

Guidelines for Designing a Licensing System For New Lawyers Based on Experiential Education: California Focus

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Experiential education offers a promising foundation for licensing new lawyers. If properly designed, this licensing pathway can make the same claim as a written bar exam: “to protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer.”³

Most other professions incorporate experiential education and assessment into their licensing pathways. That practice is especially well developed in medicine, where students complete two years of clinical rotations as part of the medical school curriculum, followed by additional years of supervised work in specialized postgraduate training (residencies). Throughout those years, evaluators assess the work of aspiring doctors through both simulated and real patient encounters.⁴

The New Hampshire Supreme Court built in part on those practices when it worked with the University of New Hampshire’s law school to create an experiential education licensing path for lawyers. Students who successfully complete the Daniel Webster Scholars Honors Program, a structured curriculum incorporating significant experiential work, receive their license to practice law at graduation. Graduates must pass the Multistate Professional Responsibility Exam (MPRE), and satisfy character and fitness requirements, but they do not take a more general bar exam.⁵ The Oregon Supreme Court recently approved a similar experiential education pathway in principle and has appointed a committee to develop detailed guidelines for that pathway.⁶

New Hampshire’s experiential education licensing pathway, which began in 2005, has been independently evaluated by scholars from IAALS (the Institute for the Advancement of the

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³ NCBE TESTING TASK FORCE, FINAL REPORT 2 (Apr. 2021), available at <https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf>.

⁴ The literature on these assessments in medicine is voluminous. For an introduction, see, e.g., Elaine F. Dannefer & Lindsey C. Henson, *The Portfolio Approach to Competency-Based Assessment at the Cleveland Clinic Lerner College of Medicine*, 82 Acad. Med. 493 (2007) (describing the Cleveland Clinic’s program in detail); John J. Norcini & Danette W. McKinley, *Assessment Methods in Medical Education*, 23 TEACHING AND TEACHER EDUC. 239 (2007) (reviewing different performance-based approaches)

⁵ See Daniel Webster Scholar Honors Program, <https://law.unh.edu/academics/daniel-webster-scholar-honors-program>.

⁶ Meera Powell, *Oregon Advances Alternate Routes to Becoming a Licensed Lawyer*, OPB, <https://www.opb.org/article/2022/01/17/oregon-advances-alternative-routes-to-becoming-a-licensed-lawyer/> (Jan. 17, 2022).

American Legal System) and the Carnegie Foundation for the Advancement of Teaching.⁷ The evaluation included a standardized client interview that was completed by both students in the experiential education pathway and newly licensed lawyers who had taken the bar exam. The students in the experiential education pathway significantly outperformed the lawyers who had taken the bar exam, earning an average score of 3.76 out of 5.00 compared to an average score of 3.11 for the lawyers who had taken the bar exam ($p < .001$; effect size = .90).⁸ Of particular note, students in the experiential pathway were significantly more likely than the newly licensed lawyers to obtain information critical to resolving the client's problem.⁹

Experience with these programs, combined with psychometric theory, suggests that a sound licensing path based on experiential education has these ten components:

- Identification by the licensing authority of the knowledge and skills needed for minimum competence, as well as the activities typically performed by entry-level lawyers
- Clear designation of courses and/or experiences that students must complete to demonstrate their competence in these knowledge areas, skills, and activities
- Ongoing feedback and assessment by faculty and others working with the students before graduation
- Creation of portfolios that students assemble documenting their work
- Summative assessment by bar examiners to determine whether the student's work demonstrates minimum competence
- Training of faculty and examiners participating in the program
- Use of assessment rubrics
- Specification of additional prerequisites for licensing (such as completion of character and fitness review)
- Transparency with respect to all program requirements and assessment criteria
- Periodic evaluation of the program to assure that it is meeting its goals

This research guide offers more detail about each of these components, as well as information about how the components meet the criteria that psychometricians have identified for sound testing (validity, reliability, fairness, alignment, and feasibility). For more information about those criteria, please see the research guide, "Guidelines for a Licensing System Based on Supervised Practice."

⁷ ALLI GERKMAN & ELENA HARMAN, AHEAD OF THE CURVE: TURNING LAW STUDENTS INTO LAWYERS (2015), available at https://iaals.du.edu/sites/default/files/documents/publications/ahead_of_the_curve_turning_law_students_into_lawyers.pdf.

⁸ *Id.* at 18. Additional analyses controlling for class rank and LSAT score confirmed that participation in the experiential education pathway was the primary factor predicting the participants' scores on the standardized interview. *Id.* at 20-21.

⁹ *Id.* at 18-20.

1. Identification of Knowledge, Skills, and Activities

To make a valid claim that a curricular licensing path ensures readiness to practice, the pathway should track the knowledge and skills that new lawyers need, as well as the activities they commonly perform. Evidence of those knowledge areas, skills, and activities should come from a practice analysis or other study of the work new lawyers do. A national study by IAALS, *Building a Better Bar: The Twelve Building Blocks of Minimum Competence*, identifies the competencies that newly licensed lawyers and their employers associate with entry-level practice.¹⁰ A recent practice analysis by the National Conference of Bar Examiners (NCBE), the *Testing Task Force Phase 2 Report*, offers another helpful overview of the competencies and tasks newly licensed lawyers perform.¹¹ In California, a curricular path would rest primarily on the practice analysis conducted by the State Bar of California, which is described in the *CAPA Report*,¹² although some insights might draw from other research.

Clear identification of the facets of knowledge and skills needed for entry-level practice is essential to support valid licensing claims.¹³ This identification also lays the foundation for fairness, reliability, and alignment. The competencies measured by the system, finally, will help determine its feasibility.

2. Designation of Courses and/or Experiences

The courses and experiences required by the licensing path should track the competencies identified in the first step. The treatment of skills and activities may differ from that of knowledge areas, so we discuss them separately. We also discuss the important question of whether an experiential licensing path should include a closely supervised live client clinic.

a. *Knowledge Areas.* The *CAPA Report* identifies twenty key knowledge areas and ranks them according to a composite of their frequency and criticality.¹⁴ The Report then recommends testing nine knowledge areas on the bar exam, while relying on required coursework and the Multistate Professional Responsibility Exam (MPRE) to demonstrate competence in a tenth.¹⁵

A curricular licensing path could follow the same pattern, requiring completion of coursework in the nine subjects the *CAPA Report* designates for a bar exam as well as the tenth area of

¹⁰ The report is available at <https://iaals.du.edu/publications/building-better-bar>.

¹¹ This report is available at <https://nextgenbarexam.ncbex.org/reports/phase-2-report/>.

¹² California's report is available at <https://www.calbar.ca.gov/Portals/0/documents/reports/2020/California-Attorney-Practice-Analysis-Working-Group-Report.pdf>.

¹³ See generally Michael T. Kane, *Validating the Interpretations and Uses of Test Scores*, 50 J. EDUC. MEASUREMENT 1 (2013).

¹⁴ The Report lists nineteen subjects, rather than twenty, but it combines criminal law and criminal procedure. Most law schools teach those subjects in separate courses. For purposes of designing a curricular licensing path, therefore, it is better to think of those two subjects as distinct.

¹⁵ Once again, the Report combines criminal law and criminal procedure into a single subject, yielding eight knowledge areas. As explained in footnote 14 *supra*, however, it is better to count these as distinct subjects when designing an experiential education licensing path.

Professional Responsibility. This approach would support a claim of competence in key areas identified by the *CAPA Report* and would closely parallel the exam pathway.

Alternatively, a curricular path could expand to include some of the other subjects rated highly in the *CAPA Report*. In doing so, it could offer students a choice among some of these subjects. This approach allows students to gather evidence of competence in foundational subjects while supporting some degree of specialization. This alternative also acknowledges the slightly different list of subjects that NCBE has designated for the NextGen bar exam¹⁶—and incorporates the finding in the *Building a Better Bar* study that new lawyers need an understanding of threshold concepts in many subjects.¹⁷ An example of this approach is:

Required

Administrative Law & Procedure
Civil Procedure
Constitutional Law
Contracts
Criminal Law
Evidence
Professional Responsibility
Real Property
Torts

Choose two of

Business Associations
Criminal Procedure
Employment Law
Environment & Land Use
Estate Planning, Trusts & Probate
Family Law
Finance (including Bankruptcy)
Legislation
Secured Transactions
Securities
Tax

Other approaches are also possible. If supported by practice analyses, jurisdictions could require completion of courses that are important for practice in that state—such as Oil & Gas Law in Texas or Community Property Law in California. A jurisdiction could also require completion of a course in that jurisdiction’s civil procedure, recognizing that most lawsuits are filed in state court rather than federal court.

Law schools vary in the way they divide some subjects into discrete courses, as well as in the credit hours they assign. To support licensing claims based on course completion, and to give fair notice to students pursuing the pathway, bar examiners should designate the specific courses from each school that qualify for the pathway. This will be relatively straightforward to accomplish based on course and credit descriptions.

Completion of “knowledge” courses will, in any event, support only a small part of the licensing claims made by the pathway. Completing these courses may be a necessary requirement, but it will not be sufficient. Instead, students will demonstrate their knowledge of foundational subjects much more extensively in experiential courses and activities. Students taking a Trial Practice Simulation or Litigation Clinic, for example, will demonstrate their knowledge of Evidence through those courses. Those courses, as explained further below, will generate work

¹⁶ See NCBE, FINAL REPORT OF THE TESTING TASK FORCE 21 (2021), available at <https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf>.

¹⁷ BUILDING A BETTER BAR, *supra* note 10, at 37-38.

product and assessments that bar examiners can review to determine competence in both knowledge and skills.

b. *Skills and Activities.* An experiential education licensing path offers ample opportunities to demonstrate students' competence in lawyering skills, as well as in performing activities that new lawyers regularly perform. The *CAPA Report* identifies six skills to test on the bar exam, although several of these skills include multiple components:

- 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, and communication

The *Building a Better Bar* report and *NCBE Practice Analysis* identify other skills that a curricular pathway might want to include, such as:

- Seeing the big picture of client matters
- Managing a law-related workload responsibly
- Coping with the stresses of legal practice
- Pursuing self-directed learning.

A jurisdiction may want to require students to complete a certain number of credits in clinics, externships, or simulations as part of an experiential pathway, but simply satisfying this requirement will not generate strong evidence of the student's competence in the skills and activities considered essential for licensing. Clinics, externships, and simulations vary widely in the skills and activities they encompass. Faculty teaching those courses may also vary in grading practices.

It is better to designate the skills and activities on which a student must gather evidence of competence—and then lay out options for gathering that evidence.¹⁸ If, for example, examiners require each student in the pathway to provide evidence that they have sufficient skills to conduct an initial client interview, students might be able to gather that evidence in some clinics (such as a Criminal Defense Clinic) but not others (such as a Legislation Clinic). A student who could not gather this evidence through a clinic might gather it through simulations in a Client Counseling course or supervised work in an externship.¹⁹

Evidence of competence in skills and activities may even come from primarily “knowledge” courses. Professors in these courses increasingly incorporate lawyering activities into their

¹⁸ For an example of this approach see Dannefer & Henson, *supra* note 4, at 495.

¹⁹ Note that this paragraph refers to “gathering evidence” rather than “demonstrating competence.” This is because, as explained further below, the jurisdiction's bar examiners should determine whether a student has demonstrated that competence. The student's role is to gather evidence supporting that determination and present it to the examiners through a portfolio (also described further below).

coursework. Torts and Contracts professors, for example, sometimes include negotiation exercises in their courses. Evidence professors may include selected trial practice simulations. Professors in these and other courses sometimes require their students to write emails or letters to hypothetical clients, discussing a point of law in the course. It is also increasingly common to require students to draft contracts, leases, complaints, or trial motions. Any of this work product might provide evidence of a student's competence on particular skills or activities—as well as on their subject matter knowledge. Students could include this work in their portfolios and examiners could assess it using the same rubrics they apply to work product drawn from clinics, simulations, or externships.

Work done in intramural, regional, or national competitions offers another source of evidence for competence in selected skills and activities. Those competitions use standardized problems (created anew for each year's competition), as well as standardized rubrics for grading. Documents, videos, and scoresheets from these competitions could be included in portfolios to offer additional evidence of competence.²⁰

Building an experiential licensing pathway around specified skills and activities, rather than specific coursework, generates better evidence of competencies and supports stronger claims of minimum competence. This approach also accords with contemporary educational policy and ABA accreditation standards, which focus on learning outcomes rather than course completion. The approach thus supports strong alignment among curricular learning outcomes, licensing requirements, and the demands of entry-level practice.

c. *Clinics.* Clinics that represent live clients allow students to develop skills that simulations and externships cannot always encompass. Those skills include seeing the big picture of a client matter, focusing on a live client's distinctive goals, managing a practice-related workload, and coping with the stresses of representing a real client. In-house clinics also provide close supervision and opportunities for reflection that are critical to developing lawyering skills.

Every other profession requires supervised work in a real-world setting before licensing. Requiring that real-world practice as part of an experiential education licensing path in law would greatly strengthen the path's licensing claims. To support a licensing claim of readiness to enter practice, therefore, an experiential education pathway should require students to complete at least one live-client clinic, closely supervised by law school faculty.

3. Ongoing Feedback and Assessment

Many law school courses already include formative assessment, but that assessment assumes additional importance in an experiential education licensing path. Regular feedback helps students track whether they are likely to obtain a license through the experiential path. If not, they will have the opportunity to improve their performance or choose another licensing path.

²⁰ Many law students work for pay during law school. This work could, in theory, also contribute evidence of a student's competence in particular skills and activities. At least to start, however, we recommend against including paid work in an experiential education pathway—unless that work occurs as part of a credit-bearing externship. Following that approach maintains the primary focus of this pathway on education.

Feedback also helps level the playing field among students who have extensive prior knowledge of law practice and those who lack that knowledge. Formative assessment thus plays a key role in establishing the system's fairness.

In addition to enhancing fairness, regular feedback can improve the reliability of data provided to examiners. As part of their determination of minimum competence, examiners are likely to review some summative assessments of student performance completed by faculty. This may be the only way, for example, for examiners to review a student's performance in a client counseling session or negotiation. Research suggests that faculty are more willing to give students negative assessments if the students have had opportunities to improve through formative feedback.²¹ Feedback thus may improve the reliability of data provided to examiners.

Formative feedback, finally, can enhance the validity of competence claims made by the system. Training and feedback cycles align with cognitive science on the development of expertise;²² candidates progress towards goals through practice and the provision of feedback. The very existence of strong feedback, therefore, increases confidence in the summative assessments made by examiners.

4. Portfolios

Portfolios are a central feature of an experiential education licensing path: they serve at least three purposes. First, they allow candidates to assemble a rich array of material demonstrating their competence. That array is essential to establish the reliability and validity of a licensing pathway based on experiential education. Experiential pathways may not ensure domain sampling and consistent use of assessment instruments that support reliability and provide validity evidence associated with the use of written exams.²³ Instead, these pathways (like other forms of workplace-based assessment) generate reliability by gathering data from a large number of observations, held under varying conditions, and conducted by a large number of evaluators.²⁴

Second, portfolios organize the evidence provided to examiners—which eases review and enhances feasibility. This is especially true if a jurisdiction adopts a common template for all portfolios.

²¹ See, e.g., Andrea Gingerich et al., *The Shift from Disbelieving Underperformance to Recognising Failure: A Tipping Point Model*, 2021 MED. EDUC. 1; Lynda J. Hughes, Marion L. Mitchell & Amy N.B. Johnston, *Moving Forward: Barriers and Enablers to Failure to Fail—A Mixed Methods Meta-Integration*, 98 NURSE EDUC. TODAY 104666 (2021).

²² K. Anders Ericsson & Kyle W. Harwell, *Deliberate Practice and Proposed Limits on the Effects of Practice on the Acquisition of Expert Performance: Why the Original Definition Matters and Recommendations for Future Research*, FRONTIERS IN PSYCH. 10:2396 (2019).

²³ Rubrics for assessing student performance can be standardized, as explained further below, but the experiences themselves often lack standardization. Clinic and externship clients present unique fact patterns and concerns. Even within simulations and competitions, students often assume different roles.

²⁴ See, e.g., Shipra Ginsburg, Kevin Eva & Glenn Regehr, *Do In-Training Evaluation Reports Deserve Their Bad Reputations? A Study of the Reliability and Predictive Ability of ITER Scores and Narrative Comments*, 88 ACAD. MED. 1539 (2013); J.M.W. Moonen-van Loon et al., *Composite Reliability of a Workplace-Based Assessment Toolbox for Postgraduate Medical Education*, 18 ADV. HEALTH SCI. EDUC. 1087 (2013).

Finally, the very process of compiling a portfolio demonstrates competencies that new lawyers need. Whatever their practice area, new lawyers must plan and execute projects over time. They also need to assemble materials according to directions, whether they are preparing evidence for a trial; organizing materials for an administrative hearing or mediation; or gathering documents for a transactional closing. Portfolios thus add to the validity of the pathway's claim of helping ensure that newly license lawyers are minimally competent to serve the public.

We outline below common components of a licensing portfolio based on experiential education. A sound portfolio need not include all of these components, but they are highly recommended.

a. *A Learning Plan.* In a learning plan, the student sets out their plan for completing the courses, experiences, and other work required by the licensing system. The student should create this plan when admitted to the pathway and revise it regularly while working through the licensing requirements. This plan assures that students are aware of the licensing requirements (promoting fairness) and have time to schedule needed courses and other experiences.

A learning plan also demonstrates one of the competencies needed for law practice (the ability to pursue self-directed learning). Although some knowledge courses in the licensing pathway will be required, students will choose opportunities for gathering evidence to demonstrate their competence in skills; some jurisdictions may also provide choices within knowledge areas. Creation of a learning plan thus demonstrates the student's ability to engage in life-long learning, which enhances the validity of the system's claim to protect the public. At the same time, the plan directly demonstrates alignment between the student's curriculum and licensing requirements. Finally, a learning plan orients examiners to the portfolio's contents, easing their assessment and aiding feasibility.

b. *Grades from Required Coursework.* The portfolio should demonstrate that a student has successfully completed any courses required for licensing. In the context of licensing, "successful completion" means passing the course. Requiring a higher grade is problematic because many law school courses are graded on a curve (i.e., their grades are norm-based), while licensing systems are criterion-based.

As noted above, successful completion of required coursework only weakly supports the licensing claims made by an experiential pathway. But if a jurisdiction requires completion of some coursework, the portfolio should include a transcript or other document demonstrating compliance with that requirement.

c. *Work Product.* A large portion of the portfolio will include work product demonstrating the student's competence in different knowledge areas, skills, and activities. Most work product will appear as written documents, but it may also be possible to include audio or video recordings of interviews, counseling sessions, hearings, etc. Written documents will include

traditional formats (such as memos, emails, motions, and contracts) but may also include documents like negotiation plans, research plans, and term sheets.

This work product should come from multiple courses and assignments, which contributes to both the validity and reliability of licensing claims. Depending on the nature of the work product, a jurisdiction may want to require more than one sample demonstrating each required skill or activity. On the other hand, many types of work product will demonstrate two or more skills at the same time. Most work product will also provide evidence of the student's knowledge in a subject area.

Some work products generated by students will represent their own independent work; other products may result from collaboration or extensive editing. There are at least two approaches jurisdictions can take to handling collaborative and edited works. First, a jurisdiction could limit portfolio contents exclusively to independent work. Products created in collaboration with another student would not be eligible for inclusion. Similarly, students could include only first, independently authored drafts of work that was later edited. This approach is simple and it supports a strong licensing claim that the student has the minimum competence to practice law without any support from colleagues or others.

On the other hand, this approach overlooks the value of collaboration in law practice—a competence that many lawyers believe is essential for effective client representation. The process of learning from feedback is also a competence that matters in law practice; it is part of the ability to pursue self-directed learning identified as a key competence in the *Building a Better Bar* study. If a licensing system wants to make claims about these competencies, it may be important to include collaborative or edited work in a portfolio.

A second approach, therefore, is to allow students to include a specified amount of collaborative and edited work within a portfolio—while also requiring a specified amount of fully independent work. For collaborative work, the students could develop a mutual statement describing their contributions, with the supervisor signing off on the attribution statement. For edited work, a student could submit the first draft, the revised version, and a reflection on how the revision improved the work product and what the student has learned for future projects.

A related question arises when a student works from a model document or template. This is quite common in law practice; in fact, competence often requires adapting a model to a particular client matter. For this type of work, a student could highlight portions of the document that represent their own adaptations and additions. It would also be useful to require a reflection in which the student indicates why they chose a particular model as the basis of their work, any concerns they developed about that model, the major issues that required adaptation, and what they have learned about creating similar documents in the future.

Any work product, of course, should be redacted to remove live client information (unless the work product is a matter of public record).

d. *Assessments.* As discussed further below, bar examiners should make the final determination of whether a portfolio demonstrates minimum competence to practice law. The examiners, however, often find it helpful to review earlier assessments made by faculty, externship supervisors, or others who have engaged with the student. Those first-line assessors may be in a better position to evaluate some aspects of a written document, such as how well it addresses a client's unique circumstances or how properly it articulates relevant legal principles. For non-written work (such as interviews, client counseling sessions, or negotiations), the first-line assessment may be the bar examiner's only window into competence.

For this reason, portfolio systems often include first-line assessments. As discussed further below, the individuals offering those assessments should receive training and use appropriate rubrics for their assessments; those steps increase the reliability of their perspectives. Training and rubrics also help maintain the system's fairness.

Most assessments in the portfolio will come from faculty, externship supervisors, and competition judges. It is also possible to collect assessments from peers, clinic clients, opposing counsel, courtroom personnel, and others. The assessment literature offers guidelines for the appropriate use of these assessments, including methods to use the information to make decisions.

e. *Reflections.* Like the portfolio itself, reflections composed by the student submitting the portfolio serve multiple purposes. These reflections can elaborate on competencies that are difficult to discern from other items in the portfolio. A student, for example, might explain the research they pursued before counseling a client, drafting a contract, or writing a motion; that reflection will help the examiner assess the student's competence in legal research. Reflections are particularly important to demonstrate competencies like coping with the stresses of law practice and pursuing self-directed learning, which are difficult to document in other ways. Reflections can also be used to address negative assessments from faculty or supervisors—or to express how the student reconciles conflicting assessments.²⁵

A good reflection has four components: (a) It describes what happened; (b) it explains how the writer responded to that situation; (c) it describes what the writer learned from the experience; and it (d) explores whether the writer will alter their behavior or perspectives as a result of this learning. To prompt good reflections, faculty and supervisors should explain these four components to students. It is also helpful to give students prompts for specific reflections. A prompt, for example, might ask: Describe a difficult moment you encountered while counseling a client, indicate how you responded to that challenge, explain what you learned from the experience, and describe how the experience will affect your future practice.

f. *Closing Statement.* A closing statement is a reflection on the full course of work completed by the student and included in the portfolio. As with other reflections, it is useful to

²⁵ For further discussion of the importance of reflections in portfolios, see, e.g., Dannefer & Henson, *supra* 4, at 494.

prompt the student on the topics to include in the closing statement. These could include questions like:

- What was hardest for you to learn during this pathway? Why was that knowledge, skill, or activity difficult for you? What special steps did you take to seek competence in that knowledge, skill, or activity? How will that experience inform the way you approach other challenges in law practice?
- What surprised you most while learning the competencies reflected in this portfolio? Why? How will that experience inform your future practice?
- In what ways did you encounter cultural differences, diversity, equity, or inclusion challenges while pursuing this pathway? How did you handle those challenges? How has that experience informed your perspectives on cultural difference, diversity, equity, and inclusion issues?

5. Summative Assessment by Bar Examiners

It is possible to create a curricular licensing system in which educators at each school make a final decision about a student's minimum competence to practice law. That type of system constitutes a type of diploma privilege. For at least three reasons, however, it is much better to put the final certification decision in the hands of independent examiners appointed by the jurisdiction's highest court or its office of bar examiners.

First, educators may feel institutional pressure to certify students who they do not believe are competent to practice law. Licensing rates affect a school's prestige and reputation, so administrators may press faculty to err on the side of certifying borderline students for licensing. This is particularly problematic for nontenure-track professors and adjuncts who teach many skills courses in law schools.

Second, asking educators to make the final licensing decision risks confounding the formative goals of education with the summative decision on licensing. Candidates should feel free to stumble when learning, without fearing that those first impressions may taint the licensing decision. Faculty, similarly, should have the freedom to focus on teaching and formative feedback, without worrying about a high-stakes licensing decision. Separating licensing from teaching reinforces the importance of education as a place of learning and supports the focus on formative feedback and the ongoing development of knowledge and skills throughout the three years of law school.

Entrusting independent examiners with the final determination of minimum competence, finally, adds important balance and credibility to the licensing system. All licensing systems include several components. Candidates who take a written bar exam, for example, also earn a law degree, achieve a passing score on the MPRE, and pass character and fitness review. Allowing educators to make the final assessment of a student's portfolio in an experiential education path collapses two elements of this structure (earning a law degree and obtaining an independent assessment of minimum competence) into a single element. An experiential

education path will be more credible, and able to make more valid claims related to competence, if these two elements are separated. In some cases (as when animosity develops between a student and school faculty or administrators) this will also enhance fairness.

The bar examiners who assess portfolios will receive training and use rubrics; those aspects of the system are discussed below. Before turning to those requirements, we address four other points related to the process of the examiners' assessment.

First, how many examiners should review a candidate's portfolio? It is possible for a single examiner to perform that task; New Hampshire has adopted this approach for its Daniel Webster program, and a single examiner enhances feasibility. Many portfolios will contain clear evidence of minimum competence, and a single examiner can make that determination. Stakeholders in some jurisdictions, however, may prefer to have more than one examiner review each portfolio. That can enhance fairness and reliability.

Second, what process is afforded to candidates who do not pass the portfolio review? If a single examiner finds the candidate "non competent," or believes that the case is a borderline pass or fail, a panel of several examiners should review the portfolio and make a joint decision. If the decision is positive, no further action is needed. If the decision is negative, the jurisdiction might require examiners to point to the competencies on which the candidate has not demonstrated minimum competence. The candidate could then have an opportunity to explain why the evidence does demonstrate that competence, with the panel of examiners reconvening to consider that explanation and render a final decision.

Jurisdictions could design different models for appeals from a negative decision; the above steps constitute simply one model. In addition, jurisdictions can decide whether to allow failing candidates to supplement their portfolios with additional work, revise their reflections, or modify the portfolio in other ways. This may be feasible in some small jurisdictions. On the other hand, candidates who fail an experiential education pathway have other options to obtain a license, such as taking the bar exam. It may be better for the candidates themselves to move to another pathway rather than make repeated attempts to pass the experiential education pathway.

The third question related to examiner assessment is whether the examiners should review portfolios during the experiential licensing path and provide interim feedback to candidates about their progress. Examiners conduct this interim review for students in the University of New Hampshire's Daniel Webster Scholars Program, and both students and examiners report that it is rewarding. Interim review and feedback can enhance the fairness of the licensing path by giving students early warning of problems.

In larger jurisdictions, however, this type of interim review may not be feasible. Instead, examiners and faculty (or a faculty coordinator for the pathway at each school) might meet periodically to discuss expectations. Faculty then will be better equipped to guide students pursuing the licensing path.

Finally, jurisdictions must determine whether candidates must demonstrate minimum competence on each activity and skill included in the portfolio, or just a percentage of those

activities and skills. If, for example, a path requires completion of a witness interview, client counseling session, negotiation, and oral argument, must the candidate demonstrate minimum competence in all four of those contexts—or just in two or three of them?

The written bar exam uses compensatory scoring; a candidate may fail individual multiple-choice questions, essays, or other exercises without failing the entire exam. This suggests providing some leeway for students pursuing an experiential licensing path. A jurisdiction, on the other hand, could decide that students should demonstrate at least minimum competence in every component of the path. Since students have multiple opportunities to demonstrate that competence over two years (rather than during a single two-day exam), requiring that demonstration on each competency may be fair.

6. Training

Training is essential for both first-line assessors (faculty, externship supervisors, competition judges, etc.) and for the bar examiners making summative decisions. Many faculty have already engaged in training related to assessments and feedback, but schools should encourage additional training related to an experiential education pathway. It is particularly important for faculty participating in that pathway to understand the examiners' expectations. Faculty will also benefit from training on any standardized rubrics used in the program.

Schools differ in how much training they currently offer externship supervisors, but solid training is essential if the supervisors will oversee materials included in portfolios and/or contribute their own first-line assessments to the portfolio. An experiential education licensing path may require more explicit feedback from supervisors than they are accustomed to providing as part of an externship program. Training (which should carry CLE credit) will help supervisors understand the purpose of the licensing path; the knowledge, skills, and activities they will oversee; and the appropriate use of any rubrics they contribute to the portfolio.

It may not be possible to offer special training to every individual who volunteers to judge a competition, but those competitions usually provide judges with some guidelines for assessing competitors and scoring rubrics. If possible, schools could complement that instruction by creating short videos that give judges additional guidance related to the licensing path. Watching those videos should, as above, offer CLE credit.

Examiners likewise should receive training about the kind of materials included in portfolios, the process they will use to assess those portfolios, and the standards they will apply. To promote fairness and reliability, examiners should periodically engage in calibration sessions where they jointly review sample portfolios, discuss the evidence of competence, and work towards consensus decisions. It may also be useful to invite some faculty to these sessions so that faculty understand the examiners' expectation.

All of these groups should receive training on reasons for variation in performance and how to account for those differences; implicit bias; and other issues that could affect the fairness and validity claims associated with grading and licensing decisions. Some law schools already provide this training to faculty and externship supervisors. Some courts and bar admissions

offices, similarly, already require this training for examiners. It is particularly important to offer good training on these issues to participants in an experiential education pathway because many of the assessments in this pathway carry risks of bias. Jurisdictions creating experiential education pathways might collaborate to develop specialized training for participants in these pathways.

7. Rubrics

Rubrics are important for the feedback and first-line assessments offered during the licensing path, as well as for the summative decision made by the bar examiners. Some rubrics may apply to both stages in the process; others will apply in just one context.

Good rubrics promote both fairness and reliability. By focusing evaluators on specific aspects of a student's performance, rubrics reduce the room for bias. They also give students notice of the criteria on which they will be judged, further enhancing fairness. Rubrics, finally, play a critical role in advancing reliability by requiring all assessors to use the same criteria and rating scales.

It is helpful to standardize rubrics that first-line assessors contribute to a portfolio. That standardization ensures that all stakeholders (including students) understand the criteria that constitute competent performance on a task. This increases the validity of licensing claims, as well as the reliability and fairness of the system. Standardized rubrics also ease the work of examiners, contributing to feasibility. Faculty, of course, may continue to use their own rubrics for formative feedback and summative assessments within their courses. But they should use standardized rubrics when providing data for student portfolios—and some may find those rubrics helpful in other coursework.

To create standardized rubrics, jurisdictions should convene panels of experts for each skill or activity that will be included in licensing portfolios. These experts may build upon existing rubrics from law school courses and competitions, but they will also find helpful insights from the psychometric literature. Many universities maintain testing and assessment centers that can assist with the development and evaluation of rubrics.

Rubrics for the portfolio summative assessment also require careful development. We are preparing another research guide that offers some guidelines for developing rubrics for both first-line and summative portfolio assessments. That guide will include several examples of rubrics that could be used in an experiential education licensing system.

8. Transparency

Transparency is essential to fairness. Students should know who will evaluate them, how they will be evaluated, and the criteria for successful performance. Transparency also enhances reliability and valid uses of assessment because the system is open to criticism and improvement.

9. Additional Licensing Requirements

Just as the bar exam does not stand on its own, jurisdictions adopting an experiential education licensing path are likely to supplement that path with other requirements. Requirements related to character and fitness, for example, should apply to all licensing paths. And given the importance of professional responsibility in law practice, jurisdictions may want to require all candidates (regardless of licensing path) to obtain a passing score on the Multistate Professional Responsibility Exam (MPRE).

10. Periodic Review

Assessment systems evolve as they benefit from experience and encounter new challenges. A good system will provide for regular evaluation and feedback from stakeholders. For a lawyer licensing system, those stakeholders include practicing lawyers and judges, legal educators, law students, recent graduates, clients, and the public at large. Regular assessment will assure that the licensing system retains credibility and protects all stakeholders.

During the first years of an experiential education licensing path, it is particularly important to gather data on the following points:

- Is the pathway accessible to all those who choose to pursue it (e.g., first-generation students, those from traditionally underrepresented racial/ethnic groups, and students with disabilities)? If not, what barriers inhibit their participation?
- How many students obtain licenses through this path?
- How many begin the pathway but fail to obtain a license through the pathway? Why do they drop out? Do they obtain licenses through other means?
- How does the pathway affect other students enrolled in participating schools? Are there sufficient seats in clinics, simulations, and other pathway courses to accommodate both pathway students and others?

Conclusion

It is possible to design an experiential education licensing path that makes the same licensing claims as a written bar exam and meets the other psychometric criteria of fairness, reliability, alignment, and feasibility. When properly designed, this path can address the needs of both aspiring lawyers and the public they will serve.

Guidelines for a Licensing System Based on Supervised Practice

Logan Cornett,¹ Danette McKinley,² and Deborah Jones Merritt³

Licensing systems protect the public by certifying only candidates who are minimally competent to practice the profession. Many systems use written exams, along with other requirements, to measure that competence. Measurement experts, however, have long recognized that assessments of workplace performance can also form the core of a licensing system. “The time-honored way to find out whether a person can perform a task,” one group of highly regarded experts wrote, “is to have the person try to perform the task.”⁴

These experts come from the field of psychometrics, an academic field that focuses on techniques for measuring knowledge, skills, attitudes, and other facets of human cognition. Assessment experts set three primary criteria for use in the selection of licensing instruments: reliability, validity, and fairness.⁵

- Reliability means that an assessment produces consistent results. A reliable bathroom scale registers the same weight if you step on the scale twice within a minute.
- Validity means that evidence establishes a link between the assessment outcomes and the purpose for which those outcomes are used. It is valid to use bathroom scale readings to determine the body weight of able-bodied people, but not to determine what they ate for breakfast. Psychometricians stress that validity is not a property of the assessment itself, but of the interpretations made based on the scores.
- Fairness means that the assessment does not discriminate, explicitly or implicitly, based on characteristics that are irrelevant to the quality being measured. Fairness also requires assessors to treat candidates with respect. A bathroom scale is not a fair measure of body weight for a person wearing a heavy leg brace who cannot stand without that brace.

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⁴ Michael Kane, Terence Crooks & Allan Cohen, *Validating Measures of Performance*, EDUC. MEASUREMENT: ISSUES & PRACTICE, Summer 1999, at 5. Dr. Kane holds the Samuel J. Messick Chair in Test Validity at the Educational Testing Service. He previously served as Director of Research at NCBE and held faculty positions at several universities.

⁵ AMERICAN EDUCATIONAL RESEARCH ASSOCIATION, AMERICAN PSYCHOLOGICAL ASSOCIATION, NATIONAL COUNCIL ON MEASUREMENT IN EDUCATION, STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING (2014).

Scholars have identified two other criteria that may affect the choice of licensing instruments: alignment and feasibility.⁶

- Alignment means that education and licensing align to produce new professionals with the knowledge, skills, and judgment needed for entry-level practice. For example, if negotiation is an important skill in law practice, then including negotiation tasks in a licensing assessment should motivate students to work on their negotiation skills.
- Feasibility means that the instrument used should be affordable and efficient; the test should not be too costly for either administrators or test takers. Feasibility, however, should not impede change: new approaches often seem more costly than established ones because the costs of the latter have become normalized.

A substantial body of psychometric literature shows that assessments of workplace performance can offer a reliable and valid means for determining competence. Fairness, alignment, and feasibility have been less extensively studied in the context of performance assessments, but an emerging literature suggests that these criteria can also be satisfied in that context. This handout offers some guidelines from the educational literature for designing a licensing system for lawyers based on post-graduate supervised practice. Similar principles would guide design of a system based on an experiential education path, but a future handout will address that pathway.

1. Begin with an Evidence-Based Definition of Competence. A sound assessment system rests on an evidence-based definition of the quality being measured. For a licensure system, that quality is minimum competence to practice the profession. In law, this aspect of the validity argument is based on identifying the tasks newly licensed lawyers perform, as well as the knowledge, skills, and judgment they need to perform those tasks. A national study by IAALS (Institute for the Advancement of the American Legal System), *Building a Better Bar: The Twelve Building Blocks of Minimum Competence*, identifies the competencies that newly licensed lawyers and their employers associate with entry-level practice.⁷ A recent practice analysis by the National Conference of Bar Examiners (NCBE), the *Testing Task Force Phase 2 Report*, offers another helpful overview of the competencies and tasks newly licensed lawyers perform.⁸ Some states have conducted similar analyses within their own jurisdiction. For example, the State Bar of California did so with a practice analysis published in 2020.⁹

⁶ John J. Norcini & Danette W. McKinley, *Assessment Methods in Medical Education*, 23 TEACHING & TEACHER EDUC. 239 (2007).

⁷ The report is available at <https://iaals.du.edu/publications/building-better-bar>.

⁸ This report is available at <https://nextgenbarexam.ncbex.org/reports/phase-2-report/>.

⁹ California's report is available at <https://www.calbar.ca.gov/Portals/0/documents/reports/2020/California-Attorney-Practice-Analysis-Working-Group-Report.pdf>.

Identifying the knowledge, skills, and judgment that new professionals use to perform common tasks is essential to define *what* needs to be measured. The definition of competence also provides guidance for *how* the requisite knowledge and skills should be measured.

2. Gather Rich Data for Each Candidate. The Uniform Bar Exam (UBE) achieves high reliability in part because it gathers many data points: answers to 175 scored multiple-choice questions, six essay responses, and two documents created for performance tests. These varied data points also support interpretations made about scores. A licensing system based on supervised practice can also achieve sufficient reliability, while supporting broader claims of competence, if it collects many data sources to support interpretations of the candidate's performance. There are several instruments that have been used in the health professions, teacher certification, and human resources field to evaluate workplace performance. This research suggests that an assessment system based on supervised practice should:

- Collect information from multiple sources (supervisors, peers, staff, the candidate, and potentially clients);
- Measure a range of relevant knowledge and skills;
- Use different formats; and
- Rely upon multiple observations.

Materials like these can be assembled into a portfolio. The richness of the data addresses reliability and allows collection of sufficient evidence of validity. Candidates can be assessed on many competencies and tasks, providing evidence to support interpretations made about competence. Multiple assessments from a wide number of raters can be monitored for potential bias, promoting fairness. Because the measures sample the full range of knowledge and skills, the multiple data sources contribute to the reliability of workplace-based assessment, supporting the decisions made about performance. With a large number of data points, errors associated with a single assessment are reduced. The portfolio as a whole is likely to paint a reliable portrait of the candidate's competence.

3. Give Candidates Feedback and Opportunities to Improve. The supervision period should provide opportunities for candidates to grow and learn from their mistakes. Supervised practice is an important part of the education process, and it is essential to provide guidance towards improvement. Initial months should focus on formative assessments designed to provide feedback rather than summative assessments used for decision-making. That focus benefits both the candidate and the employer, because the candidate will learn to provide better service.

Implementation of this guideline is particularly important in promoting fairness and reliability. Providing similar opportunities for recent graduates to hone their competence, especially for

skills and knowledge that are not taught in law school, addresses aspects of fairness in education and employment. Research, meanwhile, suggests that supervisors are more comfortable providing negative feedback if they know that candidates will have an opportunity to improve. This safety net enables assessors to give negative feedback when warranted—and to fail candidates who have not responded adequately to that feedback. Training and feedback during supervised practice also aligns with cognitive science on the development of expertise;¹⁰ candidates are provided with opportunities to progress towards goals through practice and the provision of feedback.

4. Take Certification Out of the Workplace. Supervisors, peers, and other members of a candidate's workplace offer essential information about the candidate's competence. Indeed, an employer's willingness to allow a candidate to handle client matters offers strong evidence of the candidate's competence. It is best, however, for an independent decision maker to make the final decision about a candidate's eligibility for a license. This reinforces the acceptance of supervised practice as a learning opportunity for candidates, and supports the focus on formative feedback and the ongoing development of knowledge and skills.

This structure also lends credibility to the assessment system. Equally important, it allows candidates to change supervisors during the assessment period, which helps protect them from abusive or unethical supervisors. In these ways, the structure promotes fairness, reliability, and validity.

There are several models for independent certification. In the simplest model, a trained examiner reviews the candidate's portfolio, using established rubrics and standards, and determines whether the portfolio establishes minimum competence. If the examiner has doubts—or rules against the candidate—then a panel of examiners reviews the portfolio and reaches a consensus decision on the candidate's competence.

5. Use Credible Supervisors and Examiners. The reliability, fairness, and validity of a licensing system depend greatly on the credibility of the professionals administering the system. In a system that relies upon supervised practice, the supervisors should be licensed lawyers within the state who have demonstrated an interest in training and mentoring new lawyers. Their disciplinary records should be clean or demonstrate clear rehabilitation. A supervisor should have at least three years of experience practicing law, with at least two of those years in the state. Greater seniority does not necessarily spell better supervisory competence. Lawyers in government agencies, nonprofit organizations, and small law firms assume primary

¹⁰ K. Anders Ericsson & Kyle W. Harwell, *Deliberate Practice and Proposed Limits on the Effects of Practice on the Acquisition of Expert Performance: Why the Original Definition Matters and Recommendations for Future Research*, FRONTIERS IN PSYCH. 10:2396 (2019).

responsibility for client matters very early in their careers. These junior lawyers may also be more in touch with new practice methods than their senior colleagues.

Examiners, similarly, should have experience practicing law in the state. It may be appropriate to require more years of experience (five or seven years) for an examiner than for a supervisor. It is best for examiners to devote only part of their time to portfolio examination, while they maintain positions practicing or teaching law. The latter work keeps them rooted in the profession, enhancing their credibility.

Diversity, equity, and inclusion are key components of credibility for both supervisors and examiners. The state's high court should assemble a group of examiners who are demographically diverse, represent different parts of the state, work in different practice areas, and come from a variety of organization types. Supervisors should be similarly diverse and should work in organizations that have demonstrated a commitment to diversity, equity, and inclusion.

6. Provide Training and Support for Supervisors and Examiners. Good supervisors and examiners will bring their own expertise to the licensing system. It is not necessary to erase differences of opinion among these experts or train them to reach agreement on every aspect of a candidate's portfolio. One of the strengths of a licensing system based on supervised practice is that it recognizes nuances and differences in approaches: These are the hallmarks of a profession.

Supervisors and examiners, however, will benefit from regular training on matters such as the purpose of the assessments used; the scoring of those assessments; methods to avoid implicit bias; approaches to providing constructive feedback; and ways to inform candidates that their work is not competent. It is also useful for examiners to meet periodically and review sample portfolios together; this can help individual examiners expand their perspectives. Supervisors may also appreciate a support network that allows them to share tips on providing constructive feedback and discuss other aspects of their role.

7. Make the System User Friendly. Training new lawyers, providing feedback, and rating performance take time, but a user-friendly system will greatly reduce that time commitment. System designers should solicit input from supervisors and new lawyers to understand the tools that will help users provide efficient, effective feedback. Some workplaces may have existing practices that will inform the new system. Best practices in performance review could help in implementing the system.

Supervisors and candidates often find online systems convenient. These systems also allow for ready sharing of materials with examiners. Some fields have even developed apps for providing feedback or assessments through smart phones. Designers, however, may prefer to use a paper

system during the early phase of implementation. This allows users to identify flaws and suggest improvements before putting the system online.

8. Design High-Quality Feedback and Assessment Tools. A good licensing system will use a variety of tools for feedback and assessment—just as the bar exam uses varied question formats. The literature offers these tips for designing fair and reliable tools that contribute to valid uses:

- Tie feedback and assessment to specific components of competence.
- Operationalize those components with prompts that remind supervisors of actions signifying levels of developing competence.
- Avoid numerical ratings on the forms: supervisors find them difficult to assign and err towards high ratings. Candidates also receive little guidance from numbers. Scores, however, may be built into the system for review by examiners.
- Encourage narrative feedback and ensure that the feedback is shared with the candidate.

The final pages of this handout show two sample feedback forms following this guidance. The forms are based on competencies identified by the *Building a Better Bar* report. The sample forms focus on a client interview; other forms would focus on different tasks and highlight different competencies.

The sample forms offer just two options for providing feedback and assessing competence. A candidate's final portfolio should include multiple feedback forms of different types, reflections from the candidate, and samples of the candidate's work product (with client-identifying information deleted).

9. Be Transparent. Transparency is essential to fairness. Candidates should know who will evaluate them, how they will be evaluated, and the criteria for successful performance. Transparency also enhances reliability and valid uses of assessment because the system is open to criticism and improvement.

10. Evaluate and Adjust. Assessment systems evolve as they benefit from experience and encounter new challenges. A good system will provide for regular evaluation and feedback from stakeholders. For a lawyer licensing system, those stakeholders include practicing lawyers and judges, legal educators, law students, recent graduates, clients, and the public at large. Regular assessment will assure that the licensing system retains credibility and protects the public.

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Feedback: Initial Client Interview**Date**____/____/____**Candidate:**_____**Observer:**_____

Circle points that the candidate does competently. Place an X over those needing work. Write “NA” for any that do not apply.

PROFESSIONALISM

Explained Unlicensed Status

Explained A/C Privilege

Explained any Fees

Treated Client with Respect

Identified Client Needs, Interests, and Concerns

Provided Contact Information

Promised Follow Up within Specified Time

Comments:

CLIENT INTERACTION & COMMUNICATION

Let Client Tell Story

Avoided Jargon

Explained Legal Concepts

Invited Questions

Answered Questions

Described Next Steps

Comments:

KNOWLEDGE & ISSUE IDENTIFICATION

Identified Issues

Stated Law Correctly

Acknowledged Need to
Check/Research New Points**Comments:**

Client Interview

Date:

Candidate Name:

Supervisor Name:

Competency	Requires Corrective Response	Developing	Competent
Professionalism	Does not disclose intern status	Discloses status but does not invite questions	Discloses status and invites questions/concerns from client
	Does not mention attorney client privilege	Mentions attorney client privilege but does not discuss nuances	Explains attorney client privilege fully, including when disclosure is required
	Does not explain fees (if applicable)	Mentions fees but does not give sufficient detail or invite questions	Describes fees in detail and invites questions
	Does not treat client with respect	Generally treats client with respect	Treats client with respect throughout interview
	Seems uninterested in client needs, interests, and concerns	Shows interest in client but does not sufficiently follow up on needs, interests, and concerns	Fully engages with client needs, interests, and concerns
	Provides no contact information	Provides information, but does not invite contact	Provides information and invites contact
	Does not mention follow up	Mentions follow up but does not give specifics	Promises specific follow up within specified time
Client Interaction and Communication	Uses highly structured questions rather than allowing client to tell story	Allows client to tell story but interrupts often	Lets client tell full story with only essential interruptions
	Repeatedly uses jargon without explanation	Occasionally uses jargon but clarifies in response to client questions	Uses jargon only when essential and explains without client prompting
	Uses legal concepts without explaining them	Explains some but not all legal concepts	Explains all legal concepts
	Does not invite any questions from client	Invites questions but seems unreceptive	Repeatedly invites questions and shows interest in those questions
	Ignores questions posed by client	Answers some, but not all, questions posed by client	Answers all questions posed by client
	Does not describe next steps	Mentions next steps, but does not explain them	Describes next steps in terms client readily understands
Knowledge and Issue Identification	Does not identify legal issues raised by the interview	Raises some, but not all, legal issues raised by the interview	Properly identifies all legal issues raised by the interview
	States several points of law incorrectly	States one point of law incorrectly	States all points of law correctly
	Claims full knowledge when research is necessary	Skirts over need for research rather than acknowledging need directly	Acknowledges need to check or research unfamiliar points of law

Comments:

Sample Rubrics

For Non-Exam Licensing Pathways

Rubrics play a critical role in non-exam licensing pathways. They are essential to promote validity, reliability, fairness, alignment, and feasibility in those pathways. The best practices for developing rubrics requires consultation with the examiners to define with precision the tasks intended to be assessed, consultation with expert educators and supervisors to build rubrics aligned to the designated tasks, publication of the rubrics to students or graduates who will be graded using the rubrics, and regular training of educators or supervisors who use the rubrics. Jurisdictions adopting a non-exam pathway will want to gather input from many stakeholders before finalizing rubrics.

We offer these sample rubrics simply to illustrate how non-exam pathways might operate. They draw upon existing rubrics in legal education, as well as on examples in medicine, but they are just a starting point for developing rubrics suitable for non-exam licensing paths.

Rubrics for Scoring a Client Interview

The following two pages display two different rubrics for scoring an initial client interview. Both rubrics focus on the same facets of that skill, but use different formats. We include both options to demonstrate that rubrics can be constructed in different ways depending on stakeholder preferences. The first rubric operates as a kind of checklist in which the grader would determine whether a student performance did or did not include competent demonstrations of various components of interviewing skill. The second rubric offers more gray area in which graders might give partial credit for emerging but imperfect demonstrations of the same components of interviewing skill. In practice, the best rubric design might be a blend of these approaches, taking into account the time available for grading and the agreement among graders regarding the approach to any nuances observed in student performances.

These rubrics most likely would be used by educators or supervisors as a summative assessment of a student's or graduate's performance in a real-client or simulated interview. The completed rubric would then be included in the licensing portfolio as evidence of the student's or graduate's skill level.

If examiners want to assess skills like interviewing or negotiation independently, they could require candidates to submit taped samples of that work from simulations. The examiners would then score the samples using the attached rubrics. Alternatively, examiners could allow educators or supervisors to score the interview, negotiation, or other activity, but require candidates to submit pre-activity plans (e.g., a negotiation plan) that the examiners would score using rubrics developed for that purpose. Those assessments could be combined with the rubrics completed by educators or supervisors to give a more complete picture of the candidate's skill level.

The attached rubrics are based on the twelve building blocks identified in the *Building a Better Bar* study.¹ A jurisdiction could develop different rubrics based on those building blocks or based on the practice analyses conducted by NCBE or the jurisdiction. As specific components of rubrics are developed, stakeholders should verify that those components are important aspects of the building blocks or other practice foundations identified in previous studies.

Note that some of these rubrics include names of the candidate and observer. That information is useful for managing paperwork but could be redacted before examiners review portfolio materials if a jurisdiction adopts an anonymous grading system.

¹ DEBORAH JONES MERRITT & LOGAN CORNETT, BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE (2020), available at https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf.

Initial Client Interview

Date ____/____/____

Candidate: _____

Observer: _____

Circle points that the candidate does competently. Place an X over those needing work. Write "NA" for any that do not apply.

PROFESSIONALISM

Explained Unlicensed Status

Explained A/C Privilege

Identified Client Needs, Interests, and Concerns

Explained any Fees

Provided Contact Information

Promised Follow Up within Specified Time

Comments:

CLIENT INTERACTION & COMMUNICATION

Let Client Tell Story

Avoided Jargon

Explained Legal Concepts

Invited Questions

Answered Questions

Described Next Steps

Comments:

KNOWLEDGE & ISSUE IDENTIFICATION

Identified Issues

Stated Law Correctly

Acknowledged Need to
Check/Research New Points

Comments:

Alternative Rubric for Scoring Initial Client Interview

Competency	Requires Corrective Response	Developing	Competent	NA
Professionalism	Does not disclose intern status	Discloses status but does not invite questions	Discloses status and invites questions/ concerns from client	
	Does not mention attorney client privilege	Mentions attorney client privilege but does not discuss nuances	Explains attorney client privilege fully, including when disclosure is required	
	Does not explain fees	Mentions fees but does not give sufficient detail or invite questions	Describes fees in detail and invites questions	
	Does not treat client with respect	Generally treats client with respect	Treats client with respect throughout interview	
	Does not identify client needs, interests, and concerns	Shows some interest in client needs, interests, and concerns, but does not sufficiently follow up	Fully engages with client needs, interests, and concerns	
	Provides no contact information	Provides information, but does not invite contact	Provides information and invites contact	
	Does not mention follow up	Mentions follow up but does not give specifics	Promises specific follow up within specified time	
Client Interaction and Communication	Uses highly structured questions rather than allowing client to tell story	Allows client to tell story but interrupts often	Lets client tell full story with only essential interruptions	
	Repeatedly uses jargon without explanation	Occasionally uses jargon but clarifies in response to client questions	Uses jargon only when essential and explains without client prompting	
	Uses legal concepts without explaining them	Explains some but not all legal concepts	Explains all legal concepts	
	Does not invite any questions from client	Invites questions but seems unreceptive	Repeatedly invites questions and shows interest in those questions	
	Ignores questions posed by client	Answers some, but not all, questions posed by client	Answers all questions posed by client	
	Does not describe next steps	Mentions next steps, but does not explain them	Describes next steps in terms client readily understands	
Knowledge and Issue Identification	Does not identify legal issues raised by the interview	Raises some, but not all, legal issues raised by the interview	Properly identifies all legal issues raised by the interview	
	States several points of law incorrectly	States one point of law incorrectly	States all points of law correctly	
	Claims full knowledge when research is necessary	Skirts over need for research rather than acknowledging need directly	Acknowledges need to check or research unfamiliar points	

Universal Rubrics for Scoring Documents

The following two pages contain rubrics for scoring documents produced by students in an experiential education pathway or by graduates in a supervised practice pathway. The first rubric is designed for documents that create binding agreements or otherwise have the force of law. These include contracts, leases, and wills. This rubric could apply to any document within that broad category.

The second rubric applies to all other documents produced by lawyers, including emails, letters, memos, complaints, briefs, etc. The rubric is very similar to the first one (demonstrating significant overlap between these two categories) but varies slightly to account for differences between the two document types.

Although there are two rubrics for two categories of documents, these rubrics are designed to be universal within those categories: They can be used to score any type of document included in a portfolio. The rubrics are also suitable for use by educators, supervisors, or examiners. Educators and supervisors could use these rubrics to provide formative or summative assessments to candidates. Any summative assessments could be included in a candidate's portfolio to assist examiners in evaluating the document. Examiners, however, could also score documents independently using these rubrics.

Both of these rubrics have room for comments on the flip side of the rubric; that page has been omitted for brevity.

Like the previous rubrics in this packet, these rubrics build upon the *Building a Better Bar* study. They also include identifying information that could be redacted for anonymous review by examiners.

Rubric for Contracts, Leases, Wills, and Other “Force of Law” Documents

Candidate: _____ **Document ID:** _____ **Date:** _____

	Needs Improvement	Competent	Mastery	NA
Issue Identification	The document fails to address a critical issue or omits 2 or more other issues	The document addresses all critical issues but misses one lesser issue	The document addresses all issues appropriate for the client	
Knowledge	The document reflects insufficient knowledge of the legal principles affecting the client	The document reflects knowledge of most legal principles relevant to the client, but suggests need for improved knowledge on 1-2 principles	The document reflects knowledge of all legal principles relevant to the client	
Use of Model or Template (if appropriate)	The document fails to draw from an appropriate model or template	The document rests on an appropriate model or template, but a somewhat better model/template could have been chosen	The document rests on a well chosen model or template	
Customization	The document fails to reflect the client’s distinctive concerns in several respects	The document appropriately reflects the client’s distinctive concerns, but there is room for improvement on 1-2 points	The document fully reflects the client’s distinctive concerns	
Organization	The document is poorly organized, making it difficult for the reader to follow	The document is well organized, although organization could improve in 1-2 places	The document is very well organized	
Word Choice and Definitions	The document uses a number of words that are inappropriate for the context and/or fails to define more than 2 key terms	The document generally uses appropriate words for the context and defines most key terms, but there is room for improvement in some places	The document uses appropriate words for the context and defines all key terms	
Format, Grammar, and Spelling	The document is poorly formatted and/or contains many spelling or grammatical errors	The document is well formatted and is mostly free of spelling and grammatical errors, but there is room for improvement	The document is properly formatted and has very few spelling or grammatical errors	

Comments (use reverse side):

Rubric for Emails, Memos, Motions, Etc.

Candidate: _____

Document ID: _____

Date: _____

	Needs Improvement	Competent	Proficient	NA
Identifying Issues	The document fails to identify a critical issue—or omits several less critical issues	The document identifies all critical issues but misses a lesser issue	The document identifies all appropriate issues	
Stating Knowledge	The document misstates one or more legal principles	The document accurately states all legal principles, although there is room for minor improvement on detail	The document accurately states all legal principles	
Applying Legal Principles	The document fails to apply more than 2 principles adequately to the facts	The document applies most legal principles to the facts, but application of 1-2 principles could be improved	The document adequately applies all legal principles to the facts	
Citing Sources of Law (if appropriate)	The document fails to cite sources of law or cites sources inappropriate for the context	The document cites appropriate sources in most places, but could improve in 1-2 respects	The document cites appropriate sources of law in all places, giving them appropriate weight	
Organization	The document is poorly organized, making it difficult for the reader to follow	The document is well organized, although organization could improve in 1-2 places	The document is very well organized	
Audience	The document is poorly addressed to the audience. E.g., uses jargon for a client, is too informal for the context, is adversarial in a context that requires objectivity (or vice versa)	The document properly addresses the audience, but falls short in 1-2 minor ways	The document is fully appropriate for the audience	
Format, Grammar, and Spelling	The document is poorly formatted and/or contains many spelling or grammatical errors	The document is well formatted and is mostly free of spelling and grammatical errors, but there is room for improvement	The document is properly formatted and has very few spelling or grammatical errors	

Comments (use reverse side):