

CHAIRPERSON

Rebecca White Berch
Phoenix, AZ

CHAIRPERSON-ELECT

Gregory G. Murphy
Billings, MT

VICE CHAIRPERSON

Maureen O'Rourke
Boston, MA

SECRETARY

Edward N. Tucker
Baltimore, MD

PAST CHAIRPERSON

Joan S. Howland
Minneapolis, MN

**SECTION DELEGATES TO THE
HOUSE OF DELEGATES**

Christine M. Durham
Salt Lake City, UT

Solomon Oliver Jr.
Cleveland, OH

BOARD OF GOVERNORS

LIAISON

E. Fitzgerald Parnell
Charlotte, NC

YOUNG LAWYERS DIVISION

LIAISON

Daniel R. Thies
Chicago, IL

COUNCIL MEMBERS

Jane H. Aiken
Washington, DC

Josephine Bahn
New York, NY

Diane F. Bosse
Buffalo, NY

Leo A. Brooks, Sr.
Fort Belvoir, VA

Michael J. Davis
Lawrence, KS

Roger J. Dennis
Philadelphia, PA

Antonio Garcia-Padilla
San Juan, PR

James J. Hanks Jr.
Baltimore, MD

James M. Klein
Charleston, SC

Paul G. Mahoney
Charlottesville, VA

Leo P. Martinez
San Francisco, CA

Cynthia Nance
Fayetteville, AR

Jequita H. Napoli
Norman, OK

Charles Ray Nash
Tuscaloosa, AL

Raymond C. Pierce
Raleigh, NC

Mary R. Russell
Jefferson City, MO

**Section of Legal Education
and Admissions to the Bar**
Office of the Managing Director
321 N. Clark Street
Chicago, IL 60654-7598
(312) 988-6738
legaled@americanbar.org
www.americanbar.org/legaled

MEMORANDUM

To: Elizabeth R. Parker, Executive Director, State Bar of California

From: Barry Currier, Managing Director of Accreditation and Legal Education

Re: Comment on the Phased and Scaled Recommendation Implementation of the Recommendations of the California Task Force on Admissions Regulation Reform

Date: July 6, 2016

I write in advance of the July 7th meeting of members of the California State Bar Admission and Education Committee and the Admissions Regulation Reform Task Force (TFARR) to provide brief comments on the ongoing discussion regarding the TFARR recommendation that graduates of ABA-approved law schools must certify to the Committee of Bar Examiners that they have completed a minimum of fifteen credits of practice-based, experiential courses in law school or in a Bar-approved (and presumably Bar-funded) externship, clerkship or apprenticeship program prior to being certified to sit for the bar exam.

These comments are offered on behalf of the Council of the ABA Section of Legal Education and Admissions to the Bar, not on behalf of the larger American Bar Association, because, with respect to matters of law school accreditation, the Council acts separately and independently from the ABA.

We are aware of the Phased and Scaled Recommendation Implementation (PSRI) plan, dated May 10. We hope that the relevant parties within the California Bar Association will adopt that plan as it relates to the pre-admissions competency portion of the TFARR report.¹

We continue to believe that the TFARR requirement that students complete fifteen credits of skills/experiential learning, practically speaking, during law school is

¹ We would encourage you to consider amending the plan to provide that graduates of ABA-approved law schools are exempt from separate certification for experiential learning courses because Standard 303(a)(3) imposes that requirement as a condition of their school's accreditation by the ABA.

premature and may be unnecessary as a bar-exam eligibility requirement in light of the new ABA requirement in Standard 303(a)(3).

An experiential learning requirement should not be about how many credits of experiential learning should be required, in the abstract, for a J.D. degree and to qualify to sit for a bar examination. Rather, the requirement should be tailored to require whatever experiential learning will assure that new lawyers have acquired an appropriate set of basic competencies as they begin their careers in the law.

This was the underlying concern that the TFARR recommendation addressed. As you know, new ABA Standard 303(a)(3) addresses that matter directly and requires that ABA-approved law schools require each student to complete at least six credits of experiential learning courses (clinics, externships, or simulations) as a condition of earning an ABA-approved J.D. degree. This change moved the ABA Standards from basically one course [see former Standard 302(a)(4) and former Interpretation 302-3] to the six credits required by the current Standards. It did so after considerable process and consideration of a variety of possible approaches, including a 15-credit requirement.

New Standard 303 was adopted in 2014, but implementation was deferred for two years to give schools time to determine how best to come into compliance with what the Standard requires, consistent with their missions, resources, and staffing.

We will see over the next several years, as the new requirement takes hold, whether a six-credit requirement satisfies the concerns that animated the TFARR recommendation and similar concerns in other jurisdictions. If so, then there would be no need for a fifteen-credit requirement.² If six credits prove insufficient and the concerns of the profession persist, then the Council will revisit the Standard and adjust it.

While states have control over the practice of law and the bar admissions process, there is great benefit to students/graduates, bar admissions processes, law schools, and the profession in jurisdictions committing to a shared, common set of national educational requirements. It is cost-effective and efficient. That commitment acknowledges that the marketplace in which law schools and the legal profession operate is increasingly national. The benefit of a single set of standards considerably outweighs the costs and burdens of a more fragmented and balkanized system, even accepting that the ABA Standards are not perfect in anyone's eyes.

Certainly the many benefits of embracing a common set of rules suggest that before a jurisdiction adds educational requirements on top of what the ABA Standards require, a

² Accreditation standards set necessary and sufficient minimum requirements that apply to all approved programs. Beyond those base line requirements, schools are able to develop their own missions, programs, and requirements for a degree. This model has worked well for legal education. Among other things, it provided space for skills training and clinical legal education to grow and flourish.

compelling case should be offered. In the absence of data about the impact of new ABA Standard 303, that compelling case has not been established.

There are many other issues on which we could comment that go to the substance of the original TFARR recommendation.³ But our focus here is on the difficulties, expenses, and problems – particularly for law students and recent graduates – that we see flowing from California’s imposition of education requirements to sit for the bar examination that are out of sync with ABA Standard 303.

We think that the “wait, watch, and see” approach suggested by the PSRI proposal makes sense. We encourage its adoption. Please know that the Council and the Managing Director’s Office remain available to you and your colleagues to be helpful in any way that we can to your deliberation and to exploring ways that we might discuss changes in our process that would make it more likely to believe that your voice was heard.

c: Rebecca White Berch, Council Chair

³ For example, the move to require as many as fifteen credits of experiential learning is at odds with the movement in the Standards toward outputs, rather than inputs measures. Further, the TFARR proposal implicitly sends an anti-innovation message to law schools because it would occupy approximately one quarter of a student’s elective curriculum with a particular type of course and, to a certain extent, pedagogy.