BUILDING A BETTER BAR

THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE

The legal profession has never had a clear, explicit understanding of the minimum competence needed to practice law and how it should be tested on the bar exam (or through other licensing approaches). Without this understanding, it is impossible to know if our century-old bar exam is a valid measure for licensing new lawyers or an artificial barrier to entering the legal profession. Understanding minimum competence is necessary if we are to treat test takers fairly, serve clients effectively, promote diversity in the profession, and improve access to justice.

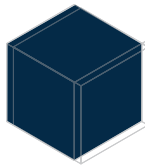**12** BUILDING BLOCKS OF MINIMUM COMPETENCE

5 INSIGHTS FOR ASSESSMENT

10 RECOMMENDATIONS FOR BETTER LICENSING

IAALS
INSTITUTE for the ADVANCEMENT of the AMERICAN LEGAL SYSTEM
UNIVERSITY of DENVER

AccessLex INSTITUTE®
EMPOWERING THE NEXT GENERATION OF LAWYERS®

THE OHIO STATE UNIVERSITY
MORITZ COLLEGE OF LAW

The *Building a Better Bar* project—an exhaustive research study conducted through 50 focus groups in 12 states around the country—has finally defined minimum competence and provides recommendations for how the legal licensing process, including the bar exam, must change to better serve the public.

IAALS, in partnership with Professor Deborah Merritt at The Ohio State University Moritz College of Law, compiled existing research and expanded it further by gathering insights into what minimum competence lawyers need when they begin to practice law—based on the knowledge, skills, and judgment needed to serve clients. Focus groups included primarily new lawyers, but also included supervisors of those lawyers. Some specialized groups of new lawyers were comprised of only women, people of color, rural lawyers, or solo practitioners to ensure we gathered a well-rounded view of new lawyers' experiences. AccessLex Institute generously provided funding to make the project possible

The data from these focus groups suggest that minimum competence consists of 12 interlocking components—or "building blocks."

- The ability to act professionally and in accordance with the rules of professional conduct
- An understanding of legal processes and sources of law
- An understanding of threshold concepts in many subjects
- The ability to interpret legal materials
- The ability to interact effectively with clients
- The ability to identify legal issues
- The ability to conduct research
- The ability to communicate as a lawyer
- The ability to see the "big picture" of client matters
- The ability to manage a law-related workload responsibly
- The ability to cope with the stresses of legal practice
- The ability to pursue self-directed learning
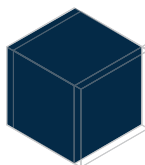
The focus group data also distilled five insights around how we can more appropriately and accurately assess minimum competence, which should drastically alter the current bar exam licensing model.

- Closed-book exams offer a poor measure of minimum competence to practice law;
- Time constraints on exams similarly distort assessment of minimum competence;
- Multiple-choice questions bear little resemblance to the cognitive skills lawyers use;
- Written performance tests, in contrast, resemble many of the tasks that new lawyers perform; and
- Practice-based assessments, such as ones based on clinical performance, offer promising avenues for evaluating minimum competence.
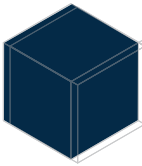
Based on these findings, we propose 10 recommendations for courts, law schools, bar associations, bar examiners, and other stakeholders to consider in their efforts to improve lawyer licensing.

RECOMMENDATION ONE: Written exams are not well suited to assessing all aspects of minimum competence. Where written exams are used, they should be complemented by other forms of assessment.

RECOMMENDATION TWO: Multiple-choice exams should be used sparingly, if at all.

RECOMMENDATION THREE: Eliminate essay questions from written exams and substitute more performance tests.

RECOMMENDATION FOUR: If jurisdictions retain essay and/or multiple-choice questions, those questions should be open book.

RECOMMENDATION FIVE: Where written exams are used, provide more time for all components.

RECOMMENDATION SIX: Candidates for licensure should be required to complete coursework that develops their ability to interact effectively with clients.

RECOMMENDATION SEVEN: Candidates for licensure should be required to complete coursework that develops their ability to negotiate.

RECOMMENDATION EIGHT: Candidates for licensure should be required to complete coursework that focuses on the lawyer's responsibility to promote and protect the quality of justice.

RECOMMENDATION NINE: Candidates for licensure should be required to complete closely supervised clinical and/or externship work.

RECOMMENDATION TEN: A standing working group made up of legal educators, judges, practitioners, law students, and clients should be formed to review the 12 building blocks and design an evidence-based licensing system that is valid, reliable, and fair to all candidates.

"The status quo—and tinkering around its edges—is not good enough."

What would a licensing system look like if jurisdictions adopted the recommendations outlined by our study?

There is room for considerable variation and experimentation, and jurisdictions do not need to choose a single licensing system. In fact, our recommendations could allow jurisdictions to offer candidates two or three pathways to licensure, with each path assessing building blocks in a different manner.

For more details, our report provides three example systems to illustrate the possible contours of an evidence-based licensing system:

- Test-Centered System
- Experience-Centered System
- Diploma-Centered System

In the end, the rules we use to license new lawyers define us as a profession. Are we a profession that serves clients, listening to their stories, helping them identify goals, and guiding them to solutions? Are we one that relies upon research and critical thinking? Are we problem solvers and negotiators as well as advocates? Do we know how to handle stress? Do we act professionally and recognize our special responsibility for the quality of justice? If these characteristics define our work, then they should be assessed during licensing—and many of them currently are not.

Drawing on the perspectives of new lawyers and their supervisors, we have identified the 12 building blocks that constitute minimum competence for practicing law. Our recommendations flow directly from practicing members of our profession—not from legal educators or bar examiners who may have their own interests at heart. But together, we can create an evidence-based licensing system that reflects the work we do, protects the public, and avoids protectionism or bias. As professionals, we owe the public no less.

> "It is time we had the courage and will to look beyond the assumptions that underpin the current bar exam and towards outcomes and purpose for a new era. We must not be wedded to tradition for tradition's sake—especially when tradition has left so many behind."

Read the full report and recommendations:
https://iaals.du.edu/BuildingABetterBar

Connect with us about improving lawyer licensing:
Logan Cornett
Report Co-Author & Director of Research, IAALS
logan.cornett@du.edu