

# 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.”<sup>1</sup>

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).<sup>2</sup> This minor modification will ensure

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

<sup>2</sup> 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.