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Dean Blake Morant, President
Dean Judith Areen, Executive Director
Dean Martha Minow, Chair, Deans Steering
Committee
Association of American Law Schools
1614 20th Street, N.W.
Washington, D.C. 20009-1001

**By U.S. mail and email to: bmorant@law.gwu.edu, jareen@aals.org,
minow@law.harvard.edu**

Re: AALS Deans Steering Committee on the California Task Force on Admissions
Regulation Reform

Dear Deans Morant, Areen and Minow:

We are law professors at UC Hastings College of the Law and UC Berkeley School of Law, and we served on the State Bar of California's Task Force on Admissions Regulation Reform (TFARR).¹ We are writing to ask the AALS Deans Steering Committee on TFARR to withdraw

¹ Professor Marshall served on TFARR during Phase I (the initial recommendation stage) and Phase II (the implementation stage). She chaired TFARR's Phase II working group on the 15-unit competency training requirement. Professor Weisselberg was a member of TFARR during Phase II, and participated in that working group. Professor Marshall served as UC Hastings' Academic Dean from 2005-2013. Professor Weisselberg was Berkeley Law's Associate Dean for the J.D. Curriculum and Teaching from 2013-2015. Our institutional affiliations are provided for identification purposes only. The views expressed here are our own.

its July 6, 2015 Statement. The Deans Steering Committee's Statement appears to be directed at the recommendations contained in TFARR's 2013 report, which came at the end of TFARR's first phase. (See <http://www.aals.org/tfarr-statement/>.) However, TFARR's final report and recommendations were issued in September 2014—following the second phase of TFARR's work—and were approved by the California Bar's Board of Trustees in November 2014. (See <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000012730.pdf> (Phase II Final Report, summaries, and proposed amendments).) The 2014 final recommendations are materially different than those first put forth in 2013. We respectfully suggest that the Deans Steering Committee withdraw its Statement since many parts of the Statement address features that are not in the final version. If the Committee still wishes to engage the California Bar's proposals, it should review the 2014 report and recommendations, as these are the provisions actually pending before the California Supreme Court.

1. TFARR's Phase I and II Recommendations are Materially Different, and the AALS Did Not Address the Final Recommendations

TFARR proceeded in two stages. During Phase I, TFARR held public meetings and assessed the need for competency training as a requirement for admission to the California Bar. TFARR issued its Phase I Final Report on June 24, 2013. The Phase I Final Report contains TFARR's initial recommendations, which include 15 units of competency training. At that time, the American Bar Association (ABA) had not yet approved its new accreditation standards with respect to experiential education, and TFARR promulgated a non-exhaustive list of topics for the proposed competency training requirement. The Phase I Final Report also recommends that some or all of the 15 units could be met by work in a "Bar-approved" externship, clerkship or apprenticeship.

The Phase I recommendations were not self-executing. Thus, in October 2013, the Board of Trustees of the California Bar authorized the creation of a special committee to hold additional public hearings, receive comments, and propose a plan to implement the recommendations. This became TFARR Phase II.

Phase II began in December 2013. The State Bar expanded TFARR's membership for the implementation phase, adding more law deans and faculty members, among the various stakeholders. TFARR held eight public meetings during Phase II, and received oral and written comments from deans, faculty members, practitioners, and members of the public. TFARR prepared a Phase II Final Report, and also drafted proposed amendments to the California State Bar Rules and Business and Professions Code in order to implement its revised, final set of recommendations. The proposed amendments were sent out for informal comment in August 2014, including to the AALS, and were revised in light of the suggestions received. TFARR's Phase II Final Report and proposed amendments issued on September 25, 2014, and were approved by the State Bar's Board of Trustees on November 7, 2014, following a formal period of public comment. (See <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000012726.pdf> (November 6, 2015 letter to the Board).)

Although AALS never submitted comments to TFARR or the Board of Trustees, many in academia did, and these comments substantially shaped the Phase II proposals. For example,

Professor Eric Talley (then at Berkeley Law, now at Columbia Law School) gave a presentation at TFARR's March 10, 2014 meeting about the competencies required of transactional specialists. Following his presentation, TFARR expanded the non-exhaustive list of topics for competency training to include "financial analysis, such as accounting, budgeting, project management, and valuation," "cost benefit analysis in administrative agencies," "use of technology, data analyses, or predictive coding," and "business strategy and behavior." (See Proposed State Bar Rule 4.34(C)(11)-(14).) In addition, after extensive discussion, TFARR also revised its Phase I recommendation regarding "Bar-approved" apprenticeships. The Phase II final rules permit law schools (and not just the Bar) to approve non-credit bearing clerkships or apprenticeships, which could include summer jobs, to substitute for up to 6 of the 15 competency training units. The apprenticeships may be in any type of law office, including in non-profits, so long as the student is given an opportunity to further develop knowledge of the law and another professional competency (such as analysis, critical reasoning and problem solving), and the school certifies that the placement is sufficiently well-structured. (See Proposed State Bar Rules 4.34(B), (H); 4.36.) The final proposed rules retain the "Bar-approved" apprenticeships or clerkships; this provision applies to Bar applicants who seek credit for these experiences *after* they have already graduated from law school. (See Proposed State Bar Rules 4.34(B), (G), (H); 4.36.)

TFARR made another very notable revision during Phase II. The Task Force of course monitored developments at the ABA. In August 2014, the ABA approved its new accreditation standard, Standard 303(a)(3), which requires at least 6 credit hours of experiential education for students in ABA-accredited schools. To simplify matters for ABA-accredited schools, TFARR created a "safe harbor." Courses that satisfy the ABA's experiential education requirement will automatically count towards the California Bar's competency training requirement. (See Proposed State Bar Rule 4.34(F).) We expect that most ABA-accredited law schools will assess their courses under the ABA's rubric, since that will permit classes to address both requirements simultaneously. Law schools not accredited by the ABA will instead look to the non-exhaustive list of competencies set forth in proposed State Bar Rule 4.34(C).

Focused as it was on Phase I alone, the Deans Steering Committee overlooked these later revisions. The Committee rightfully criticized TFARR's Phase I Final Report for not including various competencies related to technology, business models, the anatomy of business deals, valuation analysis, and related topics. Fortunately, TFARR perceived the same problem and the Phase II proposed rules cure this deficiency. The Deans Steering Committee also pointed to the need to harmonize the substantive criteria for assessing whether courses meet the competency training requirement with the substantive criteria advanced by the ABA for its experiential education requirement. TFARR identified the same issue, and thus revised its proposal to create a safe harbor for courses that satisfy the ABA's requirement. Finally, the Deans Steering Committee expressed the concern that the Phase I topics for competency training were too narrow, and missed interdisciplinary opportunities and placements with non-profits and law-and-policy reform groups. TFARR had some of the same concerns in Phase II. The final rules were revised to include a broader range of competencies, and interdisciplinary training provided experientially (such as in simulation settings) should readily count toward both the ABA and California Bar requirements. And, as noted, under the Phase II revisions, law schools can approve apprenticeships with non-profits and law reform groups.

Because the Deans Steering Committee overlooked TFARR's Phase II Final Report and recommendations, and instead addressed only the Phase I Final Report, the Committee should withdraw its Statement. The Statement discusses issues and provides examples that are not relevant to the final proposed rules. Allowing the Statement to remain on the AALS's website would mislead the academy and the public by suggesting that its discussion and examples relate to the current recommendations pending before the Court. Any submission to the California Supreme Court should be retracted as well.

2. Other Issues

We do not know if the Deans Steering Committee will reconvene to consider TFARR's Phase II Final Report and recommendations. In this part of our letter, we provide a few further comments to assist the Committee, should it decide to review the pending recommendations.

The Deans Steering Committee expressed the concern that the California Bar's competency training requirement would constrain experimentation in legal education. TFARR went to great lengths to promote experimentation, not to constrain it:

- Law schools, not the Bar, will determine which courses satisfy the training requirement. Thus, schools are free to experiment without cumbersome oversight or advance permission.
- To encourage the integration of theory and practice, TFARR's proposed rules provide partial credit towards the 15 units for experiential components taught within more traditional classroom courses. (*See Proposed State Bar Rule 4.34(D).*)
- TFARR specifically revised its proposal specifically to accommodate schools that are experimenting with their first-year curriculum. Extensive writing programs, or first-year courses with skills components, can count towards the 15 units; only the first 4 units of traditional first-year legal research and writing, and moot court, are excluded. (*See Proposed State Bar Rule 4.34(C)(6)(b).*)
- Under the ABA's new standards (and the Bar's safe harbor provision), virtually any topic taught in a real-client or simulated setting will satisfy the ABA and the California Bar, including interdisciplinary courses developed in collaboration with other professional schools.
- By providing alternative criteria for determining whether courses will satisfy the competency training requirement (schools can apply the ABA experiential education standards or the Bar's list of competency topics), TFARR has established an even more capacious framework for experimentation than encouraged by the ABA.
- Law schools can approve clerkships and apprenticeships, so schools can encourage the development of competencies in novel settings.

It may interest the Deans Steering Committee to learn that in February 2015, representatives from almost all the ABA-accredited law schools in California met to discuss the TFARR proposals. The meeting, convened by Chapman Law School, was forward-looking, with much

optimism about the schools' abilities to form collaborative networks, consult with each other, and provide first-rate legal educations that prepare graduates for practice. We also discussed expanding our network to law schools outside of California. Based upon the flexibility inherent in TFARR's proposals, as well as our discussions in February, we have every reason to believe that law schools can continue to innovate and, at the same time, produce graduates who will meet the California Bar's requirements and be better prepared to enter the legal profession.

The Deans Steering Committee has expressed the worry that the competency training requirement will limit student autonomy and mobility. To the extent that the Committee is concerned about graduates who seek jobs where a JD degree is merely preferred or is an advantage, we note that the California Bar requirements go to Bar admission, not the availability of a JD degree. Students who simply want the credential can always earn the degree. But for students who seek permission to practice law in California, the Bar has every right to set the criteria for admission, just as each state specifies topics for its own bar examination and as New York has done by requiring *pro bono* hours for admission into its Bar.

Finally, the Deans Steering Committee appeared concerned that students will find a 15-unit requirement to be onerous or distract from other studies. However, as a practical matter, if students earn 6 credits toward the competency training requirement through their summer employment, as many will, the net impact will be to require 3 units of competency-focused coursework on top of the 6 units demanded by the ABA, which is not an extraordinary burden. The Committee posits the future tax lawyer, whose employer advises taking as many specialized courses as possible. We note that tax subjects taught experientially would certainly satisfy the Bar's requirements, as would specialized classes that develop competencies in business strategy and financial analysis (including accounting and valuation).

* * *

For the reasons we have expressed, we respectfully ask the Deans Steering Committee to withdraw its July 6, 2015 Statement, so not to mislead the academy, the Court and the public. We believe that any assessment of the California Task Force's proposals should address its final and not its interim recommendations. We also hope that our additional comments may assist the Committee.

Very truly yours,



Shauna Marshall



Charles D. Weisselberg