

## **AALS Section on Clinical Legal Education**

### **Statement of Position Regarding the State Bar of California Task Force on Admissions Regulation Reform (TFARR) Experiential Education Requirement\***

The Association of American Law Schools Section on Clinical Legal Education (“AALS Clinical Section”) applauds the Trustees of the State Bar of California for unanimously adopting the proposal of the Task Force on Admissions Regulation Reform (“TFARR”) to require applicants to have completed 15 credits of experiential education prior to sitting for the California Bar. The AALS Clinical Section is made up of hundreds of legal educators, including many in California who have dedicated their professional lives to preparing students for the practice of law through in-house clinics, externships, and other experiential educational offerings. In recent years, we collectively and individually have been involved in efforts to ensure that our JD students are more ready for practice, consistent with calls for such training made by bar associations, alumni, prospective students, and fellow educators. Many of us have participated actively in state bar associations and on bar committees, allowing us to appreciate the goals of both the legal academy and state regulators. With these experiences and perspectives in mind, we believe that the TFARR proposal, which encourages the integration of 21<sup>st</sup> century lawyering skills into the core of legal education, presents a significant opportunity to better prepare students to meet the demands of clients upon admission to the bar.

As the Clinical Legal Education Association (CLEA) and other stakeholders have noted, the legal profession has lagged far behind every other profession in regards to required pre-licensing professional skills education. Numerous studies over the past four decades by the American Bar Association (ABA) and others have decried this lack of practical training and called for reforms to the required law school curriculum.<sup>1</sup> As a result of these reports, the ABA recently increased the number of credits of experiential education required of JD students from 1 to 6 credits.<sup>2</sup> While this represents a significant increase for law students, it corresponds to less than 8% of the

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\* Disclaimer in accordance with AALS Executive Committee Regulation 1.4: The opinions expressed here are not necessarily those of each member of the Section and do not necessarily represent the position of the Association of American Law Schools.

<sup>1</sup> The ABA’s 1979 *Report and Recommendation of the Task Force on Lawyer Competency: The Role of the Law Schools* (“the Crampton Report”) proposed that law school curricula pay more attention to providing professional experiences. The ABA’s 1983 Task Force on Professional Competence shared this perspective and recommended that the ABA make enhanced law school training in lawyering skills a top priority. A decade later, the 1992 ABA *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (“the MacCrate Report”) recommended that law schools “develop or expand instruction” in fundamental lawyering skills and professional values; and the most recent, the ABA Task Force on the Future of Legal Education Report and Recommendation reiterated the “calls for more attention to skills training, experiential learning, and the development of practice-related competencies” and noted that the “balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further towards [the latter].” In addition, the Carnegie Foundation for the Advancement of Teaching publication, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007), found that courses that included real-life experience with lawyering could teach students all of the relevant professional competencies: intellectual, practical, and formation of professional identity and judgment.

<sup>2</sup> ABA Standard 303(a)(3).

JD program. It is also 4 times less than the practical training required of social workers and nurses and more than 6 times less than the practical training required of physicians.<sup>3</sup>

#### A. The Proposal Reflects an Increased Demand for Experiential Opportunities

Law students also have been clamoring for more experiential education opportunities. The greatest evidence of this demand is the criteria students rely upon when choosing a law school. These choices have become ever more important for law schools facing declining application numbers. A Law School Admission Council study in 2013 found that clinics/internships were among the most influential factors for prospective students in deciding whether to enroll at a given law school, behind only location and employment of graduates (77% of respondents considered location to be a very important factor and 68% classified clinics/internships as very important).<sup>4</sup> In fact, experiential offerings were more important to these prospective students than the cost of the institution, the personal attention they would receive, a school's ranking, and the reputation of faculty. In addition, a survey conducted in 2004 of recent law school graduates found that opportunities for professional skills training (including clinical courses and legal employment) were rated as *the* most helpful law school experiences in successfully transitioning to practice.<sup>5</sup> Surveys conducted by the National Association for Law Placement in 2010 and 2011 likewise found that lawyers in the private, government, and non-profit sectors attached great value to their law school clinic experiences.<sup>6</sup> Thus, from the viewpoints of prospective law students, recent graduates, and more senior lawyers, practical training is vital.

#### B. The Proposal Permits Great Flexibility and Aligns with the ABA Rules

We are aware that TFARR took these factors into account and that it crafted and revised the final proposal over several years during which it worked closely with California law schools, practitioners, and the judiciary, and engaged in extensive information gathering, including numerous opportunities for public comment. The result is a proposal that gives law schools guidance on developing and evaluating experiential learning offerings while simultaneously giving schools flexibility to design these offerings in ways that suit particular institutional missions, student bodies, and relevant legal markets. First and foremost, the proposed California bar rules provide a “safe harbor” for courses that comply with the revised ABA standard, thus allowing ABA-accredited schools to offer programs that simultaneously satisfy both requirements. Under both sets of rules, virtually any topic taught in a real-client or simulated setting will satisfy the ABA and the California Bar, including interdisciplinary courses

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<sup>3</sup> Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENVER L. REV. 1, Appendix A (2015) (citing MOLLY COOKE ET AL., *EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY* (2010); and COUNCIL ON SOCIAL WORK EDUC., *EDUCATIONAL POLICY AND ACCREDITATION STANDARDS*, at Educ. Policy 2.3., Accreditation Std. 2.1.3 (2012)).

<sup>4</sup> The survey ranked factors based on the percentage of respondents who rated each factor as “4” or “5” on a 5-point scale, with “3” as “somewhat important” and “5” as “extremely important.” See Law School Admission Council, LSAC REPORT, May 2013, at 12.

<sup>5</sup> NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION & AMERICAN BAR FOUNDATION, *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* 81 (2004).

<sup>6</sup> NATIONAL ASSOCIATION FOR LAW PLACEMENT & THE NALP FOUNDATION, *2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS* 6 (2011); NATIONAL ASSOCIATION FOR LAW PLACEMENT & THE NALP FOUNDATION, *2011 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS: RESPONSES FROM GOVERNMENT AND NONPROFIT LAWYERS* 7 (2012).

developed in collaboration with other professional schools. Skills learned can be as diverse as law practice management, client counseling, practical writing (including transactional writing), and pre-trial preparation.

In addition, under the California rules, the settings in which these skills can be learned include traditional courses, clinics and externships, uncredited clerkships, and apprenticeships. The proposal even allows for portions of a course to count, such that a 3-credit course that uses a contract-drafting exercise for 1/3 of the class time could count the 1-credit module towards the 15-credit requirement. Moreover, in a nod to schools experimenting with their first-year curricula, all but the first 4 units of first-year legal research/writing courses can count towards the 15 credits if they are taught through real or simulated client work. Finally, summer work that is uncredited is specifically allowed to count for up to 6 of the 15 required units. Thus, there are virtually limitless permutations of course, field, and uncredited work that law schools can offer to their students in order to meet both the ABA and California rules.

Moreover, the emphasis on skills (as opposed to substantive practice areas) provides schools the ability to tailor offerings to the local marketplace (e.g., oil and gas offerings in Texas or maritime law offerings at coastal schools). The result is that virtually any legal experience a student gains, whether in a law and policy reform organization or at the U.S. Patent and Trademark Office, can potentially count towards the 15-credit requirement. This provides a great deal of room for innovation, allowing institutions to experiment with the delivery of skills and professional training and draw upon generally under-utilized resources such as alumni.

As with any new undertaking, there will be a period of adjustment as schools begin to grapple with both the new ABA requirements as well as state requirements like those proposed by TFARR. TFARR has wisely taken this adjustment period into account by offering exemptions for licensed attorneys from other jurisdictions and allowing post-graduate apprenticeships (which can be paid) to meet the 15-credit requirement. This will ensure that schools have plenty of time to audit and/or ramp up their offerings, that lawyers who had not planned to practice in California still have access to that state's bar, and that students have every opportunity to learn about and meet the requirements prior to their first bar admission.

### Conclusion

Overall, the TFARR proposal presents a significant opportunity to improve the overall competency of new admittees to the State Bar of California. As students enter a rapidly changing and expanding legal marketplace, it is incumbent upon the Bar to ensure that law graduates have the doctrinal knowledge and professional and interpersonal skills needed to effectively and ethically represent clients in California. The TFARR proposal would advance this important obligation of the Bar and help legal education fulfill the demands of our students, their future clients, and the legal profession.