

## Foundational Skills and Associated Lawyering Tasks

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**Note:** This list of NextGen bar exam testable tasks includes proposed additions that have not yet received approval by NCBE’s Implementation Steering Committee (ISC). The ISC will review the changes reflected here in March 2023, but the task list is unlikely to be considered “final” until the NextGen drafters have completed additional item development, NCBE has performed its full schedule of pilot/field testing, and the final exam design and test content specifications are published in 2024.

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### A. Issue Spotting and Analysis, Investigation and Evaluation

1. In a client matter, identify which Foundational Concepts and Principles are likely to affect the outcome of the matter.
2. In a client matter, identify which facts or legal elements or factors are likely to be relevant to or dispositive of a legal issue in the matter.
3. In a client matter, identify the strengths and weaknesses of the client’s position and/or the opposing parties’ positions based on the relevant legal rules and standards.
4. In a client matter that requires additional factual development, identify which facts need to be explored, and/or the best strategy for exploring or eliciting those facts, in order to be able to evaluate the strengths and weaknesses of the client’s position

and/or the opposing parties' positions based on the relevant legal rules and standards.

5. In a client matter, identify gaps in information obtained, suggestions for improvement, and/or grounds for objection (if applicable) based on a transcript of an interview, deposition, or examination of a client or fact witness.
6. Assess the probable outcome of a claim, motion, discovery matter, or objection based on the relevant legal rules and standards.
7. In a client matter that requires interpretation of a provided statute, rule, constitutional provision, contract, or judicial opinion, identify the standards, elements, or factors relevant to the matter.

## B. Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management

8. In a client matter, identify which claims to recommend bringing, which remedies to recommend seeking, which evidence to present, which arguments or defenses to raise, and/or how to respond to arguments, based on the relevant legal rules and standards and consistent with the client's objectives.
9. Given a transcript of another lawyer's interaction with a client, identify gaps in information obtained and/or suggestions for improving the lawyer's effectiveness.
10. In a client matter, list 2–3 points that favor your client's position and/or 2–3 points that favor the opposing party's position.
11. In a client matter, list 2–3 benefits and/or 2–3 drawbacks of an approach to settling disputed issues, consistent with the client's objectives.
12. In a client matter, list 2–3 resolutions in which both sides of the dispute could potentially be satisfied.
13. In a client matter in which your client has 3–5 objectives, but where your experience suggests that only one of them is attainable, identify the one objective that you would recommend as the top priority.
14. In a client matter, identify or describe your client's BATNA (Best Alternative to a Negotiated Agreement) and a realistic "best case" outcome you would advise seeking

through negotiation and/or a “worst case” outcome you would advise accepting, consistent with the BATNA and the client’s objectives.

**Note:** Issues related to the rules of professional responsibility listed below frequently arise in the context of the Foundational Skills Group 2 (Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management). To more fully capture the scope of these foundational skills, knowledge of these rules of professional responsibility will not be assessed in stand-alone questions but may be assessed in the context of assessment of Foundational Skills Group 2.

- MRPC 1.1 (Competence)
- MRPC 1.2(a) & (d) (Scope of representation and allocation of authority between client and lawyer)
- MRPC 1.3 (Diligence)
- MRPC 1.4 (Communications)
- MRPC 1.6(a) & (c) (Confidentiality of Information)
- MRPC 1.7 (Conflict of Interest: Current Clients)
- MRPC 3.1 (Meritorious Claims and Contentions)
- MRPC 3.3(a)(1)-(2) (Candor to the Tribunal)
- MRPC 4.1 (Truthfulness in Statements to Others)
- MRPC 4.2 (Communication with Person Represented by Counsel)
- MRPC 4.3 (Dealing with Unrepresented Person)

## C. Legal Research

15. In a client matter that requires legal research, identify an accurate way to frame the research questions that need to be answered.
16. In a client matter that requires interpretation of a provided legal source (or excerpt) such as a statute, rule, constitutional provision, contract, or judicial opinion, identify which words or elements in the provided source seem legally significant and/or potentially ambiguous.
17. In a client matter that requires interpretation of a provided legal source (or excerpt) such as a statute, rule, constitutional provision, contract, or judicial opinion, identify efficient research strategies (including appropriate search terms) that are likely to uncover other legal sources to assist in this interpretation.
18. Given a collection of legal sources (or excerpts) that may be relevant to a client matter, identify the roles and differing characteristics of the sources, including their authoritative weight.

19. Given one or more judicial opinions (or excerpts) that may be relevant to a client matter, identify the dispositive facts from the opinions, as well as the facts in the client's matter that are analogous to and/or distinct from the dispositive facts in the opinions.
20. Given a collection of legal sources (or excerpts), identify other sources, search terms, and/or research strategies that might be used to update sources or find additional sources.
21. Given a collection of legal sources (or excerpts) that may be relevant to a client matter, identify which sources are relevant to or dispositive of a legal issue in the matter.
22. Given a collection of legal sources (or excerpts) that may be relevant to a client matter, identify whether the sources are sufficient to complete an assigned research or other lawyering task.

## D. Legal Writing and Drafting

23. Draft an email to a client explaining the legal implications of a course of action, updating the client on the status of the client's matter, and/or providing advice on the next steps to be taken in the matter.
24. Draft the specified sections of a complaint or an answer to a complaint.
25. Draft the specified sections of an affidavit.
26. Draft or edit selected specified provisions of a contract.
27. Given a collection of legal sources (or excerpts) that may be relevant to a client matter, as well as guidance on the appropriate format of a legal document, draft specified section(s) of the document, demonstrating legal analysis in completing lawyering tasks. This task may include
  - an objective memo;
  - a persuasive brief; or
  - another common document, such as a mediation brief, an opinion letter, or a draft proposal for a contract.