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Clinical Legal Education Association

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CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA) COMMENTS TO CALIFORNIA STATE BAR TASK FORCE ON ADMISSIONS REGULATION REFORM

April 17, 2013

The Clinical Legal Education Association (CLEA) writes to support the efforts of the Task Force to develop a regulatory requirement for a pre-admission practical skills training program that will both better prepare law students for the practice of law and provide the public with more competent counsel. We address the California State Bar Task Force on Admissions Regulation Reform's March 22 Discussion Draft.

Representing more than 1,000 dues-paying members, CLEA is the nation's largest association of law teachers; its mission is to establish clinical legal education as a fundamental component of the education of lawyers. Our membership is comprised of law professors who teach law clinics and externship courses, and thus whose teaching agenda focuses squarely on the preparation of students for practice. For several decades, CLEA members have been pioneering and refining pedagogical techniques that facilitate student learning in live-client law clinics and other real-life practice settings. Over that same period, CLEA has worked to secure approaches to law school curricular reform and accreditation standards designed to improve and broaden the professional abilities of law school graduates.

Recent law graduates have also voiced strong support for clinical and experiential legal education. The ABA's 2004 *After the JD* report surveyed recent law school graduates. When asked what was most helpful in their transition to practice, they highlighted professional skills training: legal employment during summers and school year, clinical courses, legal writing courses, and internships. Lagging behind were the doctrinal courses that still dominate legal education.

Today, students may graduate from an ABA-approved law school and sit for the bar having only met the minimum ABA Accreditation Standard 302(a)(4) requirement of a single credit (out of a total of 83 academic credits) of

CLEA is the nation's largest association of law teachers, representing over 1000 dues-paying faculty at over 180 law schools. CLEA is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. Its membership consists of law professors who teach students in their role as lawyers and who devote their energy and attention to identifying, teaching, and assessing proficiency in the skills and values essential to lawyering.

Katherine Kruse, CLEA President, Hamline University School of Law, 1536 Hewitt Ave., MS-D2017, Saint Paul, MN 55104, 651-523-2472, kkkruse02@hamline.edu

skills training.¹ That single credit hour, or even a single 2- or 3-credit professional skills course, cannot provide a student with the necessary foundational skills to practice law effectively. Many law school graduates, however, enter practice with no more than that one credit of preparation for the practice of law.

Up to now, law schools and bar admissions officials have been content to assume that graduates will develop their lawyering skills on the job, without harm to clients or the public. But this trust is increasingly misplaced, given the realities of present-day law practice. Few young lawyers can now obtain the mentoring and supervision needed to gain competence to serve clients. The system imposes the risks of inadequate training in law school onto unsuspecting members of the public.

For these reasons, we strongly support the Task Force recommendation to require 15 academic units to be taken in law clinics, field placement, or professional skills courses following the first year of law school. Requiring a professional school to devote one quarter of its “upper level” instructional time to the skills deemed necessary for the competent practice of that profession is very important step. However, we caution that in implementing the new requirements, the bar needs to ensure that its requirements are not satisfied by a discussion, by a few exercises in a classroom course, or by taking a course in the rules of professional responsibility. To receive credit under any new rule, a course must integrate substantial practice-based, experiential training and the credit units should be awarded in proportion to the amount of skills-based instruction taught within an otherwise doctrinal course.

We further propose that that the new rule require that at least one-third of the proposed units, or five credits, involve live-client practice experience through a law clinic or externship. Our experience shows the power of a supervised introduction to the practice of law in the real world. For all their many virtues, simulated skills courses cannot reproduce the challenges and uncertainties of situations in which something real is at stake. Supervised real world practice is a powerful way to shape professional identity and inculcate the values of our profession.

Two recent studies from the National Association for Law Placement (NALP) demonstrate the importance of requiring law clinic or externship experiences for all students. In a survey of new nonprofit and government lawyers, over 83% rated legal clinics as “very useful” in preparing them for the practice of law, with externships/field placements rated as “very useful” by 72% and skills courses by only 48%.² In a similar survey of new associates in private law firms, almost two-third (63%) rated legal clinics as “very useful,” followed closely by externships/field placements (60%) with skills courses lagging far behind (38.5%). It is clear that law clinics and externships better prepare law students for the practice of law than skills courses and should be required by any new rule.³

We are impressed by the thoughtful flexibility built into the skills training requirement by providing the option of employment in a Bar-approved clerkship or apprenticeship program of at least six months. So that this option does not become exploited by employers, we believe it is necessary for the Bar to develop clear guidelines that mandate that the graduate receives sufficient legal work assignments, assessments and mentorship during the six-month period to ensure that the training in professional skills in that setting is comparable to 15 academic units in professional skills taught by a member of the law school’s faculty.

We agree with the Task Force that the decision whether to require a certain number of professional skills courses cannot be left to individual law schools. Most law schools are dominated by faculty who prefer

¹ ABA, Section on Legal Education and Admissions to the Bar, “Consultant’s Memo #3 (Mar. 2010).

² NALP, 2011 Survey of Law School Experiential Opportunities and Benefits: Responses from Government and Nonprofit Lawyers 26 (2012).

³ NALP, 2010 Survey of Law School Experiential Opportunities and Benefits 26 (2011).

to teach only traditional doctrinal courses. Without action by the bar, American legal education will not soon cure itself of its failure to prepare law graduates for competent practice.

The claim that a new skills requirement for law practice will be too costly is much overstated. A number of schools already have the courses to meet the requirement. Those that do not can adopt one of the many models that are already working. Of course some schools may need to reorient their priorities, perhaps moving away from what a special committee of the Illinois State Bar Association recently termed “exotic courses” toward courses with a practice-oriented component.⁴ Deferring implementation of the 15-academic unit requirement until 2017 provides the time necessary for schools to shift priorities and redeploy faculty without unreasonable costs to law students.

In conclusion, the State Bar of California’s principal mission is protection of the public by ensuring competence and ethics in the legal profession. Without significant steps to ensure that all law graduates seeking admission to the bar learned to represent clients in a competent and ethical manner, the Bar cannot be confident that it is fulfilling its mission. CLEA shares the Bar’s mission and supports the Task Force’s current efforts. We will be happy to assist in any way we can.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Kruse".

Katherine Kruse
CLEA President

⁴ Illinois State Bar, Special Committee on the Impact of Law School Debt on the Delivery of Legal Services: Final Report & Recommendations 45 (Mar. 8, 2013).