

**List of Public Comment Received
As of 9/16/14**

1. 8/18/14

Mark Skinner
Family Law Facilitator/Self Help Attorney
Siskiyou County

2. 8/18/14

Thomas A. Thiesen
Family Law Facilitator/Self-Help Attorney
Humboldt County Superior Court

3. 8/20/14

Janice Munoz, Esq.
Law Offices of Janice Munoz
Redondo Beach, CA

4. 8/25/14

Barbara Arnold, Esq.
Law Office of Barbara Arnold
Oakland, CA

5. 8/25/14

Betsy Brazy
Law Office of Betsy Brazy
Alameda, CA

6. 8/25/14

Katherine Scott-Smith, Attorney
Burnham Brown
Oakland, CA

7. 8/26/14

James M. Schiavenza, Dean
Lincoln Law School of Sacramento

8. 9/4/14

Marsha N. Cohen, Founding Executive Director
Lawyers for America

9. 9/4/14

Zach Cowan, City Attorney
City of Berkeley

10. 9/10/14

Clinical Legal Education Association (CLEA)

Donna H. Lee
City University of New York School of Law Co-President, Clinical Legal
Education Association

Jenny Roberts
American University, Washington College of Law Co-President, Clinical Legal
Education Association

11. 9/15/14

Gary F. Smith
Executive Director
Legal Services of Northern California, Inc.
Voluntary Legal Services Program

12. 9/12/14

Thomas J. Kensok
Assistant District Attorney
Contra Costa County

13. 9/12/14

Jean Boylan
Associate Dean of Clinical Programs and Experiential Learning
Loyola Law School

14. 9/14/14

Steven H. Schulman
President
Association of Pro Bono Counsel (APBCo)

15. 9/15/14

Robert R. Kuehn
Professor of Law
Washington University School of Law

16. 9/15/14

Sebastian Kaplan
Immediate Past President, Barristers Club
Chair, Ad Hoc Committee on TFARR II Recommendations
Bar Association of San Francisco

17. 9/15/14

Robert V. Hawn
38th Chair
Business Law Section
State Bar of California

18. 9/15/14

Frank H. Wu
Chancellor & Dean
William B. Lockhart Professor of Law
University of California Hastings College of the Law

19. 9/15/14

Linda L. Curtis
President
Los Angeles County Bar Association

20. 9/15/14

Stephen C. Ferruolo
Dean and Professor of Law
University of San Diego School of Law

21. 9/15/14

Legal Research and Writing Program Directors: Loyola Law School, USC Gould School of Law, Whittier School of Law, UCLA School of Law, University of the Pacific, McGeorge School of Law, UC Berkeley School of Law, UC Irvine, Bren School of Law, Southwestern School of Law

22. 9/15/14

Susan E. Keller
Associate Dean for Academic Affairs
Western State College of Law

23. 9/15/14

Susan Westerberg Prager, Dean
Southwestern Law School

Greenman, Teri

Subject: RE: Comments TFARR

From: Mark Skinner [<mailto:miskinner@siskiyou.courts.ca.gov>]
Sent: Monday, August 18, 2014 1:20 PM
To: Greenman, Teri
Subject: Comments TFARR

Teri,
I am pleased to see practical instruction being contemplated as part of a standard legal education. The public would benefit from a sizable increase in pro bono services during and immediately after law school.

I would suggest a massive expansion of the certified law student program to facilitate actual legal experience while in law school. I participated in the program 19 years ago and benefitted significantly. I also took a significant amount of practical coursework over the summers and took several internships. After graduating I worked with the Pro Bono Project in Santa Clara County for about six months. My learning curve was significantly accelerated by the experience.

This would be a good time to consider introducing negotiation theory and settlement decision theory to the curriculum. These two subject areas provide the foundation for ADR, it makes sense to provide a range of tools to a new admittee rather than a single model for resolving conflict. Having multiple options, including litigation, allows the practitioner to "fit the forum to the fuss."

It would also be wise to spend some time determining how to implement the new rule. Requiring pro bono work or practical education is meaningless if there is no way to obtain practical experience or find pro bono work. The last thing you want is a check the box attitude among the schools and the students. The experience should be perceived as a meaningful and important part of the curriculum. I had to work hard to find acceptable internships and agencies that were willing to provide me with real hands on experience. Most of them viewed me as a grunt work resource and did not have any interest in providing real experience. This should be looked at with an eye to developing the resources in the Court, agencies that serve the Court and public interest agencies to provide the experience that will support the objectives of the new rule. While in law school I interned with Protection and Advocacy, Ventura County Superior Court and the EEOC. Most of the certified law students I knew were working with a district attorney's office or a public defender's office. It was hard to find resources and most of agencies I contacted had never heard of the certified law student program.

Mark Skinner
Family Law Facilitator / Self Help Attorney
Siskiyou County

Greenman, Teri

Subject: RE: [EqualAccess] Task Force on Admissions Regulation Reform (TFARR) Phase II: Request for Unofficial Public Comments on Implementing Recommendations-Due September 15

Begin forwarded message:

From: Thomas Thiesen <ThomasT@humboldtcourt.ca.gov>
Date: August 18, 2014 at 12:32:25 PM EDT
To: "Hough, Bonnie" <Bonnie.Hough@jud.ca.gov>, <equalaccess@listserve.com>
Subject: Re: [EqualAccess] Task Force on Admissions Regulation Reform (TFARR) Phase II: Request for Unofficial Public Comments on Implementing Recommendations-Due September 15

Great idea but too burdensome.

Thomas A. Thiesen
Family Law Facilitator/Self-Help Attorney
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Eureka, CA 95501
707-269-1210

From: EqualAccess [<mailto:equalaccess-bounces+thomast=humboldtcourt.ca.gov@listserve.com>] **On Behalf Of** Hough, Bonnie
Sent: Friday, August 15, 2014 4:52 PM
To: equalaccess@listserve.com
Subject: [EqualAccess] Task Force on Admissions Regulation Reform (TFARR) Phase II: Request for Unofficial Public Comments on Implementing Recommendations-Due September 15

Greenman, Teri

To: Janice Munoz
Subject: RE: Feedback on TFARR

From: Janice Munoz [<mailto:janice@jmunozesq.com>]
Sent: Wednesday, August 20, 2014 3:05 PM
To: Greenman, Teri
Subject: Feedback on TFARR

While I am interested in improving the competency of new bar members, I honestly don't think any of the proposals are going to help and here's my arguments:

Experiential training - -

Most of the firms here in the South Bay (the beach cities that are south of Los Angeles) will NOT take interns for no pay. They are extremely concerned about liability issues. And, they cannot afford to pay the interns. So the laws need to change before this is a practical approach. LACBA informed me 2 years ago they were working on it. Have not seen anything yet.

My law school (Loyola Law) offered a course in trial prep. Too bad that none of the professors appeared to have ever done trial work! The class was downgraded by the volunteer judges for failing to do such simple things as STATE THEIR APPEARANCES!!! So how does that help?

15 hours does not even scratch the surface. It gives only a glimpse and the student will receive minimal from the effort of trying to find somewhere to fulfill this requirements, drive there, park, and receive no funds for it.

Pro Bono -

Loyola made this a requirement for students. I fulfilled mine by filling out income taxes for the public. I had NO other attorney with me during my sessions. I was constantly asked for legal advice. And it was a nasty experience as the provider scheduled so many people that I often stayed late to finish with clients (not fun in a bad neighborhood). Did it help me learn to be a better new attorney? A resounding no.

The Legal Aid Foundation of Los Angeles offers free Self Help clinics. However, having worked with them, I know that they often over-step their limits by not being properly supervised. The volunteers will offer advice, and frequently the advice is wrong. While it attempts to serve a need, it often takes several hours and re work of paperwork to make things acceptable to the court. Since the lead attorney does not appear in court, most of them are unaware of court procedures. And they don't seem to try to learn either. How is dispensing bad information without appropriate supervision going to help?

MCLE/Mentoring

This is the most practical approach as it is more supervised and provides information. MCLE is fine. But mentoring brings up the issue of unpaid interns again (see above).

SUGGESTIONS:

Classes in service of process.

Practical class on how to file papers, obtain copies of court pleadings

Requirement that students observe in the courtroom - they'll learn a heck of a lot more that way than attempting to do pro bono work without the right information.

Thank you for permitting me to offer my 2 cents.

Janice Munoz, Esq.
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Greenman, Teri

Subject:

RE: Invitation to Comment on TFARR Recommendations

From: Barbara Arnold [<mailto:ba@barbaraarnoldlegal.com>]

Sent: Monday, August 25, 2014 1:16 PM

To: Tiela Chalmers

Subject: Re: Invitation to Comment on TFARR Recommendations

Thank you for the opportunity to make informal comments. I am commenting on the proposed new pro bono requirement. I believe in providing services to fill what is referred to as the “justice gap,” and find that many of my colleagues are doing this in ways not fully recognized by the proposed new rules. In particular I represent persons before the Social Security Administration. My work on a case takes between 25 to 40 hours. Some cases have even required a longer time commitment. Fees in Social Security claims are capped at \$6,000.00. Often clients cannot or do not pay costs associated with the claim. For work performed in US District Court, the fee is capped at EAJA fees, which in the 9th Circuit is about \$189.00 /hour. These fees are 30% to 50% lower than what attorneys doing similar services in other contexts are authorized to charge. I hope the proposed new rules will be crafted to recognize that in the arena of public benefits, most attorneys are doing “low bono” or modest means representation.

Let me tell you a little bit more about Social Security work. There are large companies who advertise aggressively and take a large portion of the claims. That’s not a problem for me, as long as the claimants are getting good representation. Sometimes, they are; sometimes, the representation is poor. These companies have been known to dump a client on the eve of a hearing if they believe the claim is not strong and wish to protect their “win” percentage. Frequently, large disability service companies do not have attorneys working on claims. Non-attorney representation is permitted under Social Security rules, however, the creation of a mandatory pro bono requirement gives a further advantage to non-attorneys who are not subject to this requirement. The interplay between the state and federal systems will effectively penalize someone for being an attorney. I propose an exception to the 50 hours minimum for disability claims work, given the dynamics already in place under federal rules.

Thank you for your consideration.

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Greenman, Teri

To: Betsy Brazy
Subject: RE: Opposition to Proposed 50 hours pro bono for pre-admission/new admittees

From: Betsy Brazy [<mailto:brazylaw@gmail.com>]
Sent: Monday, August 25, 2014 11:49 AM
To: Greenman, Teri
Subject: Opposition to Proposed 50 hours pro bono for pre-admission/new admittees

The Task Force on Admissions Regulations Reform recognizes the staggering debt of a legal education. "Many recent law graduates face staggering levels of debt, and as a result, mandating that these graduates bear the burden of paying additional monies to fulfill new competency training requirements is a matter of great concern." (Phase I Final Report, Page 21).

Therefore, I am disheartened by the willingness to add to that burden by requiring graduates and new admittees to lose 50 hours of wages via mandatory pro bono. Obviously new lawyers need more training. Recommendation C, in particular, addresses this via additional MCLE hours. But new lawyers can ill-afford to work for free or "low bono", especially those of us with school-age children and a part-time practice, while paying off law school loans.

Instead, place the financial burden where it belongs. Seasoned attorneys have the resources to fund mandatory pro bono, and can do so without making the poor risk inadequate legal advice.

Betsy Brazy

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Betsy Brazy
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Greenman, Teri

To: Katherine Scott-Smith
Subject: RE: Comment to Task Force on Admissions Regulation Reform

From: Katherine Scott-Smith [<mailto:kscott-smith@burnhambrown.com>]
Sent: Monday, August 25, 2014 11:58 AM
To: Greenman, Teri
Subject: Comment to Task Force on Admissions Regulation Reform

Teri,

My comment to this is that the three year law school period should include option A: 15 Units of Practice-Based Experiential Training in Law School/Apprenticeship Option (Recommendation A). However, the law schools should not be able to charge money for this. There is no need to pay a school tens of thousands of dollars for providing a student with no service (besides a throw-away few "classes" to discuss the internship). Payable units should be for legitimate classes, not for "letting" a student take part an internship and earn credits for it. Thank you,

Katy

 *Please consider the environment before printing this e-mail*

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Greenman, Teri

To: James Schiavenza
Subject: RE: TFARR - Requesting Feedback on Draft Rules for Pre- and Post-Admission Competency Training Requirements

From: James Schiavenza [mailto:Schiavenza@lincolnlaw.edu]
Sent: Tuesday, August 26, 2014 7:06 PM
To: Greenman, Teri
Subject: TFARR - Requesting Feedback on Draft Rules for Pre- and Post-Admission Competency Training Requirements

Dear Ms. Greenman

This email is in response to your request for input from various stakeholders [regarding the Draft Rules for Pre- and Post-Admission Competency Training Requirements](#).

I have reviewed the cover letter, Memorandum to All Interested Parties, and Draft A, B and C of the TFARR Recommendations. My goal through this email is to request clarification of several points which appear to be contradictory, dramatically unfair to evening law students or [are simply in error](#).

1. The Memorandum to All Interested Parties under the heading Pre-admission Competency Training contains the following language "(b) in lieu of some or all of the fifteen units of practice-based, experiential 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."

This language appears to be in conflict with the TFARR Recommendation A Summary of Rules and proposed Rule 4.34 (C)(1) which state that law schools may approve apprenticeships or clerkships.

2. The TFARR Recommendation A Summary of Rules under the heading Proposed Rule Changes contains the following language "The proposed rule does not apply to traditional first year Legal Writing and Research and first-year Moot Court class or to upper division traditional academic seminars."

This language creates confusion for all evening programs which offer Legal Research and Writing and Moot Court in other than the first year of legal studies. [The language](#) also appears to conflict with the 6th bullet point which follows and Rule 4.34 D (6) which read "[advanced legal research and writing \(excluding first year legal research and writing and papers completed in a traditional academic seminar\), first year Moot Court Class;](#)"

To be more specific, do units earned in Moot Court qualify as Practice Based Experiential Competency Training?

3. Rule 4.34 (C) (1) and 4.34 (H) are confusing. Subsection (C)(1) states "'unit' is the academic credit a law school gives for course work completed or, in the case of Committee-approved apprenticeship or law school-approved apprenticeship or clerkship for which academic credit is not awarded, 50 hours of qualifying work as defined in Rule 4.34 (H)."
- In addition subsection H reads "An applicant may satisfy no more than six units of this requirement through a Committee-approved apprenticeship or clerkship or law school-approved apprenticeship or clerkship for which academic credit is not awarded, provided that 50 hours of qualifying work is completed for each unit earned."

Perhaps the confusion is self-imposed but how can a student earn six units if academic credit is not to be awarded? Also in (C)(1) language appears to be missing when discussing the requirement of 50 hours of qualifying work.

4. Apprenticeship is defined in 4.34 (C)(4) as “placement after completion of the first year of law school or following law school in a private, public, or non-profit law office for which an applicant may receive compensation but is not awarded academic units.”

If I am reading this language correctly a student can earn unit credit for work as an apprentice only if not compensated [for that work](#). This restriction places a tremendous financial burden on all evening law students who must work during day hours in order to have sufficient funds to pay for housing, food, and other necessities as well as law school tuition and books. With this language the Committee is telling students that they cannot earn academic credit as an apprentice if compensation is received. In essence the Committee is telling all students who are currently working as an apprentice for pay in private, public or non-profit law offices that they must quit those jobs or alternatively work for free at those firms in order to earn academic credit.

Perhaps this is an overreaction [on my part because](#) defining work as an “externship”, which apparently allows for earning units while being paid, rather than a “clerkship” which does not allow for pay solves the problem. Is my understanding of the term “externship” as allowing for compensation correct?

5. The definition of “unit” (Rule 4.34 (C)(1)) which states that credit is not awarded for clerkships appears to be in conflict with the definition of “clerkship” (Rule 4.34 (C)(3)) which states that units may be awarded for clerkships.
6. “Externship” is defined in Rule 4.34 (C)(1) and listed in Rule 4.34 (D) (19). Is the Committee requiring that externships have a classroom component in order to meet the Practice-Based Experiential Competency Training requirement?
7. Clarification regarding the distinction [between](#) and application of the terms externship, clerkship and apprenticeship may be of assistance in rectifying my [concerns and possibly my](#) confusion as expressed above.
8. TFARR Recommendation B Pre-admission or post-admission: 50 hours of Pro Bono or Reduced-Fee Legal Services

I certainly understand the need for pro-bono and reduced fee legal services. That said, law school is an expensive endeavor resulting in many graduates incurring staggering debt in order to pay for tuition, books, bar review courses, and living expenses. And it is without dispute that the cost of law school plays a huge role in prospective law students choosing other forms of graduate studies or choosing no graduate studies whatsoever. Furthermore, many law students particularly evening law students, have families and work full time in order to pay for family obligations and law school costs. Requiring fifty hours of pro bono or reduced fee legal services will require many current law students to quit their paying jobs in order to fulfill the pro bono or reduced fee requirement. Furthermore, those graduates who do not fulfill the requirement while attending law school and who enter the legal work force will face a large financial burden if required to perform fifty hours of pro bono or reduced fee work. Simply put, pro bono and reduced fee legal services is not an option for many law school graduates particularly [evening students and all students of](#) limited financial means.

In addition, many law students and law graduates work for public agencies (Attorney General’s Office, district attorney offices, public defender offices, county counsel, city attorney, etc.) that do not allow employees to [perform](#) work outside those public law offices. Conflicts between public agency and pro bono or reduced fee legal services may arise and [public employee](#) union agreements may preclude such work.

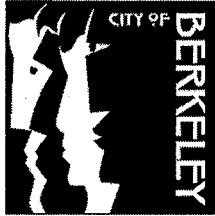
The Committee recognizes the difficulty if not impossibility of doing pro bono or reduced fee work [acknowledging such in](#) Business and Professions Code section 6073 [which reads](#) –“In some circumstances it may not be feasible for a lawyer to directly provide pro bono services. In those circumstances, a lawyer may instead fulfill his or her pro bono ethical requirement, in part, by providing financial support to organizations providing free legal services to persons of limited means.” Curiously, this form of providing pro bono or reduced fee services is not available to fulfill the requirements of Business and Professions Code section 6060.4.

Also, it is unclear to me how law students and recent graduates who possess limited experience further the public protection mission by requiring work in fields of law (criminal, family, landlord tenant, [elder law](#), etc.) which are generally provided to those in need of pro bono or reduced fee services [and with which students and recent graduates may not be familiar](#). In effect, those in need of the most help will be receiving assistance from those who are least qualified to provide that help.

I appreciate and applaud the work of the State Bar of California Task Force on Admissions Regulation Reform. The materials [provided to](#) stakeholders are complex, [very](#) detailed and in many areas difficult to interpret. I apologize for my shortcomings in perhaps not fully understanding what is intended. I am, however, of the opinion as [I have](#) expressed [above](#) that the Draft Rules should be reworked to acknowledge the difficulties law students and recent graduates, particularly those who participate in evening programs, will have in meeting these requirements.

Sincerely,

James M. Schiavenza, Dean
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Office of the City Attorney

September 4, 2014

VIA E-MAIL

teri.greenman@calbar.ca.gov

Ms. Teri Greenman
Staff, Task Force on Admissions Regulation Reform

Re: City of Berkeley Comments on the State Bar of California's Task Force on Admissions Regulation Reform

Dear Ms. Greenman:

I am submitting these comments on behalf of the City of Berkeley City Attorney's office, to amplify the comments of Professor Cohen on behalf of Lawyers for America concerning automatic termination of certified law student status if an applicant fails to pass the bar examination on his or her first try. (We agree that failure on a second try raises different issues.)

Our office employs two Lawyers for America (LfA) fellows. Our interest in doing so has two elements, which we strongly suspect are shared by other similarly-situated employers of certified law students: to obtain useful legal services that we could not otherwise afford.

The first element – *useful* legal services – depends on the competence of the certified law student. Accordingly, our agreement with LfA not only calls for us to provide adequate supervision, but allows us to terminate LfA fellows if they are not performing adequately, before or after taking and passing (or failing) the bar examination. In other words, our self-interest (and that of other similarly situated employers) will ensure that a LfA fellow or other certified law student who is not performing competently will not be retained. We do not need the State Bar to ensure that we look after this self-interest by terminating the status of a LfA fellow solely because he or she has not passed the bar examination on the first attempt, perhaps only by a point or two.

Thus, we support Professor Cohen's suggestion that law school graduates be allowed to continue as certified law students for one full year after graduation, with continuation of certification status after December 15 of the year of graduation dependent upon having taken the bar examination and received a score within a certain range of the passing score. We also support her additional proposal that continued certification be dependent instead or also upon continuing in a fellowship or other work placement in which the graduate has already participated for a certain period of time. Although we note that a certified law student who is simply not performing

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adequately will not likely be retained in that capacity, *regardless* of his or her performance on the bar examination.

The second element – obtaining legal services that we could not otherwise afford – also bears mention in light of proposed Rule 2.151, defining “pro bono”, and in particular its application to government agencies. Certified law students may earn up to 50 hours of credit only for working for “pro bono” organizations. The definition should make clear beyond cavil that this includes governmental organizations.

Subdivision (A)(3) defines as “pro bono” “...governmental... organizations [acting] in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.” The second part of this definition – “where the payment of standard legal fees would significantly deplete *the organization’s* economic resources or would be otherwise inappropriate” – may be problematic.

For instance, the City of Berkeley has a budget well in excess of \$200 million. While this office is budgeted for 8 attorneys and not 10, it cannot be said that the payment of standard legal fees¹ for two additional attorneys would “significantly deplete *the organization’s* economic resources”.

Nonetheless, I interpret the final part of this phrase, referring to whether payment of standard legal fees would be “otherwise inappropriate” to cover our situation, and that of most government agencies. Payment of such fees (or salaries) would be grossly inappropriate in our case because such payment would be: (1) well in excess of the budget formally adopted for our office by the City Council; and (2) in violation of the City’s personnel rules and authorizations. Thus, while the “otherwise inappropriate” language is helpful, you may wish to explain it with a non-exclusive list of examples, such as the one I have given here. This would clarify the ability of certified law students to earn credit for working for governmental agencies – which after all by definition are pro bono.

Thank you for your attention to this comment.

Very truly yours,



Zach Cowan
City Attorney

¹ Since most government attorneys, and many NGO attorneys, are salaried, I assume the reference to “standard legal fees” includes salaries as well. You may wish to clarify this.



UC Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102

September 4, 2014

Ms. Teri Greenman
Staff, Task Force on Admissions Regulation Reform
teri.greenman@calbar.ca.gov

Dear Ms. Greenman:

I am submitting these comments, which primarily focus upon the need for modest changes in the rules governing Practical Training of Law Students, on behalf of Lawyers for America (www.uchastings.edu/lawyersforamerica).

Lawyers for America (LfA) is a new nonprofit whose dual mission is increasing access to justice while improving the practical training of new lawyers. We implement our mission by enabling two-year fellowships at legal nonprofits and government law offices, through cooperation between law schools and those work sites. The fellows have a training year that is their last year of law school, followed by a service year that is their first year after graduation. The stipend for that service year is financed by the work sites, which gain added legal manpower at a discounted, and thus affordable, cost. The fellows gain early assurance of a valuable experience that will help them to get a permanent position, with some immediate pay and health insurance while doing so.

The mission of LfA is closely aligned with the goals of the Task Force on Admissions Regulation Reform. Our program, through participating law schools, provides extensive practice-based experiential course work designed to develop law practice competencies. Close cooperation between the law schools and host nonprofits and government offices, plus the training incentive host offices have because of their financial investment in fellows, should assure excellent training. Depending upon the definition given to “pro bono” service,¹ LfA fellows will have completed rather more than 50 hours of service before graduation: their pre-bar training will comprise most of eight months, and they will return to serve with their host offices for a year after the bar. LfA expects, as do participating law schools, that the supervisors at host offices will provide “high-quality training, professional-level assignments, and direct supervision and feedback to the applicants, which will foster the applicants’ development of practice-based professional competencies and benefit the profession as a whole.”

Our mutual goal of insuring the competence of new lawyers is implemented by providing significant opportunity for those new lawyers to provide legal services under careful and direct supervision. The requirements for that supervision are set forth in detail in Rule 9.42 of the California Rules of Court; I am unfamiliar with any pattern of problems that has arisen to date under these rules. However, the current rules for Certified Law Student status provide for immediate termination of that status upon the release of the results of the bar examination.

¹The first LfA training sites include a District Attorney’s office and a City Attorney’s office. The Fellows are engaging in public service at these sites, and will be eligible for public interest loan payment programs. During their service they might well have conflicts of interest that prevent their simultaneous performance of other types of *pro bono* service.

As everyone on the Task Force is aware, many excellent attorneys failed to pass the California Bar the first time they took the examination. In addition, sometimes a bar passer's admission is delayed by the moral character review, even when the application has been timely filed. For many employers participating in the Lawyers for America program, their fellows will have worked as certified law students throughout their 3L year, and by the time bar results are released will have worked there for an additional three or more months under a contract calling for a full year of post-bar service. The fellows will have been given considerable responsibility by that time, in compliance with the supervision rules applicable to Certified Law Students, and their capabilities will be fully evident to their supervisors.

Under the proposed rules requiring significant pre- or post-admission *pro bono* work by new lawyers, many nonprofit and government legal offices will step up to provide supervision of this training and service. They and their clients will, of course, reap the benefit of this work. However, training, done right, is time-consuming for supervisors, and 50 hours (little more than a week of full-time work) is very short to learn enough to repay those supervisors for their investment of effort. Surely offices will hope, and some will expect, that the newly-trained will continue to provide their services, at least while they do not have other full-time employment. Those who need to retake the bar exam or await moral character certification may have months before they will have other full-time legal employment and could both learn more and provide additional service to the public. But at least in some offices, the lack of certification may be a significant barrier to being welcomed for continuing service.

The solution could be modification of the rules governing the Practical Training of Law Students. I would urge that law school graduates be allowed to continue in this status for one full year after law school graduation (for uniformity, perhaps until June 1 of the year after graduation). Because it is appropriate to be concerned with the competence of graduates, the rules could limit this eligibility in one or more ways. For example, continuation of certification status after December 15 of the year of graduation could be dependent upon having taken the bar examination and received a score within a certain range of the passing score (most appropriately determined by statistics demonstrating likely success upon a second examination). It could be dependent instead or also upon continuing in a fellowship or other work placement in which the graduate has already participated for a certain period of time, whether as a student or post-bar or both together. That could require that supervisors at the site specifically certify the continuation, stating their confidence in the work skills of the graduate.

Any modification of these rules would certainly help to incentivize employers to participate in the practical training of law students after their graduation. It would also enable continuing involvement of recent graduates in *pro bono* work while awaiting admission, thus further cementing their commitment to these activities (as well as capturing their talents and effort). A modest change in the Rules governing Practical Training of Law Students could be a great boost for all of us hoping to fill the justice gap while improving the practice-readiness skills of new lawyers.

Thank you for your attention to this request.

Very truly yours,

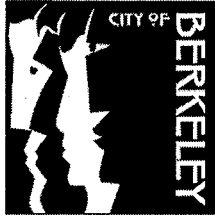


Marsha N. Cohen

Founding Executive Director

Hon. Raymond L. Sullivan Professor of Law,

UC Hastings College of the Law



Office of the City Attorney

September 4, 2014

VIA E-MAIL

teri.greenman@calbar.ca.gov

Ms. Teri Greenman
Staff, Task Force on Admissions Regulation Reform

Re: City of Berkeley Comments on the State Bar of California's Task Force on Admissions Regulation Reform

Dear Ms. Greenman:

I am submitting these comments on behalf of the City of Berkeley City Attorney's office, to amplify the comments of Professor Cohen on behalf of Lawyers for America concerning automatic termination of certified law student status if an applicant fails to pass the bar examination on his or her first try. (We agree that failure on a second try raises different issues.)

Our office employs two Lawyers for America (LfA) fellows. Our interest in doing so has two elements, which we strongly suspect are shared by other similarly-situated employers of certified law students: to obtain useful legal services that we could not otherwise afford.

The first element – *useful* legal services – depends on the competence of the certified law student. Accordingly, our agreement with LfA not only calls for us to provide adequate supervision, but allows us to terminate LfA fellows if they are not performing adequately, before or after taking and passing (or failing) the bar examination. In other words, our self-interest (and that of other similarly situated employers) will ensure that a LfA fellow or other certified law student who is not performing competently will not be retained. We do not need the State Bar to ensure that we look after this self-interest by terminating the status of a LfA fellow solely because he or she has not passed the bar examination on the first attempt, perhaps only by a point or two.

Thus, we support Professor Cohen's suggestion that law school graduates be allowed to continue as certified law students for one full year after graduation, with continuation of certification status after December 15 of the year of graduation dependent upon having taken the bar examination and received a score within a certain range of the passing score. We also support her additional proposal that continued certification be dependent instead or also upon continuing in a fellowship or other work placement in which the graduate has already participated for a certain period of time. Although we note that a certified law student who is simply not performing

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adequately will not likely be retained in that capacity, *regardless* of his or her performance on the bar examination.

The second element – obtaining legal services that we could not otherwise afford – also bears mention in light of proposed Rule 2.151, defining “pro bono”, and in particular its application to government agencies. Certified law students may earn up to 50 hours of credit only for working for “pro bono” organizations. The definition should make clear beyond cavil that this includes governmental organizations.

Subdivision (A)(3) defines as “pro bono” “...governmental... organizations [acting] in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.” The second part of this definition – “where the payment of standard legal fees would significantly deplete *the organization’s* economic resources or would be otherwise inappropriate” – may be problematic.

For instance, the City of Berkeley has a budget well in excess of \$200 million. While this office is budgeted for 8 attorneys and not 10, it cannot be said that the payment of standard legal fees¹ for two additional attorneys would “significantly deplete *the organization’s* economic resources”.

Nonetheless, I interpret the final part of this phrase, referring to whether payment of standard legal fees would be “otherwise inappropriate” to cover our situation, and that of most government agencies. Payment of such fees (or salaries) would be grossly inappropriate in our case because such payment would be: (1) well in excess of the budget formally adopted for our office by the City Council; and (2) in violation of the City’s personnel rules and authorizations. Thus, while the “otherwise inappropriate” language is helpful, you may wish to explain it with a non-exclusive list of examples, such as the one I have given here. This would clarify the ability of certified law students to earn credit for working for governmental agencies – which after all by definition are pro bono.

Thank you for your attention to this comment.

Very truly yours,



Zach Cowan
City Attorney

¹ Since most government attorneys, and many NGO attorneys, are salaried, I assume the reference to “standard legal fees” includes salaries as well. You may wish to clarify this.

C L E A

Clinical Legal Education Association

COMMENT OF CLINICAL LEGAL EDUCATION ASSOCIATION ON THE PHASE II IMPLEMENTING RECOMMENDATIONS OF THE CALIFORNIA TASK FORCE ON ADMISSIONS REGULATION

SEPTEMBER 10, 2014

The Clinical Legal Education Association (CLEA), the nation's largest association of law professors with more than 1000 dues-paying members, offers this comment in connection with the August 11, 2014, draft of the Phase II Implementing Recommendations of the Task Force on Admission Regulation Reform (TFARR). We are grateful for your invitation to review and comment on the important work of TFARR in advance of its meeting scheduled for September 16, 2014.

We have eight recommendations for your consideration. Three of these are proposals for substantive changes. We ask that you: (1) require that all 15 units of practice-based training be completed in law school courses; (2) should you not require all 15 units be in law school courses, require that the 6 eligible apprenticeship units be approved by a law school; and (3) require that all applicants have a prior law clinic or externship experience. Our remaining five comments involve ambiguities or discrepancies that remain in the current draft.

1. All 15 Units of Practice-Based, Experiential Training Should Be in Law School Courses

Draft Rule 4.34(H)-(J) proposes that up to six of the fifteen required units of practice-based experiential training can be satisfied through a "Committee-approved apprenticeship or clerkship or law school-approved apprenticeship or clerkship for which academic credit is not awarded." We believe that TFARR should require that all fifteen units be satisfied through appropriate credit-bearing law school courses. While collaboration with the Bar is undoubtedly important, it is law school faculty members, devoted full-time to educating lawyers, who are best positioned to deliver the envisioned practice-based competency training. Most law schools are expanding their experiential course offerings, and the latest ABA Standards for Approval of Law Schools include extensive guidance on the required content of experiential courses, simulation courses, law clinics, and field placements. The educational content required by the Standards in those courses significantly exceeds the expectations summarized in proposed Rule 4.35(A) for an apprenticeship or clerkship. If the new rule required all fifteen units to be satisfied through qualifying law school courses, the State Bar's oversight would be streamlined considerably by simply incorporating by reference the national standards adopted by the ABA for experiential education.

At the foundation of the Task Force's work is the recognition that law students are presently graduating with insufficient practice-based training. This is so despite the fact that virtually all of them work in law-related positions during one or both of their summers, and many work part-time during law school. The proposal to count up to six units of work

experience toward the fifteen required units of practice-based training does not advance the goal of the reform proposals and, as a practical matter, simply reduces the number of required units from fifteen to nine. This effective reduction in required units jeopardizes the likelihood that the new pre-admission skills requirement will lead to the improved competencies of students at graduation.

2. Only Law Schools Should Approve Apprenticeship or Clerkship Units

Should TFARR retain the provision allowing six units of the required training to be satisfied through an apprenticeship or clerkship, only law schools (and not the Committee) should be authorized to approve them. Because of the ABA Accreditation Standard regulating law school “field placements” (Standard 305), all law schools are familiar with the process of evaluating practice-based work environments and the experiential opportunities for students within them. In addition, all law schools devote significant resources and attention to developing and maintaining relationships with employers, counseling students about summer and post-graduate positions, and helping students understand the opportunities available in a variety of practice settings. Consequently, law schools are in the better position to consistently evaluate and approve proposed apprenticeships or clerkships regarding the requirements outlined in proposed Rules 4.34(I) and 4.35(A).

3. A Law Clinic or Externship Experience Should Be Required

The new regulations should in all events require that at least a portion of the proposed fifteen units be devoted to professional training in practice-based settings through a law school clinic or externship. The overarching purpose of the Task Force’s work is to ensure that new lawyers are prepared to represent clients and practice law. Under the current recommendations, bar applicants are merely “strongly encouraged to meet a portion of these units by taking a law clinic or an externship.” This is not sufficient to satisfy the most important purpose of the new training requirements. As valuable as simulation courses can be, they do not substitute for the experience gained by handling actual cases and clients under the tutelage of supervisors devoted to the educational endeavor. Every student should learn to be a lawyer through exposure to clients in the context of the real world, just as in other professions. The overwhelming majority of law schools already possess the capacity to deliver instruction to all their students through clinics and externships, and all would have three years to revise their curricula to ensure that all students have these opportunities. The clients of licensed California lawyers deserve to be confident that their attorneys have at least once encountered a client while in training.

4. Remove “Knowledge of Law” From the List of Approved Practice-Based Skills in an Apprenticeship or Clerkship

Under proposed Rule 4.34(I) pertaining to an apprenticeship or clerkship, the opportunity to develop “knowledge of law” is included on the list of pre-approved activities. Knowledge of law is, of course, essential. But it is already the exclusive focus of the overwhelming majority of all law school curricula, and should not be included on this list of activities that justify approving an apprenticeship or clerkship as part of practice-based experiential competency training. All law-related activities to some extent involve increasing one’s knowledge of law, but some

activities (such as pure legal research) do not involve the kind of practice-based experience that meets the goals of the proposed rules.

5. Remove “First-Year Moot Court Class” From the List of Approved Topics for Competency Training in Law School Courses

Under proposed Rule 4.34(D)(6) pertaining to course topics for competency training in law school courses, “first-year Moot Court class” is included on the list of pre-approved topics. This is inconsistent with the narrative in the summary for Recommendation A, which states: “The proposed rule [regarding experiential law school courses] does not apply to traditional first year Legal Writing and Research and first-year Moot Court class...” The retention of the provision in Rule 4.34(D) (6), or the placement of the closed parenthesis, thus appears to be inadvertent.

6. Specify the Meaning of “Practiced in Another United States Jurisdiction”

The Task Force should define the meaning of “practicing law” under Rule 4.34(B), which waives the experiential competency training requirement for applicants who have “practiced in another United States jurisdiction...” The evident and reasonable goal of this waiver is to credit the actual practice experience of attorneys licensed outside of California. However, given the absence of a statutory definition of what it means to “practice law,” Rule 4.34(b) (2) should be modified to include the requirement that to qualify for the waiver an applicant must have been doing or performing legal services in a court or other tribunal, providing legal advice or counsel, or preparing legal instruments, in conformance with California case law construing “law practice.”¹

7. Adopt the ABA Definition of “Credit Hour” as the Definition of “Unit”

The proposed rules about practice-based experiential competency training are based on requirements surrounding a number of units of training, with “unit” defined in Rule 4.34(C)(1) as “the academic credit a law school gives for course work completed...” However, because law schools may be on a quarter, trimester, or semester calendar, “unit” has no universal meaning. The ABA just amended its Standards for Approval of Law Schools to address these discrepancies and to comply with new U.S. Department of Education requirements. The Task Force should eliminate the law school “unit” as currently defined in the proposal and adopt the definition of “credit” in new ABA Standard 310(b).² This minor modification will ensure

¹ See *People ex rel. Lawyers’ Inst. of San Diego v. Merchants’ Protective Corp.*, 209 P. 363, 365 (Cal. 1922).

² The text of the ABA Standard is:

ABA Standard 310. Determination of Credit Hours For Coursework

(b) A “credit hour” is an amount of work that reasonably approximates:

(1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time; or

(2) at least an equivalent amount of work as required in subparagraph (1) of this definition for other academic activities as established by the institution, including simulation, field placement, clinical, co-curricular, and other academic work leading to the award of credit hours.

consistency across schools and make clear that the Bar will approach units in a way familiar to students and law schools across the country.

8. Remove the Definition of “Externship” in Rule 4.34(C)(2)

The definition section of the implementing rules defines “externship” as “a placement during law school in a private, public or non-profit law office for which the applicant is awarded units.” This definition appears to be an unintended carryover from the Phase I Task Force language which provided that, in lieu of experiential course work, a candidate could opt to participate in “a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school.” Because reference to “externships” has now been eliminated elsewhere in the rule, in favor of references to “apprenticeships or clerkships,” the definition of “externships” in Rule 4.34(C)(2) appears unintentionally to permit units to be awarded for experiences that do not meet the additional requirements of 4.34(I) governing only apprenticeships or clerkships. Deleting the definition would make clear that references to “externships” in the rule, like references to “clinics” elsewhere in the rule, are intended to refer only to law school courses. The ABA Standards have long included specific requirements for credit-bearing externships, and law schools are familiar with them, so a definition in these rules is unnecessary.

CLEA appreciates the opportunity to submit these comments. We hope they are helpful. We look forward to continuing to assist TFARR and the California State Bar as you deliberate on these important reforms to bar admission.

Via electronic mail: teri.greenman@calbar.ca.gov

September 15, 2014

Teri Greenman
Executive Offices
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Comments on State Bar Task Force on Admission Regulations
Reform Draft Rules

Dear Ms. Greenman:

On behalf of Legal Services of Northern California, Inc. (LSNC) and the Voluntary Legal Services Program (VLSP) of Sacramento, we submit the following comments to the draft rules published by the State Bar Task Force on Admissions Regulation Reform (TFARR).

Introduction

These comments respond to the invitation published on August 14, 2014 to certain of the draft rules recommended by the TFARR and specifically are focused upon proposed Business & Professions Code §§ 6060.4 and 6073 (the "50 hour pro bono" requirement). With respect to organizational background, LSNC was founded in 1956, and has nearly 60 years of experience providing free civil legal services to low-income persons and communities across northern California, with a service area presently encompassing 23 counties and eight field offices. VLSP, LSNC's sister organization, was founded as a collaborative between LSNC and the Sacramento County Bar Association in 1981. LSNC is a qualified legal services provider under the State Bar Trust Fund's Interest on Lawyer Trust Account (IOLTA) program, and VLSP is specially qualified as an IOLTA pro bono provider. LSNC has decades of experience working with private attorneys, throughout our service area, who volunteer their time assisting indigent clients on a pro bono basis. VLSP's mission as a pro bono organization is to provide the structure, training, client screening, and placement for private attorneys to efficiently fulfill their professional pro bono obligations.

Pro Bono Delivery Models

LSNC and VLSP both have extensive expertise in the structure and delivery of pro bono legal services. In April of 2014, two long-time volunteer attorneys, one with LSNC and one with VLSP, received the first "Pro Bono Awards" conferred by the Sacramento County

Bar Association. Both of these attorneys serve as models for the most effective—from our perspective—delivery of pro bono assistance for poor clients: experienced attorneys, who have volunteered in our offices for many years, with specific expertise in legal areas which are useful in our practice (in their cases, mortgage foreclosure and bankruptcy) but which many of our staff do not possess. They are familiar with our core management systems and advocacy operations, and require very little supervision from our staff.

Understandably, most attorneys seeking to fulfill their pro bono obligations are unable or unwilling to devote the amount of time and continuity of service required in the model above. Most lawyers are able to provide only limited periods of service, with only brief interactions with clients, and require a considerable amount of substantive training and supervision before they are competent to engage in pro bono work. Obviously this is especially true for law graduate and new attorneys who have neither substantive nor practical knowledge or skills. The primary challenge for pro bono organizations like VLSP is to (1) create delivery structures to accommodate the scheduling needs of the attorneys, through “brief service” models such as clinics and hotlines; (2) provide the substantive and skills training necessary to prepare the attorneys for the work; and (3) provide the experienced supervision for the pro bono attorneys to ensure they are delivering effective services.

All of these tasks require significant time and resources, both of which are in short supply at most legal services and public interest law organizations. While we certainly appreciate the good intentions and professional diligence of all attorneys who contact our programs with offers to volunteer their services, often we simply do not have the resources or structure necessary to efficiently manage and supervise their work.

The TFARR “Pro Bono” Requirement

The draft rule, set forth in proposed B&PC § 6060.4, imposes a mandatory requirement of “fifty hours of supervised pro bono or supervised reduced-fee legal services.” The draft summary of the proposed rule identifies three purposes behind it: (1) to “increase practical competency skills in furtherance of the State Bar’s public protection mission”; (2) to “help inculcate pro bono as a core value of professionalism”; and (3) to “help address California’s justice gap—the shortfall between those who need legal assistance but cannot afford to pay for it, and the availability of lawyers to meet that need.” The pro bono requirement must be overseen by supervising attorneys who “will provide or ensure active and timely written or oral feedback.” The draft rules allow both the pro bono and some of the experiential competency requirements to be “concurrently satisfied” by “completions of an externship or apprenticeship with a qualified legal services provider” under IOLTA program, which (again) is designed to “lead to direct legal services to low income clients, and also “to send an important message to law students and new lawyers about the importance of pro bono.” Unlike the application of the pro bono ethic to every other lawyer in California, the 50 hour pro bono requirement for new admittees is mandatory, and necessary to maintain active Bar membership status. In addition, as the proposed amendment to B&PC § 6073 makes clear, the 50 hour requirement for new admittees may not be satisfied, as it can for all other

California lawyers, “by providing financial support to organizations providing free legal services to persons of limited means.”

Comments

LSNC and VLSP believe that the primary purposes behind the new pro bono requirement rest upon flawed premises. First, as the extensive debates within the legal academic community for decades amply demonstrate, the (oxymoronic) concept of “mandatory pro bono” arguably violates the primary philosophical distinction of the ethic itself, that the service is, in fact, voluntary. No state mandates pro bono services from its lawyers. Relatedly, the premise that compelled “pro bono” service will somehow induce lawyers to voluntarily provide such assistance beyond their first year is also highly questionable, and the subject of much debate; many studies suggest that forcing lawyers to provide free services “for the public good” will have just the opposite effect.

The second questionable premise, from our perspective as legal services providers for indigent clients, is that a flood of new, completely inexperienced and untrained legal graduates and lawyers will substantially contribute to the provision of high quality legal services to poor persons. As outlined above, unless a pro bono delivery model is very carefully designed, structured, and supervised, the actual services delivered by the pro bono participants—especially completely inexperienced and untrained participants—will not be of much value to low-income clients.

TFARR acknowledges that in response to its first draft of the proposals, it received many public comments expressing “concern about the potential impact of the 50 hour requirement on legal services providers, creating more bureaucracy, the need for flexibility to complete the 50 hours, and adequate supervision.” In response, the current draft eliminates the need to “create a separate list of Bar-certified providers.” But as a practical matter, it is the IOLTA community which still will be inundated and overwhelmed with requests from legal graduates and new admittees to satisfy their new requirements through volunteer work, internships, apprenticeships, etc. Assuming, conservatively, 5000 new admittees per year (not including unsuccessful Bar exam candidates), they will be required to perform, in the aggregate, 250,000 hours of “pro bono” service. Even if every one of the approximately 90 IOLTA programs in California were willing and able to participate in this process, each one would have to support and supervise nearly 2800 hours per year.

Our community has insufficient resources and capacity to adequately (and usefully) train, place, and supervise even a tiny fraction of these hours. As a result, most IOLTA organizations will, we strongly suspect, turn away most of the requests for pro bono placement received from new admittees. If a substantial percentage of these new lawyers cannot find suitable placements with legal services organizations, one of the Bar’s two stated goals for the proposed rule—additional resources to provide legal services to indigent clients—will not be fulfilled.

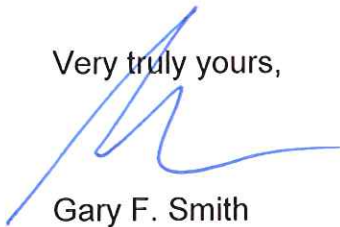
Furthermore, if those new lawyers are frustrated in their efforts to find placements, or if they do manage to obtain placements but, as a result of inadequate resources, capacity, and

supervision, ultimately have frustrating and unsatisfying “pro bono” experiences, the second goal for the proposed rule—the inculcation of the pro bono ethic in new lawyers—seems unlikely to be achieved as well.¹

Conclusion

Although the draft “pro bono” rules are certainly well –intended, we have grave concerns that their successful implementation is doomed to failure unless much greater analysis and attention is paid to increasing the structure, support, resources, and capacity of organizations such as ours to meaningfully participate in this process. We urge TFARR to convene a sub-group consisting entirely of legal services of legal services organizations and pro bono providers to specifically address these issues prior to the program’s implementation. Thank you.

Very truly yours,



Gary F. Smith
Executive Director
Legal Services of Northern California, Inc.
Voluntary Legal Services Program
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GS/ag

¹ Finally, we see no reason to eliminate the ability of new lawyers to fulfill their commitment through appropriate financial contributions to organizations that provide direct legal services to indigent clients, just as all other attorneys in California currently are able to do. Substantial financial support to such organizations not only enhances the quality and quantity of services of services to clients, but builds capacity to support greater pro bono contributions from the private bar.



OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY

Mark A. Peterson
DISTRICT ATTORNEY

September 12, 2014

Ms. Teri Greenman
Staff, Task Force on Admissions Regulation Reform
teri.greenman@calbar.ca.gov

Dear Ms. Greenman:

I would like to offer support for Professor Marsha Cohen's suggestion that law school graduates be allowed to continue as certified law students for one full year after graduation, with continuation of certification status after December 15 of the year of graduation. We also support her proposal that continued certification be dependent instead or also upon continuing in a fellowship or other work placement in which the graduate has already participated for a certain period of time.

Our office employs four Lawyers for America (LfA) fellows. In addition, we typically employ up to six post-bar clerks. In the past four years we have had two clerks not pass the bar exam on their first attempt. Both were successful on their second attempt. One of the two was forced to leave the exam because of a medical emergency (she strongly believes that staying for all three days made all the difference in passing), while the other experienced an aberration in his academic career.

From our standpoint, there was no discernable difference in the quality of work produced by the clerks that passed the bar on the first attempt. In addition, they were always supervised by a qualified attorney during the when they appeared in court as certified law clerks before they received their examination results. Finally, there was no difference in the quality of their work in our office from November, before they received their results, and December, after they received the results.

We rely on certified law students: to obtain useful legal services that we could not otherwise afford. Moreover, we rely on the competence of the certified law student under the supervision of a qualified attorney. Like other LfA placements, our agreement with LfA allows us to terminate LfA fellows if they are not performing adequately, before or after taking and passing (or failing) the bar examination. Thus, a LfA fellow or other certified law student who is not performing adequately will not likely be retained in that capacity, *regardless* of his or her performance on the bar examination. In sum, their contribution to the mission of our office is contingent on the quality of their supervised performance.

I would also like to comment on proposed Rule 2.151, defining “pro bono,” and in particular its application to government agencies.

Subdivision (A)(3) defines as “pro bono” “...governmental... organizations [acting] in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.”

While we are a governmental organization and the new attorneys would be working in furtherance of our organizational purpose, the payment of standard legal fees would not significantly deplete the county’s economic resources. Nonetheless, payment of standard fees would put us significantly over the amount allocated to us by the Contra Costa County Board of Supervisors and redirect resources from some other services provided by the county. Thus, assuming it was the intent to include district attorney and public defender offices as beneficiaries of the rule, it would be helpful to specifically include them by name.

Thank you for your attention to this comment.

Respectfully submitted,

Thomas J. Kensok
Assistant District Attorney

Submitted by:
Jean Boylan
Associate Dean of Clinical Programs and Experiential Learning
Loyola Law School
9/12/14

Thank you for the opportunity to submit comments to the Task Force on the practice-based experiential training (15 unit) requirement.

First, the first year legal writing class does not count towards the 15 units. We strongly urge you to relook at this recommendation. In the last 5 years, many programs, including Loyola Law School's legal writing and research curriculum, has expanded. The students receive more assignments, more faculty feedback, and more research instruction. In addition, e-mail format, resumes and professionalism have been added. These developments are beneficial to our students, employers and the legal community. If legal research and writing is not included in the Bar requirement, it will incentivize schools to reduce legal writing and research in the first year curriculum. This would not benefit the students or legal community. We urge the Task Force to relook at this issue.

Second, the proposed rule also does not include Moot Courts in the practice-based experiential learning requirement.

The terms "Moot Court" are not defined in the proposed rule, nor does the rule purport to provide the rationale for excluding Moot Court in general. Nonetheless, the introduction to the proposed rule does describe the qualities of the courses that would satisfy the 15 unit training requirement as: "For a course to meet the requirement, it must develop the concepts underlying the practice competencies being taught, provide opportunities for performance by each student other than traditional classroom discussion, provide for regular individualized student feedback from a faculty member, and provide opportunities to student self-evaluation."

At Loyola Law School, the official Moot Court program known as the Scott Moot Court Competition Course (2 units) and the Scott Moot Court Honors Board Course (6 units), satisfy all of the elements described in the new rule to qualify as "practice-based, experiential course" under the new rule. The Scott Moot Court Courses require the students to have training and instruction on the appellate oral and written advocacy principles; requires each student to prepare a 30-page appellate brief on complex matters of constitutional and federal law; requires each student to prepare and deliver an oral argument on both sides of the case; and each student is provided with individualized feedback on their written work and oral advocacy by both faculty members, experienced appellate practitioners, members of the judiciary and their peers. The students are also provided with opportunity to self-reflect on their work.

In addition, the Loyola moot court program is similar to other courses identified in the new rule that meet the professional competency training requirement which include the topics such as "Oral presentation and advocacy," and "advanced legal research and writing."

Accordingly, law schools should be allowed to evaluate each individual moot court to determine if it meets the state bar requirements. There should not be a blanket exclusion of all moot courts.



<http://www.apbco.org>

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** Firm names provided for identification purposes only.*

September 14, 2014

VIA ELECTRONIC DELIVERY

Teri Greenman
Staff, Task Force on Admissions Regulation Reform
Teri.greenman@calbar.ca.gov

Dear Ms. Greenman:

I am writing on behalf of the Association of Pro Bono Counsel (APBCo) to comment upon the State Bar of California's Task Force on Admissions Regulation Reform Draft Rules. In particular, as discussed below, APBCo is concerned that there may be an unintended consequence as a result of a possible overlap between the definition of services intended for "modest means" and pro bono clients.

APBCo is a membership organization of more than 135 partners, counsel, and practice group managers who run pro bono practices on primarily a full-time basis for 95 of the country's largest law firms. Founded in 2006, APBCo is dedicated to improving access to justice by advancing the model of the full-time law firm pro bono partner or counsel, enhancing the professional development of pro bono counsel, and serving as a unified voice for the national law firm pro bono community. In addition to professional development activities, APBCo devotes substantial efforts to expanding pro bono services and closing the gap in access to justice. Many of the APBCo members' firms either are headquartered or have offices in California and APBCo members will therefore be directly involved in the implementation of the Admissions Regulation Reform Rules.

The Draft Rules have clearly resulted from a well thought out process, and embody a policy to ensure that new members of the California Bar have the skills necessary to adequately represent clients. Additionally, the rules will help bring much needed legal services to low-income populations living and working in California. We applaud the efforts of the Task Force and, on behalf of our many members, are grateful for the considerable time and thought that has yielded a regulatory process that will accomplish the State's intended purposes.

The one concern we would like to raise with the Task Force involves the concept of service to clients of "modest means." While it undoubtedly is true that such clients currently are significantly underserved by the legal profession and that there are burgeoning efforts to address that gap in service -- by, for example, expanding

incubator and bar referral programs -- we believe there may be a potential unintended consequence of the draft rule. By giving "credit" toward admission to the Bar for service to modest means clients, the rule clearly supports an expansion of those important services. We concur with the Task Force that such a result is a worthy and positive development. However, the rule does not make precise the definitional line between "pro bono" and "modest means" clients. Therefore, under the Task Force definition of "modest means" services, there seems to be a risk that low-income clients who are eligible for free legal services could be charged fees under the "modest means" rubric. We are concerned that because the definition of "modest means" is broad enough to encompass many low-income, legal aid-eligible clients, these overlapping eligibility parameters could unintentionally result in legal aid-eligible clients being charged fees for services they might have otherwise secured for free from legal aid or pro bono attorneys, assuming that free representation is available. Conversely, if the line that demarcates low-income clients and modest means clients is not clear and defining, modest means clients might not receive services because legal aid eligible clients are usurping their opportunities (albeit struggling to do so).

Understanding the careful work the Task Force has done and the late stage of implementation, we recommend only that this concern be noted, and that the issue be revisited in the next 24-36 months. At that time it may be possible to determine if any adjustment to these definitions is required to address any problems that have arisen due to the overlapping eligibility definitions. While we do not support the creation of any hurdles to any modest means clients receiving needed legal counsel, at the same time we do not want inadvertently to create a situation that might divert legal aid-eligible clients away from the expert, no cost, representation they may find at legal aid organizations. The hardship that could ensue if legal aid-eligible clients are directed to fee-for-service providers may result in increasing the justice gap that we at APBCo, and so many others, are working hard to diminish. We recognize that clearly is not the intent of the draft rule and consequently suggest that the matter be re-examined at an appropriate time.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "S.H. Schulman", is shown on a light blue background.

Steven H. Schulman
President, APBCo

cc: APBCo Board
Renee Chantler, DLA
Scot Fishman, Manatt



Washington University in St. Louis

SCHOOL OF LAW

September 15, 2014

Teri Greenman
Task Force on Admissions Regulation Reform

c/o email: teri.greenman@calbar.ca.gov

Re: Comment on TFARR Draft Phase II Implementing Regulations

Dear Ms. Greenman:

I am writing in response to the August 14 notice from Jon Streeter inviting comments on the Task Force on Admission Regulatory Reform's Draft Phase II Implementing Regulations. I applaud TFARR for addressing the longstanding deficiency in the practice-based training of law students and provide the comments below to address concerns about feasibility and potential costs to students.

For over 30 years, special committees of the ABA and reports on legal education have called on law schools to provide more professional skills training for law students, including courses that involve work with real clients. The 1979 ABA *Report and Recommendation of the Task Force on Lawyer Competency: The Role of Law Schools*, 1983 ABA *Task Force on Professional Competence*, 1992 ABA *Report of the Task Force on Law Schools and the Profession* (the MacCrate Report), and 2014 *Report and Recommendations of the ABA Task Force on the Future of Legal Education* all pointed out the value to students from practice-oriented instruction in courses such as law clinics, externships, and simulations and the need for greater attention to such courses in law school. The *Task Force on the Future of Legal Education* concluded that legal education needed to shift from doctrinal instruction toward more focused preparation for delivering legal services to clients.

Beyond the ABA, the 2007 Carnegie Foundation report on legal education (*Educating Lawyers: Preparation for the Profession of Law*) stressed the need for law students to engage in an "apprenticeship of practice" while in law school, contrasting legal education's minimal training with that provided in other professions such as medicine. That same year, the *Best Practices for Legal Education* report argued that it was critical for students to have supervised practice experiences while in law school: "In the United States, it is only in the in-house clinics and some externships where students' decisions and actions can have real consequences and where students' values and practical wisdom can be tested and shaped before they begin law practice."

Recent law school graduates often point out the inadequacy of the current level of professional skills training in law school. The ABA *Task Force on the Future of Legal Education* reported that much of what it "heard from recent graduates reflects a conviction that they received insufficient development of core competencies that make one an effective lawyer, particularly those relating to representation and service to clients." Echoing this concern, the ABA's Young Lawyers Division passed a unanimous resolution in August 2013 calling on the ABA to require at least one academic grading period (i.e., one full semester) of practical legal skills classes as a graduation requirement, noting that "a J.D. degree alone does not make a lawyer."

Surveys of recent law graduates echo this need. The ABA's *After the JD* asked lawyers two to

three years into their new careers to rate the importance of certain experiences and courses during law school in helping them successfully transition to practice. Clinical courses were rated the third most helpful experience, trailing only legal employment; legal writing and internships followed law clinics. Behind those practice-based experiences were the traditional doctrinal courses that dominate most of a law student's legal education. In a 2013 Kaplan Bar Review Survey, 97% of 2013 law graduates favored a law school model that incorporates clinical experience in the third year and 87% agreed that the legal education system needs "to undergo significant changes to better prepare future attorneys for the changing employment landscape and legal profession." A National Association of Legal Career Professionals (NALP) survey asked lawyers to rate the usefulness of law school experiential learning opportunities in preparing for the practice of law. Lawyers in nonprofit and government legal positions rated law clinics extremely high, with clinics rated 3.8 using a scale of 1 ("not useful at all") to 4 ("very useful") and externships/field placements 3.6, followed by skills courses (3.3) and pro bono work (3.2).

However, the ABA's Accreditation Standards do not reflect these calls for significant reform. At present, Standard 302(a)(4) requires "substantial instruction" in professional skills, which the ABA has interpreted to be satisfied by a single credit in a skills course. Recently adopted Standard 303(a)(3) would increase this to 6 credits hours (i.e., two courses) for the entering class of 2016, but still not require a law clinic or field placement experience. Instead, Standard 303(b)(1) continues the largely unenforceable requirement that a school shall provide "substantial opportunities" to students for faculty supervised law clinics or field placements but "need not offer these experiences to every student."

In response to these repeated calls for more practice-based educational training are claims that requiring more professional skills coursework is infeasible or would be too expensive for students. To test this claim, I analyzed tuition, curricular, and enrollment data from all 202 ABA-accredited law schools. I shared some of these results with TFARR in February but have now analyzed these claims with new data, which continues to show that requiring more practice-based coursework, and even a clinical experience, is not related to the tuition students are charged. That is, schools can provide 15-credits of practice-based coursework, including a clinical experience, without raising tuition, and in many cases without even adding additional courses or faculty.

My most recent research results, using data submitted by schools to the ABA in fall 2013, and focusing also on just the 21 ABA-accredited law schools in California, is outlined briefly below and fully discussed in Robert R. Kuehn, *Pricing Clinical Legal Education*, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2318042 and available later this year in the Denver University Law Review.

My research found:

Legal education lags far behind the pre-licensing education requirements of other professions, which require one quarter to over one half of a student's education in clinical courses (see attached chart). Unlike law, those other professions do not leave it up to the school or student to decide what minimum amount of practice-based education is needed before entering the profession.

Even at 15 practice-based, experiential credits (1/6th of a student's total J.D. coursework), legal education would still require the fewest number of practice-based educational requirements of comparable professions. And unlike other professions (excepting veterinary), legal education requires no post-education apprenticeship or practice requirement before licensing.

A number of law schools (e.g., City University of New York, University of the District of Columbia, Washington & Lee) already require their students to take more than 15 credits of practice-based, experiential coursework, including a law clinic or externship, without any noticeable adverse effects on what students pay in tuition (see pp. 31-33 of article).

A school's public/private status, *U.S. News* ranking, and cost of living in its geographic area have a statistically significant effect on the tuition charged and explain about 74% of the total variation in tuition among ABA-accredited schools. (pp. 34-35).¹

There is no statistically significant relationship between the availability to students of: 1) simulation courses and tuition; 2) law clinic courses and tuition; or 3) externship courses and tuition (see pp. 37, 41-44). This is true not only across all ABA-accredited law schools but also for the 21 accredited law schools in California.²

There is no statistically significant relationship between the availability of a school's total number of positions available in its practice-based experiential education courses for students (simulation, law clinic and externships) and the tuition they pay (pp. 35-36). This is true for both ABA-accredited and California law schools.

84% of law schools already have the law clinic and externship course capacity (i.e., capacity in clinical courses) to provide each graduating J.D. student with a clinical experience (p. 39). Likewise, 19 of the 21 California schools have sufficient capacity to provide each of its graduating J.D. students with a law clinic or externship experience without having to add any additional course or even slots within courses.

Comparing the tuition at the 170 U.S. law schools with sufficient law clinic and field placement positions for each student with the tuition at schools that do not presently offer enough positions, there is no statistically significant difference in the tuition charged to create these course slots for all students (pp. 39-40).

Thirty-six schools require or guarantee a clinical experience (i.e., a law clinic or externship course) for all graduating J.D. students; these schools do not charge higher tuition than schools that do not have a requirement or guarantee (pp. 37-38).

Upon adoption of a clinical education requirement or guarantee, schools do not raise their tuition at a rate higher than schools that do not require or provide those courses; the rate of increase at three-quarters of those schools was actually less than the national average of other schools over that same time period (p. 40).

Schools with a greater percentage of students participating in a law clinic or in an externship do not charge higher tuition than schools with lower participation rates, again either among all U.S. law schools or only California schools (pp. 43-44).

Having a highly regarded clinical program is not related to tuition as comparing schools ranked best in clinical training by *U.S. News* with schools not ranked shows no significant difference in tuition charged (p. 45).

¹ These three variables were controlled in the subsequent data analysis.


² See attached chart comparing the availability of practice-based, experiential courses at California's law schools with the size of their fall 2013 first-year J.D. class. The results of the regressions examining the relationship between the indicators of experiential course availability to the tuition charged students (none of which show any statistically significant relationship) are available upon request.

I also recently examined the discounted or net tuition private schools receive (after providing students with scholarships) rather than the gross tuition that schools advertise on their websites and report to the ABA.³ Of the ten relationships between simulation, law clinic, and externship course availability and discounted tuition examined, four showed statistically significant relationships with the net tuition a school receives and six did not. All four that were significant showed an *inverse* relationship with net tuition—as the availability of practice-based, experiential courses for students increased, average net tuition at private law schools decreased in amounts ranging from \$420 to \$1,915 (pp. 46-47).

These data demonstrate that a school's curriculum can be structured to provide students with significantly more practice-based, experiential coursework and to give every J.D. student a clinical experience without having to charge students more in tuition. Notwithstanding the potentially higher instructional costs of some forms of clinical education, students that are provided more experiential courses, or even required or assured of a chance to enroll in a clinical course, are not charged more in tuition for those enhanced educational opportunities. Stated alternatively, students that receive fewer experiential or clinical education opportunities from their schools do not benefit financially from this lost educational opportunity by paying less in tuition. Contrary to what is sometimes claimed, this empirical research, and the examples at a number of schools, show that requiring 15 credits of practice-based, experiential coursework and even requiring clinical training in law school need not cost students more in tuition.

Please let me know if I can provide any further information that might be of assistance to the Task Force.

Sincerely,

A handwritten signature in black ink, reading "Robert R. Kuehn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert R. Kuehn
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attachments: Professional School Practice-Based Coursework Requirements
California Law School Experiential Course Availability

³ Discounted tuition for public schools could not be determined because of the lack of reliable information on the percentages of students paying resident vs. non-resident tuition.

Practice-Based and Clinical Education Requirements for Professional Schools

Law	Medical	Veterinary	Pharmacy	Dentistry	Social Work	Architecture	Nursing
6 credits in experiential courses; no clinical requirement ⁴	2 of 4 years in clinical practica or clerkships ⁵	minimum 1 of 4 years in clinical settings ⁶	300 hours in first 3 years & 1,440 hours (36 weeks) in last year in clinical settings ⁷	57% of education in actual patient care ⁸	900 hours (18 of 60 required credits) in field education courses ⁹	50 of 160 credits in studio courses (nat'l licensing board's calculation of minimum needed for licensure) ¹⁰	varies by state, e.g., California: 18 of 58 credits in clinical practice; Texas: 3 to 1 ratio of clinical to classroom hours ¹¹
1/14	1/2	1/4+	1/4+	1/2+	1/3	1/3	1/3+

⁴ ABA ACCREDITATION STANDARDS, *supra* note 1, at Stds. 303(a)(3) & (b)(1). This does not include the required first-year writing experience, which may be as few as two credits, or upper-class writing experience, which is not required to be and generally is not a practice-based course.

⁵ MOLLY COOKE, DAVID M. IRBY & BRIDGET C. O'BRIEN, EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY 21 (2010).

⁶ AM. VETERINARY MED. ASS'N, ACCREDITATION POLICIES AND PROCEDURES OF THE AVMA COUNCIL ON EDUCATION, Sec. 7.9, Std. 9 (2012).

⁷ ACCREDITATION COUNCIL FOR PHARMACY EDUC., ACCREDITATION STANDARDS AND GUIDELINES FOR THE PROFESSIONAL PROGRAM IN PHARMACY LEADING TO THE DOCTOR OF PHARMACY DEGREE, Guidelines 14.4 & 14.6 (2011).

⁸ AM. DENTISTRY ASS'N, ACCREDITATION STANDARDS FOR DENTAL EDUCATION PROGRAMS Stds. 2-8, 2-23 (2010); MASS. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW, THE ECONOMY, AND UNDEREMPLOYMENT - BEGINNING THE CONVERSATION 4 (2012).

⁹ COUNCIL ON SOCIAL WORK EDUC., EDUCATION POLICY AND ACCREDITATION STANDARDS, Policy 2.3., Std. 2.1.3 (2012).

¹⁰ NAT'L COUNCIL OF ARCHITECTURAL REGISTRATION Bds., NCARB EDUCATION STANDARD 24 (2012) ("The NCARB Education Standard is the approximation of the requirements of a professional degree from a program accredited by the National Architectural Accrediting Board (NAAB).").

¹¹ CAL. CODE REGS. tit. 16, § 1426(c) (2013); 22 TEX. ADMIN. CODE § 215.9(c) (2013).

school (fall 2013 Std 509 reporting form data)	num 1Ls	#Clinic Spots Availa ble	#Field Placement Spots Filled	#Clin+ FP Spots	#Simu lation Spots Availa ble	#Clinic + FP + Sim	ratio Clin Spots to1L	ratFP Avail to1L	ratClin +FP to1L	ratClin Spots to FP Avail	ratSim Spots to1L	ratClin+ FP+ sim to1L
California Western	224	76	182	258	1,501	1,759	0.339	0.8125	1.152	0.418	6.701	7.85268
Chapman University	156	174	169	343	700	1,043	1.115	1.0833	2.199	1.03	4.487	6.6859
Golden Gate University	150	114	187	301	832	1,133	0.76	1.2467	2.007	0.61	5.547	7.55333
Loyola Marymount University-Los Angeles	358	250	453	703	1,806	2,509	0.698	1.2654	1.964	0.552	5.045	7.00838
Pepperdine University	201	93	295	388	1,872	2,260	0.463	1.4677	1.93	0.315	9.313	11.2438
Santa Clara University	246	367	267	634	539	1,173	1.492	1.0854	2.577	1.375	2.191	4.76829
Southwestern	367	130	388	518	1,599	2,117	0.354	1.0572	1.411	0.335	4.357	5.76839
Stanford University	179	281	30	311	503	814	1.57	0.1676	1.737	9.367	2.81	4.54749
Thomas Jefferson	255	91	418	509	603	1,112	0.357	1.6392	1.996	0.218	2.365	4.36078
University of California-Berkeley	280	228	156	384	1,450	1,834	0.814	0.5571	1.371	1.462	5.179	6.55
University of California-Davis	142	126	133	259	430	689	0.887	0.9366	1.824	0.947	3.028	4.85211
University of California-Hastings	334	240	209	449	1,162	1,611	0.719	0.6257	1.344	1.148	3.479	4.82335
University of California-Irvine	126	205	73	278	167	445	1.627	0.5794	2.206	2.808	1.325	3.53175
University of California-Los Angeles	293	113	116	229	310	539	0.386	0.3959	0.782	0.974	1.058	1.83959
University of La Verne	49	24	36	60	195	255	0.49	0.7347	1.224	0.667	3.98	5.20408
University of San Diego	241	268	219	487	1,113	1,600	1.112	0.9087	2.021	1.224	4.618	6.639
University of San Francisco	171	100	135	235	971	1,206	0.585	0.7895	1.374	0.741	5.678	7.05263
University of Southern California	175	103	152	255	428	683	0.589	0.8686	1.457	0.678	2.446	3.90286
University of the Pacific (McGeorge)	159	219	277	496	969	1,465	1.377	1.7421	3.119	0.791	6.094	9.21384
Western State	113	30	66	96	625	721	0.265	0.5841	0.85	0.455	5.531	6.38053
Whittier	221	102	220	322	870	1,192	0.462	0.9955	1.457	0.464	3.937	5.39367



THE BAR ASSOCIATION OF SAN FRANCISCO

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September 15, 2014

Task Force on Admissions Regulation Reform (TFARR)
c/o Teri Greenman
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: TFARR Phase II Implementing Recommendations

Dear Members of the Task Force on Admissions Regulation Reform:

The Barristers Club of the Bar Association of San Francisco (BASF) appreciates the opportunity to comment on the draft implementing recommendations proposed by the TFARR II Working Groups. Our organization, which comprises and serves attorneys in their first ten years of practice, participated in Phase I of TFARR's work as well. In that earlier phase, we submitted the results from a survey of our membership regarding TFARR's initial proposed practical skills requirements, along with comments regarding the problems we believed the proposals could raise for our members.

Upon receiving TFARR's implementing recommendations, our organization formed an *ad hoc* committee to review them. In this letter, our *ad hoc* committee—with the support of the Barristers Club Board of Directors and BASF's Executive Committee—offers the Barristers Club's concerns about these new practical skills requirements. We also offer specific comments, suggestions, and questions that we hope the Working Groups will consider as they finalize their recommendations.

Principal Concerns

First among our concerns is that these new admissions regulations create additional burdens, and in certain circumstances significant ones, on law students and recent graduates. We share TFARR's goal of ensuring that new members of the State Bar receive the training and possess the practical skills necessary to serve the public and keep its trust. However, we fear that the proposed

implementing regulations are principally tailored to the specific experience of certain portions of the law student population, often to the detriment of less well-represented groups.

For instance, we expect that the proposed requirements will be easily met by students with resources—that is, full-time students at well-established law schools, who are able to work full-time during summers, especially at large law firms with significant administrative apparatuses and *pro bono* programs. By contrast, other categories of students may face greater difficulties, such as part-time students who must hold full-time employment; students who lack the means to seek summer employment at a “Committee-approved apprenticeship or clerkship”; students employed by a solo practitioner or small firm that lack the administrative resources to meet the requirements of the proposed Rule 4.35(A); transactional lawyers who may have little use for the litigation-focused practical-skills courses typically offered at law schools; or recent graduates who earn admission to practice law in other jurisdictions but then move to California and would have to clear additional and significant hurdles to practice there.

Next, we are also concerned that these additional requirements, rather than encouraging law firms to provide training and instruction to young lawyers, may instead lead employers—especially smaller and mid-size firms—to hire only attorneys who have already completed these requirements. Especially in an economic climate where many recent law school graduates are struggling to find work, we believe these implementing recommendations should be reviewed with an eye toward minimizing the burden on employers, and by extension, making sure that new attorneys are not penalized for lacking the very skills and experience that these requirements are intended to develop.

With these overarching concerns in mind, we offer the following comments on the specific implementing recommendations of the TFARR II Working Groups.

Pre-Admission Competency Training

- 1. Modifications Provision.** TFARR II’s proposed competency training requirement contains no “modifications” provision. By contrast, the proposed 50-hour *pro bono* or modest means service requirement contains a proposed Rule 2.154, which would allow individuals to apply for modification of the requirement “due to a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause.” We believe there are a number of circumstances under which individuals might appropriately seek



modification of this requirement for good cause, including but not limited to the categories of individuals identified below. Thus, we recommend that TFARR incorporate a similar “modifications” provision to the competency training recommendation as well:

- *Out-of-State Graduates and Practitioners.* One hallmark of young attorneys is that they change jobs often, and sometimes unexpectedly. Students may obtain a law degree expecting to work in another jurisdiction, only to move to California on account of a spouse, family needs, or an unanticipated employment opportunity. Under these circumstances, the draft implementing recommendations seemingly would require any individual who had not met the 15-unit competency training requirement either to complete additional coursework or to complete a year of full-time work (or two years of half-time work) in the other jurisdiction. *See* Rule 4.34(B)(1). The *ad hoc* committee perceived little risk that students would seek admission in other States in order to escape the proposed practical-skills requirement, especially given that California does not permit reciprocal admission. In addition, we see little reason to treat attorneys from other States different from foreign attorneys who obtain an LLM. *Compare* Rule 4.34(B)(1), *with* Rule 4.34(B)(2).
- *Low-Income or Part-Time Students.* Students who attend law school part-time and/or cannot seek specific law-related employment during the summer often face significant constraints, including with respect to the courses they are able to work into their restricted schedules and the types of employment experiences they are able to obtain during the summer. Such students therefore would not have the same opportunities to complete 6 units in apprenticeship-clerkship-externship programs, and also may not have the same flexibility to obtain all the practical-skills coursework they might like. As a result, the *ad hoc* committee was concerned about the potentially unfair impact of the proposed regulations on these students, including the likely disproportionate impact on minority students. We suggest that such students should be permitted to apply to the State Bar and receive an appropriate modification of this 15-unit requirement upon a showing of hardship or other good cause.



2. Apprenticeship Option. Members of the *ad hoc* committee had different opinions about whether and how the apprenticeship-clerkship-externship option might be revised:

- Some committee members expressed concern that the structure of the proposed requirement (15 total units, 6 of which may be satisfied through approved apprenticeships, externships, or clerkships) would mean that the requirement effectively will become only a 9-unit academic requirement, and that both students and law schools will uniformly seek to satisfy the maximum number of credits possible outside the academic setting. In light of this expectation, and the fact that the students who would not be able to meet the requirement through externships or clerkships are also likely to be disadvantaged students (low-income students; students working full-time during school; students in rural areas where externships and clerkships may be unavailable), these committee members suggested that the competency training requirement might include only an academic component, and not a externship or clerkship option at all.
- Other committee members expressed a preference for the flexibility provided by the option of completing 6 units in a work environment. However, these committee members expressed a different concern that the timeframe for completing these 6 units of work-based competency training should be extended to include the first year following admission to the Bar. This would permit law students to satisfy the requirement by obtaining fellowships, judicial clerkships, and other similar positions after graduating from law school, but without impeding their ability to find legal employment denying them admission to the Bar until the requirements are met. The committee members in favor of this revision suggested that the TFARR II committee amend proposed Rule 4.34(A) to include the following italicized text: “A general applicant qualifying to take the California Bar Examination through legal education must have successfully completed nine units of practice-based experiential competency training *and must complete a total of fifteen units of practice-based experiential competency training within their first year of admission.*”

3. Instruction by Practitioners. There was consensus among members of the *ad hoc* committee that practical-skills instruction is likely to be most useful to law



students when provided by instructors with significant real-world experience in the practice of law. The committee would encourage law schools to hire additional faculty, including greater numbers of adjunct faculty, to teach the courses that will meet the new requirements. Some committee members believe a minimum number of years in legal practice should be required of instructors who teach qualifying practical-skills courses.

4. **Types of Courses.** The *ad hoc* committee believed that certain types of courses often offered by law schools (moot court, legal writing and research, negotiation workshops, clinical courses) may already satisfy or could readily be adapted to satisfy the proposed requirements.
5. **Supervision.** Some committee members believed that two years of supervision is inadequate to provide the type of meaningful practical-skills training contemplated by the TFARR project. Although it was recognized that increasing the number of years of experience required of supervisors might lead to a reduction in the number of opportunities available for students to fulfil this requirement, a majority of the *ad hoc* committee nevertheless recommended that a minimum of five years should be required for individuals to supervise apprenticeship, clerkship, or externship work.
6. **Rule 4.34(F) Fees?** The *ad hoc* committee was confused by and requested clarification of the nature of the “fee” that would be “set forth in the Schedule of Charges and Deadlines” if an applicant for admission elected to satisfy the competency-training requirement “through qualifying study not certified by a law school.”

50-Hour Pro Bono or Modest Means Service Requirement

1. **Exclusion of Government Agencies from “Dual Credit.”** A large majority of *ad hoc* committee members disagreed with the proposed exclusion of government agencies from the definition of employment receiving “dual credit” under the draft recommendation. These members asserted that public service constitutes an equally important and worthy aspect of lawyers’ work as *pro bono* service, as well as some of the best practical training that law students and young lawyers receive. For these reasons, the recommendation of the *ad hoc* committee would be to *include* work for the organizations defined in Rule 2.151(A)(3) as receiving “dual credit.”



2. **Contingency-Fee Work.** The modest-means model appears to be predicated on the model of billable hours. Does contingency-fee work qualify for credit under the draft recommendations? If so, we suggest that this be made explicit and an explanation given for how this might be accomplished. If not, the committee is concerned about the imbalance that this may create between qualifying and non-qualifying legal work, and specifically the fact that work on many cases involving modest-means clients (such as civil rights, employment discrimination, and personal injury matters) would not be eligible for credit at all unless they are handled *pro bono*.
3. **Modifications Provision.** Some *ad hoc* committee members asserted that the 50-hour requirement would pose a greater financial hardship for new attorneys working as solo practitioners or in smaller firms, which may not have the *pro bono* infrastructure to help newer attorneys to meet this requirement. (In particular, such firms seem less likely to offer the kinds of work opportunities that are eligible for “dual credit” under the proposed recommendations.) The *ad hoc* committee considered the language of the “modifications” provision in proposed Rule 2.154 broad enough to allow new attorneys in such situations the flexibility to extend the time to complete the *pro bono* and modest-means requirements; however, some guidance regarding what constitutes “hardship” or “good cause” under this provision may be necessary and would certainly be useful. In this regard, it was suggested that the State Bar might rely on other financial benchmarks (such as the standards used in student loan forgiveness or modification programs) in order to establish a consistent scheme for evaluating claims of hardship.
4. **Breadth of *Pro Bono* Opportunities.** Too often *pro bono* opportunities are limited to the context of litigation or are available principally through a limited number of legal services providers. To meet the needs of underserved client populations, and to develop a broader range of practical skills among law students and new attorneys, the *ad hoc* committee agreed that the State Bar should encourage law schools and other nonprofit organizations to develop a broader array of workshops and opportunities to satisfy these new requirements, especially including transactional work. One committee member suggested requiring a certain number of *pro bono* hours to be completed through law school clinics and programs so as to maximize the diversity of *pro bono* opportunities that might satisfy this requirement.



5. **Environmental Nonprofits.** The *ad hoc* committee perceived ambiguity in the definition of *pro bono* work regarding whether work done for environmental nonprofit organizations would qualify under the draft implementing recommendations. The unanimous view of the committee was that such work *should* qualify as *pro bono* and that the recommendations should be revised to make this explicit.
6. **Supervision.** Some committee members believed that two years of supervision is inadequate to provide the type of meaningful practical-skills training contemplated by the TFARR project. Although it was recognized that increasing the number of years of experience required of supervisors might lead to a reduction in the number of opportunities available for students to fulfil this requirement, a majority of the *ad hoc* committee nevertheless recommended that a minimum of five years should be required for individuals to supervise qualifying *pro bono* work.
7. **Tracking Data.** The *ad hoc* committee suggests that, as it implements the new admissions standards, the State Bar make efforts to tally the amount of *pro bono* or modest-means work that is done by new attorneys on account of this new requirement. This should include (but need not be limited to) requiring applicants to identify, in connection with their compliance reporting under proposed Rule 2.156, the number of *pro bono* hours they would not otherwise have worked but for the new *pro bono* or modest-means requirement.

Enhanced Post-Admission Practical Skills Training

1. **Cost.** The *ad hoc* committee felt strongly that any additional costs flowing from the enhanced post-admission training requirements should not be borne by new attorneys, who as a population are generally the least able to afford the cost of such training. The committee appreciates that the proposal “encourages MCLE providers to offer the first-year MCLE requirements at no cost or a nominal cost,” and further, that several MCLE providers have agreed to do so while this requirement is being implemented. To the extent that MCLE providers do not follow this practice, however, the committee suggests that fee waivers be provided for first-year attorneys who certify that paying for such training would pose a financial hardship. In the event that waivers are not permitted, however, the *ad hoc* committee believed that either the requirement should be lifted



altogether or that State Bar-certified MCLE providers be *required*, as opposed to merely encouraged, to offer these courses for free.

2. **“Post-Examination” Training?** Some committee members suggested that all training completed after an applicant has completed the Bar examination but is awaiting results should count toward this requirement, as opposed to requiring all CLE work to be completed post-admission.

We wish to stress that, to the extent any new admissions requirements are approved by the Board of Trustees and the California Supreme Court, applicants for admission should be given appropriate grace periods and significant outreach efforts should be made—not just in California but across the country—to apprise law schools and law students of these new requirements. We recognize and appreciate that this concern has been addressed in many of the phase-in provisions of the draft implementing recommendations. The Barristers Club looks forward to working with the State Bar as these proposals are implemented to ensure that applicants and new attorneys are able to meet their obligations under the new rules with as little undue burden, financial and otherwise, as possible.

Very truly yours,

Sebastian Kaplan
Immediate Past President, Barristers Club
Chair, *Ad Hoc* Committee on TFARR II
Recommendations



BUSINESS LAW SECTION

THE STATE BAR OF CALIFORNIA

September 15, 2014

Teri Greenman
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Task Force on Admissions Regulation Reform

Dear Ms. Greenman:

Thank you for this opportunity to comment during the unofficial public comments period concerning the Final Phase II Implementing Recommendations for a Competency Skills Training Requirement. Our comment pertains solely to the need for a Bar-wide mentoring program for newly admitted attorneys, an issue we understand was considered by the Task Force. I have attached a letter, dated September 8, 2014, and accompanying memorandum, previously provided to a number of State Bar of California personnel and officials, describing an innovative joint venture between the California Young Lawyers Association and the Business Law Section concerning a mentoring program for newly admitted business attorneys. This letter is provided in the event that the attached letter has not otherwise been delivered to the Task Force.

As the materials indicate, our experience is that the Sections do not, at this time, have sufficient resources to conduct a mentoring program notwithstanding the extraordinary need for such a program to protect consumers of legal services. The Business Law Section stands ready to assist in any Bar-wide effort regarding a mentoring program to assist new California lawyers.

Thank you for the opportunity to provide these materials.

Sincerely,

Robert V. Hawn

Robert V. Hawn
38th Chair
Business Law Section
State Bar of California

cc: Pamela Wilson, Senior Director, Office of Education
Laila Bartlett, Coordinator California Young Lawyers Association
John Buelter, Coordinator Business Law Section
Business Law Section Executive Committee



BUSINESS LAW SECTION

The State Bar of California

September 8, 2014

Pam Wilson
Senior Director
Office of Education
The State Bar of California
180 Howard Street
San Francisco, California 94105

Re: Business Law Section Mentor Program

Dear Ms. Wilson:

As you know, the Business Law Section (the "BLS") and the California Young Lawyers Association ("CYLA") recently completed a mentorship program pairing senior lawyers from the BLS with new admittees from CYLA. Enclosed you will find a memorandum documenting our experience and the recent sunset of this program. The memorandum serves to memorialize the program and provide recommendations. We are writing you, and submitting this documentation for three reasons.

First, we believe it is important that you are aware of the innovative approach the BLS and CYLA have taken to develop programs that not only assist their respective members, but furthers the consumer protection mission of the State Bar. This particular program grew out of a simple question asked by a BLS Executive Committee member to a CYLA officer. The question, "How can we help you?", was quickly answered by "We need mentors." From that simple conversation grew a program which, over its short two-year life, served almost a hundred new lawyers, while enlisting the help of over 15 mentors, many of whom desired to continue their efforts.

Second, the enclosed forms, now stored on the Section's workroom in the State Bar's Hummingbird Collaboration website, provide a template for implementing a mentorship program in the future. Creation of these materials is the result of substantial efforts by members of the BLS and CYLA, and they should be preserved for further efforts in creating mentorship opportunities.

Third, as the enclosed memo indicates, the influx of new lawyers, coupled with the crushing debt experienced by many of them, creates a perfect storm under which the consuming public will purchase services from lawyers who may be desperate to sell their services but may be ill-equipped to provide the representation the public deserves. We understand that the State Bar's Task Force on Admission Regulation Reform has recently examined the mentorship issue and believes that, absent action by the legislature, any mentorship program can only be pursued by the Sections. As our memo indicates, the Sections are ill-equipped to operate this type of program. The critical missing resources are the availability of staff to administratively support

attorney volunteer efforts, and any tangible incentive for experienced attorneys to act as mentors. Notwithstanding, the threat to the public arising out of insufficiently trained lawyers will not go away.

As you know other states have successfully established statewide mentorship programs. We believe that California should do the same. Many of us were lucky to receive critical mentoring as we were coming up through the ranks. We believe new lawyers, and the consuming public, deserve nothing less.

Should the Office of Education or the Board of Trustees wish to discuss mentorship, the BLS would be happy to participate. We welcome the opportunity to discuss innovative methods to address this need. The BLS supports the State Bar's consumer protection initiatives and its desire to further explore solutions.

Thank you for your time and consideration.

Sincerely,

Charles E. McKee

Charles E. McKee
37th Chair
Business Law Section
State Bar of California

cc: Luis J. Rodriguez, President, State Bar of California Board of Trustees
Craig E. Holden, Incoming President, State Bar of California, Board of Trustees
Joseph L. Dunn, Executive Director, State Bar of California
Nancy L. Fineman, State Bar of California Board of Trustees
Janet L. Brewer, State Bar of California Board of Trustees
Jodi Cleesattle, Co-Chair, Council of State Bar Sections
Doug Youmans, Co-Chair, Council of State Bar Sections
Mark Ressa, Incoming Co-Chair, Council of State Bar Sections
Perry Segal, Incoming Co-Chair, Council of State Bar Sections
Robert V. Hawn, Incoming Chair, Business Law Section
John Buelter, Coordinator, Business Law Section
Laila Bartlett, Coordinator, California Young Lawyers Association
Business Law Section Executive Committee
California Young Lawyers Board of Directors

MEMORANDUM

To: Business Law Section Executive Committee

From: Business Law Section/California Young Lawyers Association Mentoring Task Force

Date: August 4, 2014

Re: The BLS/CYLA Mentoring Program - Recommendation

This Memorandum discusses the Mentoring Program operated by the BLS/CYLA and the Committee's recommendations regarding continuing the Program in some other form.

History of BLS/CYLA Mentoring Program

In late 2011, the Business Law Section ("BLS") reached out to the California Young Lawyers Association ("CYLA") to discuss creating a mentoring program in which designated BLS attorneys would serve as mentors to CYLA members. The goals of the Mentoring Program included fostering professionalism, ethics, civility and legal skills among new lawyers.

Following initial discussions, the respective BLS and CYLA representatives created the "BLS/CYLA Mentoring Program Guidelines," attached as Appendix A. The Guidelines were intended to serve as a rough outline of the program and a basis for discussion and approval by the BLS Executive Committee and the CYLA Board.

In early 2012, both the BLS Executive Committee and CYLA Board formally approved the BLS/CYLA Mentoring Program Guidelines and the creation of a joint mentoring program. A joint committee made up of both BLS Executive Committee members and CYLA Board members was established. This BLS/CYLA Mentoring Program Committee was charged with the task of creating and implementing the Mentoring Program.

Following a number of preliminary (telephonic) meetings, the BLS/CYLA Mentoring Program Committee made several key decisions regarding how the program would be launched and operated:

- (1) The program would be open to any CYLA member interested in practicing business law. A CYLA member is defined as an attorney who has been in practice for five years or fewer or is under the age of 36.
- (2) Mentors would be any attorney licensed in California with at least five years of experience who practices business law, whether or not a member of BLS.
- (3) Mentoring would be done in groups, where three to five mentees would be matched with one mentor.
- (4) Matching of mentoring groups would be done on the basis of practice area interest first and geographic proximity second.¹

¹ Note, after soliciting feedback from program participants, geographic location was given priority in forming mentoring groups as both mentees and mentors expressed a preference for being able to meet in person and the importance of understanding the local bar.² With the exception of the publicity materials,

(5) The program would be launched and then would continue on a rolling basis. In other words, mentee applications would be received, mentors solicited, and additional mentoring groups formed on an ongoing basis.

(6) Under the program, the formal mentoring relationship would last for one year, and would ideally include 6 meetings, in person or telephonic, during the year. Mentors would typically hold meetings jointly with the mentees assigned to them.

The BLS/CYLA Mentoring Program Committee then prepared the forms necessary to run the program, including:

- (1) a mentee application form;
- (2) a mentee application transmittal cover letter,
- (3) a mentor questionnaire;
- (4) a mentor questionnaire transmittal cover letter,
- (5) a “match letter” informing the mentee of acceptance into the program and the identity of the mentor to whom he/she was matched;
- (6) a “match letter” to the mentor providing him/her the names of and contact information for the mentees assigned to him/her; and
- (7) publicity materials announcing the program.²

The program and the above-described materials were approved by the State Bar’s Office of the General Counsel before the program was launched. Versions of documents 1 through 4 were uploaded into the BLS Hummingbird site.

In approximately June 2012, the mentoring program formally began. An announcement about the program was added to CYLA’s webpage, CYLA sent out an e-news blast, Facebook post, and tweet soliciting mentees, and BLS sent out an e-news blast soliciting mentors. Mentee applications began pouring in shortly thereafter.

The BLS actively solicited mentors. During the duration of the program, a solicitation article was placed in each issue of the E-News, BLS’ monthly email newsletter. An ad was also run in the BLS’ flagship publication, the Business Law News. Last, a reception was held during the State Bar Annual Meeting held in October, 2013, honoring current mentors.

A BLS/CYLA Mentoring Program Committee member took responsibility for tracking incoming mentee applications and mentor questionnaires. The first three mentoring groups (each consisting of 1 mentor and 5 mentees) were launched in July 2012. After the initial launch, mentee applications continued to roll-in on a steady basis. Other than the static webpage about

these forms are attached hereto as Appendix B.³ In 2014, in order to share the administrative burden of the Program, the Committee members began rotating all responsibilities. Those responsibilities are outlined in Appendix C, hereto.

² With the exception of the publicity materials, these forms are attached hereto as Appendix B.³ In 2014, in order to share the administrative burden of the Program, the Committee members began rotating all responsibilities. Those responsibilities are outlined in Appendix C, hereto.

the program, CYLA never did any additional promotion of the program (no additional emails, Facebook posts or tweets). BLS continued to advertise in order to solicit additional mentors.

From an administrative standpoint, once the program was launched, the Committee was responsible for soliciting additional mentors, tracking incoming mentee applications, responding to communications from potential mentees and mentors, vetting mentors (checking their state bar status), and matching mentees with mentors. For a significant portion of the Program's existence, these tasks were largely handled by one member of the Committee, with the exception of soliciting mentors and matching, the responsibilities of which were shared by the Committee.³

Tracking mentee applications as they came in, and responding to interested potential mentees, became an important and time consuming task as far more mentee applications were received than mentors were available. The Committee attempted to give priority to mentees who had been on the de facto waiting list the longest, while also accommodating geographic proximity and practice area compatibility.

Between the program's public launch and the end of its first year, approximately 13 mentoring groups were launched. Mentee applications continued to come in at a steady pace over that time. However, finding mentors willing to serve became increasingly challenging. In the Program's second year, only 5 mentoring groups were launched. On average there were 15-20 potential mentees on the waiting list. When the program ended in June 2014, mentoring had been provided to approximately 89 mentees. Another 18 potential mentees were still on the waiting list, some having submitted their applications over a year earlier.

Challenges Experienced

The BLS/CYLA Mentoring Program faced a number of challenges throughout its history.

Mentor Recruitment

The most significant challenge was in recruiting mentors. Because of the lack of any credit or income from the program, it was extraordinarily difficult to add mentors to the program. The psychic return in helping to foster professional development among new lawyers proved to be an insufficient draw. The task force tried a number of approaches, including a recognition reception at the Annual Meeting, personal emails to prospective mentors, personal appeals, and advertising in the monthly electronic E-News and the quarterly print Business Law News. Even with these efforts, the number of mentors never exceed 16. The lack of mentors severely constrained the growth of the program and prevented the assignment of a number of qualified mentees.

³ In 2014, in order to share the administrative burden of the Program, the Committee members began rotating all responsibilities. Those responsibilities are outlined in Appendix C, hereto.

Geographic Proximity Issues

In the beginning of 2013, the program conducted a survey of the mentees using survey monkey, and of the mentors using email and direct conversations. One of the universal responses was the need for face to face communications and for matching of mentors and mentees practicing in the same legal community where their shared experiences were most relevant. This required mentors and mentees to be in close geographic locations and further constrained the ability to create groups. Certain geographic areas, particularly Los Angeles, contained strong mentee demand but no mentors.

Administrative Burden

The administration of the program was conducted by members of the task force, who handled the significant time commitment in various ways. In particular, one member was fortunate to have the administrative support to be able to send out applications, and letters, to prospective mentees, and another to send out the same to mentors (which, of course, were far fewer). Other members were required to match mentors and mentees on a rotational basis.

The amount of time required to prepare individual letters and materials for the matching process and to respond to the numerous requests for mentors, including follow up with mentees not yet assigned a mentor, was extraordinary. Most members of the Committee did not have administrative support for this work, and struggled to balance the time commitment with the requirements of their full time jobs. To spread the burden, records were often passed from member to member by email. Loading up many of the forms into Hummingbird has eliminated the need to pass forms to one another, but the administration of the program, particularly in communicating with mentees, is significant, as was the learning curve each time the responsibility rotated. It was a universal experience among the committee members that the time commitment was excessive and not feasible, especially when combined with other BLS Commitments.

Curriculum

There was no unified curriculum for the groups. One mentor, Paul Pascuzzi, developed materials based on online searches, and these materials were made available to others. Mentoring programs of other states were reviewed, using online searches, and a suggested course curriculum was designed and loaded onto Hummingbird. However, there was not necessarily consistency among the mentoring groups as a result. At inception, the lack of strict or formal structure was seen as a positive to allow the mentors to tailor the mentoring to the specific needs to that mentoring group (within guidelines in terms of what would and would not be appropriate). But, feedback from mentors later indicated that more formal structure and materials would be helpful.

Mentee Involvement

Some mentors reported that mentees would join the program hoping that it would lead to employment. These mentees would find that the program was, in the short-term, not tailored for

this purpose and leave the program. This resulted in a small number of cases of having groups reduced in size at the same time the demand for space in these groups continued. The task force responded by creating language in mentee application materials stating that the program was ill-suited for short term job search purposes. Notwithstanding, those mentees that put time into the program found it helpful for career development. In one case, a mentee was able to find a new position more in keeping with her desires for her career.

Success of the Mentoring Program

Despite the time commitment required to operate the program, demand for mentors remains very strong among new lawyers. All members of the Committee agreed that the program was valuable and should be supported if it could be operated by Bar Staff or some other administrative office that can devote the time needed to run the program.

The BLS has been operating the Mentoring Program in coordination with the CYLA for over two years. Since July, 2012, the Program successfully matched 89 mentees with experienced mentors. The Program also collected materials to help structure the relationships and make the experience rewarding for mentors as well as mentees. The feedback from mentors and mentees in the program has been positive.

Value of the Mentoring Program

I like the program, I like my mentees, I like the opportunity to further my own professional development in this interesting way.

*As we look back on our first years as lawyers (which may have been painful for a number of reasons – type of work, pay, hours, stress), it takes on a whole different light when you see such a talented and large group who have little or no opportunity to develop their skills in a structured setting. This is my line, but you are free to use it: **we are losing a generation of lawyers, and should not let that happen.** [emphasis added]*

Holden Stein, Mentor

The mentoring program benefits three groups of stakeholders: mentors, mentees, and the general public.

Mentees involved in the program have, anecdotally, been successful in crystalizing their career objectives and, in one case, making a career change to a more attractive path. Although the program has had to caution mentees that the program is not a job seeking service, those mentees that have put in the time, and been involved, have appeared to benefit. The need for the program is evidenced by the continued stream of mentees requesting program applications, notwithstanding minimal outreach to the mentee population.

The benefits to mentors derive from the psychic satisfaction of helping to improve the profession. As Mr. Stein's quote indicates, there is real joy in assisting in the growth of a young lawyer and providing a contribution to the growth of the profession as a whole.

The greatest benefit of a wide ranging mentoring program, however, is to the consumer of legal services. The glut of lawyers, coupled with heavy law graduate debt, could force lawyers into positions where mentoring opportunities are not available, resulting in practitioners that may not have the requisite practical skills to offer to their clients.

The well-known lawyer glut has hit new graduates especially hard. In 2012, California graduated 5,465 law students, at a time when there were only 2,227 fulltime salaried and self-employed jobs available. (<http://www.economicmodeling.com/2014/01/10/the-oversaturated-job-market-for-lawyers-continues/>) Forbes Magazine reported that, nationwide, in 2012, there were 46,565 new law graduates for an estimated 21,460 job openings. (<http://www.forbes.com/sites/emsi/2014/01/10/the-job-market-for-lawyers-side-work-on-the-rise-amid-continuing-glut-of-new-grads/>). The Forbes article noted that the only growth area was in the contract, or part-time employment, areas.

At the same time that the labor market for new lawyers softens, law graduates are faced with an enormous debt burden. Notwithstanding that payment deferrals are available, any new graduate will want to relieve themselves of their debt burden as soon as possible.

The combination of low lawyer employment and individual debt burden will likely force many lawyers to work as solo practitioners, or in contract positions, neither of which offers the mentoring opportunities typically found in more stable employment environments. The lack of mentoring means that newly minted lawyers will be required to serve clients without the benefit of the experience provided by a senior lawyer. The lack of experience could, in turn, result in less skilled practitioners providing legal services, with the corresponding reduction in protection for many consumers of legal services.

Much of law practice revolves around finding effective resolution to client problems, and experience in the practice, and training by someone experienced in the practice, greatly contributes to client service. Without the training provided by effective mentoring, there is a much higher probability that lawyer error could result, with negative consequences to both young attorneys and their clients.

It is no wonder that so many states offer state-wide mentoring programs. These include Illinois, Nevada, Louisiana, Ohio, and Oregon, among others. We hope that our experience in the BLS will provide the necessary foundation for the State Bar of California to offer a mentoring program to all new attorneys for the sake of our profession and our public.

Recommendation

The Program to some extent has been the victim of its own success in that the demands of administering the program have far exceeded available volunteer time. We have found that mentee requests for mentors have far exceeded available volunteer mentors, and this is particularly true with respect to matching Los Angeles area mentees with Los Angeles area mentors. We have also found that the administrative burden of managing the program has far

exceeded available volunteer time. For that reason the BLS very reluctantly has decided to terminate the BLS-CYLA Mentoring Program.

We remain more convinced than ever that a mentoring program would be an invaluable part of the mission of the State Bar and its Sections. The members of the Task Force would be delighted to assist in setting up a mentoring program, and to share our experiences and the materials we have prepared.

The Task Force recommends that the Mentoring Program, in its current form, be suspended (and this occurred in Spring 2014). The Task Force strongly recommends and supports the continuance of this excellent program by other means, or in another form, with appropriate Bar Staff support, funding, and advertising.

Appendix A

BLS/CYLA Mentoring Program Guidelines

Business Law Section /CYLA Mentoring Program

Goals of Mentoring Program:

To foster excellence in professionalism, ethics, civility and legal skills for young lawyers.

- Promote collegial relationships among legal professionals and active involvement in the profession, the legal community in general and, in particular, the Business Law Section;
- Foster the development of CYLA members' practical skills;
- Increase CYLA members' knowledge of legal customs;
- Build awareness of ethical obligations and proper practices;
- Mentor CYLA members as to various practice areas within business law and provide opportunities to interact with BLS standing committees; and
- Encourage the use of best practices and professionalism in the practice of law.

Participation:

The mentors shall be members of the Business Law Section who have been in practice for at least 10 years. The mentees shall be members of CYLA (attorneys under the age of 36 or in practice 5 years or less).

Mentors and mentees will be matched by members of the Business Law Section according to practice area interest and location, where possible.

The formal mentoring relationship will last for one year, but mentors and mentees are encouraged to maintain the relationship informally following the mentorship program.

Mentors and mentees shall meet in person or telephonically at least six times during the year. Both mentors and mentees will make every effort to attend scheduled mentoring sessions and actively participate. Mentors will likely provide their volunteer effort to multiple mentees so that meetings will be jointly held amongst mentor and their mentees.

Expectations:

Mentoring should primarily focus on professionalism, ethics, civility and legal skills while fostering valuable networking opportunities.

Mentors should seek to create an environment of trust so that the mentee feels free to ask questions even if they might seem insignificant, trivial or obvious.

Mentors should share with mentees techniques and strategies they have found successful, and, when appropriate, reveal mistakes they have made and pitfalls to avoid.

Mentors should provide mentees with guidance about professional practices, unwritten rules, and practical application of general legal concepts.

Mentors should introduce mentees to other lawyers and opportunities and encourage mentees to develop relationships with other lawyers, to find appropriate opportunities to better develop lawyering skills, and to become involved in bar associations and other professional networks.

The mentor program is intended to provide general assistance to mentees, but it is not intended to provide mentees with answers to case specific questions. When discussing a particular legal issue, mentees should raise the question with their mentor in general terms.

The mentor program is intended to be a learning tool and is not intended as a recruitment device or to provide employment opportunities. However, seeking advice from the mentor about general job hunting strategies and networking suggestions is appropriate.

Suggested Mentoring Topics:

- Professional development
- Developing client relations
- Work/life balance and career planning
- Ethical concerns
- Discussion of cases and substantive law
- Anecdotal experiences

Appendix B

Program Forms

Mentoring Questionnaire/Application

The following questions are intended, among other things, to assist us in determining if you are a match for the Mentoring Program and, upon selection, do our best to assign you to those Mentees with whom we believe you are best suited to mentor. This will be based upon factors ranging from practice experience to geographic location. While we appreciate you taking the time to fill out this questionnaire, we hope you understand that we may not be able to find suitable matches at the time you submit the application. In that event, we will keep your information on file and hope you will be available if and when we are able to match you with a suitable group of Mentees. Please feel free to attach additional pages if the space below is insufficient. Finally, please complete, date, sign and return this application to:

MentorApplication@insullaw.com.

1. Name: _____
2. Address: _____
3. Phone #: _____
4. Cell#: _____
5. Email: _____
6. Bar #: _____
7. Years in Practice: _____
8. Other Jurisdictions Admitted to: _____
9. Areas of Practice: _____
10. Best Times For Your Mentee Meetings (Plan on at least every other month): _____

11. Best way for Mentees to reach you (Phone, email, social media, etc.): _____
12. Briefly describe other mentoring or teaching experience: _____

13. Describe Practice and Non Legal Experience:
 - a. If you describe yourself primarily as a litigator please indicate and describe areas of business litigation as well as years engaged in litigation: _____

 - b. If you describe yourself as primarily a transactional attorney please indicate and describe areas of emphasis in transactional work as well as years engaged as a transactional attorney: _____

 - c. If you handle both litigation and transactional matters please provide a brief description of the bulk of your litigation and transactional experience: _____

 - d. Current Firm Size: _____
 - i. Big Firm Experience (y/n): _____
 - ii. Government or public sector experience (identify): _____

 - iii. House Counsel Experience (Identify): _____

- e. Describe any non-legal business experience that is relevant (e.g. CEO, CFO):

- f. Publications, noteworthy cases, other achievements you consider relevant to serving as a Mentor: _____

14. Please describe your expectations for yourself and the Mentees under your guidance:

15. Although committing to work with up to 5 mentees, are you willing to work with more than 5 and if so how many (If so, how many are you comfortable working with)? _____
16. Are you willing to make the yearlong commitment to meet with your Mentees as envisioned by this program (y/n): _____
17. Is there any information you would like to provide that will better assist us in determining if you are a good fit for the Mentoring Program: _____
18. Please provide us with the best ways to assist you should you be selected as a Mentor:

The mentor program is intended to provide general assistance to mentees, but it is not intended to provide mentees with answers to case specific questions, or create a lawyer client relationship of any kind. When discussing a particular legal issue, any discussion should be in general terms.

I understand that if I am accepted into the Mentoring Program as a Mentor, I will be responsible to and will accept the obligation to commit to a full year of providing mentoring to my assigned mentees.

DATE: _____

Print Name of Applicant

Signature of Applicant

Business Law Section /CYLA

Mentoring Program

MENTEE APPLICATION

This program matches CYLA (attorneys under the age of 36 or in practice 5 years of less) with more experienced attorneys (in practice at least 10 years) who are members of the Business Law Section to provide advice and guidance in various areas of their careers.

The following questions are intended, among other things, to assist us in determining if you are a match for the Mentoring Program and, upon selection, to help us to assign you to a Mentor with whom we believe you are best suited. This will be based upon factors ranging from practice experience to geographic location. We will be matching Mentors with potential Mentees as applications are received, so we encourage you to submit your application as soon as you are able. While we appreciate you taking the time to fill out this questionnaire, we hope you understand that we may not be able to find suitable matches at the time you submit the application. In that event, we will keep your information on file and hope you will be available if and when we are able to match you with a suitable Mentor.

Please feel free to attach additional pages if the space below is insufficient. Finally, please complete, date, sign and return this application to: cyla.bls.mentee@calbar.ca.gov

Name: _____

State Bar Number: _____

Firm: _____

Address: _____

City: _____

State/Zip: _____

Business Phone: _____

Business Fax: _____

E-mail: _____

Firm Size: ☐ Small ☐ Mid-size ☐ Large

Year of Law School Graduation: _____

No. of Years Experience: ____ Firm

____ Government ____ Corporate

____ Other: _____

Preferred Meeting Times:

In-person: ☐ Breakfast ☐ Lunch ☐ Dinner

Telephonic: ☐ Morning ☐ Midday ☐ Afternoon

Preferred Method of Contact:

□ Email

☐ Business phone

☐ Cell phone: _____

Areas of Interest:

☐ Career Development

□ Bar Involvement

☐ My Practice Area

□ Networking

☐ Family/Career

☐ Non-Traditional Career

☐ Other _____

My Practice Areas:

Primary:_____

Others: _____

Describe what benefits you hope to derive from the mentoring program or any particular concerns you may have:

[illegible]

DATE: _____

Print Name of Applicant

Signature of Applicant

Please return form to: cyla.bls.mentee@calbar.ca.gov

For Office Use Only:

Mentor:_____

Mentee:_____

Date of Match:_____

Notifications Made:_____



CALIFORNIA YOUNG LAWYERS ASSOCIATION

THE STATE BAR OF CALIFORNIA

_____, 2012

Re: Business Law Section / CYLA Mentor Program

Dear _____,

You are receiving this letter because you have expressed interest in participating as a mentee in the inaugural mentoring program sponsored by the Business Law Section (“BLS”) of the State Bar and the California Young Lawyers’ Association (“CYLA”). The outline below is provided to give you an overview of the Mentoring Program and our expectations for the program.

Goals of the Program

The goals of the program are to:

- Foster excellence in professionalism, ethics, civility, and legal skills for new lawyers.
- Promote collegial relationships among legal professionals and active involvement in the profession, the Business Law Section, and the legal community in general.
- Foster the development of CYLA members’ practical skills.
- Increase CYLA members’ knowledge of legal customs.
- Build awareness of ethical obligations and proper practices.
- Mentor CYLA members as to various practice areas within business law and provide opportunities to interact with BLS standing committees.
- Encourage the use of best practices and professionalism in the practice of law.

Time Commitment

The formal mentoring relationship will last for one year, but mentors and mentees are encouraged to maintain the relationship informally following the mentorship program.

Mentors and mentees will meet in person or telephonically at least six times during the year. In order to be able to offer the mentoring program to as many CYLA members as possible, the mentors have

graciously volunteered to take on up to 5 mentees each. As a result, and out of respect for the mentors' time, we anticipate that in person meetings will be group meetings among the mentor and several of his or her mentees and that such meetings will last no more than an hour and a half. However, the mentor and mentee are encouraged to arrange to speak one-on-one by telephone periodically throughout the year.

Both mentors and mentees will make every effort to attend scheduled mentoring sessions, whether in person or telephonic, and to actively participate.

General Conduct

Mentoring should primarily focus on professionalism, ethics, civility and legal skills while fostering valuable networking opportunities. The goal of the program is to foster an environment of trust and the mentee should feel free to ask questions even if they might seem insignificant, trivial or obvious.

The mentor program is intended to be a learning tool and is not intended as a recruitment device or to provide employment opportunities, although providing advice about general job hunting strategies and networking suggestions is appropriate and encouraged.

The mentor program is intended to provide general assistance to mentees, but it is not intended to provide mentees with answers to case specific questions. When discussing a particular legal issue, any discussion should be in general terms.

Topics You Should Discuss With Your Mentor:

- Professional development.
- Techniques and strategies they have found successful, and, when appropriate, mistakes they have made, and pitfalls to avoid.
- Developing client relations.
- Guidance about professional practices, unwritten rules, and practical application of general legal concepts.
- Introductions to other lawyers and opportunities.
- Developing relationships with other lawyers through bar associations and other professional networks.
- Discussion of cases and substantive law .
- Ethical concerns.
- Useful vendors and services.

- Work/life balance and career planning.
- Anecdotal experiences.

Topics You Should Not Discuss With Your Mentor:

- Specific client matters, although general discussions of client relations are appropriate.
- Any matter or information which would be considered confidential as to a particular client, even if names are not provided.
- Personal or family issues.

If you would like to apply to participate as a mentee in the Mentoring Program, please fill out the enclosed questionnaire and return it as soon as possible to: *cyla.bls.mentee@calbar.ca.gov*. We will be matching mentees to mentors as applications are received.

Thank you again for your interest in this program.

Sincerely,



CALIFORNIA YOUNG LAWYERS ASSOCIATION

THE STATE BAR OF CALIFORNIA

_____, 2012

Re: Business Law Section / CYLA Mentor Program

Dear _____,

You are receiving this letter because you have applied to be a mentee in the inaugural mentoring program sponsored by the Business Law Section (“BLS”) of the State Bar and the California Young Lawyers’ Association (“CYLA”). Congratulations, your application has been approved and you have been matched with a mentor! CYLA is very excited to be able to collaborate with BLS to offer this program to our members and we are thrilled that you will be participating.

In addition to providing you with information about your BLS mentor, who is an attorney who has been practicing for a minimum of 10 years, we are providing the following outline to help guide you through the mentoring program and give you the best opportunity to build a successful mentor/mentee relationship with your mentor.

Goals of the Program

The goals of the program are to:

- Foster excellence in professionalism, ethics, civility, and legal skills for new lawyers.
- Promote collegial relationships among legal professionals and active involvement in the profession, the Business Law Section, and the legal community in general.
- Foster the development of CYLA members’ practical skills.
- Increase CYLA members’ knowledge of legal customs.
- Build awareness of ethical obligations and proper practices.
- Mentor CYLA members as to various practice areas within business law and provide opportunities to interact with BLS standing committees.
- Encourage the use of best practices and professionalism in the practice of law.

Time Commitment

The formal mentoring relationship will last for one year, but mentors and mentees are encouraged to maintain the relationship informally following the mentorship program.

Mentors and mentees will meet in person or telephonically at least six times during the year. In order to be able to offer the mentoring program to as many CYLA members as possible, the mentors have graciously volunteered to take on up to 5 mentees each. As a result, and out of respect for the mentors' time, we anticipate that in person meetings will be group meetings among the mentor and several of his or her mentees and that such meetings will last no more than an hour and a half. However, the mentor and mentee are encouraged to arrange to speak one-on-one by telephone periodically throughout the year.

Both mentors and mentees will make every effort to attend scheduled mentoring sessions, whether in person or telephonic, and to actively participate.

General Conduct

Mentoring should primarily focus on professionalism, ethics, civility and legal skills while fostering valuable networking opportunities. The goal of the program is to foster an environment of trust and the mentee should feel free to ask questions even if they might seem insignificant, trivial or obvious.

The mentor program is intended to be a learning tool and is not intended as a recruitment device or to provide employment opportunities, although providing advice about general job hunting strategies and networking suggestions is appropriate and encouraged.

The mentor program is intended to provide general assistance to mentees, but it is not intended to provide mentees with answers to case specific questions. When discussing a particular legal issue, any discussion should be in general terms.

Topics You Should Discuss With Your Mentor:

- Professional development.
- Techniques and strategies they have found successful, and, when appropriate, mistakes they have made, and pitfalls to avoid.
- Developing client relations.
- Guidance about professional practices, unwritten rules, and practical application of general legal concepts.
- Introductions to other lawyers and opportunities.

- Developing relationships with other lawyers through bar associations and other professional networks.
- Discussion of cases and substantive law .
- Ethical concerns.
- Useful vendors and services.
- Work/life balance and career planning.
- Anecdotal experiences.

Topics You Should Not Discuss With Your Mentor:

- Specific client matters, although general discussions of client relations are appropriate.
- Any matter or information which would be considered confidential as to a particular client, even if names are not provided.
- Personal or family issues.

Your Mentor:

Name: _____

Address: _____

Telephone No.: _____

Email: _____

Preferred Method of Contact:

- ☐ Email
- ☐ Business phone
- ☐ Cell phone: _____

Practice Area: _____

Member of BLS committees: _____

Initial Meeting:

- ☐ Your mentor will contact you to arrange the first meeting
- ☐ Your mentor asks that you contact him or her to arrange the first meeting

We hope you find the mentorship program enjoyable and rewarding. As this is the first year this program is being offered, we welcome your feedback. As you work with your mentor, please consider ways in which the program can be improved, and provide your suggestions as they occur to you, either directly to your mentor or to _____ at _____, who will be acting as the program administrator.

If there are any problems, particularly ones that you feel cannot be raised and addressed directly with your mentor, please do not hesitate to contact the program administrator.

Thank you again for your interest in this program. We hope that you find it rewarding!

Sincerely,



BUSINESS LAW SECTION

The State Bar of California

August 4, 2014

Re: Business Law Section Mentor Program

Dear Mentor:

Thank you very much for volunteering to become a mentor to members of the State Bar's California Young Lawyer Association (the "CYLA"). We have matched you with the new lawyers whose name and contact information is listed in the attachment to this letter. We have also included their applications so you can get to know them better. Please reach out to them, welcome them into the program, and set up a time to meet either in person or by telephone.

This letter is substantially similar to the letter we provided earlier to help guide you through the mentoring program and give you the best opportunity for success for you and your mentees.

Goals of the Program

The goals of the program are to:

- Foster excellence in professionalism, ethics, civility, and legal skills for new lawyers.
- Promote collegial relationships among legal professionals and active involvement in the profession, the Business Law Section, and the legal community in general.
- Foster the development of CYLA members' practical skills.
- Increase CYLA members' knowledge of legal customs.
- Build awareness of ethical obligations and proper practices.
- Mentor CYLA members as to various practice areas within business law and provide opportunities to interact with BLS standing committees.
- Encourage the use of best practices and professionalism in the practice of law.

Time Commitment

The formal mentoring relationship will last for one year, but mentors and mentees are encouraged to maintain the relationship informally following the mentorship program.

Mentors and mentees will meet in person or telephonically at least six times during the year. We expect that each meeting will last for no longer than an hour and a half. Out of respect for your

time, we have instructed mentees that they should not expect that you will be available to meet individually, or for more than an hour and a half per meeting.

Both mentors and mentees will make every effort to attend scheduled mentoring sessions and actively participate. Mentors will likely provide their efforts to multiple mentees so that meetings can be jointly held among a mentor and his or her mentees.

General Conduct

Mentoring should primarily focus on professionalism, ethics, civility and legal skills while fostering valuable networking opportunities. Fundamentally, mentors should seek to create an environment of trust so that the mentee feels free to ask questions even if they might seem insignificant, trivial or obvious.

The mentor program is intended to be a learning tool and is not intended as a recruitment device or to provide employment opportunities, although providing advice about general job hunting strategies and networking suggestions is appropriate and encouraged.

The mentor program is intended to provide general assistance to mentees, but it is not intended to provide mentees with answers to case specific questions, or create a lawyer client relationship of any kind. When discussing a particular legal issue, any discussion should be in general terms.

Topics You Should Discuss

- Professional development.
- Techniques and strategies you have found successful, and, when appropriate, mistakes you have made, and pitfalls to avoid.
- Developing client relations.
- Guidance about professional practices, unwritten rules, and practical application of general legal concepts.
- Introductions to other lawyers and opportunities.
- Developing relationships with other lawyers through bar associations and other professional networks.
- Discussion of cases and substantive law.
- Ethical concerns.
- Vendors that could assist the mentee.
- Work/life balance and career planning.
- Anecdotal experiences.

Topics You Should Not Discuss

- Specific client matters, although general discussions of client relations are appropriate.
- Any matter or information which would be considered confidential as to a particular client, even if names are not provided.
- Personal or family issues.

We hope you find your time enjoyable and rewarding. As you work with your mentees, please consider ways in which the program can be improved, and provide your suggestions as they occur to you. If there are any problems, particularly with an individual mentee, please do not hesitate to contact Bob Hawn at bhawn@structurelaw.com.

Thank you again for your generous contribution of time toward the professional development of our future attorneys.

Sincerely,

/s/

Robert V. Hawn, Esq.

Mentee Lawyers

Name: _____

Address: _____

Phone: _____

Email: _____

Website Bio: _____

Etc.



BUSINESS LAW SECTION

The State Bar of California

August 4, 2014

Re: Business Law Section Mentor Program

Dear Mentor:

As you conclude your 2012-2013 mentoring group, the California Young Lawyer Association and the Mentoring Committee of the Business Law Section of the State Bar of California thank you for your generous commitment of time as a mentor this year.

There is an unprecedented need for mentoring and professional support in the current generation of young lawyers. As Holden Stein of the Stein Law Group in San Francisco, one of this year's mentors, said, "We are losing a generation of lawyers, and should not let that happen." Many new admittees to the California Bar struggle to find jobs, and are hanging out their own shingles with little or no professional support, or do not have formal mentoring available at their current jobs.

Your willingness to act as a mentor is a great contribution to the legal community and its newest lawyers. It is our sincere hope that you enjoyed the mentoring program as much as your mentees, and that you will remain in touch with your mentees as their careers progress.

The need for mentors to establish new mentoring groups continues. If you would like to serve as a mentor for a new group this year, and you haven't already contact us, please contact me at bhawn@structurelaw.com or 408.441.7500.

If you are planning to attend the State Bar Annual Meeting in San Jose, we will be holding a reception to honor you and our other mentors on Saturday, October 12, at 5:00 p.m. in the Guadalupe Room of the San Jose Marriott. Please join us.

With thanks and appreciation for your service.

Sincerely,

/s/

Robert V. Hawn, Esq.

Appendix C

Committee Member Responsibilities

Monthly Coordinator Responsibilities

Mentee Side:

1. Respond to requests for information/applications by sending the potential mentee an email attaching (1) the "Letter to Potential Mentees" and (2) the "Mentee Application" in Word. Both are located in the Forms folder, Mentee Forms subfolder.
2. After receiving a completed mentee application:
 - a. Email the mentee letting him or her know that the application has been received but that matching can sometimes be a slow process.
 - b. Save the application to the Mentee Applications Folder
 - c. Update the Spreadsheet by adding the mentee's name, date application was received, and location of mentee to the unassigned mentee column in the Matching worksheet with the next in line priority number
3. Respond to requests from unassigned mentees regarding the status of their applications asking them to be patient because it sometimes takes a while to find a suitable mentor.

Mentor Side:

1. Respond to potential mentors by emailing them (1) the "Mentor Program Introduction" in pdf and (2) the "Mentor Questionnaire" in Word. Both are located in the Forms folder, Mentor Forms subfolder.
2. Save completed Mentor Questionnaires to the Mentor Questionnaires Folder.
3. Check the State Bar website to see if the Mentor has had any disciplinary history that would make him or her ineligible. Bring any issues to the attention of the committee.

Matching:

1. After receiving a Mentor Questionnaire and confirming that the mentor has no disqualifying disciplinary record, match the Mentor with three to five mentees who are in the Mentors geographical area (to the extent possible).
2. Email the committee with the proposed matches and solicit comments.
3. If there are no objections to the matches, email the Mentor, attaching the "Mentor Letter Post Assignment" letter informing the mentor of his or her mentees and their contact information. The letter is located in the Forms folder, Mentor Forms subfolder.
4. If the committee approves, and the mentor is a new mentor, send a copy of "The Lawyer's Guide to Mentoring".
5. Email each of the mentees the letter informing him or her of the match and providing him or her with the mentor's contact information. The letter is located in the Forms folder, Mentee Forms subfolder.
6. Update the Spreadsheet by:
 - a. adding the mentoring group to the Matching worksheet, deleting the newly assigned mentors from the unassigned mentees column, and updating the priority for the remaining unassigned mentees
 - b. changing the status of the newly assigned mentees from "unassigned" to "assigned" in the Applications Received worksheet.



Frank H. Wu
Chancellor & Dean
William B. Lockhart Professor of Law

University of California Hastings College of the Law | 200 McAllister Street | San Francisco, CA 94102
phone 415.565.4788 | fax 415.565.4702 | wuf@uchastings.edu | www.uchastings.edu

September 15, 2014

Jon Streeter, Immediate Past Chair
California Bar Association
c/o Teri Greenman
180 Howard St.
San Francisco, CA 94105

Dear Chair Streeter:

I write to support the work of the Task Force on Admissions Regulation Reform (TFARR) and the efforts to better prepare new lawyers for successful transition into law practice. The State Bar and the TFARR Committee are to be commended for leading this initiative and the development of the draft rules for the Pre- and Post-Admission Competency Training Requirements.

Law school should not be about theory alone, because legal practice is not about theory alone; it's about applying doctrines to solve problems and bring about justice. As Chancellor and Dean of UC Hastings College of the Law, I support the proposed requirement of 15 units of practice-based experiential competency training and that this course work should be completed within the law school setting. I understand there is some debate as to whether the 15 units must be earned in law school or whether it might be possible to create a type of curriculum, taken outside the law school (including at a private law firm), for which formal academic credit is not conferred but 6 units for purposes of satisfying this rule are earned. I think that it would be preferable that all 15 units be taken in a law school setting. Substantively, it would be difficult to ensure that the 6 credits earned outside of the law school meets the intended purpose of the rules and contains appropriate, qualifying educational content and oversight.

We at UC Hastings, as a public law school with a long-standing history of public service, are equally supportive of the proposed 50 hours of pro bono. Finally, the proposed requirement of 10 hours of MCLE during the first year of admission will further ensure new lawyers have access to the tools necessary to further their professional development.

Thank you for your consideration.

Sincerely,

Frank H. Wu

LOS ANGELES COUNTY BAR ASSOCIATION

September 15, 2014

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JEFF S. WESTERMAN

MAILING ADDRESS:
P.O. Box 55020
Los Angeles, CA 90055-2020

213.627.2727 phone
213.833.6717 fax
LACBA.org

Teri Greenman
Staff, Task Force on Admissions Regulation Reform
State Bar of California
180 Howard Street
San Francisco, CA 94105
By email to teri.greenman@calbar.ca.gov

Dear Ms. Greenman:

Thank you for providing the Los Angeles County Bar Association (“LACBA”) with an opportunity to comment on the Phase II Implementation Recommendations dated as of August 14, 2014 (the “Recommendations”) made by the State Bar Task Force on Admissions Regulation Reform (the “Task Force”).

LACBA, with nearly 21,000 members, is the largest metropolitan voluntary bar association in California. LACBA’s mission is to meet the professional needs of Los Angeles lawyers and advance the administration of justice. Our Barristers Section comprises LACBA members who are either younger than 36 years of age or who have been admitted to practice for 5 years or less. LACBA, through its charitable arm LACBA Counsel for Justice, provides its members numerous opportunities for pro bono and public service in programs including our AIDS Legal Service Project, Domestic Violence Project, Immigration Legal Assistance Project, Center for Civic Mediation and Veterans Pro Bono Project. LACBA provides lawyer referral services through its Legal Referral and Information Service (LRIS), the largest and oldest referral service of its kind in the country. LACBA also supports numerous legal service providers (including Public Counsel) and provides its members with hundreds of hours of quality MCLE programs every year. LACBA has a long-standing and abiding commitment to both pro bono legal services and training lawyers.

LACBA commends the Task Force for the thoughtful work and detailed discussions to prepare the Recommendations during Phase I of the Task Force’s project. We have five additional comments on the Recommendations, which we hope can be addressed by the Task Force prior to the implementation phase.

First, in Recommendation B, the pro-bono and reduced fee requirement, there appears to be some ambiguity in the definition of “reduced fee,” which may have the unintended impact of precluding some representation from qualifying for credit under the rule. In Rule 2.151(B), reduced fee is limited to services provided “at a substantially reduced rate affordable to” low, very low, and extremely low-income individuals. This definition does not seem to include when *free* services are provided to such lower income individuals. The definition of “pro bono” in 2.151(A) is limited to providing *free* services to persons of “limited means,” which is very strictly defined under the Business and Professions Code. Many people with incomes higher than the “limited means” standard still cannot afford to pay for legal services. However, under the rule as currently drafted, anyone providing *free* services to people who did not meet the “limited means” definition” would not be able to count those hours towards satisfying either the pro bono or reduced fee requirement. LACBA suggests that the Task Force broaden the definition to include situations in which free services are provided to people in these extremely low, very low and low income categories, even where they do not meet the strict “limited means” definition, as well as to the situation in which reduced fee services may be provided to people of limited means.

Second, LACBA reiterates the practical concerns of monitoring compliance with Recommendation B. While many law students may seek to fulfill this requirement during law school where they have access to appropriate supervision, there does not seem to be a sufficient number of qualified pro bono agencies with the capacity and funding to train and adequately supervise the flood of newly admitted members who will now be required to fulfill their pro bono hours during their first year after law school graduation.

Third, LACBA would like to alert the Task Force to the issue of assistant district attorneys and other government attorneys may be prevented from performing pro bono work under ethical guidelines or office policies. In addition, given the potential conflict with law clerks in judicial chambers engaging in pro bono work during the course of their one- or two-year clerkships, LACBA suggests that the Task Force modify Rule 2.158 (A) to specifically provide an extension of time for judicial law clerks to complete the requirements of Recommendation B.

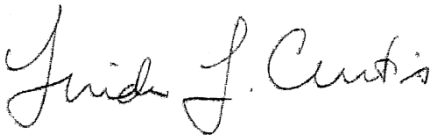
Fourth, in Recommendation C, the first year CLE, LACBA supports the requirement that ten hours be completed by the end of the first year of admission, as well as the required course distribution of four hours of ethics and six hours of skills. Recognizing the additional cost and time burden on newly admitted attorneys, however, LACBA suggests that during the initial implementation phase, the ten hours of CLE should be included in, rather than in addition to the mandatory twenty-five hours currently required under the proposed modifications to Section 6070 of the Business and Professions Code.

Fifth given the potential for stigma, and associated potential impact on employment opportunities, that could attach to newly admitted attorneys who have not yet satisfied the new requirements, LACBA suggests that language be added to make clear that newly admitted attorneys are in good standing during that first year -- prior to completion of their 10 hours of CLE. We further suggest that the Task Force include a statement to encourage

employers to move forward with hiring decisions before the CLE requirement has been satisfied. Some of our members are concerned that because many law firms wait until an applicant has passed the bar examination before extending an employment offer, those firms may decide to delay hiring decisions even further, until the applicant has completed her first year CLE, thus putting an additional financial strain on some of our most vulnerable attorneys.

We commend the Task Force for its hard work on the implementation recommendations. We look forward to working with the State Bar on the next stage of this reform.

Very truly yours,

A handwritten signature in cursive script, reading "Linda L. Curtis". The signature is written in dark ink and is positioned above the printed name and title.

Linda L. Curtis
President

MEMORANDUM

To: Members of State Bar Task Force on Admissions Regulation Reform

**From: Stephen C. Ferruolo, Dean and Professor of Law, University of San Diego School of Law
(California Bar Member #159,500)**

Date: September 15, 2014

**Re: Pre-Admission: 15 Units of Practice-Based Experiential Training (Recommendation A)
[8/11/14]**

I am writing to provide comments to Recommendation A [8/11/14]. Let me begin by saying that I strongly support the Recommendation and believe that the Task Force has come a long way in prescribing a set of rules that are coherent, clearly defined and yet sufficiently flexible to accommodate the wide variance in the careers for which we are training lawyers. As a long-time business lawyer, I agree with the goal of establishing a competency requirement that is directed at providing students with “the synthesis of doctrine and skills that lawyers find in practice.” The challenge for all of us, law schools and the bench and bar alike, will be to implement the new rules to meet this objective effectively, efficiently and without further obstructing equal access to the legal profession.

At law schools like the University of San Diego, a very high percentage of students are already taking fifteen (15) or more units involving competency training through a combination of the type of practice-based experiential courses listed (including law clinics and legal externships) and apprenticeships or clerkships. These courses will need to be evaluated to ensure that they comply with the four specific criteria proposed by the Task Force; and the apprenticeships and clerkships offered will need to be reviewed to meet the six criteria proposed for approval, as well as to certify that they give applicants the opportunity to develop the competency skills prescribed. However, I believe that this process can reasonably be done within the time proposed for implementation of the rules.

As I noted in the comments I provided to you in April 2013, I agreed with the Task Force’s view that law schools would need to expand the use of practicing lawyers and jurists as adjunct faculty to teach the new practice-based experiential courses and to supervise the expanded clinical, externship and apprenticeship programs. I was somewhat encouraged by the new Accreditation Standards adopted by the American Bar Association (ABA) in August, notably the greater flexibility provided by Standard 403(a) and the deletions of the student-faculty ratio calculations and interpretations to Standard 402. However, I was also struck by the elimination of Standard 403(c) (“A law school should include experienced practicing lawyers and judges as teaching resources to enrich the educational program.”) and, in particular, by the explanation given for the change: “Current Standard 403(c), regarding the use of practicing lawyers and judges, has been deleted. Law schools may, of course, use practicing lawyers and judges to deliver instruction, but are not obligated under the Standards to do so.” I hope that the Task Force will reiterate (and strengthen) its previous recommendation that “more practicing lawyers

ought to be integrated into law school faculties, perhaps by expanding the use of adjunct teaching roles.”

Some Specific Suggestions and Questions

Clinics and Externships. While I think that flexibility is one of the strengths of the proposed rules, there is one place where I think that the rules should be stricter. This is with respect to law clinics and legal externships. The proposed rules state that applicants are “strongly encouraged” to meet a portion of the fifteen (15) units by taking a law clinic or legal externship. I believe this recommendation should be made a requirement. However well crafted, and even if taught by highly-experienced practitioners, practice-based courses (or even simulations) do not provide the actual experience of client service, practice management and practice competencies found in a “real world” setting. I would recommend that at least six (6) units be met by requiring that students take a law clinic or a legal externship (or both), unless the applicant fulfills equivalent units through an approved apprenticeship or clerkship.

Clerkships. The proposed rules provide that clerkships must be either Bar or law school approved. I would suggest that there be an exception for judicial clerkships, whether state or federal, and that no formal approval of judicial clerkships be required by either the Bar or any law school. This exception may already be contemplated, but I think it should be made explicit, as I would question whether any judge would need (or want) to go through a certification process for such approval.

Bar Examination. It is my understanding that implementation of the Task Force’s recommendations on competency training is proceeding without any tandem consideration of changes to the California Bar Examination. I think this would be a mistake, and I remain concerned that the adoption of these new requirements, however valuable, without making changes to the California Bar Examination would further obstruct equal access to the legal profession, especially for underrepresented minorities. If applicants are being required to spend more time on practice-based experiential learning during law school, the bar examination should be reformed to test practical and doctrinal competencies in equal measure. As I wrote to the Task Force in April 2013:

“I ... agree that changes in the bar exam to give emphasis to practical skills, rather than standardized testing focused on legal doctrine, would have a positive impact on the socio-economic diversity of the legal profession. For these reasons, I think it essential that the CBE make appropriate changes to the bar exam on a time schedule consistent with the implementation of the recommendations of the Task Force.”

For the foregoing reason, I also agree with the recommendations made by other law school administrators who have urged that the California Bar Examination be shortened to two days and that the number of doctrinal subjects covered on the essay part of the exam be reduced.

National Uniformity. As both a law school dean and a long-time practitioner and law firm leader, I remain concerned about the impact of increasing state-by-state regulation of the standards for admission to the bar on legal education (access to law school), the legal profession (mobility) and legal services (costs and availability). At present, there seems to be more of a convergence than a divergence

in the proposed reforms, with the emphasis on improving practical skills training and pro bono legal services. But all of us who care about access to law education and access to justice need to remain alert to measures that are protectionist in purpose or impact. I applaud the Task Force for providing a “safe harbor” provision for courses that satisfy the new ABA Accreditation Standard 303(a)(3) requiring six credit hours of “experimental courses,” in the form of simulations classes, law clinics or field placements. I am hopeful that, despite the variation in the descriptive language and precepts, future interpretations of the ABA Standards will give equivalent recognition to courses and programs certified to meet the California pre-admission competency training requirements.

One issue I would ask the Task Force to address specifically relates to applicants (including the many California residents) who choose to attend law schools in other states but who seek admission to the California Bar. Does the Task Force contemplate that some portion of those out-of-state students will look to California law schools to provide and certify the course work or to approve and certify clerkships or apprenticeship they will need for admission to the California Bar? Will a law school be authorized to certify graduates of other law schools and how would such certification work?

My sincere thanks to the Task Force for the work you have all done in advancing these important recommendations. I will be attending the public hearing tomorrow, and I look forward to your discussion of these and other issues.

Ms. Teri Greenman
Task Force on Admissions Regulation Reform
The State Bar of California
180 Howard Street
San Francisco, CA 94105
Via email: teri.greenman@calbar.ca.gov

RE: Comments on Competency Training Recommendations

Dear Ms. Greenman,

This letter represents the combined effort of legal research and writing program directors across the state of California urging the Task Force on Admissions Regulation Reform (TFARR) to consider the impact of its proposal requiring applicants to complete 15 units of practice-based experiential training in law school for State Bar admission but not allowing units earned in first year legal research and writing to account for any of those units. First year legal research and writing is the core foundation of any law school's experiential learning program. It is there students learn the foundational analysis, research, and drafting skills necessary to represent clients.

The Bar's proposal is not the first recognition that clients would benefit from law students receiving more experiential training. Accordingly, over the last 5-10 years, law schools have added substantially to their required and elective experiential offerings.

Ten years ago, many schools required no more than 2 to 3 units of training in first year legal writing programs. Now the national average is slightly more than 5¹ units in the first year with many requiring units beyond the first year. Within California, the average is 4.6 units. Moreover, while in the past most schools used upper-division students or adjuncts to teach in the first year program, today almost all programs are staffed by full-time faculty members dedicated to the teaching of lawyering skills.

Many of those faculty members have developed and teach upper division courses aimed at providing a higher level of skills training. Accordingly, all would agree that the training should not end in first year. Moreover, we would agree that more skills training should be required beyond the first year. Not allowing the units for first year legal writing to count for State Bar admission requirements however may de-incentivize law schools from investing further legal resources in legal writing programs. Moreover, in a time of decreasing resources, the current draft of the policy also may inadvertently incentivize schools to take resources and even units away from legal writing.

Many alternatives exist for addressing the potential conflict between the proposed amendments to the admissions requirements and first year legal writing programs. With the goal of requiring 15 units on top of the units typically allocated to first-year legal

¹ ALWD/LWI 2014 Survey indicates that the average units rose to 5.71 in 2014. Schools vary greatly in the number of credits they give to LRW (from 2 to 14). They also vary greatly in the units they give in the first year (from 2 to 9).

writing programs without creating unintended consequences for schools that devote extra units to first-year legal writing, viable alternatives include:

1. All the units from legal writing courses should apply to the Bar Admission requirement, but at the very least, to compensate for fact the number of units in first year legal writing programs vary, *everything above 4 units of first year legal writing* should be able to be used to fulfill the State Bar Admissions experiential learning requirement.
2. Include all units from first year legal writing but increase the required number of units accordingly. For example, since the average units devoted to first-year legal writing in California is just over 4, the unit requirement could be increased to 19 to ensure that the policy results in 15 additional units of experiential courses.
3. At a minimum, add comments to the rules emphasizing the importance of first year writing programs to the overall training of competent lawyers and that the new experiential requirement is meant to require units above and beyond those provided in the first year program and is not intended to shift units away from the first year.

Any one of the undersigned is willing to provide further information to the committee and some are available to provide live testimony if it would help to provide clarification for this matter. Thank you, in advance, for your consideration of this matter.

Sincerely,

Directors of Legal Writing Programs of California Law Schools

Signatures included with permission:

Cindy Archer, Director of Legal Writing and Lawyering Skills

Loyola Law School, Los Angeles

Elizabeth Carroll, Director of Legal Writing and Advocacy Program

USC Gould School of Law

Andrea Funk, Associate Dean for Lawyering Skills and Institutional Assessment

Whittier School of Law

Thomas Holm, Director, Lawyering Skills Clinical Program
UCLA School of Law

Mary-Beth Moylan, Director of Global Lawyering Skills Program
University of the Pacific, McGeorge School of Law

Lindsay Saffouri, Director of First Year Skills Program
UC Berkeley School of Law

Grace Tonner, Associate Dean of Lawyering Skills
UC Irvine, Bren School of Law

Tracy Turner, Director of Legal Analysis, Writing & Skills
Southwestern School of Law

Greenman, Teri

From: Keller, Susan <skeller@wsulaw.edu>
Sent: Monday, September 15, 2014 4:56 PM
To: Greenman, Teri
Subject: Task Force on Admission Regulation Reform

Dear Ms. Greenman:

The faculty at Western State College of Law has carefully followed the development of the Task Force's recommendations. As a law school dedicated to the study and practice of lawyering skills required for the ethical, skillful, and professional practice of law, we welcome the emphasis on producing practice-ready attorneys. The faculty has created a Professional Skills Task Force to monitor and improve the provision of skills instruction at the College of Law.

On behalf of the Western State Professional Skills Task Force, I did want to bring one area of concern to the attention of the Task Force. We have a long history of serving the needs of working professionals who go to law school at night. We are concerned that these students might be disadvantaged by the proposal as it currently stands, given the Task Force's emphasis on fulfilling some of the requirements by participating in clerkships and apprenticeships:

To provide flexibility in meeting this requirement and to encourage collaboration with practicing attorneys, an applicant may fulfill up to six (6) of the fifteen (15) units through Committee-approved apprenticeships or clerkships or apprenticeships or clerkships that have been approved by a law school. For the purpose of this rule, fifty (50) hours of work in an apprenticeship or clerkship is the equivalent of one law school unit. (p. 3)

Because many evening students work at non-law related jobs during normal business hours when apprenticeship and clerkship opportunities are more likely to be available, they will be provided with less flexibility than more traditional students. In addition, and for similar reasons, it will be difficult to provide them with as extensive an array of clinic and externship opportunities as we are able to provide for our day students. For these reason, we are concerned that the 15 unit requirement will be unfairly burdensome to our part-time evening students. Mindful of the needs of these students, we are exploring ways to increase externship and clinical opportunities outside of traditional working hours. However, we hope the Task Force will take into account the additional burdens potentially faced by this population and consider the impact of the proposal on them. We look forward to contributing to future conversations about this important development in legal education.

Thank you very much for the work the Task Force has done, and for the opportunity to offer our comments.

Susan E. Keller
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September 15, 2014

Task Force on Admissions Regulation Reform
Attn: Teri Greenman
Executive Offices
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Sent Via E-mail: teri.greenman@calbar.ca.gov

Dear Chairman Streeter:

Thank you for providing Southwestern Law School the opportunity to comment on the Phase II Implementing Recommendations from the Task Force on Admissions Regulation Reform ("TFARR"). Our comments are supportive of the goals of the Task Force and are addressed to your focus on increased practical training in law schools. We also want to take this opportunity to commend the Task Force for your emphasis on access to justice.

At Southwestern, we take great pride in our longstanding commitment to produce new lawyers who are well prepared for the practice of law and who can and do hit the ground running as they enter the profession. We also see providing access to justice as one of the defining values of the school. This letter offers comments to the Task Force that relate to the Practice-Based Experiential Competency Training Requirement, which we believe are supportive of the Task Force's goals.

We fully support the concept that law students should be well prepared for the practice of law. While we understand that under the proposed requirement law schools will individually determine which of their academic programs meet the 15-unit requirement, we are concerned about the exclusion of important experiential coursework that some schools have already placed in the first year. Particularly given the fact that the first year plays such an important role in shaping students, we urge you not to inadvertently impede the goals that motivated the creation of the Task Force in the first place. We hope that you will not constrain the choices that law schools can make as they experiment to see what methods and timing are most effective in preparing students for practice.

While many schools continue to award few credits to first year writing courses, in reality, a number of innovative law schools have used a significantly expanded year-long first year writing course as the vehicle for creating a meaningful introduction to lawyering skills in the first year. Law schools that have restructured their first year programs in this way have also tended to hire experienced, reflective lawyers to teach these expanded first year courses, and many of them have been

recruited to do so as full-time law teachers. However, as the recommendations currently stand, all first year legal writing courses are excluded from counting toward the 15-unit requirement.

Because there is such a wide discrepancy in the number of units that are awarded for first year legal writing courses, we believe that completely excluding first year legal writing undermines the innovations that a number of schools have built into the first year legal writing curriculum. Southwestern is just one example of a school that uses the first year lawyering skills class to provide a rich exposure in a wide array of skills. We award 6 credit hours for our first year legal writing course. Students have the opportunity to choose among three separate tracks – appellate, negotiation or trial advocacy. Each of these tracks affords students the opportunity to practice a particular skill above and beyond the typical required first year moot court experience. We cover not only writing, research, and oral advocacy but also address professionalism, client counseling, and stress management. Students work on these skills over the course of the entire first year.

Furthermore, excluding from the new requirement all units for the first year legal writing courses may have unfortunate unintended consequences. First, schools will be incentivized to move legal writing credits from the 1L year into the upper division. In addition to the important educational value of having a meaningful introduction to lawyering skills in the first year, expanded first year writing courses help prepare students for their summer work experience and in so doing, they enable students to gain much more from their summer and part-time work experiences and externships. Second, schools that have not yet expanded their first year course will be deterred from doing so because they will not get credit for those units in the 15-unit requirement. We urge the Task Force to craft the new requirements in a way that will provide latitude for law schools to determine the timing and sequencing of programs as they continue to experiment with the goal of more effectively preparing students for practice. We will learn more about what is effective if different schools experiment, rather than work under constraints that are not essential to achieving the goals of the Task Force.

By excluding the first year legal writing program in its entirety, we believe that the proposed rule will disadvantage schools that have already been innovative in their approaches to the first year of law school and may impede progress in others. One approach that might remedy your concern would be to establish a certain number of credit hours for legal writing that cannot be counted. For example, the proposed rule could state that anything above 3 credit hours of first year legal writing may count toward the 15-unit requirement.

We appreciate the Task Force's consideration of our comments and concerns, and look forward to continued work with the State Bar on this important project.

Sincerely,



Susan Westerberg Prager
Dean and Chief Executive Officer