

Discussion Draft
Phase I
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Introduction

The Board of Trustees of the State Bar of California charged the Task Force on Admissions Regulation Reform (the “Task Force”) with “[e]xamin[ing] whether the State Bar of California (the “State Bar” or the “Bar”) should develop a regulatory requirement for a pre-admission practical skills training program, and if so, proposing such a program” for submission to the Supreme Court.

Most American law schools today follow the traditional Langdellian model of legal education, emphasizing doctrinal study as the basis for teaching students the art of “thinking like a lawyer.” Over the course of more than a century since this model of legal education took root around the country, law schools have gradually incorporated clinical experience and practical skills training into their core curriculum. The importance of providing new lawyers with opportunities to develop practical skills has been driven, in large part, by the rapidly changing landscape of the legal profession, where, due to the economic climate and client demands for trained and sophisticated practitioners fresh out of law school, fewer and fewer opportunities are available for new lawyers to gain structured practical skills training early in their careers. Many new lawyers, in fact, are now entering the profession as solo practitioners, without the solid practical skills foundation necessary to represent clients in a competent manner and with nowhere to turn to build that foundation.

From the standpoint of regulatory policy, this situation presents serious issues of public protection that cannot be ignored. The record that we have compiled and examined confirms the importance and urgency of a thoughtful policy response. Following a series of hearings during which the Task Force took testimony from many practitioners, legal academics, judges, clients, and members of the public at large, and based on a thorough review by the Task Force of the literature on the topic of practical skills training for new lawyers – an extensive body of work going back decades that has repeatedly addressed the same set of questions considered here, and that has time and again confirmed the need for reform -- we now answer the charge given to us in the affirmative: In our view, a new set of practical skills requirements focusing on competency and professionalism should be adopted in California in order to better prepare new lawyers for successful transition into law practice, and many of these new requirements ought to take effect pre-admission, prior to the granting of a law license.

With this brief introductory background in mind, we set forth below our findings and the basis for our call for reform. We conclude by outlining a recommended program of reform. Our proposed recommendations, in brief overview, are as follows:

- **Pre-admission:** A practical skills training requirement fulfilled prior to admission to practice. There would be two routes for fulfillment of this pre-admission practical skills requirement: either in law school, where 15 units of course work following the first year of law school must be dedicated to developing practical skills and serving clients, or, alternatively, employment in a Bar-approved clerkship or apprenticeship program of at least six months in duration;
- **Pre-admission or post-admission:** An additional practical skills training requirement, fulfilled either at the pre- or post- admission stage, where 50 hours of legal services is specifically devoted to pro bono or low bono service. Credit towards those hours would be available for “in-the-field” experience under the supervision and guidance of a licensed practitioner or a judicial officer; and,

- **Post-admission:** 10 additional hours of Mandatory Continuing Legal Education (“MCLE”) courses for new lawyers, over and above the required MCLE hours for all active members of the Bar, specifically focused on practical skills training. Alternatively, credit towards these hours would be available for participation in mentoring programs.

In general, we are recommending an approach that maximizes freedom of choice from a menu of options, so that law students and new admittees to the Bar are presented with a variety of ways to fulfill their practical skills training requirements, at different times and in different ways, during law school and in the early years of practice. Flexibility is of paramount importance in addressing an issue of this complexity and potential cost. The adage that “no one size fits all” is certainly apt.

Because we believe that closing the gap in practice-readiness must involve a collaborative effort in which the law school community, practicing lawyers, and the Bar each have a role – it must be a shared endeavor in which burdens are shared and responsibility is shared as well – we view the academy as a partner. We call for no radical change in legal education as it exists today. Indeed, we see much to build upon. And by including in our pre-admission proposal an alternative that would permit law graduates to meet their requirement through a six-month clerkship or apprenticeship, wholly outside of law school, we hope to promote greater participation by practitioners in the training of new lawyers.

We have no illusions that the State Bar can fashion a new, more practice-oriented training regimen overnight or prescribe exactly what it must look like in every detail. But we are confident that the Bar can establish a regulatory framework that will provide a structure for the organic evolution and growth of such a system. We intend the recommendations we make in this Report to provide the foundation for that framework. To put these requirements into effect, we recommend that the Bar develop a set of implementing rules, with full and extensive vetting in the rulemaking process, and that the final rules go into effect gradually, perhaps phasing in first the post-admission requirements in 2015, the pro bono/low bono requirement in 2016, and the classroom requirements in 2017.

I. Background and Findings

A. Past Studies

The Task Force reviewed and considered several past studies dealing with a perceived gap between law school education and preparation to practice law. All echoed a common theme: While law schools are able to impart “a distinctive habit of thinking that forms the basis for their student’s development as legal professionals . . .” they are less successful in the “task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions. . .”¹

¹ Sullivan et al, *Educating Lawyers, Preparation for the Profession of Law*, The Carnegie Foundation for the Advancement of Teaching (2007), pp. 5-6.

In 1992, the American Bar Association (“ABA”) Section of Legal Education and Admissions to the Bar published its 400-plus page *Report of the Task Force on Law Schools and the Profession*.² Known as the “MacCrate Report,” this influential study documented the findings of a task force commissioned to examine the connection between legal education and the profession.³ The MacCrate Report found that “[t]he skills and values of the competent lawyer are developed along a continuum that starts before law throughout a lawyer’s professional career.”⁴ After extensively reviewing the state of the profession and of legal education, the MacCrate Report issued a “Statement of Fundamental Lawyering Skills and Professional Values” that, in concluding summary, made some simple findings: a lawyer should (1) attain a level of competence in one’s own field of practice, (2) maintain a level of competence in one’s own field of practice, and (3) represent clients in a competent manner.

The MacCrate Report emphasized the value to law students of practice-oriented instruction that includes clinics, externships and simulations. It also recognized the value of part-time employment during the academic year as a complement to classroom instruction. It noted that apprenticeships have fallen into disfavor in the United States, but are generally required in English commonwealth jurisdictions. The MacCrate Report avoided acknowledging any “gap between law school and law practice,” but recognized the existence of “bridge the gap programs” in most states. The MacCrate Report did not address when, in the educational continuum, the level of competence to represent a client must be achieved, but did note the importance of continuing legal education.

Commenting in retrospect on the continuing importance of the MacCrate Report today, former Chief Justice Randall Shepard of the Indiana Supreme Court recently said:

[T]he central contribution of the MacCrate Report has been to help all of us view ‘legal education’ as something that does not conclude with law school graduation but rather continues well thereafter. Whether we do it through the law-school admissions process, through law instruction in school, through the bar admissions process, or through continuing legal education, we should view lawyer education as a lifelong continuum in which various players take principal roles at different moments but which, in fact, ought to be one long and useful venture.⁵

² American Bar Association, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992). See also Robert MacCrate, *The Lost Lawyer Regained: The Abiding Values of The Legal Profession*, 100 Dick L. Rev. 587 (1996); Robert MacCrate ed., *Legal Education and Professional Development* (1992).

³ The task force report took its name from the chair, Robert MacCrate, a well known and successful lawyer from New York. (Shultz, RT 8-1-12 p. 104).

⁴ Patterson and Arons, *Joint NOBC/APRL Committee on Competency* (2010), pp. 1, 3.

⁵ Randall T. Shepard, “From Students to Lawyers: Joint Ventures in Legal Learning for the Academy, Bench, and Bar”, 31 Ind. L. Rev. 445 (2011).

In the ensuing years since the MacCrate Report was published, several other major studies have appeared, each finding essentially the same thing.⁶ Clinical legal education is, naturally, central to the vision for legal education advocated by these various studies. As part of a program designed to promote student competence, some commentators have endorsed universal clinical education, arguing that all students should be required, during their third year of law school, “to participate in externship courses or in-house clinics in which students represent clients or participate in the work of lawyers and judges, not just observe it.”⁷

B. Changes in Legal Education

Much has changed among law schools in the years since the MacCrate Report was issued. Clinical education is now widely available in most law schools and a great deal of experimentation is occurring, with many schools finding new and innovative ways to integrate it into their traditional curricula. Despite these laudable changes, however, it is clear that the economics of legal education are putting the traditional law school model under great strain.

Due to the staggering cost of education, those who cannot pay for law school on their own or by tapping family wealth are graduating heavily burdened by debt, but are facing one of the worst employment markets for recent law graduates in decades. While we in the profession see and are taking steps to respond to the crisis in access to justice, the economics of legal education point to another developing crisis, this one more insidious -- the emerging crisis in access to legal education. If things continue on the current trajectory, over time only the wealthy will be able to afford law school. For all but the financially well-endowed, law school will soon make no sense as a career choice.

In the face of sharply declining enrollments, the question is not whether law schools will respond to this issue, but how they will do so. The ABA’s Task Force on the Future of Legal Education (the “ABA Legal Education Task Force”), a blue-ribbon group appointed in 2012 by Immediate-Past ABA

⁶ See also Sullivan et al, *Educating Lawyers-Preparation for the Profession of Law*, The Carnegie Foundation for the Advancement of Teaching (2007) (the “Carnegie Report”), pp. 5-10; Roy Stuckey et. al., Clinical Legal Education Association, *Best Practices for Legal Education* (2007) (the “Best Practices Report”). The critiques in the MacCrate Report, the Best Practices Report, and the Carnegie Report have a long lineage. Jerome Frank said many of the same things in the 1930s. See Jerome Frank, “*Why Not a Clinical Lawyer-School?*” 81 U. Pa. L. Rev. 907, 916 (1933)(emphasis omitted) (“Law students should be given the opportunity to see legal operations.”). A fellow member of the Legal Realist school of thought, Karl Llewellyn, echoed Frank’s critique of the law school method of instruction. See Karl N. Llewellyn, *The Bramble Bush: On Our Law and Its Study* (1930), at p. 101 (“[The first year] aims, in the old phrase, to get you to ‘thinking like a lawyer.’”). The themes laid down by these scholars continue to be heard decades later. See Anthony G. Amsterdam, “*Clinical Education – A 21st Century Perspective,*” 34 J. Legal Educ. 612 (1984).

⁷ For another useful summary of how clinical education fits into the traditional legal education curriculum -- and can be fitted in better -- including a survey of the historical development of the clinical education movement, see Marc Feldman, “*On The Margins of Legal Education,*” 13 N.Y.U. Rev. L. & Soc. Change 607 (1985).

President William T. Robinson III, is currently examining this question. From some quarters, fairly radical steps have been suggested. For example, what began years ago as an odd-sounding suggestion that the third year of law school be simply abandoned and that law students be permitted to sit for the bar examination after two years is now re-surfacing more and more frequently, and in one state, Arizona, the Supreme Court has recently changed the admission rules to allow that.⁸ Others have suggested that ABA accreditation standards should be relaxed to allow for more experiential learning, since these standards limit the use of adjunct faculty, impose library requirements that are outmoded, and impede the use of on-line learning.⁹

We do not embrace or endorse the idea that law schools are somehow “broken.”¹⁰ We take that thesis into account only as a marker of the vigorous debate about change now underway within the academy itself, as it is in the profession. We also choose not to enter into the debate about whether some forced restructuring of law school education is in order, through accreditation standards or otherwise.¹¹ This issue is better addressed at the ABA level, where national change may best be accomplished, if appropriate. Here in California, at the state level, we believe that closing the gap in practice-readiness must involve a collaborative effort in which the law school community, practicing lawyers, and the Bar each have a role – it must be a shared endeavor in which burdens are shared and responsibility is shared as well.

We view the legal academy as a partner, and we are disposed to give considerable weight to the views we hear from its members, while recognizing that it does not speak with one voice. During our Task Force proceedings, we heard helpful and illuminating testimony from a number of law school deans. We accept much of the advice given by those deans who testified before us. In particular, we agree with the suggestions that any new practical skills and professionalism requirements be implemented gradually and that there should be a focus on the immediate post-admission period when new lawyers are just entering the profession. We adopt those points in our recommendations. We may differ in some respects, mostly because we look at these issues through a regulatory frame, always

⁸ See Debra Cassens Weiss, “Two-year law school was a good idea in 1970, and it’s a good idea now, prof tells ABA Task Force,” ABA Journal (February 9, 2013) (citing the testimony of Professors Paul Carrington and Jim Chen before the ABA Task Force).

⁹ *Id.* (citing testimony of Professor Luke Bierman before the ABA Task Force).

¹⁰ Brian Tamanaha, *Failing Law Schools* (2012). See also William D. Henderson & Rachel M. Zahorsky, “The Law School Bubble: How Long Will It Last if Law Grads Can’t Pay Bills?,” ABA Journal (Jan. 1 2012), available at www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills/.

¹¹ See Randall T. Shepard, “From Students to Lawyers: Joint Ventures in Legal Learning for the Academy, Bench, and Bar,” 31 Ind. L. Rev. at ____ (urging the bar to exercise prudence and caution in calling for law school reform since lawyers often overlook the powerful institutional pressures that many law schools face, such as raiding of tuition revenues to cross-subsidize undergraduate education, and intense competition to hire top quality faculty).

bearing our public protection charge in mind, but to the degree we part ways with some in the academic community, we believe we do so only by degrees.

C. Changes in the Profession

Coming out of law school, new lawyers today face a crushing debt burden -- the average is well over \$100,000 – and many have great difficulty finding jobs. At the same time, hastened by the economic realities of the last few years, lawyers must learn to be more efficient, more cost effective, and more attuned to both client desires and expectations.¹² Changes in the economics of the profession are making it more and more difficult for new lawyers to find the training, hands-on guidance and mentoring that is necessary for a successful transition into practice. Big law firms and government agencies had in the past done trainings to provide that sophisticated knowledge. Now, clients no longer want to pay for that training and are refusing to do so. Just as many other industries have had to restructure over the past five years, restructuring is at hand for the legal profession as well. Further, more than half of the recently admitted attorneys have not found jobs with big law firms or government agencies, and have instead worked in firms of five or less.¹³ While some small firms have provided excellent mentoring and training, many lawyers have had to rely upon themselves to find “on the job” experience with no safety net for themselves or their clients.

The skill set that new lawyers develop as they transition into the profession must be well-matched to the impact of technology on how the law is practiced these days. Thus, any changes to admission requirements, in terms of a new practical skills requirement, either pre- or post-admission, must take technology considerations into account. Internet search engines, such as Google and FindLaw now make it possible to use machine algorithms to replace people, particularly in finding information. No longer is legal research the exclusive preserve of lawyers. The emergence of a global supply chain that allows for off-shoring of routine legal work to locations where lawyers work for much lower wages is becoming increasingly evident. And although always an essential part of lawyering, the value and importance of developing a deep trusting relationship with the client is even more critical, now that electronic communications is so prevalent.¹⁴

The day-to-day business of practice and the challenges associated with law practice management are also changing. Due to technology, there is a diminishing need for secretarial assistance. Location is less of an issue, since lawyers can now work from home, share space, or have a virtual office wherever necessary. The expense of maintaining a hard copy law library is also a relic of

¹² Testimony of William D. Henderson, (RT 8-1-12 pp. 130-148). See Susskind, *The End of Lawyers?* pp. 22-23, 28-33, 148.

¹³ “Class of 2011 Has Lowest Employment Rate Since Class of 1994,” NALP Bulletin, July 2012, available at <http://www.nalp.org/0712research>. See also: Law School Graduate Employment Data, ABA Section of Legal Education and Admissions to the Bar, Compilation-All Schools Data, 2011 Class, available at <http://employmentsummary.abaquestionnaire.org/>.

¹⁴ See Richard Susskind, *Tomorrow’s Lawyers: An Introduction to Your Future* (2013); The Legal Whiteboard Blog, “Why Are We Afraid of the Future of Law?” September 6, 2012.

the past, as online resources replace the books and mortar.¹⁵ Intertwined with those changes are changes in client expectations, primarily based on economics. Corporate clients are no longer willing to pay high hourly rates for associate training. These clients, in fact all clients, want quality work at lower costs. They now seek alternative billing methods, reduced rates for routine work, and other ways to lower the costs of legal services.

Not only does technology empower clients, it levels the playing field so that solo and small firms can compete with bigger firms. Virtual offices, e-lawyering, cloud computing and social media were concepts unimaginable less than a decade ago, but now they represent different ways of providing cost efficient legal services. Lawyers entering the profession need to understand technology, for their own practices, and also for the representation of clients, especially in ediscovery matters. Having project management skills may also make sense for those entering the profession now and in the years to come. Change will continue to come to the profession, redefining how lawyers practice, how they use technology, and how they interact with clients and manage their expectations. The world is no longer lawyer-centric, and new lawyers must understand that and prepare for the continuing evolution of how legal services will be provided going forward.

A number of state bars around the country have issued studies canvassing recent changes in the profession and commenting on challenges facing today's new lawyers as they begin the process of transitioning into the profession. For example, Stephen P. Younger,¹⁶ a recent Past-President of the New York State Bar Association, addressed the Task Force regarding a comprehensive report on lawyers and legal education (the "NYSBA Report") that was conducted during his Presidential term.¹⁷ Motivating the NYSBA Report was one fundamental question: Why should students go to law school today, given the cost of legal education, layoffs in the profession, and the necessity for attorneys with over 25 years' experience to "retool their practice?"¹⁸

The NYSBA Report makes 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. The NYSBA Report notes the groundbreaking impact of the MacCrate Report in triggering changes within the

¹⁵ Kendall Coffey, "*Underserved middle class could sustain underemployed law school graduates,*" National Law Journal, August 15, 2012.

¹⁶ Mr. Younger is a partner with the New York law firm of Patterson, Belknap, Webb & Tyler. He is a leading commercial litigator who is also well known for his alternative dispute resolution work. He is a past president of the New York Bar Association.

¹⁷ NYSBA *Report of the Task Force on the Future of the Legal Profession* (April 2, 2011).

¹⁸ Testimony of Stephen Younger, Past-President, New York State Bar Association, RT 8-1-12 pp. 72-78, 80.

legal academy, and recommends more capstone courses¹⁹ and other modes of practice-based learning in law schools, but emphasizes the importance of viewing professional development as a continuing process in which law school is just the beginning. “The MacCrate Report was important in many ways and focused all of us—the profession, the academy, the bench and all lawyers—on the ways lawyering requires the integration of multiple dimensions of knowledge and skills, a process that begins in law school and continues throughout one’s professional life.”²⁰ This key insight underscores a critically important aspect of professional skills development: It must be a shared enterprise in which the profession undertakes a central role.

The NYSBA Report recommends, for example, that a study be undertaken to look at whether bar examination testing in New York could be better aligned with the core competencies required for good lawyering, drawing on the rich body of learning that has been developed since the MacCrate Report on these core competencies.²¹ Given the natural pressures in law school to “teach-to-the test” for admission, this recommendation has merit in California as well. Within the profession, we must recognize the close link between our professional licensure standards, law school curricular offerings, and the choices law students make about how to spend their law school time. If we are going to expect

¹⁹ “Capstone courses are designed to reflect real-world scenarios that integrate doctrine, skills, and theory into legal education. They ‘build on previous learning, require students to be responsible for their learning, and encourage reflection on legal ethics, professionalism, and what they learned.’” NYSBA Report at 49, *quoting* John O. Sonsteng, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 William Mitchell L. Rev. 1, 104 (2007).

²⁰ NYSBA Report, p 42.

²¹ Specifically, the NYSBA Report recommends a serious study of important potential licensing reforms including: (i) adoption of the Uniform Bar Exam—a format that would promote efficiency and reciprocity; (ii) sequential licensing, which would permit limited practice for new professionals pending further training and examination; (iii) adjusting an applicant’s score on the bar exam to reflect the successful completion of skills courses; and (iv) permitting licensure after a period of closely supervised public service work. NYSBA Report, p. 7.

more practice-based learning at the law school level, then we too should be open to “seriously examin[ing] our assumptions about the Bar Exam...”²²

The NYSBA Report finds great value in mentoring, as do we. Mentoring has always played a part in professional development. It is, after all what the old-style apprenticeship system of bar admission was based upon. Based on a survey of different mentoring programs in a variety of states, the NYSBA Report finds that “mandatory mentoring has the potential to be the most effective system to assist newly admitted lawyers in their development of professional skills and professional identity.” In a Bar as large as ours, we question whether any mandatory mentoring program could succeed in California. Consistent with our preference for giving law students and new admittees flexibility in meeting any new practical skills requirements, we view voluntary mentoring by choice -- through voluntary associations -- as the better approach.

One of the best, most successful examples of an association of lawyers whose mission is dedicated in major part to mentoring as a central feature of professional development for lawyers is the American Inns of Court (“Inns of Court), an organization that was founded in 1980 by then United States Chief Justice Warren E. Burger, using the English Inns of Court system as a model. More than three decades later, the Inns of Court is now a flourishing national umbrella organization that operates hundreds of local Chapters. Today, there are more than 28,000 judges and lawyers across the country who participate in an Inn of Court Chapter. There are also more than 80,000 judges and lawyers who are alumni of an Inn.

The core mission of the Inns of Court is to foster excellence in professionalism, dedication to the rule of law, ethics, civility, and legal skills. By its membership creed, adopted by all members, the Inns of Court requires a pledge to these core principles. While the Inns of Court originally started as a way to improve trial advocacy skills, its practice scope has expanded. There are in fact now special Inns for transactional law made up of attorneys engaged in the practice of various types of transactional law. Each Inn of Court Chapter has Master members, Barrister members, and Associate members, reflecting all experience levels in the profession. Sitting and retired judges are included among the Masters. Participation in an Inns of Court Chapter is entirely voluntary and takes place in the evenings, on top of

²² Referring to the New York State Bar Examination, the NYSBA Report observes:

It is a good test of substantive knowledge, abstract analysis and exam writing skills. These are not inconsiderable aspects of competent lawyering. But many urge that the test could be more efficient in those areas and could expand its scope to include other skills that lawyers need. The Bar Exam also plays an important role in diversifying our profession, and significant attention must be paid to those concerns. And, of course, the Bar Exam has a powerful effect on law school curriculum, teaching methods and student selection at many law schools. For these and other reasons, many look to improving the Bar Exam as a key step in meeting the challenges faced by our profession. Strong as it is, the Bar Exam could better align with the best current thinking on measuring and incentivizing best practices in legal education.

NYSBA Report at pp. 50-51. These observations are equally apt here in California.

the daily demands of law practice. But the proliferation of Inns of Court Chapters evidences the relative scarcity, and the demand for, such associations.

In California, we already have a strong and deep network of associations that could serve as the backbone for more mentoring programs modeled on the Inns of Court. There are more than one hundred county, municipal and specialty bar associations in California. Some of those organizations already offer mentoring programs, and with the right incentives and support from the State Bar, many more mentoring programs could be developed. We believe, for example, that if MCLE credit were offered to lawyers who serve as mentors, in much the same way that enhanced MCLE credit is given to lawyers who teach MCLE programs, the number of programs would grow and the number of Bar members who choose to participate actively in the professional development of new lawyers would increase. Since we envision a variety of new roles that experienced practitioners must play if members of the Bar are to shoulder part of the burden of training, as they should, we see MCLE credit as a potentially valuable tool to incent their participation.

II. Beyond the “nuts-and-bolts” of law practice: Inculcating the values of professionalism

Effective and meaningful orientation to the legal profession for new lawyers involves far more than simply teaching them such day-to-day details as how to find the courthouse, how to format pleadings properly, how to draft contracts and other legal instruments, how to conduct interviews of clients and third-party witnesses, how to negotiate, how to frame questions, how to find and examine documents, how to recognize and take precautions to ensure the protection of privileged and other confidential matters, how to set up and manage the business of a law practice, and any of the other myriad details that a young lawyer must learn. It also involves orientation in the values of professionalism and the identity of what it means to have the privilege of holding a law license. Some aspects of professionalism, such as honesty, integrity and respect for clients, other attorneys and the courts, can be addressed by experienced lawyers and judges in “bridging the gap” programs, as well as through clinical programs and externships during law school. In addition, we believe that including a requirement that all new admittees spend some time either in law school or in the first year of practice, or both, serving those who cannot afford a lawyer will help to inculcate the values of professionalism. As a model for this aspect of our recommendations, we look to the example of New York.

A. Pro Bono Service

Recently, responding to the call of its Chief Judge, New York has found a path-breaking way to enhance the practical skills training of new lawyers *and* address the access to justice crisis. Following the issuance of the NYSBA Report, on May 1, 2012, Chief Judge Jonathan Lippman announced that, beginning in 2013, prospective attorneys will be required to spend 50 hours performing pro bono work before admission to the New York bar. To set the guidelines for implementation of this requirement, the Advisory Committee on New York State Pro Bono Bar Admission Requirements made implementation recommendations to Chief Judge Lippman in September 2012 (the “Advisory Committee Report”). The Advisory Committee Report explains that the pro bono bar admission requirement arose primarily to respond to the access to justice crisis. The Advisory Committee Report further explains that, by requiring 50 hours of highly supervised pro bono work, the State of New York is not only improving access to justice, but is helping prospective attorneys build valuable skills. It additionally imbues in them the ideal of working toward the greater good.

The Advisory Committee Report focuses heavily on the issue of supervision. It is mindful that the individuals complying with the proposed rule will most likely be law students, not admitted practicing lawyers, and that in New York State, as with most jurisdictions, the unauthorized practice of law is forbidden. In order to ensure a high level of supervision, the Advisory Committee recommends an affidavit of compliance form. The Advisory Committee urges the organized bar, through its young lawyer and pro bono sections, to create programs that assist legal services providers and law schools in implementing the program. The Advisory Committee specifically finds that the qualifying work is an essential part of education and therefore should not be deferred until admission. It rejects the adoption of a post-admission deferral option because it would result in administrative problems and inequities.

B. Low-Bono Service

Low bono practice involves the handling of legal matters at greatly reduced rates for clients who cannot qualify for pro bono legal assistance but who also cannot afford traditionally priced legal services.²³ Low bono services are provided and contemplated in a variety of areas, including, but not limited to, family law, bankruptcy, unlawful detainer, and breach of contract matters. In California, low bono services have traditionally been provided in the context of local bar association lawyer referral services. Many have special panels of attorneys willing to take on cases in certain designated areas for qualifying “modest means” clients.

Low bono service, by definition, focuses on the increasingly large population of people in the middle class and those aspiring to be in the middle class who can pay a little for a lawyer, but not a lot. Among these clients, the most common legal needs tend to revolve around personal finances, housing, consumer issues and real property. Many of these clients are only a paycheck away, a divorce away, or an eviction away from needing legal help that is now unaffordable for them. Providing help for them is a critical issue that the legal profession must not ignore. Including low bono service in our new regime of practical skills training thus offers the dual advantage of providing needed legal services to those who do not qualify for legal aid services while also giving young lawyers exposure to the day-to-day realities of modern legal practice.

This area provides an excellent example of the ways in which law schools are developing new approaches to practice-based, experiential education. For example, in her testimony before the Task Force, Lily D. McCoy, Director of the Solo Practice Concentration & Lawyer Incubator Program at the Thomas Jefferson School of Law, described an innovative program that her school has launched

²³ Luz Herrera, “*Rethinking Private Attorney Involvement through a Low Bono Lens*,” *Loyola of Los Angeles Law Review*, Vol. 43, No. 1, p. 1 (December 19, 2009) Thomas Jefferson School of Law Research Paper No. 1524433, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1524433

recently.²⁴ The program is led by experienced practitioners who take a hands-on approach to teaching new lawyers about how to set up and run a small practice geared to those with limited ability to pay. Not only do newly emerging low bono programs help recent law graduates find gainful employment in the law, they promote the value of serving the underserved.

A number of law schools have created fellowship programs that are designed to support law graduates in their immediate post-graduate period if they wish to pursue careers in legal services for the poor or low bono legal practice. An excellent example is Lawyers for America ("LfA"), a 501(c) (3) foundation that Hastings Law School Professors David Faigman and Marsha Cohen launched recently.²⁵ The mission of LfA is 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." LfA and the Solo Practice Concentration & Lawyer Incubator Program illustrate an emerging trend. A new infrastructure of organizations designed to support students who wish to

²⁴ Called the "Center for Solo Practitioners at Thomas Jefferson School of Law," this is a post-graduate program through which law school alumni offer low-cost legal representation to people who are traditionally cut off from legal services and denied access to justice. The new lawyers in residence at the Center for Solo Practitioners address unmet legal needs in the following areas:

- Consumer law, including debt collection issues, credit report errors, credit card law, automobile fraud
- Wills and trusts, including simple wills and education on trust administration, probate, guardianships, and conservatorships
- Small-business advising, including city permit requirements and business formation
- Family law, including child support, spousal support, child custody, dissolution
- Immigration law, including visas, residency, naturalization, and asylum
- Landlord/tenant, including advice on unlawful detainer laws and procedure
- Real property law, including advice on foreclosure law and procedure
- Criminal law, including misdemeanors and felonies in both state and federal court
- Personal injury, including automobile accidents, insurance disputes, products liability, and premises liability

Similar programs can be found in a number of schools around the country, including University of Utah's S.J. Quinney College of Law, see ULaw Today, "*College of Law Announces University Law Group to Provide Low Bono Services to Underserved Populations*", November 17, 2011, available at <http://today.law.utah.edu/2011/11/college-of-law-announces-university-law-group-to-provide-low-bono-services-to-underserved-populations/>, and Wake Forest University School of Law, see John Trump, "*Alumni provide low-income legal assistance with support of the Community Law and Business Clinic*", Wake Forest University School of Law, February 22, 2010, available at <http://news.law.wfu.edu/2010/02/alumni-provide-low-income-legal-assistance-with-support-of-the-community-law-and-business-clinic/>

²⁵ See <http://www.uchastings.edu/academics/clinical-programs/lawyers-for-america/index.php>

devote their immediate post-law school years to service for the poor and middle class is emerging. We believe that trend should be encouraged by the Bar.

C. Closing the Justice Gap: Pro Bono and Low Bono Service Should be Part of any Practical Skills Training Program

Proposed California Rule of Professional Conduct 6.1 provides that “[e]very lawyer, as a matter of professional responsibility, should provide legal services to those unable to pay. A lawyer should aspire to provide or enable the direct delivery of at least 50 hours of pro bono publico legal services per year.”

This proposed rule, passed by the State Bar Board of Trustees in 2010, is only the latest step by the State Bar to address the importance of providing legal services to the poor and underserved. The commitment to pro bono service that we have made in California is also in line with longstanding national trends. For more than 50 years, since the founding of the Legal Services Corporation and the beginning of the legal aid movement in America,²⁶ lawyers in the United States have been seeking to address what has come to be known as the justice gap – the shortfall between those who need legal help to address crises in their lives, but cannot afford to pay for it, and the availability of lawyers to meet that need.²⁷

Due to the recent economic downturn, the number of people who qualify for civil legal aid has risen by 10 million nationwide since 2007. At the same time, there has been an explosion in demand for legal services in specific areas, such as bankruptcy, child dependency, foreclosure, and also in the number of first-time applicants for free legal services. A large number of returning veterans from Iraq and Afghanistan have been forced to turn to legal services agencies for help upon returning home to face new economic and family challenges. Across the country, the need for legal services among those who cannot pay or have limited ability to pay has never been higher. And although the United States has one of the best justice systems in the world, millions of Americans cannot access this system effectively because they cannot afford a lawyer.²⁸ We have seen the same disturbing trends in California, especially in recent years as chronic underfunding of the courts has exposed the problem more than ever.²⁹

In the face of these challenges, and given the recognition by the State Bar Board of Trustees in passing proposed Rule of Professional Conduct 6.1 -- which would elevate pro bono service to the status

²⁶ Earl Johnson Jr., *Justice and Reform: The Formative Years of the American Legal Services Program* (1974).

²⁷ California Commission on Access to Justice, *Action Plan for Justice* (2011); California Commission on Access to Justice, *And Justice for All: Fulfilling the Promise of Access to Civil Justice for All in California* (1996).

²⁸ Legal Services Corporation, *Report of the Pro Bono Task Force* (2012).

²⁹ OneJustice, *Hearings on California’s Civil Justice Crisis* (2012).

of an ethical duty on the part of every member of the Bar -- we agree with the remarks of New York's Chief Judge Lippman, when he announced the formation of the Advisory Committee on New York State Pro Bono Bar Admission Requirements:

[I]f pro bono is a core value of our profession, and it is — and if we aspire for all practicing attorneys to devote a meaningful portion of their time to public service, and they should — these ideals ought to be instilled from the start, when one first aspires to be a member of the profession. The hands-on experience of helping others by using our skills as lawyers could not be more of a pre-requisite to meaningful membership in the bar of our state.³⁰

But we propose to go further. Low bono service – as an alternative way of fulfilling part of the new requirements we propose -- may help to introduce many young lawyers to an area of private, for-pay law practice focused on a middle class segment of California's population. That segment, often in rural areas or in specialty areas such as consumer law or elder law, has long been underserved by new attorneys in search of “glamorous,” high-paying career paths.³¹ In short, we believe that low bono legal service is, in reality, a vastly underdeveloped part the legal economy. To the extent possible, the profession should embrace that sector and encourage young lawyers to train for it. The practical skills training regimen that we propose here is an opportunity to do so.

III. What a new practical skills requirement should look like and how to implement it

A. What competencies are most critical?

Building on the work reported in the MacCrate Report, the Carnegie Report, and the Best Practices Report, the ABA published a 2010 study (the “ABA Core Competencies Study”) showing 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, including problem solving, exercising good judgment, client relations, time management, communication, and ability to see and understand opposing points of view.³² The ABA Core Competencies Study builds upon the pioneering empirical work

³⁰ Advisory Committee on New York State Pro Bono Bar Admission Requirements: Report to the Chief Judge of the State of New York and the Presiding Justices of the Four Appellate Division Departments (September 2012), p. 1.

³¹ See E. Thomas Sullivan, “*The Transformation of the Legal Profession and Legal Education*,” 46 Ind. L. Rev. 145, 153 (2013) (“We have a maldistribution of lawyers, ...the result of which is we have many sectors of society that are not being serviced optimally or at all. There continue to be real ‘access’ and justice issues because of this maldistribution.”) (footnote omitted); see also Coffey, note ___ *supra*, “*Underserved middle class could sustain underemployed law school graduates*”.

³² Edwin W. Patterson III and Jonathan I. Arons, *Joint NOBC/APRL Committee on Competency: Final Report* (2010).

of two leading scholars in the field, Professors Marjorie Shultz and Sheldon Zedeck, in 2001 (the “Shultz and Zedeck Study”).³³

We view this work on core competencies to be foundational for purposes of setting expectations about what a new, more practice-oriented training regimen for new lawyers ought to include. The specific areas of pre-admission practical skills training that we recommend are intended to be a distillation of concepts found in these studies. If our recommendations are adopted, we do not see them as fixed or set in stone. We anticipate that, in the implementation phase, further study will be given to ensuring that the areas of practical training that we specify fit sensibly with the curricula that law schools and continuing education courses can deliver. We also emphasize that our focus is not just on law schools. We are recommending, as the NYSBA Report does, a study of how the California Bar Examination might be better aligned with and better assess core competencies that are required for good lawyering.³⁴

- B. For pre-admission practical skills training in law school, how many course units should be required?

We approached this issue with three things in mind. First, the traditional focus on doctrinal curricula in the first year of law school is important and ought to remain a cornerstone of law students’ introduction to the law. Second, the trend toward increasing clinically-based curricular options in law school ought to be reinforced and encouraged just by building in incentives for students to choose these courses. Third, ideally, some substantial portion of law students’ credit hours following the first year in law school ought to be devoted to practice-based, experiential learning. We make no pretense to having drawn upon a rigorous formula for measuring what should count as substantial. We simply took as a rule of thumb that 25% of the final two years of school would be devoted to experiential learning in clinics, externships, and skills courses.

We initially considered measuring that in the form of credit hours, but opted instead for the more precise measure of academic units – 15 units, or in ABA terms, 10,500 classroom or classroom-equivalent minutes -- to be taken as skills courses, clinics or field placements following the first year of

³³ Marjorie M. Shultz and Sheldon Zedeck, “*Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*,” *Law & Social Inquiry*, Journal of the American Bar Foundation, Volume 36, Issue 3, 620, 661 (2011). *See also* Susan Swain Daicoff, “*Expanding the Lawyer’s Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*”, 52 *Santa Clara L. Rev.* 752 (2012).

³⁴ Because the Committee of Bar Examiners (“CBE”) is specifically charged with administering and developing rules for the California Bar Examination, this study ought to be undertaken and carried out by the CBE, on a separate track from the development of implementing rules for our recommendations, and on a timetable established by the CBE.

law school.³⁵ In the development of implementing rules, further attention should be given to refining precisely how the 15 unit requirement will apply. We are aware, for example, that units earned in the field often require a much higher number of hours than classroom units do, and as a result, it may be appropriate to develop separate levels of units for classroom and field work. There may also be a need to request data from law schools as to how much practice-based, experiential learning law students are already doing and to calibrate the implementing rules as much as possible to actual experience. But we are confident that these important details can be worked out.

C. How can we promote greater participation by practitioners and judges in the training of new lawyers?

Law school should be the starting point for learning the core competencies that it takes to be a good lawyer, but law school should not be viewed as the only place to handle any new practical skills requirements. The current reality is that most of the tenured faculty in law schools has had little or no practice experience.³⁶ Over time, perhaps that may change. We think it should, and that more practicing lawyers ought to be integrated into law school faculties, perhaps by expanding the use of adjunct teaching roles. But we also see practical skills training in the core competencies of lawyering as something that happens on a continuum, beginning in law school and continuing after the transition into law practice. Thus, mentoring and continuing education must be included in any new practice-based training regimen for new lawyers.

A key feature of our recommendations is the pre-admission clerkship or apprenticeship alternative. This option adds flexibility in how Bar applicants may meet their pre-admission training requirement, accommodates concerns on the part of law schools that we seek to force changes on them that are impractical and bound to increase costs, and most importantly, promotes a greater role by practitioners and judicial officers in pre-admission practical training. In the long run, as a new system for clerkships and apprenticeships develops, it could also serve the function of helping new lawyers find jobs by providing them exposure as trainees to potential employers.

To promote the development of apprenticeship and clerkship programs, mentoring programs, and greater participation by practicing lawyers in legal education of all forms – in law schools, and as MCLE instructors – we recommend that the Bar develop expanded rules for MCLE credit designed to incent lawyers to engage in these activities. Because effectiveness of these programs depends on continuing, active engagement and oversight by a supervisor or instructor, certification standards must be developed to ensure quality and accountability.

D. Should law practice management be included in a practical skills training regimen?

³⁵ We anticipate that these units would generally be taken in the second and third years of law school, but in the case of part-time law school programs, they could be taken in a later year. As we have emphasized, flexibility is important, and in any implementing rules we expect that the unique needs of night law schools or other part time programs would be kept in mind.

³⁶ (RT 9-25-12 p 32).

The Task Force heard testimony to the effect that discipline issues do not tend to arise with new admittees, but rather are typically seen among lawyers who have been in practice for some years. Moreover, many discipline issues are traceable directly to problems with law practice management.

To the extent that there is a discernible pattern here, it is that a new attorney who is forced to “figure things out on his or her own” can often pick up bad habits early, and those habits may remain latent as a discipline risk for some years. Misconduct warranting discipline may not be manifested until the attorney’s middle to late years in practice, when common financial pressures of adult life – such as, for example, divorce or home foreclosure – combine with the increased scale and responsibility of a mature law practice. Thus, we do not find it especially noteworthy that we are not seeing many young lawyers in the discipline system. More than likely, what that means instead is that the true magnitude of the problem with poor practical skills training among young lawyers is being masked and may not show up for a number of years. It also means that, if we do not act now to try to correct the problem, the profession -- and the public -- could be at greater risk than we may realize in the future.

Because law practice management problems do tend to be closely associated with discipline patterns, we are convinced that any new practical skills requirement should include a significant law practice management component.³⁷ Running a law practice competently requires business skill, and as a result, we believe that the nuts-and-bolts of operating a business should be part and parcel of good practical skills training for young lawyers. The fiduciary responsibilities of lawyers provide a special overlay to the kind of business training that lawyers need, but at bottom law practice management is about understanding the financial aspects – and risks – of operating an enterprise. That subject can and should be taught, and taught early.

IV. Cautionary comments on any new practical skills requirement

A. Potential adverse impact on diversity

We gave careful consideration to concerns about potential adverse impact on diversity in the profession. At the policy development stage where the most anyone can do is speculate about this important issue, diversity cannot be used as a talisman to ward off change, particularly where there are good reasons to believe that the long-term effect of what we have in mind may be to improve diversity in the profession. We believe that giving greater emphasis to practical skill in the areas of competency that are found among the best and most successful lawyers, as opposed to the heavy reliance on standardized test-taking skills and knowledge of legal doctrine that we currently use in the Bar Examination, will, in the end, spur greater diversity in the profession rather than obstruct it.

One variation on concerns about adverse impact on diversity is that law students at the most prestigious and highly ranked schools will have an advantage in meeting any new practical skills training requirement. This critique rests on a flawed assumption. While many of the top law schools in the country have been leaders in developing and offering more and more clinical offerings to their students, the opposite is not true. Some of the most innovative and advanced practice-based law school curricula are in law schools of lesser status in the hierarchy of the *US News & World Report* rankings, and students

³⁷ (RT 9-25-12 p 67).

who attend those schools might well find themselves better positioned to fulfill any new practical skills requirements than students at more highly ranked schools.

We are mindful that we must be especially careful in recommending an introduction into the licensing process- of mentoring or apprenticeship programs that may be accessible to a select few based on “who you know.” That is always a matter of legitimate concern for historically unrepresented groups. We think that the Bar certification process—which should examine equal opportunity and even-handed membership selection in mentoring and apprenticeship programs – is an important safeguard here. It is also important to bear in mind that participation in mentoring and apprenticeship programs would never be mandatory. Thus, the programmatic flexibility that we have in mind would, itself, help to guard against any potential disparate impact on disadvantaged groups.

B. Potential cost burden on law students and new lawyers

An issue raised by many witnesses who appeared before the Task Force as well as by many Task Force Members is the financial impact of any new practical skills requirement. Many recent law graduates face staggering levels of debt (not only from law school, but from undergraduate studies as well) and, as a result, mandating that these graduates bear the burden of paying additional monies to fulfill a new practice skills requirement is a matter of great concern. Of all the concerns expressed about whether to add new practical skills training requirements, we find this one to be the weightiest, given the exploding debt burden that law students have had to undertake in recent years and the challenges that so many new admittees face today in finding employment. But in the end, we have concluded that, while the root economic conditions that drive this concern are real and of great moment to the profession, the idea that new practical skills requirements will materially add to the cost burden for new lawyers can easily be overstated, since, as many of the law school deans pointed out, most law schools are already moving in the direction we wish to see.

In evaluating cost concerns, the most important thing to keep in mind is that we are recommending something that is designed to improve the employability of law school graduates. The scarcity of jobs for new lawyers in recent years was not simply a statistical phenomenon, isolated from the issue of employability, and driven purely by macro-economic factors outside of the legal profession. For many years before the recent downturn in the economy, there was widespread concern that the cost of training new lawyers was being foisted onto clients, which played a significant role in driving up legal costs. If, in the future, new lawyers come into the profession more practice-ready than they are today, more jobs will be available and new lawyers will be better equipped to compete for those jobs. Critics of improving practical skills training as too costly overlook this key point.

We also emphasize that we are not proposing the addition of a fundamentally different set of practical skills requirements in law schools – necessitating the creation of a raft of new courses, adding to the existing cost structure, and driving tuition up – but rather that there would be a shifting of priorities within law schools in a way that encourages the existing trend toward incorporating more clinically-based, experiential education. Nor do we have in mind suddenly foisting upon law students a new and wholly unexpected set of requirements. We accept the advice we heard from a number of the law school deans that we should proceed gradually. We expect that any change that takes place following our recommendations would take place over a number of years. We envision a staged implementation, beginning with a further period of study to develop specific implementation rules, and then a multi-year period in which the implementation is executed. To put these requirements into effect, we recommend that the Bar develop a set of implementing rules, with full and extensive vetting

in the rulemaking process, and that the final rules go into effect gradually, first phasing in the post-admission requirements in 2015, the pro bono/low bono requirement in 2016, and the classroom requirements in 2017.

By the time any new requirements for practical skills training fully take effect, everyone who is affected, teachers and administrators in law faculties, law students, the Bar itself -- which will need to build new administrative capacity for implementation -- and, of course, practicing lawyers, many more of whom who will need to do far more mentoring and teaching than they have done in the past, will have had plenty of time to anticipate and adjust to the new environment. Because we recommend a gradualist approach, we simply do not accept the “sky is falling” warnings about increased costs. We emphasize, above all, that we expect future improvement in practice-readiness will prepare new lawyers for the changing legal job market far better than they are today, which will help them become productive lawyers with the capacity to begin repaying educational debt at the earliest opportunity, and ultimately will lower costs to clients, who, in today’s legal market, are too often forced to bear the costs of training young lawyers, either in the form of increased fees or ineffective lawyering.

C. Potential impediment to national uniformity and multistate practice

When we examined what other state bars are doing in this area, we found that most states have already begun implementing new requirements to enhance practical skills training for new lawyers. A clear trend toward enhanced practical skills training for new lawyers is evident.³⁸ That trend points toward taking action, not shirking away from it. Our State Bar, with 230,000 licenses, is the largest organized bar in the country, by far. If we take a leading position on this issue -- as New York has already done -- we suspect that what we do may point the way towards ultimate national uniformity.

The Task Force considered various other concerns and issues, including whether the Bar has the clout to go to the ABA and advocate for standards that require law schools to provide practical skills training,³⁹ and what exemptions from any new practical skills requirement are appropriate. There was

³⁸ The Task Force considered a chart that summarized the pre- and post-admission requirements in 23 states. In comments to the Task Force, which were accompanied by a PowerPoint presentation, Chairman Streeter noted that there are 10 states that have selected a pre-admission regulatory approach. The majority of the states on the chart, however, have adopted a post-admission requirement of some nature. Most commonly, these are mentoring programs or CLE requirements. Chairman Streeter highlighted the discussions on this topic in New York and the Massachusetts. The New York model was proposed in September 2012 by the Advisory Committee on New York State Pro Bono Bar Admission Requirements. The general proposal is that each new lawyer be required to perform 50 hours of pro bono legal services pre-admission. In Massachusetts, a Task Force on the Law, the Economy and Underemployment released a report in May 2012 exploring the causes of and solutions for underemployment of law school graduates. The Task Force recommended that the Massachusetts Bar Association encourage the law schools to re-tool the third year to provide greater opportunities for practical experience and to provide additional training in legal writing. The report additionally recommended the creation of a legal residency program.

³⁹ (RT 11-7-12 pp. 60-61).

very little appetite for exemptions among members of the Task Force. While it may be that rules exempting Bar applicants who are eligible for membership after passing the Attorneys' Bar Examination might be worth considering, we leave that specific issue to further study in the implementation phase. Although we applaud the work of the ABA Task Force and would welcome the ABA's recognition of the importance of practice skills training in law schools, nothing that we recommend would require changes in law school accreditation standards, at the ABA level or in California.

We contemplate, instead, focusing on what is going to be expected of new admittees to the Bar. We certainly hope that law schools continue the path that they have been on in recent decades, increasing the clinically-oriented content of their curricula, and perhaps what we recommend here will provide incentives for them to accelerate that trend. But we would not recommend that the Bar purport to mandate that, even if it had power to do so. We wish to put in place a new training regime that will evolve organically, with multiple paths for law students – which will maximize their choices, and leave law schools free to address students' needs as the schools deem fit – while encouraging more participation by judges and lawyers in the process of new training for new lawyers.

V. Recommendations

A. Pre-Admission: Practical Skills Training Requirement

The Task Force recommends that the State Bar propose to the California Supreme Court 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 prior to admission.

There would be two routes for fulfillment of this pre-admission practical skills requirement: either (1) in law school, where 15 units following the first year of law school must be dedicated to developing practical skills and serving clients, or (2) employment in a six-month clerkship or apprenticeship program approved by the Bar.

Credit for the law school training units would be given for stand-alone courses, or for clinical work integrated into the core curriculum in such a way that it is part of and complements existing doctrinal classes; or it may take the form of earned credit units in clerkships, externships or other supervised work – for courts, governmental agencies, law firms or legal service providers. For those who elect to satisfy this requirement during law school, the 15 units would be required in the following subject areas:

- Negotiation
- Speaking and writing
- Alternative dispute resolution (mediation, arbitration)
- Problem solving and application of practical judgment
- Interviewing and counseling
- Project management
- Practical writing, such as contract drafting, motion drafting, advanced legal research and writing
- Pre-trial training, including e-discovery
- Oral advocacy skills

- Law practice management and technology
- Basics of the justice system, including how courts are organized and administered
- Professional responsibility, ethics and civility⁴⁰

Credit toward the 15 unit requirement, to the extent it falls within the parameters of one of the designated categories, may also be received for in-the-field experience such as hours devoted to legal clinic work or in judicial or other governmental externships. These units may also overlap with the units required in Section B below.

As an alternative to law school credits, another path to meeting the pre-admission training requirement would be available through employment in a Bar-approved six-month clerkship or apprenticeship offered by a court, a government agency, a legal service provider, a private law firm, or a solo practitioner. This aspect of our proposed pre-admission practical skills requirement is key. It is intended to provide flexibility for law students, so that if any student feels that available curricular offerings in law school are unsuitable to 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 practical skills requirements could be taken. Most importantly, giving credit for approved internships or apprenticeships would promote greater participation in training and mentorship by experienced practitioners, potentially assist with permanent job placement, and avoid the appearance that the Bar seeks to foist the entire burden of better practical skills training on law schools.

B. Pre- or Post-Admission: Pro Bono or Low Bono Requirement

The Task Force recommends requiring 50 hours of legal services in the pro bono or low bono areas. The 50 hours would have to be carried out in a Bar-certified Pro Bono Program or Low Bono Program, or under the supervision of a Bar certified Mentor.

In addition to addressing the justice gap and increasing core competencies, the breadth of this requirement – by including low bono as well as pro bono -- 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. The 50 hour requirement may be satisfied in the second or third year of 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 pre-admission practical skills requirement through a year's employment in a clerkship or apprenticeship program with a court, governmental agency or legal service provider, the 50 hour pro bono/low bono requirement would be deemed automatically satisfied.

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 existing MCLE regime, would result in license suspension.

C. Post-Admission: Practical Skills MCLE Or Mentoring Requirement

⁴⁰ See notes 32-33 supra and accompanying text.

The Task Force also 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 3-year, 25-hour requirement for licensees. For MCLE, 10 hours must be in a course that covers one or more of the same practical skills training subject areas described in Section V. A. above. For certified mentoring programs, the participation would have to involve in-person meetings at least once a month of two hours or more.

Conclusion

The new practical skills requirement we propose must be forward-thinking. We seek to better prepare law students and new lawyers for practice in the 21st century. We want them to be cognizant of the continuing changes in how legal services will be delivered and of the marketplace pressures that are expected to continue into the future. Twentieth century skills will not be sufficient for the new legal world.

We do not delude ourselves that it is possible to bring about a system of training in which new lawyers would somehow emerge from law school fully formed and in possession of all the wisdom and maturity that we know comes only from experience.⁴¹ What we do expect, however, is that new lawyers enter the profession oriented to the actual experience of practice and the values of ethics and professionalism, so that when they begin to absorb that experience as practicing lawyers, they all have a proper foundation for growth. If we continue to throw most new members of the profession into the experience of practice on a “sink or swim” basis, as we do now, some will find their way and prosper, and some will not – but those who stand the most to lose are clients and the public at large.

We are the only learned profession that sends our newest members out into the world of practice without a period of intensive, supervised training. We also stand alone among English common law countries in not universally requiring that new lawyers undergo some type of apprenticeship training period prior to licensing. Long ago, when American lawyers entered the legal profession by reading law in the office of a practicing lawyer, as Abraham Lincoln did, the training regimen for new lawyers was integral to law practice. That venerable tradition has long since disappeared, never to return, and we do not propose to try. Our proposal here is simply that some elements of that venerable tradition -- namely, a serious focus on practice-based, experiential learning, and early inculcation of the values of ethics and professionalism -- be revived. The future of our profession depends on us doing so.

⁴¹ Sullivan, *supra* note 31 at __ (suggesting that while better practical skills training may improve the depth of technical knowledge that young lawyers bring to their early years of law practice, it is no substitute for “the requisite judgment and wisdom that come from a more generalist-centered legal education experience”); Charles E. Rounds, Jr., “The Sorry State of American Legal Education,” 24:2 Acad. Quest. 34 (2011) __ (Law graduates should not “be expected to spring from the academic womb armed with a full complement of lawyering skills. Seasoned practitioners, of all people, should know that practice proficiency comes only after years of, well, practice.”).