related to [competency]?"
	1 = No harm at all 2 = Minimal harm 3 = Moderate harm 4 = Substantial harm 5 = Extreme harm	
Performance Expectations: Identifies the point in an attorney's career when they 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

Construct	Traditional Survey	Experience Survey Method
Depth of Knowledge: 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

Because there are over 190,000 active, licensed attorneys in California, the Working Group determined that it did not need to choose between the Traditional and ESM 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 Working Group was notified that the NCBE was conducting its own practice analysis survey, and was seeking participants from California, opening the opportunity for further cross-validation. The State Bar agreed to provide the necessary support and collaboration. Consequently, in addition to the traditional and ESM survey formats being administered pursuant to CAPA, the project sampling strategy accounted for the concurrent practice analysis being conducted by the NCBE.

To accomplish the goal of administering all three surveys in a manner that would allow for the 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 Traditional and ESM surveys were originally scheduled to be completed by August 26, 2019. To improve the survey response rate, that deadline was extended for one 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 per 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 Working Group held three meetings in person and a conference call in the fall of 2019 to review the survey results and formulate recommendations for the bar exam blueprint.

Scantron prepared all results such that the findings of each survey could be compared against one another. Detailed findings of all the results reviewed by the Working Group are available in the Scantron report.

The results generated extensive discussion which required the Working Group to make 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 evaluating 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 format allowed respondents to evaluate survey items within the overall 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 meaningful than those generated by the Traditional Survey. First, the ESM Survey recorded near real-time data from attorneys on the tasks they were performing while responding to the survey, as opposed to the Traditional Survey's reliance on attorneys' recollections of activities over the previous 12 months. Second, the ESM Survey's frequency data represent the actual percentage distribution of activities compared to the five-point frequency rating scale used in 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 actual variance in percentage frequencies from the ESM Survey allows for a more reliable assessment of often quite substantial differences across categories; and

- Finally, the Working Group agreed to combine data from the two surveys into standardized composite measures for the purpose of evaluating and selecting competencies and legal topics for the bar exam content outline.[5] To combine the results from both surveys, the data was 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.[6]

---

[5] Data from the two surveys was weighted equally in the composite measure.
[6] The calculation of the composite scores is explained in more detail in the Scantron report.

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?[7]

"ENTRY LEVEL-ATTORNEYS" – PRACTITIONERS WITH FEWER THAN THREE YEARS' EXPERIENCE

While the bar exam 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 empirically evaluate 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 to identify the point in their careers when 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.

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 approached four or five years of experience, the criticality ratings began to rise at small but continual increments.[8]

---

[7] Although data was collected at the level of 110 tasks shown in Appendix C to document the practice of law in California, for purposes of developing an exam outline, or 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.

[8] Findings from the ESM survey.

Figure 1. Criticality Ratings by Years of Practice
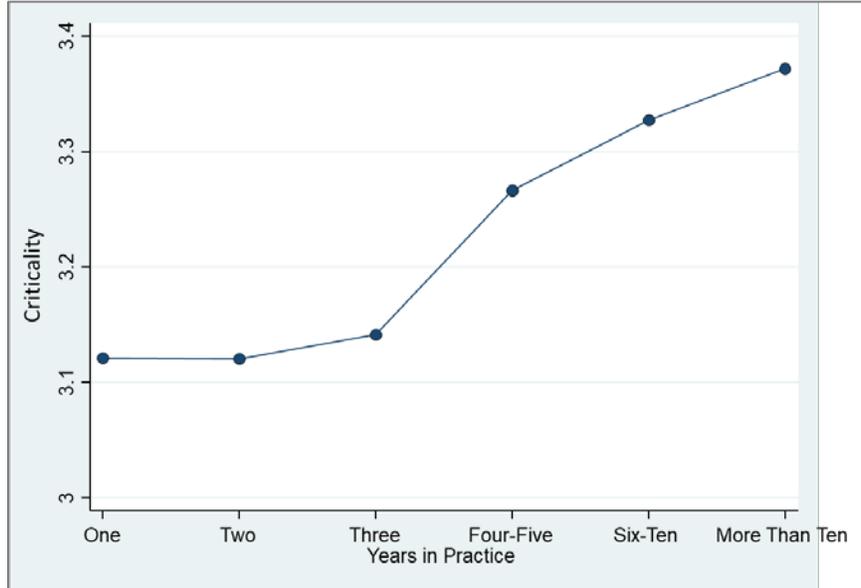
Analysis of the tasks performed by attorneys reveals gradual shifts in responsibilities as attorneys gain more experience. Figure 2 shows that tasks related to Factual and Legal Analysis account for a larger proportion of the time of newer attorneys—half or more of the time of attorneys in their first through third years of practice. The amount of time devoted to Factual and Legal Analysis 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.

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

Years in Practice	Establishing and Maintaining Relationships	Practice Management and Administration	Factual and Legal Analysis	Resolutions
One	18	12	57	14
Two	19	12	54	14
Three	21	13	50	16
4 to 5	20	13	46	21
6 to 10	20	14	44	22
> Ten	22	16	39	23

■ Establishing and Maintaining Relationships ■ Practice Management and Administration
■ Factual and Legal Analysis ■ Resolutions
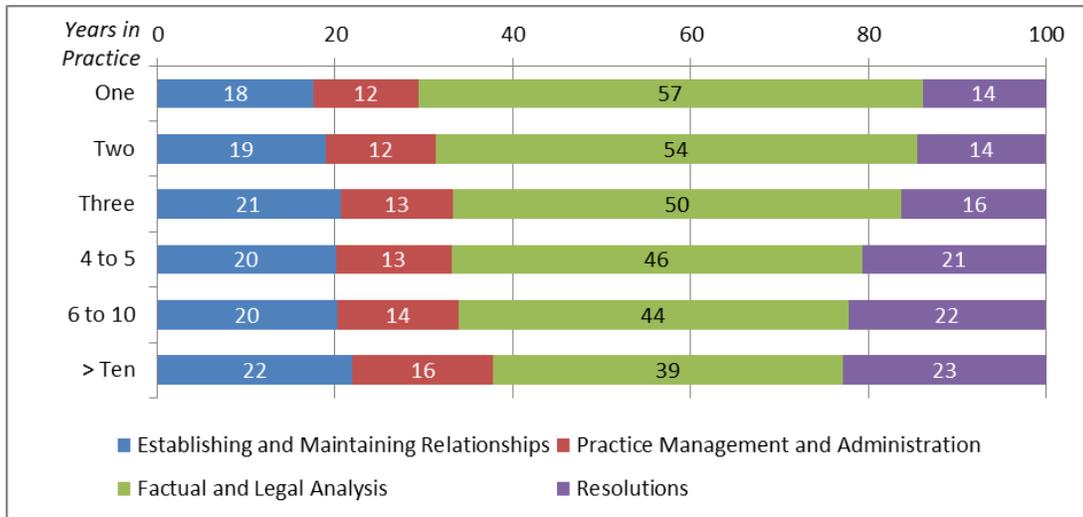
Recommendation One: Language and Definitions for Future Bar Exam Studies

The findings regarding criticality ratings and the frequency of tasks performed by newer attorneys support the use of the first three years to define the experience of an entry-level attorney. The data shows 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.[9]

After empirically establishing the definition of entry-level attorney to include 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 follows:

> The California Bar Exam 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 establishing a foundation for further defining and operationalizing the concept of minimum competency for entry-level attorneys. At a more detailed level, the term minimum competency will need 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 data from the surveys were critically important to the final deliberations of the Working Group, the empirical findings alone were not dispositive. In addition to the data from the CAPA surveys, the Working Group considered other relevant factors including whether the

---

[9] For complete survey results, see the Scantron technical report.

content might be better delivered and assessed as part of mandatory continuing legal education for new attorneys, or whether a topic was foundational to an understanding of the law, even if not 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 two 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 for content for the bar exam, and the Working Group determined that fewer, not more, legal topics should be tested on the exam.

Although the idea of the potential advantages of reducing the number of legal topics tested was a consideration of the Working Group (particularly to allow for the de-emphasis on memorization), the recommendation to reduce the number of legal topics tested is grounded in 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 are foundational to the practice of law, which according to the data, are reflected largely in fundamental legal skills such as issue spotting and legal analysis. Taking into account the data on both the legal knowledge and skills required, the core legal topics recommended for the bar exam are deemed 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 currently tested on the bar exam. 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 currently being 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 recommended for inclusion above, the Working Group agreed that the need for newer 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 Multistate 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 attorneys during the first year of practice. Already in place, the MPRE and course requirement are more focused and dedicated assessments of an entry-level attorney's knowledge of ethics and rules of professional conduct. If necessary, the New Attorney Training Program could be enhanced to address specific needs for legal ethics training.

- **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 work for business law firms. However, the Working Group determined 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, Continuing Legal Education (CLE)

courses, or coursework while in law school. The Working Group recommends further evaluation to determine alternatives to specifically testing these legal topics on the bar exam 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 testing.

In sum, the Working Group reached a consensus on recommending eight legal topics for the blueprint, as shown in Table 5. Compared to the legal topics included in the current bar exam scope, also shown in Table 5, the recommended blueprint for legal topics reduces the total number of topics from 13 to eight. 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 exam are recommended to be removed.

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

13 Legal Topics Tested on Current Bar Exam	8 Legal Topics Recommended by 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 bar exam.

There were, however, some competencies that were so closely related to one another functionally, that the Working Group determined they 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. Through the use of the traditional testing method, it is also recognized that some competencies are more amenable to traditional forms of testing than others. The Working Group exhaustively discussed 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 necessary to effectively test these recommended competencies, especially 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 for the bar exam blueprint is as follows:

- 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 NCBE launched its practice analysis study in 2018, approximately 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.[10] There are also important differences, especially with regard to project scope and how the survey results are analyzed and synthesized to inform the next steps.

SURVEY DESIGN

NCBE's survey invited participation from attorneys licensed in the United States that fall into one of the following two categories:

- Newly licensed lawyers (NLLs) who have been licensed for three years or less; and
- 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 often showing highly correlated results.

ORGANIZING FRAMEWORK OF SURVEY AND COMPARABILITY OF FINDINGS

As described above, CAPA survey questions were organized into two major categories: tasks that attorneys perform, and the 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 (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

---

[10] See NCBE report: https://testingtaskforce.org/wp-content/uploads/2020/03/TestingTaskForce_Phase_2_Report_031020.pdf.

CAPA study is "Research laws and precedents." In contrast, in NCBE's survey, there are several task statements that would fit this single CAPA task, but provide more specificity into 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 extracted from the Traditional Survey's criticality rankings and the ESM Survey's frequency distribution by percentage. NCBE's ranking was based on a metric of percent performed. Despite the varying degrees of granularity in describing the tasks and the difference in the two studies metrics, the two lists of ten items converge on 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 documents 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 examines the treatment of legal topics in the two studies: 77 items in the NCBE study, referred to as "knowledge areas," 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 the gaps in the NCBE rank order—for example, rankings 5 through 9—result from knowledge areas in the NCBE survey that do not have direct, corresponding items in the CAPA list for legal topics.[11] Three 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 is listed separately in the NCBE survey.

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

Note: Sorted in descending order by the CAPA study composite rating.

To further assess the degree of correlation between the CAPA and NCBE rankings, Figure 3 slightly transformed the rank orders, first by eliminating the gaps in NCBE's ranking, and then reversing the numerical orders for both, such that items with higher rankings are located at higher positions (Civil Procedure's number 1 ranking transformed to 19, for

---

[11] 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).

example). With the exception of a few misaligned items, the results from the two surveys are highly correlated (correlation coefficient of 0.77).

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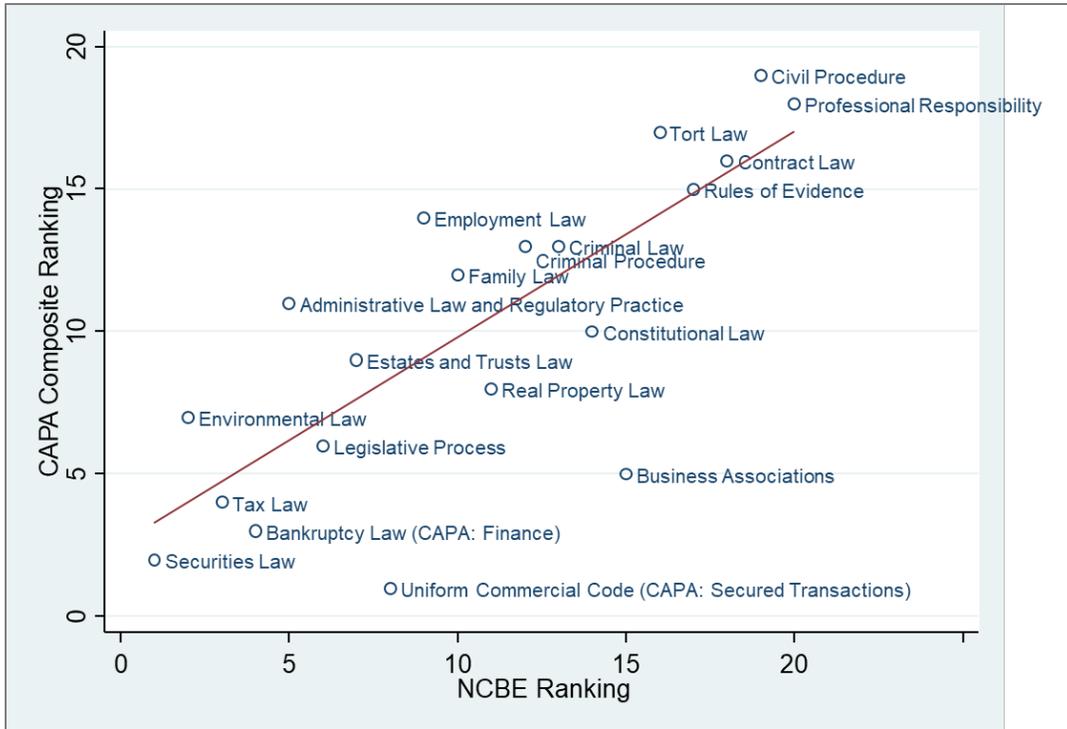
CONCLUSION

The detailed, robust data from two surveys conducted under the guidance of the Working Group provides an empirical foundation for reaching a consensus on the legal topics that should be covered on the bar exam, as well as the competencies expected of entry-level attorneys. These efforts will be invaluable in ensuring that the bar 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	Chair
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 • Establishing the client relationship • Maintaining the client relationship • Communicating with others Practice Management and Administration • Practice management • Case or matter management • Supervision and collaboration Factual and Legal Analysis • Issue spotting and fact gathering • Research and investigation • Drafting and writing Resolutions • Counsel/advice (via conversation, in person or by telephone) • Negotiation and closing • Alternative Dispute Resolution • Litigation	Administrative Law and Procedure Business Associations Civil Procedure Constitutional Law Contracts Criminal Law and Procedure Environment and Land Use Estate Planning, Trusts, and Probate Evidence Family Law Finance Labor and Employment Legislation Professional Responsibility Real Property Secured Transactions Securities Tax Torts

The following pages contain the tasks that attorneys perform while working in one of the competency domains. There is a total of 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 nonattorney consultants or experts
8. Confer with nonattorney 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 including a number of subtopics as listed on the following pages. Within each subtopic, several major sources related to the subtopic are listed.

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

Interpretation
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

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

Performance
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

Pre-Trial Writs

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

Criminal Procedure

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

Sentencing

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

Adoption
1. California Family Law Code

Custody
1. California Family Law Code
2. California Penal Code
3. Welfare and Institutions Code
4. Probate Code, Division 4

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

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

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

Fraud, Corruption, and Regulatory Risk
1. GAAP
2. Federal statutes and regulations
3. State statutes and regulations
4. Case law

7. Governmental Accounting Standards Board
8. Financial Accounting Standards Board
9. Public Company Accounting Oversight Board guidance documents
10. International Accounting Standards Board

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