

**CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA)
COMMENT TO ABA TASK FORCE ON THE FUTURE OF LEGAL EDUCATION**

June 19, 2013

The Clinical Legal Education Association (CLEA) takes this opportunity to respond to the Invitation to Comment by the American Bar Association Task Force on the Future of Legal Education. CLEA is the nation's largest association of law teachers. Our more than 1,000 dues-paying members teach in law school clinics, externships, and across the rest of the law school curriculum. We share the Task Force's goal of improving legal education. Law schools must respond to the current economy, changes in the profession, and shortcomings in legal education.

The Initial Charge of the Task Force identifies the challenge of improving practical skills training. CLEA is deeply committed to this goal: for more than 20 years, CLEA and its members have developed innovative programs in their own schools and have worked with the American Bar Association (ABA), the American Association of Law Schools, state bars and committees, and individual law schools to promote and strengthen live-client clinics and well-supervised externships. We appreciate this opportunity to continue to work with the ABA to strengthen these critical components of legal education.

We address three of the many important questions the Invitation to Comment poses: (1) How can law schools improve the pedagogy of legal education?; (2) What can law schools learn from other disciplines?; and (3) How can accreditation standards improve the preparation of law students for practice? Legal education urgently needs a new, significant commitment to supervised professional practice. A number of law schools already offer extensive experiential programs, demonstrating both their feasibility and value in legal education. In other professions, schools and licensing authorities require far more supervised practice in students' professional education than is required in the profession of law. The legal profession is an outlier. Our profession faces new and significant challenges, and legal educators can no longer rely on employers to provide their graduates with the professional training they should be receiving in law school. Although individual states are working to reform legal education, national accreditation standards should reflect the importance of closely supervised, in-role learning. All law students should be required to take the equivalent of at least one quarter of their legal education in supervised professional practice in clinics, externships and other experiential settings.

How Can Law Schools Improve the Pedagogy of Legal Education?

The educational case for requiring every law student to have significant experiential training is no longer seriously debated. A long line of reports by ABA special committees, beginning with the 1979 *Report and Recommendation of the Task Force on Lawyer Competency: The Role of Law Schools* ("Compton Report") and including the well-publicized 1992 *Report of the Task Force on Law Schools and the Profession* ("MacCrate Report"), have urged much greater attention to professional experiences in law school curricula. 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. 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, more than 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%.¹ In a similar survey of new associates in private law firms, almost two-thirds (63%) rated legal clinics as “very useful,” followed closely by externships/field placements (60%).

Despite the unanimity of opinion, progress in providing experiential education in law has been modest. Twenty years after the MacCrate Report, students can still graduate from an ABA-approved law school and sit for the bar having met only the minimum ABA Accreditation Standard 302(a)(4) requirement of a single credit (out of an average of 89 academic credits) in professional skills.² The ABA’s Standards Review Committee has been discussing an increase in that requirement – to three credits – but that would still represent less than four percent of the graduate’s three-year course load. That single credit hour, or even a single 3-credit professional skills course, cannot provide a student with the necessary foundational skills to practice law effectively.

What Can Law Schools Learn From Other Disciplines?

The Task Force is right to look to other disciplines for guidance. The comparison is stark and instructive as the professional education training and licensing of lawyers falls far behind the other professions. Other professions require that at least one-quarter, and up to more than one half, of a graduate’s pre-licensing education be in-role in supervised professional practice. Examples include:

Medicine: Medical school education consists of two years of classes and then two years of professional experience (one-half of each student’s medical education) in clinical rotations.³

Veterinary: The required curriculum for all veterinarian students must include a minimum of one academic year (or at least one-quarter of a student’s veterinary medical education) in hands-on clinical education.⁴

Pharmacy: Pharmacy school students are required to spend no fewer than 300 hours in the first three years of their education and at least 1,440 hours (36 weeks) in the last year in clinical settings.⁵

¹ National Association for Law Placement, 2011 Survey of Law School Experiential Opportunities and Benefits: Responses from Government and Nonprofit Lawyers 26 (2012).

² ABA Consultant’s Memo # 3 (Mar. 2010) (“What is “*substantial instruction*” in other professional skills? . . . At least one solid credit (or the equivalent) of skills training is necessary.”) (emphasis in original).

³ Molly Cooke, David M. Irby and Bridget C. O'Brien, “A Summary of *Educating Physicians: A Call for Reform of Medical School and Residency*” (2010).

⁴ “Accreditation Policies and Procedures of the American Veterinary Medical Association,” Section 7.9, Standard 9.

⁵ Accreditation Council for Pharmacy Education, “Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree,” Guidelines 14.4 & 14.6.

Architecture: Architectural school students must take at least 50 of their 160 total required semester credit hours (approximately one-third) in design studio courses.⁶

Social Work: Masters of Social Work students must accrue at least 900 hours, or 18 of their required 60 academic credit hours (approximately one-third), in field education courses, the “signature pedagogy” of social work professional education.⁷

Dentistry: To meet the requirement that graduates possess the skills and values to begin the practice of general dentistry, dentistry students spend more than 57% of their time in actual patient care over the course of their four-year education.⁸

As these examples from other disciplines illustrate, law schools fall short of equipping our students and graduates with the practical skills training and exposure to professional culture that they need in order to represent clients.

How Can Accreditation Standards Improve the Preparation of Law Students for Practice?

The suggestion made by some commentators that law schools should focus on learning to “think like a lawyer” and leave development of other critical lawyering skills to law graduates’ first jobs is wrong. While this argument may make sense in countries such as Australia, Canada, and the United Kingdom, where only a small fraction of students obtaining a law degree seek admission to practice, it does not make sense in the United States where a large majority of law school graduates take the bar.⁹ Unlike other countries, the primary focus of legal education on legal analysis and legal doctrine is misplaced in the United States where there is no required apprenticeship to qualify for legal practice as there is in these other countries. In the United States, a law school graduate can currently be licensed to practice law in all states without additional pre-admission practice or training.

The absence of substantial opportunities for clinical legal education in many schools and for many students leaves the responsibility and cost of preparation for practice to employers, clients, and law graduates themselves. They simply are not likely to get that preparation in the current rapidly evolving legal job market. Few legal employers have well-structured programs to train new lawyers. Many law graduates open solo practices as soon as they pass the bar, and in the current economy this trend is growing. Insufficient exposure to professional skills and values during law school can extract a heavy toll on clients. Lack of practice preparation also weighs heavily on the new lawyers themselves, many of whom find themselves ill-equipped by a legal education that has left them tens of thousands, if not more than a hundred thousand, of dollars in debt. The current approach allows law schools to shirk their responsibility to prepare students for the ethical, effective practice of law. Finally, law schools’ failure to provide appropriate skills

⁶ National Council of Architectural Registration Boards, “NCARB Education Standard.”

⁷ Council on Social Work Education, “Educational Policy and Accreditation Standards,” Educ. Policy 2.3., Accreditation Std. 2.1.3 (2012).

⁸ American Dentistry Association, “Accreditation Standards for Dental Education Programs” Std. 2-4; Massachusetts Bar Association, “Report of the Task Force on Law, the Economy, and Underemployment - Beginning the Conversation” (2012).

⁹ Linda F. Wightman, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY viii (1998) (approximately 95% of study participants ultimately pass the bar), *available at* <http://www.unc.edu/edp/pdf/NLBPS.pdf>.

and values can cut strongly against racial and economic diversity by disparately disadvantaging insufficiently prepared new lawyers who may not have equal access to alternative training opportunities. Although the Invitation to Comment did not explicitly identify diversity in legal education as a matter of concern, we trust that the Task Force will carefully consider the impact any proposed changes would have on diversity.

A few comments submitted to this Task Force suggest a two-year J.D. degree or otherwise reducing the required timeframe in legal education. Those who argue that legal education is inadequate, not too long, have the better position. Law graduates are not prepared for practice; they need a guaranteed minimum of professional practice experience before graduating from law school. Legal education must join the other professions described above, which all require that at least one-quarter, and up to one half, of a graduate's pre-licensing education be in-role in supervised professional practice. The Task Force should recommend that students take at least 15 credits of courses in the second and third years of law school, one-quarter under the current structure, in clinical, supervised externship, or professional skills courses.

The Invitation to Comment asks whether the ABA's Section of Legal Education should review the Standards for accreditation of law schools with an eye toward "removing barriers to innovation in legal education, particularly those that would better prepare J.D. students for practice." The fact is that innovation and experiential learning are possible and, in some law schools, are thriving under the existing standards. For example:

CUNY: All students must take a 12-to-16-credit faculty-supervised law clinic, or a field placement and a 4-credit lawyering skills seminar.

University of District of Columbia: Students must enroll in a 7-credit clinic in their second year and a second 7-credit clinic in their third year, as well as a required moot court course.

Washington & Lee: The much-publicized, revamped third-year curriculum requires 20 academic credits in simulated or real-practice experiences that include one clinic or externship, three problems-based electives, and two skills immersion courses.

In addition to requiring that at least one-quarter of a law student's professional education be in practice-based, experiential courses, the accreditation standards should require that every graduating J.D. student take a law clinic or externship course. As the University of California-Irvine School of Law Dean recently stated, "there is no way to learn to be a lawyer except by doing it." Dean Chemerinsky pointed out the absurdity of not requiring all students to handle real cases with real clients by remarking that "it is unthinkable that medical schools could graduate doctors who had never seen patients or that they would declare that they just wanted to teach their students to think like doctors."¹⁰ It is indefensible that American law schools consider students prepared for the practice of law without ever having handled a client's legal problem.

¹⁰ Law School Survey of Student Engagement, "2012 Annual Survey Results" (foreword by Erwin Chemerinsky).

Universal clinical legal education is attainable. More than a dozen schools already mandate clinical education, and many others guarantee every interested student a clinical opportunity.¹¹ The schools that mandate that each student take a law clinic or externship are diverse. They include public and private schools, schools in urban and rural areas, schools whose graduates work in the school's local region and those who work across the country, schools with part-time programs and those with only full-time students, and schools with significant tuition and those charging among the lowest in the country. It is not too difficult or too expensive for law schools to deliver experience-based education. Many of our members teach in law schools that have worked hard and successfully to find cost-effective ways to achieve this goal.

State bar associations are now stepping in to fill the void created by the absence of rigorous ABA standards relating to preparation for practice. In 2012, the New York State Court of Appeals adopted a new rule requiring applicants for admission to the New York State bar to perform 50 hours of pro bono services.¹² Earlier this year, an Illinois State Bar Special Commission report noted a likely connection between new law graduates' difficulties finding employment and law schools' inadequate training for practice and recommended that law schools prioritize, among other things, "live-client clinics, and other courses that give students the opportunity to learn and apply legal principles in the context of real life problems" and that clinical and legal writing faculty have an equal say in governance.¹³ Just last week, a California State Bar task force recommended a new set of requirements mandating that Bar admittees certify prior to admission that their law school course work included at least 15 credits (not counting the first year legal research and writing course) of practice-based, experiential training prior to admission.¹⁴

With respect to the relationship between the cost of legal education and ABA accreditation standards, the U.S. Government Accountability Office recently found that "ABA accreditation requirements appear to play a minor role" in driving the cost of law school education.¹⁵ Indeed, as noted above, a number of schools have managed to innovate and to focus more of their curriculum on professional skills within (and despite the absence of encouragement from) the current standards and without driving costs up more than at schools that lack such innovation and focus. For example, Washington and Lee's experience requiring 20 credits of experiential coursework in the third year has not increased their costs: "the new

¹¹ Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Clinic Requirements, Clinic Guarantees, and the Case for Experiential Pluralism: The New, Improved American Law School Curriculum*, 43 WASH. U. J.L. & POL'Y (forthcoming fall 2013).

¹² See New York State Unified Court System, *The Legal Profession – Pro Bono*, at <http://www.nycourts.gov/attorneys/probono/baradmissionreqs.shtml>.

¹³ Illinois State Bar, *Special Comm. on the Impact of Law School Debt on the Delivery of Legal Services*, Final Report & Recommendations (Mar. 2013).

¹⁴ The State Bar of California, *Task Force Recommends Practical Skills Training, Pro Bono for New Lawyers*, at <http://www.calbar.ca.gov/AboutUs/News/ThisYearsNewsReleases/201317.aspx> (stating that "[t]he report now goes to the Regulation, Admissions and Discipline Oversight Committee of the State Bar Board of Trustees for further action."). The current draft states that, "in lieu of some or all of the 15 units of course work, a candidate for admission may opt to participate in a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school."

¹⁵ GAO, "Issues Related to Law School Cost and Access" (Oct. 2009), at <http://www.gao.gov/products/GAO-10-20>.

curriculum is not more expensive to run than the prior third year curriculum, nor the current first or second year curricula.”¹⁶

CLEA urges the Task Force to recommend that professional skills training and experiential learning be required as a foundational element of legal education. Although clinical legal education has long advocated for the importance of teaching law students the skills and values they need to practice, the legal academy has been slow to change. The examples from other professions, ranging from medicine to architecture and social work, that require students to gain hands-on experience practicing the profession they plan to join, strongly supports the need for a similar requirement in legal education. Finally, changes in accreditation standards would ensure that these reforms are adopted throughout legal education. Given wide-spread and justified concerns regarding student debt, law schools must take responsibility for providing students with the training they need to successfully begin the practice of law.

¹⁶ Email comment from Professor James Moliterno to the Chair of the California State Bar Task Force on Admissions Regulation Reform, Jon Streeter, dated May 30, 2012 (on file with CLEA).