

Adapting to Uncertain Times: The Results of Nevada's First Post-COVID-19 Bar Exam

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As states across the country wrestled with administration of the July bar exam, Nevada was ahead of the game. In late April, the Nevada Board of Bar Examiners knew that a safe, in-person administration of the bar exam was not possible. Rather than risk the health of Nevada test-takers, the board recommended to the Nevada Supreme Court that it adopt a remote, open-book exam. We also opted to exclude the Multistate Bar Examination (MBE) as the National Conference of Bar Examiners (NCBE) would not grant permission to include the 200-question multiple choice test in a remote setting. While the MBE may be a helpful tool, we did not conclude that our online approach would lack validity or reliability without it.

Unable to use the NCBE Multi-State Practice Test (MPT), we created a Nevada Practice Test (NPT), testing an applicant's ability to analyze a Nevada statute and Nevada cases in solving a legal problem. The summer Nevada bar exam included eight essay exams and the NPT, which applicants answered over a two-day period of four exam sessions. The open-book format of this bar exam might at first appear to make it a less-difficult exam than the closed-book exams of the past. However, with only 60 minutes allotted per question, the new format offered little, if any, help to those who did not study for the exam.

The board initially attempted to proctor the exam using a livestreaming

camera on each test-taker's computer during the test. When the Indiana State Bar Association's beta test of the livestreaming software failed, we recommended an additional beta test, and the court delayed the exam for two weeks. Nevada's livestreaming beta test the following week also failed due to unreliable software. As a result, the board recommended, and the court quickly adopted, an exam administration similar to the Nevada exam's previously used in-person format. The same in-person testing software was downloaded onto each applicant's computer. Included in the downloaded software were the exam questions themselves. Prior to each of the four exam sessions, test-takers received an email with the password to access the questions. Those handwriting the exam or special accommodation test-takers were tested in person at the State Bar of Nevada. Just as in the in-person format, all exam answers were uploaded to the central server at the end of the exam.

Our decision to communicate updates as our exam software provider, ILG, worked on a solution created some confusion and uncertainty. However, we believed that more communication was better than less. When the second beta test with the in-person exam software proved successful, the board issued the final detailed instructions that were used for the exam. We understand this three-week process was not ideal, but we made the right decision in delaying the exam for two weeks and conducting two separate beta tests. This process allowed us to work out all of the bugs before exam day.

The Nevada bar exam was successfully administered on August 11 and 12. The few technical problems that arose during the exam were similar to issues experienced in the prior in-person

format and were immediately addressed. Each examinee has verified that his/her work was theirs alone and that they received no outside help.

In order to increase the exam's reliability in the absence of the MBE, each exam answer was graded independently by two graders. Throughout the grading process, the board's psychometrician analyzed each question's scores. As we have always done, the board conducted its regrading of those examinees who fell just short of a passing score on the exam. The pass rate for the exam was 64 as compared to 60 on the previous five July Nevada bar exams.

In conclusion, Nevada was able to offer a safe and fair exam because of several factors. Our court took an active interest in how the exam was to be administered in April as the scope of the COVID-19 crisis became apparent. During our April meeting, the board confronted the challenges of administering the bar exam in a pandemic environment and recommended a remote, open-book exam. Finally, we in Nevada write our own exam and are not reliant on the NCBE, which gave Nevada the flexibility to quickly adjust, omitting both the MBE and the MPT.

We will study the data generated from this new format and make further recommendations to the court regarding how we test for minimum competence on future exams. When all is said and done, it is our duty to protect the Nevada public and ensure that only those practitioners meeting the minimum competence standard are allowed to practice law. Since licensing for the practice of law does not require some form of residency or apprenticeship as other learned professions do, the bar exam is the only protection afforded the Nevada public.