

DESIGNING LEGAL WRITING PROBLEMS FOR THE NEXTGENERATION

JACLYN CELEBREZZE, LAUREN SANCKEN, CARRIE SANFORD,
AMANDA KATE MAUS STEPHEN & DAVID ZIFF¹

In July of 2026, Washington will be one of the first states in the nation to administer the NextGen bar exam, the exam that will replace the current Uniform Bar Exam (UBE).² The underlying goal of NextGen is to ensure newly licensed attorneys “possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer.”³ NextGen identifies four groups of foundational skills for entry-level attorneys: (A) issue spotting and analysis, investigation, and evaluation; (B) client counseling and advising, negotiation and dispute resolution, and client relationship and management; (C) legal research; and (D) legal writing and drafting.⁴

These foundational skills will be tested in three different question types: multiple-choice questions, performance tasks, and integrated

¹ The authors are professors in the legal writing department and academic success department at the University of Washington School of Law. This topic was presented at the 2024 Western Regional Legal Writing Conference at Seattle University School of Law.

² *In re* Adoption of the NextGen Bar Exam & Reduction to the Passing Score for the Uniform Bar Exam, No. 25700-B-710

<https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%2025700B710.pdf>; *In re* Adoption of the Recommendations of the Wash. Bar Licensure Task Force, No. 25700-B-711

<https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%2025700B711.pdf>; *see also* *Implementing the NextGen Bar Exam, 2022–2028*, Nat’l Council of Bar Exam’rs, <https://nextgenbarexam.ncbex.org/about/implementation-timeline/>.

³ *Overview of the Recommendations for the Next Generation of the Bar Examination*, Nat’l Council of Bar Exam’rs, <https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Next-Gen-Bar-Exam-Recommendations.pdf>.

⁴ *Bar Exam Content Scope*, Nat’l Council of Bar Exam’rs, 1–4 (May 2023), https://www.ncbex.org/sites/default/files/2024-11/NCBE-NextGen-Content-Scope-May-24-2023_0.pdf.

question sets.⁵ Because the specifics of the NextGen bar are evolving, law faculty—particularly legal writing faculty—must collaborate with a law school’s Academic Success Program and research librarians to ensure that the curriculum will teach these foundational skills.

The good news for the legal writing community is that our curriculum is already designed to teach many of these foundational skills. In fact, much of our curriculum looks a lot like two of NextGen’s question types—the performance tasks and the integrated question sets. The performance tasks, modeled on the Multistate Performance Test on the UBE,⁶ test examinees on their “ability to use fundamental lawyering skills in realistic situations.”⁷ Examinees are provided with a library of legal materials and a file of factual materials.⁸ Using those materials, examinees are required to demonstrate their legal research and writing skills.⁹ The integrated question sets give examinees “a common fact scenario and may include some legal resources” and/or additional documents, like a police report.¹⁰ Examinees will either be asked to edit or draft a document or to address issues related to dispute resolution and/or counseling.¹¹

When reviewing the legal writing curriculum at our school for these NextGen skills, we discovered that our primary class activities and assignments already provided our students with opportunities to practice NextGen’s fundamental skills. This essay highlights some of our activities and describes how those assignments hone relevant NextGen skills.

⁵ *NextGen Bar Exam Sample Questions*, Nat’l Council of Bar Exam’rs, <https://www.ncbex.org/exams/nextgen/sample-questions>.

⁶ Marilyn Wellington, *The Next Generation of the Bar Exam: Quarterly Update*, The Bar Exam’r (Summer 2023), <https://thebarexaminer.ncbex.org/article/summer-2023/next-generation-of-the-bar-exam-sum23/>.

⁷ *NextGen Bar Exam Sample Questions*, *supra* note 5.

⁸ *Sample NextGen Bar Exam Performance Task*, Nat’l Council of Bar Exam’rs, <https://www.ncbex.org/exams/nextgen/sample-questions/performance-task>.

⁹ *Id.* (“All performance tasks assess an examinee’s skills in legal research and written legal analysis (Groups A, C, and D of the Foundational Skills), but some performance tasks emphasize some skills over others.”).

¹⁰ *Sample NextGen Bar Exam Integrated Question Sets*, Nat’l Council of Bar Exam’rs, <https://www.ncbex.org/exams/nextgen/sample-questions/integrated-question-sets>.

¹¹ *Id.*

A. Using a Predictive, Closed Universe Memo to Teach NextGen Skills

Our opening assignment finds our 1Ls navigating the demands of a new internship and immediately drops them into the action: Our new recruits have just returned from a short coffee break or are preparing to power down on a Friday afternoon when an email strikes. A long-time client (or desperate prospective client) needs our help—and time is of the essence. Students understand we need a predictive, closed-universe memo as soon as possible (or rather, in four weeks).

Our purpose in setting the scene is two-fold. First, we want to ensure students take a client-centered approach to lawyering from the earliest stages of their law school career. Second, it's an excellent on-ramp to the practical skills they'll use for NextGen bar preparations.

To prepare this assignment, we provide students with many of the same resources they'll see in a NextGen performance test or integrated question set:

- Formal memo assignment instructions;
- A case file containing an e-mail from the partner and relevant client exhibits;
- Six slightly edited Washington cases;
- Reading questions; and
- An analysis workshop.

As the students build their memos week-to-week, they work through each of the NextGen foundational skills. First, they practice skills in Group A: issue spotting while working through relevant and irrelevant facts. To closely model real-world practice and the NextGen bar, we also enjoy adding a twist—implicit fact identification.

For example, we often use a problem that explores the public disclosure of private facts, which is a common law tort under Washington law. Under this tort, the element of publicity requires a review of audience size and circulation. Rather than feeding this specific information to the students in the assignment memo, the memo provides only basic details, such as telling students that a social media post was made on an individual's private account with some number of followers. That claim

will be followed by a short note to review an attached exhibit. We then reveal additional relevant specifics in the exhibit itself, which is a fake social media post we create using an online tool.¹² Students must therefore review the entire file and cross-reference resources—much like the anticipated performance tasks¹³—to identify whether the audience is public or private, large or small, and whether the relevant information has spread by inference from the social media post exhibit itself.

Next, students practice Group B skills by assessing the client exhibits and the provided sources of law during an in-class workshop. The workshop requires them to work in groups to draft short format responses, similar to the integrated question sets¹⁴ they may experience.

Third, students exercise their legal research skills—Group C—performing case selection and assessing their sources' authoritative weight. In addition to providing precedential opinions from the highest court and appellate court, we typically provide a compelling, but unpublished opinion—allowing students to further test Group C and their citation literacy skills.

Finally, students move to skills in Group D—Legal Writing and Drafting—and prepare their supervising attorney for a subsequent client meeting by composing their first memo.

The exercise outlined above is neither novel nor revolutionary. The legal writing community has opened classroom instruction this way for decades because it prepares students for practice. But now we can add that pedagogy also helps prepare students for licensure.

B. Teaching NextGen Statutory & Administrative Research Skills Using a Presentation Activity

When the students begin learning research, we use a relatively simple and very enjoyable activity that allows them to practice researching statutes and regulations, while also stepping into the role of client counselor. This activity involves NextGen skills in Groups A, B, and C. In short, a client asks two questions that the students address with a

¹² Tweetgen, <https://www.tweetgen.com/>.

¹³ *Sample NextGen Bar Exam Performance Task*, *supra* note 8.

¹⁴ *Sample NextGen Bar Exam Integrated Question Sets*, *supra* note 10.

short presentation. The client is coming to the office the following week and, working in small groups, students must complete the research, prepare their substantive advice, create the presentation, and then actually present to the fictional client.¹⁵

Research questions. The activity starts with a short message that includes two client questions: First, the client wants to rent out his townhouse for a year, but he doesn't want to allow pets. Does he have to allow *service* animals? And what is a service animal anyway? Second, after the rental period, the client wants to sell the townhouse, but he wants to avoid selling to wealthy developers or outside gentrifiers. Instead, he wants to give his neighbors the first opportunity to buy the property. He's drafted an announcement to post on various online neighborhood groups, offering the townhouse for sale before listing it, telling his neighbors that they have the power to "control" who moves in, and expressing his desire to uphold the "longtime standards" of the community. Can he post that announcement?

The research questions require students to experiment and struggle with several sources of information. For the first questions, students start by locating the specific Washington statutory provision that addresses real estate transactions and discrimination based on use of a service animal.¹⁶ The relevant provision, however, does not define "service animal." The students must therefore locate the Chapter's general definitions section, which—good news, bad news—*does* include a definition of "service animal" but specifically states that the definition *does not* apply to the relevant provision.¹⁷ So we're back at square one.

To fill this definitional gap, the students then look to case law¹⁸ and implementing regulations.¹⁹ Both sources provide clear answers, but the students stumble upon something odd: The case law uses a different

¹⁵ Thank you to Professor Erika Nicole Pont, who sparked the idea for this presentation activity at a previous conference.

¹⁶ Wash. Rev. Code. § 49.60.222 (2020) (prohibiting rental discrimination based on "the use of a trained dog guide or service animal").

¹⁷ Wash. Rev. Code § 49.60.040 (2024) (providing a definition of "service animal" but stating that it "does not apply to RCW 49.60.222").

¹⁸ *Timberlane Mobile Home Park v. Wash. State Hum. Rights Comm'n*, 95 P.3d 1288 (Wash. Ct. App. 2004).

¹⁹ Wash. Admin. Code § 162-36-001 (2024); Wash. Admin. Code § 162-38-040 (2024).

section number when discussing the relevant statutory definition. Perhaps the judges got it wrong? Nope. The legislature has amended the definitions (and changed the numbering) since the opinion was issued. By looking back through the historical statutes, the students can see that the opinion’s definition of “service animal” was based on a now outdated version of the statute. And the implementing regulations have the same problem. What a mess.

The client’s second question—regarding the neighborhood announcement—presents different problems. No statute or case law directly addresses the question. But the students don’t know that, of course. So, they get to experience what it’s like when there’s just no case law on point. Fun.

The applicable regulations, however, directly address the client’s question. A provision entitled “Content and Language of Solicitation” specifically states that sellers should not use discriminatory phrases like “standards of the community” or imply that the neighbors have “the power to control the type or character of the person or persons” who might buy the property.²⁰ The client’s proposed language, therefore, should not be used.

Preparing advice. Having completed the research, the students are faced with two somewhat-knotty problems: How to answer the client’s “service animal” question when the legal sources are a mess of inconsistency and silence? And how to answer the client’s “solicitation” question when his proposed language is clearly discriminatory, at least in the eyes of Washington regulators?

To answer these questions, the students must embrace the role of client counselor. How much of the research mess does the client care about? Despite the underlying conflicts, how confident should the students be in their definition of “service animal”? What should they advise the client to actually *do* regarding service animals? As for the solicitation, how do you tell a client—who seems to be a good man concerned about gentrification—that his proposed wording is legally

²⁰ Wash. Admin. Code § 162-36-020 (2024).

discriminatory? What advice do you give him? How do you frame it? Of course, there is no one right answer to any of these questions.

Creating a presentation. The students must answer these questions, not by drafting a responsive email or memorandum, but with a slide-based presentation to the client. We tell the students that the client is coming to the office next week. During that meeting, the students must give a digital presentation (like a PowerPoint) for the client, with legal answers and advice. Each presentation must be shorter than six minutes. To help students prepare for the presentation, we assign Professor Jonah Perlin's piece on digital presentations,²¹ together with Professor David Ziff's practitioner-focused review of Professor Perlin's piece.²²

Presenting to the client. Presentation day is always an engaging experience. We give the students a bit of last-minute preparation time at the start of class. Then each small group presents to the class as if the class were the client. The presentations always reflect unique styles, strategic decisions, and points of emphasis. And by watching four or five other groups give presentations, each student can see how different peers answered those questions differently. After the presentations, we always have a lively discussion about those choices, what worked, what didn't, the reasons behind the decisions, etc.

In sum, this activity prepares students for multiple NextGen skills. In Group A, they are investigating, analyzing, and evaluating legal questions. The develop Group B skills like client counseling, advising, and relationship management. In Group C, they are developing legal research skills in a realistic setting. And, they enjoy taking on the role of a real lawyer advising a client.

²¹ Jonah Perlin, *Making Your (Power) Point: An Introductory Guide to Digital Presentation Design for Lawyers*, 18 Legal Commc'n & Rhetoric 81 (2021).

²² David J.S. Ziff, *Say Goodbye to Bad Digital Presentations*, Wash. State Bar News (June 9, 2022), <https://wabarnews.org/2022/06/09/say-goodbye-to-bad-digital-presentations/>.

C. Using a Predictive, Open Universe Memo to Teach NextGen Skills

Once students have had the chance to practice a short statutory research problem, we typically assign a longer research and predictive memo assignment as their final assignment of the term. One problem that works particularly well is an analysis of whether a student loan is dischargeable in a Ninth Circuit bankruptcy proceeding.²⁵ The problem is designed to hit all four of the NextGen foundational skill groups.

First, the set-up is meant to be realistic, similar to the NextGen bar: The student is a first-year associate in a law firm, working with both a partner and a senior associate to assist a low-income client who they met as part of a free bankruptcy law clinic. The students practice their Group A skills by finding the applicable law, assessing the probable outcome of a bankruptcy petition, and evaluating potential counterarguments. Like the writing problem described above, this one also includes a case file, and we make a point to give students the kinds of materials they might find in a NextGen Performance Task, such as internal emails from a law firm partner and a senior associate, an email from the client, client interview notes, and copies of some of the client's bills (like utilities, car insurance, and cable and internet). We then help students grapple with the case file, the research, and the drafting process through a research workshop, a group presentation of their research findings, and a faux senior partner meeting designed to evaluate whether their research and analysis are on track.

The problem also includes a bit of Group B client management skills. In addition to the possibility of a full discharge of the student loan debt, students also find that the case law includes examples of partial discharge of debt. Additionally, students may decide that the client could do things (e.g., give up certain expenses, look into a payment plan with the lender) that will increase the chances of full or partial discharge. The problem gives students a chance to practice communicating that advice to the client in a written memo.

Group C's legal research skills are also a big component of the

²⁵ This problem was originally developed by a colleague, Professor Ben Halasz.

problem. As part of the research process, students have to make a research plan that identifies both the research question and efficient strategies for finding information. They must also identify ambiguous language in the bankruptcy code; for example, the definition of “undue hardship,” a key term in the statute, is not statutorily defined. Further, students have to grapple with the weight of authority for case law they come across as many decisions are from the federal district courts but only Ninth Circuit Court of Appeals cases will be binding.

Finally, students practice Group D legal writing and drafting skills as the final work product is a formal predictive memo advising the supervising attorneys and the client on the probable outcome of the bankruptcy petition.

D. Using Persuasive Writing to Teach NextGen Research, Drafting, and Negotiation and Settlement Skills

In the spring, our students transition from predictive writing to persuasive writing. Our persuasive writing curriculum finishes the year by reinforcing and teaching additional skills students need to develop for the NextGen bar and their future legal practice. We give students a large case file at the beginning of the term—much like one they would receive if they were new to a case—and we base all activities for the term on the materials in the case file. The case file might include a complaint, exhibits, a deposition transcript, and a student-created client interview document. Students experience what it might feel like to litigate a real-life case and gain many of the skills needed to move through a litigation process. At the end of the term, their final assignment is to write a dispositive motion for one side, usually a motion for summary judgment or a motion to dismiss, and a supporting declaration.

Many different types of legal problems can work well for persuasive writing, but one we have used successfully is a fictional case that uses the fair use doctrine. Students are externs at a local law firm, and they receive an email from an attorney that outlines the case: Our client has been sued for copyright infringement for using a photograph in their environmental nonprofit materials. This case file includes the complaint, exhibits of the original photograph, the infringing photograph, and the copyright registration. We typically create a sympathetic plaintiff, an artist trying to

protect their intellectual property, and a sympathetic individual defendant representative, who is the executive director of an environmental nonprofit. Students can generally imagine representing either side.

Over the course of the next ten weeks, students learn important lawyering and NextGen skills in Groups A, B, C, and D. One of the students' first tasks is to think about the questions they would like to ask the client in an upcoming client interview. To do this, they work in small groups to better understand the basics of the fair use doctrine and the facts of the case and then brainstorm questions to ask the client (usually another professor dressing up for the part). The students eventually use that client interview as the basis for the client declaration to support their motion. This activity teaches them the Group A skills of issue spotting, identifying relevant facts, and determining which facts are still needed. It also teaches students how to identify relevant parts of the fair use rules to inform which facts are relevant. The interview activity also provides an opportunity to practice Group B skills—effective client relationship-building skills, including the process of interviewing a client sensitively and effectively—skills they will need in legal practice.

By week five, students are ready to outline their motions and prepare an oral argument—NextGen Group B and C skills that help students conduct legal research and think candidly about the strengths and weaknesses of their case, as well as which arguments and defenses to raise. While the students write their motion representing only the defendant, we assign them randomly to a side for oral argument and have them each present argument on an issue. While some students are eager to argue, others are more hesitant, and we help them to overcome their public speaking nerves by providing structure and practice in a small group. These persuasive argument Group B skills help students see the connection between a client's goals, the merits of a case, and their own professional responsibilities to provide zealous, ethical representation.

In week seven, students practice negotiation and settlement drafting skills—Group B and D skills. We tell them that the parties' attorneys have worked out some basic settlement terms to resolve the case, and we ask them to brainstorm and negotiate the other details and

aspects of a deal. The entire activity can be finished in a two-hour class. By the end of class, their task is to write the draft of a settlement agreement using principles of contract drafting we cover in class that week. All these client counseling, negotiation, and resolution skills are valuable for legal practice, and simultaneously preparation for the skills tested on the NextGen bar. The final weeks of the class are spent editing, peer-reviewing, and revising their final motions for summary judgment, helping them practice Group C and D research and drafting skills.

Conclusion

Given the foundational, practice-ready skills taught in most legal writing classrooms, many of the demands of the NextGen bar are likely being met by your current activities. And, to the extent our sample activities could enhance your curriculum, please feel free to adopt them. While much remains uncertain about the NextGen bar, we feel confident that by keeping a practice-ready curriculum in focus, legal writing professors can ensure that students will be prepared for licensure and lawyering.