

CALIFORNIA'S TASK FORCE ON ADMISSIONS REGULATION REFORM: RECOMMENDATIONS FOR PRE- AND POST-ADMISSION PRACTICAL SKILLS TRAINING REQUIREMENTS

by Richard A. Frankel

The State Bar of California Task Force on Admissions Regulation Reform (the “Task Force”) issued a report on June 11, 2013, proposing a new set of pre- and post-admission training requirements focusing on competency and professionalism in order to prepare new lawyers for successful transition into practice.¹ If the Task Force recommendations are adopted by the State Bar of California Board of Trustees and subsequently by the California Supreme Court, they may have a profound effect on bar admissions.

THE TASK FORCE'S CHARGE

The Task Force was authorized in February 2012 by the State Bar of California Board of Trustees. It was charged with (1) exploring whether the State Bar should develop a regulatory requirement for a pre-admission practical skills training program and, (2) if so, proposing such a program to the Supreme Court.² The Task Force is composed of 22 members—including judges, law school professors and deans, and attorneys in private and public employment—under the leadership of Jon Streeter, Task Force chair and former president of the State Bar of California Board of Trustees.

In beginning its work, the Task Force gathered information about practical skills training requirements in other states³ and countries and the availability of practical skills training in law schools. It also considered an extensive body of past research

and literature dealing with a perceived gap between law school education and preparation to practice law.⁴ The Task Force held eight public hearings in Los Angeles and San Francisco over a one-year period, during which it received public comment from law schools, bar associations, attorneys in private practice, and attorneys employed in the public sector—both in California and throughout the United States.

THE CURRENT ECONOMIC CLIMATE REVEALS A NEED TO BETTER PREPARE NEW LAWYERS FOR PRACTICE

The regulatory component of the Task Force recommendations relates to public protection, which has become an increasing concern given the new legal employment patterns that have emerged in the face of the recent economic crisis. The State Bar of California Board of Trustees appointed the Task Force to find a way to address the issues it perceived relating to the rapidly changing nature of the profession—so that the State Bar can ensure the highest standards of professional competence among its members while giving them the support they need to meet those standards.

Full-Time Jobs for Attorneys Are Scarce

Much has been written about the current economic state of the legal profession in the United States.

According to James G. Leipold, Executive Director of the National Association for Law Placement (NALP), the legal sector is presently still down about 50,000 jobs from its pre-recession peak in 2007.⁵ This has trickle-down implications for former law firm associates and partners who now find themselves out of work along with almost half of new admittees. Full-time jobs for attorneys are scarce. American Bar Association data shows that in 2011 and 2012, just over half of law school graduates nationwide obtained full-time employment as lawyers within nine months of graduation (54.9 and 56.2 percent, respectively).⁶ The trend for 2013 appears to be about the same.

Student Loan Repayment Obligations Are Considerable

New attorneys have more to think about than simply finding a job. Almost all new admittees have immediate loan repayment obligations. According to Brian Z. Tamanaha, professor at the Washington University School of Law and author of numerous books relating to legal education, about 90 percent of law students borrow to finance their legal education. Average debt for graduates from private law schools is more than \$125,000 (which does not include average debt from undergraduate schools, another \$25,000). The highest average debt in California for the class of 2012 was \$168,000 (Thomas Jefferson Law School).⁷

Traditional Training Paths Have Disappeared

New lawyers and displaced lawyers need work. When traditional employment opportunities dry up, they frequently hang out their shingles. Starting a law practice is easier than ever before; one needs only a computer and a website. With the option of inexpensive and mobile virtual offices, the

new “shingle” could even be a table at Starbucks accompanied by an attorney’s laptop and smart phone. Bar regulators are concerned that this trend has become a public protection issue. The formal training period that new lawyers may formerly have received prior to engaging in practice when initially employed by the public sector (i.e., offices of district attorneys, public defenders, county counsel, etc.) and private law firms has generally become obsolete. On-the-job training has become the norm. Large private-sector clients are no longer willing to subsidize training of junior attorneys. These clients are not bashful about demanding concessions in billing practices.

Analogies about how new lawyers receive their training can be drawn with the medical, accounting, and engineering professions. Each of these professions has a formal training regimen in place under supervision of a licensed practitioner as a prerequisite for entering the profession. Why should the legal profession be different?

THE TASK FORCE’S RECOMMENDATIONS

The following three practical skills training requirements proposed by the Task Force are intended to address the important and urgent need to better equip newly admitted lawyers to practice law. (See the sidebar on page 27 for a summary of the recommendations.)

A. Pre-Admission: Competency Skills Training Requirement

The Task Force recommends a new set of requirements mandating that Bar admittees certify prior to admission that their law school course work has included a substantial amount of practice-based, experiential training.

Summary of Task Force Recommendations

A. *Pre-admission: Competency skills training (15 units)*

- Two routes:
 - 15 units of course work designed to develop professional competency skills (from designated subject areas), or
 - In lieu of some or all of the 15 units of course work, participation in a Bar-approved externship, clerkship, or apprenticeship (during or following completion of law school, within the designated course work subject areas)
- The 15 units may overlap with hours required in Section B

B. *Pre- or post-admission: Representation of clients on a pro bono or modest means basis (50 hours)*

- 50 hours of pro bono or modest means legal service
- Performed in a Bar-certified program or under the supervision and guidance of a Bar-certified mentor
- Can be satisfied during law school, post-graduation, or during first year of licensure
- May be satisfied through participation in the Bar-approved externship, clerkship, or apprenticeship route in Section A

C. *Post-admission: Competency skills MCLE or mentoring (10 hours)*

- Two routes:
 - 10 additional hours of Minimum Continuing Legal Education courses (in addition to the regular MCLE requirement for licensees) specifically focused on professional competency skills training (from designated subject areas in Section A), or
 - 10 hours of participation in a Bar-certified mentoring program (involving in-person meetings of two hours or more at least once a month)

How to Fulfill the Requirement

There would be two routes for fulfillment of this pre-admission competency skills training requirement: (1) in law school, where 15 units of course work designed to foster the development of professional competency skills would be taken; or (2) in lieu of some or all of the required 15 units of law school course work, participation in a Bar-approved externship, clerkship, or apprenticeship for a court, governmental agency, law firm, or legal service provider.⁸ The intention is that law students could “mix and match” course work, externships, clerkships, or apprenticeships and meet the required 15 units through any combination of those experiences.

For externships, clerkships, or apprenticeships to count toward the 15-unit requirement, it would not be necessary that those experiences also earn academic credit. A law student who works in a summer clerkship, for example, would not earn academic credit but would be eligible to receive credit toward his or her pre-admission competency skills training requirement. Similarly, a law school graduate who works in a judicial clerkship after graduation but before taking the bar examination would not earn academic credit but would be eligible to receive credit for his or her pre-admission competency skills training requirement.

Credit for the law school training units would be given for stand-alone courses; for clinical work integrated into the core curriculum in such a way that it is part of and complements existing doctrinal classes; or for earned credit units in externships, clerkships, or other apprenticeship-type work. Furthermore, in an effort to encourage greater integration of experiential learning, law schools may certify portions of courses to count toward satisfying this requirement by giving appropriate levels of credit for integrated curricula involving a combination of experiential

and doctrinal education, thus entitling students to partial credit toward the 15-unit requirement for such courses.

What Subject Areas Count Toward the Requirement

For those who elect to satisfy this requirement during law school, 15 units of course work would be required from among the following subject areas:

- Oral presentation and advocacy
- Advanced legal research and writing (excluding first-year legal research and writing)
- Negotiation and alternative dispute resolution (i.e., mediation, arbitration)
- Client counseling, effective client communication, and problem solving for clients in practice settings
- Witness interviewing and other investigation and fact-gathering techniques
- Law practice management and the use of technology in law practice
- Project management, budgeting, and financial reporting
- Practical writing (i.e., drafting contracts and other legal instruments, drafting pleadings)
- Preparation of cases for trial during the pre-trial phase, including e-discovery
- Trial practice
- Basics of the justice system, including how courts in California are organized and administered and what responsibilities lawyers have as officers of the court
- Professional civility and applied ethics (i.e., ethics in practice settings)

This list of subject areas is illustrative, is not intended to be exclusive, and is subject to further refinement in the implementation stage. Credit toward the 15-unit requirement that is received for in-the-field experience, such as hours devoted to legal clinic work or in judicial or other govern-

mental externships, must fall within the parameters of one of the designated categories. The 15 units may also overlap with the hours required in Section B below (that is, units fulfilled via in-the-field experience in the pre-admission Competency Skills Training Requirement category may also satisfy the Representation of Clients on a Pro Bono or Modest Means Basis requirement, if they meet those criteria).

Benefits of Allowing Credit for Externships, Clerkships, or Apprenticeships

Offering law students the choice of meeting the pre-admission training requirement through an externship, clerkship, or apprenticeship experience is key. The Task Force believes that this aspect of its proposed pre-admission competency skills training requirement will provide flexibility for students, so that if any student feels that available curricular offerings in law school do not meet the requisite number of in-class units, or if any student elects for whatever reason not to take courses that are available, an alternate path to fulfilling the pre-admission competency skills training requirement may be taken. And it will mean that no law school must necessarily change its course offerings if, for example, doing so would be cost-prohibitive or inconsistent with the pedagogical model it has chosen. Most importantly, giving credit for approved externships, clerkships, or apprenticeships would promote greater participation in training and mentorship by experienced practitioners and potentially assist with permanent job placement (and avoid the appearance that the Bar seeks to foist the entire burden of better competency skills training on law schools).

B. Pre- or Post-Admission: Representation of Clients on a Pro Bono or Modest Means Basis

The Task Force recommends requiring 50 hours of legal services in the pro bono or modest means areas.

The 50 hours would have to be carried out in a Bar-certified pro bono/modest means program, or under the supervision of a Bar-certified mentor. Care would need to be taken to ensure that participants are provided with adequate supervision.

In addition to addressing the justice gap and increasing core competencies, the breadth of this requirement—by including what is often referred to as “low bono” work (i.e., legal services offered at a greatly discounted rate to those who do not qualify for pro bono legal assistance but who cannot afford legal services at the traditional rate) as well as pro bono work—is designed to expose more new lawyers to the possibilities for developing law practices geared to clients who are not indigent but are of limited means.

How to Fulfill the Requirement

The 50-hour requirement may be satisfied in whole or in part at any point during law school, post-graduation, and during the first year of licensure. It must be completed no later than the end of the first year of practice. For anyone who chooses to fulfill the 15-unit pre-admission competency skills training requirement in whole or in part through a Bar-approved externship, clerkship, or apprenticeship with a court, governmental agency, or legal services provider, the 50-hour pro bono/modest means requirement would be deemed automatically satisfied.⁹

How the Requirement Would Be Enforced

This requirement, spanning the transition years from law school into practice, would be enforced by mandating a certification from the Bar applicant or new admittee. For those who fulfill all or some of the requirement post-admission, failure to provide satisfactory certification, as with the Bar’s exist-

ing Minimum Continuing Legal Education (MCLE) regime, would result in license suspension.

C. Post-Admission: Competency Skills MCLE or Mentoring Requirement

The Task Force recommends that new admittees be required to complete 10 hours of certified MCLE courses by the deadline for the first compliance period following the completion of the first year of practice or, at their option, to participate in a Bar-certified voluntary mentoring program.

This post-admission MCLE or mentoring requirement is *in addition to* the regular MCLE requirement for licensees.¹⁰ For MCLE, 10 hours must be in a course that covers one or more forms of competency skills training in the same areas described earlier in Section A. For certified mentoring programs, the participation would have to involve in-person meetings of two hours or more at least once a month.

Implementation of the Recommendations

If these recommendations are substantially adopted by the State Bar of California Board of Trustees and, in turn, by the California Supreme Court, the proposal is to form an Implementation Committee.¹¹ The Task Force recommends that the final rules go into effect gradually, first phasing in the post-admission MCLE/mentoring requirement in 2015, the pro bono/modest means requirement in 2016, and the competency skills training requirement in 2017.

The devil will be in the details. On the bar admissions side, staff will need guidelines relating to

- Bar-approved externships,
- law school self-reporting certification requirements for student completion of pre-admission competency skills training,

- Bar-certified pro bono/modest means programs,
- Bar-certified mentors, and
- post-admission compliance requirements for MCLE completion or mentoring programs.

CHALLENGING QUESTIONS FACED BY THE TASK FORCE

The Task Force is keenly aware of the costs of becoming a lawyer. Law schools are concerned that Task Force recommendations will require increased tuition because additional adjunct faculty will be required to teach clinical programs which, by their nature, involve smaller class sizes. On the bar admissions side, personnel will need to reflect how they can accomplish the mission of screening candidates for admission without increasing fees to cover evaluating compliance of pre-admission requirements. Public protection becomes a balancing test. If Task Force recommendations are implemented, will the end result foreclose disadvantaged and less wealthy students from considering a legal career?

The imposition of any admissions reform, moreover, poses challenges for some law students who have no desire to enter private practice. They seek careers in the military, business, or education and assert that much of the proposed pre-admission competency skills training is irrelevant.

The Task Force received comments that other existing structures are better suited to providing lawyers with practical skills training, such as the American Inns of Court (which are dedicated in large part to mentoring as a central feature of professional development for lawyers) or specialty and local bar associations. Other comments identified the 15-unit requirement as being in conflict with the Carnegie Report (the 2007 Carnegie Foundation

for the Advancement of Teaching's study on legal education, *Educating Lawyers: Preparation for the Profession of Law*), which emphasized the goal of *integrating* training in practical expertise and professionalism into the core curriculum. Still other comments asserted that the State Bar's role is to regulate the result of law students' legal education and that law schools should continue to have the ability to design and implement the educational process. On balance, however, comments during public hearings were very positive and appreciative that the State Bar is taking proactive steps to improve the admissions criteria with the goal of improving the qualifications and practice-readiness of attorneys admitted to the State Bar of California.

KEEPING REFORM IN STEP WITH ONGOING CHANGES IN PRACTICE

Admissions regulation reform is not new to California. The difficulty with reform is that it is sometimes a moving target, given the continually changing nature of law practice. For instance, in 1988, the State Bar of California Board of Governors (predecessor to the Board of Trustees) considered, but did not adopt, a proposal that would have required all persons admitted to practice law in California to complete a certified "Lawyers Skills Course." Three semester hours would have been devoted to teaching trial and court-related lawyering skills. Applicants to the Attorneys' Examination would have been required to provide proof of equivalent experience. Law schools were exhorted to immediately begin developing course structures in all aspects of lawyering skills.

While regulators may have believed that trial practice skills were important in 1988, today the same regulators may recognize that unlike criminal trials, civil litigation is more frequently than

not resolved by some form of alternative dispute resolution before trial. Other changes in the legal profession also affect the skills required for practice. Because of automation, the Internet, and technology, lawyers are less dependent on support staff and do more with less. Clients now frequently show up in legal offices having researched their disputes on the Internet and downloaded forms from RocketLawyer or LegalZoom, wanting unbundled legal services to sufficiently prepare them for self-representation. While it may be difficult to predict the long-term changes the legal profession will yet experience, much can be done to generally address the gap between education and practice.

RECOMMENDATIONS ABOUT REFORM ABOUND

Opinions about what is needed to improve the legal admissions process are plentiful. Some argue that real change to admitting new lawyers to the profession will come when the U.S. Department of Education terminates recognition of the American Bar Association (ABA) as a federally approved accreditor of law schools, claiming that the ABA accreditation process stifles law schools' efforts to develop innovative, cost-effective programs, thereby inhibiting needed reform.¹²

Still others believe that if law schools agree not to submit any data to *U.S. News and World Report*, which uses the data to rank the law schools and publishes such rankings annually, then prospective students may have to conduct their own independent due diligence to determine law school selection. Perhaps law schools will then be evaluated not according to such criteria as the LSAT scores and test-taking skills of their students but on other qualities that make for competent legal professionals, freeing law schools to refocus their efforts on their curricula.

There is no shortage of other recommendations for licensure changes, such as

- Follow the medical school model, in which a physician enters into a hospital residency after obtaining his or her medical degree.
- Follow the English model, which includes extensive practical training in the form of clerkship or apprenticeship programs prior to licensure.
- Use law firm incubators established by law schools.
- Use the Lawyers for America, Inc., approach initiated by University of California Hastings College of the Law, which formed a California charitable corporation with IRS 501(c)(3) nonprofit status to improve the practical skills of new lawyers, to expand the availability of legal services for those who cannot afford lawyers, and to increase the ability of government and legal offices to render such services.
- Use the clinical program model, such as the one established by Washington and Lee University School of Law requiring third-year law students to take 20 experiential course credits in simulation or practice-based courses that must include one clinic or externship, three problem-based electives, and two skills immersion courses.

CONCLUSION

In summary, as these examples and the Task Force's recommendations illustrate, the winds for admissions reform are blowing. Regulators have a multitude of competing interests. Bar examiners should hold on to their hats. 

NOTES

1. State Bar of California, Task Force on Admissions Regulation Reform: Phase I Final Report (June 11, 2013), available at [http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_\(FINAL_AS_APPROVED_6_11_13\)_062413.pdf](http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_(FINAL_AS_APPROVED_6_11_13)_062413.pdf).
2. See The State Bar of California, Task Force on Admissions Regulation Reform, <http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx>. (Phase II of the Task Force's original mission posted on the website, which involved an examination of law school accreditation rules, has since been taken up by the State Bar Committee of Bar Examiners.)
3. It is estimated that more than half the states have some form of practical skills training requirement as a condition of admission to a state bar.
4. Past studies considered by the Task Force included the following:
 - The Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (known as the "MacCrate Report"), published in 1992 by the American Bar Association ("ABA") Section of Legal Education and Admissions to the Bar. This report documented the findings of a task force commissioned to examine the connection between legal education and the profession and issued a statement identifying a set of fundamental lawyering skills and professional values necessary for the practice of law.
 - A study relating to predicting lawyer effectiveness published in 2008 by University of California at Berkeley professors Marjorie M. Shultz and Sheldon Zedeck, in which they identified 26 factors relating to effective lawyering and the behaviors associated with each factor.
 - The "ABA Core Competencies Study," a report issued by the Joint National Organization of Bar Counsel and Association of Professional Responsibility Lawyers Committee on Competency, published by the ABA in 2010, which pulled together a number of concepts about the transition of law students into the legal profession (summarizing influential reports such as the MacCrate Report; the 2007 "Carnegie Report," the Carnegie Foundation for the Advancement of Teaching's study on legal education, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW; and the "Best Practices Report," the 2007 Clinical Legal Education Association publication BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP). The ABA Core Competencies Study showed that any new practical skills requirement must involve the various competencies that it takes to be a good lawyer—competencies not covered by doctrinal learning.
 - The New York State Bar Association's 2011 Report of the Task Force on the Future of the Legal Profession, a culmination of the New York State Bar Association's analysis on lawyers and legal education, which made a number of recommendations designed to promote an educational process that trains young lawyers so that they are more practice-ready right out of law school. As a result of that report, the New York Court of Appeals adopted a rule requiring prospective attorneys to perform 50 hours of pro bono service before they can be admitted to the New York Bar. (*Editor's Note:* See page 8 of this issue for an article about New York's pro bono service pre-admission requirement.)
5. James G. Leipold, *The New Entry-Level Legal Employment Market*, 82(2) THE BAR EXAMINER 7 (June 2013).
6. Brian Z. Tamanaha, *The Broken Economics of Legal Education in America*, 119:98 SAN FRANCISCO DAILY J. 1 (May 21, 2013).
7. *Id.*
8. How many hours constitute a unit of credit will obviously vary depending on whether the credit was obtained via classroom hours versus via the externship/clerkship/apprenticeship option. The definition of a unit of credit and the standards of equivalency for the two options will need to be addressed during the implementation stage in close consultation with law schools.
9. Again, the definition of a unit of credit for in-the-field experience fulfillment of the pre-admission competency skills training requirement—and how this correlates to fulfillment of the 50-hour pro bono/modest means requirement—will need to be addressed during the implementation stage.
10. The California State Bar requires 25 hours of MCLE every three years, including 4 hours in legal ethics, 1 hour in detection/prevention of substance abuse or mental illness, and 1 hour in elimination of bias in the legal profession.
11. The Implementation Committee would be charged with working out the answers to many questions, such as who certifies qualifications of the pro bono/low bono providers; what qualifications are required for mentors; whether the State Bar monitors any of the law school competency training programs, or whether these programs are all self-certified, or whether the ABA accreditation process is deferred to; how to guarantee a sufficient number of providers for the number of applicants annually; how a unit of credit is defined and the standards of equivalency for units obtained in the classroom versus via externships/clerkships/apprenticeships; and how to evaluate the effectiveness of the program.
12. Michael L. Coyne, *ABA and Legal Education: Change Won't Come from Within*, NAT'L LAW J., May 8, 2013.



RICHARD A. FRANKEL is a member of The State Bar of California Task Force on Admissions Regulation Reform, current member of the State Bar of California Committee of Bar Examiners, current member of the National Conference of Bar Examiners' Education Committee, and a former member of the State Bar of California Board of Trustees. He is in private practice in San Ramon, California, with the firm of Frankel Goldware Ferber LLP. (The views expressed in this article are his own and not those of the State Bar of California.)