NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

25 BEAVER STREET • NEW YORK, NEW YORK 10004 • (800) 401-6580

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N.Y.S. COURT OF APPEALS

Margaret Nyland Wood, Esq.
Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

October 28, 2015

Dear Ms. Wood:

On behalf of the New York State Judicial Institute on Professionalism in the Law, I write to commend the work of the New York State Task Force on Experiential Learning and Admission to the Bar and, in particular, its proposals with respect to the experiential learning component of legal education. Specifically, we endorse the proposal for a licensing requirement that includes an assessment of an applicant's lawyering skills and understanding of the practical aspects of a legal career.

In May 2014, the Judicial Institute, together with the New York State Bar Association's Committee on Legal Education and Admission to the Bar, held a Convocation titled "The Coming Changes to Legal Education: Ensuring Professional Values."

At that Convocation, Chief Judge Jonathan Lippman told us that "with law schools, it is not just about teaching the different academic disciplines in classrooms. It is also about what it means to be a lawyer. You have to have real world learning and you have to be in touch. And law schools, more than anybody else, have to have their students in touch with the core values of our legal profession: service to others and pursuing justice for all regardless of one's resources or station in life."

Our keynote speaker at that Convocation, Justice Rebecca Love Kourlis (Ret.) of the Institute for the Advancement of the American Legal System, told us that "[Law schools should] figure out what law students need in order to be successful lawyers, what they need to learn in law school, what they need to know when they graduate. This is an effort to allow law students to 'begin with the end in mind.'"

The Task Force's proposals go far in the direction that both Chief Judge Lippman and Justice Kourlis urged us to take. The proposals are revolutionary to be sure, but they are headed in the right direction. We heartily endorse them.

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With respect to "Pathway 1", we note the reference to Standards 302(b)(c) and (d) of the ABA Standards and Rules of Procedures for the Approval of Law Schools, and we observe that those standards refer generally to skills that might be necessary for competent and ethical participation as a member of the legal profession, but do not otherwise define those skills.

We appreciate that the Task Force wished to give law schools the freedom to identify and articulate those skills and we are aware of many attempts by others to identify those skills.

The Judicial Institute would be willing to undertake an effort, working with the academy and the Court, to attempt to identify the skills that we believe should be attained by young lawyers, especially as they relate to the observance of and respect for the core professional values of our shared profession.

We also note that your "Pathway 2" would permit consideration for the licensing requirement of law-related work experiences, including non-credit bearing summer employment programs in lieu of six of the required fifteen hours of experiential coursework. We are concerned that that might impose an administrative certification burden on the law firms and we would be willing to examine how such a proposal and certification requirement was working in practice, should it be adopted.

We congratulate the Task Force for its good work and we look forward to our continued participation in our common effort to inculcate professional values in legal education.

Respectfully submitted,

Paul C. Saunders

Paul C. Saunders
Chair

Margaret Nyland Wood

From: Kandace J. Kukas <[redacted]
Sent: Friday, November 06, 2015 3:31 PM
To: Attorney Admissions
Subject: Skills Comment

Ms. Margaret Wood
Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

RE: Comment on Skills Competency Requirement

Dear Ms. Wood:

My name is Kandace Kukas and I am the Assistant Dean and Director of Bar Admissions Programs at Western New England University School of Law in Springfield, Massachusetts. I support the goal of the proposal in concept, but have one concern that I detail below. First, I appreciate the flexibility that the task force has offered by providing for five pathways to skills competency. Second, if the proposal goes forward, I believe implementation in 2016 is appropriate.

As indicted in an 2013 NCBE study on Job Analysis, employers rated the top five skills needed as: (1) written communication, (2) detail orientation, (3) listening, (4) oral communication, and (5) professionalism. The ability to combine these five skills at one time, in one case, while at the same time engaging in legal analysis of that case, goes beyond a classroom environment, so the move to require experiential learning is consistent with the goal of ensuring that newly admitted members of the bar will be competent lawyers.

Of course, the ABA has also recognized the importance of experiential learning and in 2014 modified its Standards to require that all ABA accredited law schools require six-credits of experiential learning as a prerequisite to graduation.

My concern is that the heightened experiential learning requirement in the New York proposal will create a new barrier or unnecessary confusion to entry to the New York Bar because it will deviate from ABA Standards. I appreciate the fact that the State of New York, by adopting the UBE now offers candidates the flexibility to practice in other jurisdictions. The special experiential learning requirement, however, cuts the other way and makes entry into the New York bar more difficult because it adds an additional requirement to admission.

In sum, I support the changes in concept, but worry they may make the national bar admission process less consistent and therefore more difficult for lawyer mobility.

Respectfully submitted,

Kandace J. Kukas

Kandace J. Kukas, Esq.
Assistant Dean & Director of Bar Admission Programs

WESTERN NEW ENGLAND UNIVERSITY

SCHOOL OF LAW
1215 Wilbraham Road
Springfield, MA 01119
[redacted]

Margaret Nyland Wood

From: Hon. Jenny Rivera
Sent: Tuesday, November 10, 2015 11:18 AM
To: Margaret Nyland Wood
Subject: FW: Permanent Commission on Access to Justice --experiential pathways proposal

Pls send to the task force members.

JR

From: Lauren Kanfer
Sent: Tuesday, November 10, 2015 10:56 AM
To: Hon. Jenny Rivera <[redacted]
Subject: Permanent Commission on Access to Justice --experiential pathways proposal

Dear Judge Rivera,

The Permanent Commission's efforts to expand access to justice are consistent with pathways to bar admission that expose law students to skills and values necessary to address the legal needs of low-income New Yorkers who are confronting life-altering civil legal issues. Due to the Commission's meeting schedule, the members did not have the opportunity to discuss the proposals and for this reason did not submit a formal comment.

Thank you.

Best,
Lauren

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November 9, 2015

To: Judges of the New York Court of Appeals
c/o Margaret Wood, Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

We write as a diverse group of law deans, acting as a steering committee of deans under the aegis of the Association of American Law Schools (AALS) in response to the Court of Appeals October 9, 2015 request for public comment.[1]

We commend the New York Task Force, chaired by the Honorable Jenny Rivera, for its careful efforts to explore, through an inclusive, deliberative process, steps to enhance opportunities for experiential learning in law school, with the aim of improving professional competencies of graduates seeking admission to practice in New York. We share the Task Force's goals. AALS member law schools, including the law schools represented by the dean signatories to this letter, are diligently working to develop and implement a variety of modalities for professional skills instruction, including both live

[1] The Association of American Law Schools (AALS) Deans Steering Committee whose views are reflected in this letter include Darby Dickerson (Texas Tech University School of Law); Dave Douglas (William & Mary's Marshall-Wythe School of Law); Ward Farnsworth (University of Texas School of Law); Lisa Kloppenberg (Santa Clara University School of Law); Marc Miller (University of Arizona James E. Rogers College of Law); Martha Minow (Harvard Law School and Chair of the Steering Committee); Blake Morant (The George Washington Law School and AALS President); Wendy Perdue (University of Richmond School of Law); Susan Poser (University of Nebraska College of Law); Daniel B. Rodriguez (Northwestern University School of Law); Kellye Testy (University of Washington School of Law), and Phillip Weiser (University of Colorado School of Law). Judith Areen, AALS Executive Director and past dean at Georgetown University Law Center also participated in discussions leading to this statement.

1614 20th Street, N.W. Washington, DC, 20009-1001
phone: 202.296.8851 • fax: 202.296.8869 • email: aals@aals.org • website: aals.org

client and simulation learning. Reflecting both recommendations from the practicing bar and emerging insights from theories of learning, the last two decades in the American legal academy have been marked by innovation and enhancement in experiential education. Indeed, these trends have accelerated in the last few years. We can point with pride to most of our nation's law schools for implementing effective structures of experiential education to better prepare students for our dynamic, demanding profession.

It is in light of these manifestly shared commitments to experiential learning that we write to express our general endorsement of the goals but also to raise two concerns about the Task Force's specific proposals. Our fundamental concern lies with the effort to impose mandates on essentially all law schools.[2] In a time in which legal practice is increasingly national and even international, our law schools prepare our students to practice law (and pursue other careers for which a general legal education is good preparation) wherever they end up living and working. New York has recognized this fact by embracing the Uniform Bar Exam, thus helping to accelerate the movement toward a Uniform Bar Exam (UBE). To be sure, New York bar authorities have an appropriate interest in ensuring that their new lawyers meet the standards of knowledge and professionalism that suit the state in which they are licensed to practice. Entirely consistent with respecting the continuing role of state-level testing and licensure, we respectfully suggest that the adoption of a set of mandates for experiential learning that go above and beyond the six-credit requirement of the American Bar Association (ABA) Section on Legal Education pushes in the direction of the balkanization of legal practice, a direction which is at odds with the trend and tendencies elsewhere in bar regulation and standard-setting.

To put this proposal in its contemporary context: The ABA has been gradually moving in the direction of reducing "command-and-control" type regulation; the AALS has also been promoting diversity and innovation in the curricula of our member schools. The UBE is likewise a movement in this direction. Moreover, on a global scale, we see more opportunities for cross-border admission and convergence in bar requirements, especially in the European and Asian context.

While predicting the future is always hazardous, it does seem that the strong trend is toward removing geographical barriers for lawyers to practice. In this light, it is an especially inopportune time to establish a set of intra-American regulatory roadblocks to national access and opportunity.

[2] We say "essentially all law schools" because the vast majority of U.S. law schools graduate students who aspire to membership in the New York bar. As the Court of Appeals and the Task Force well appreciate, these requirements are not limited to New York law schools, but have de facto nationwide scope.

Earlier this year, we expressed our concern with recommendations of a task force established by the California state bar.[3] Those requirements diverge even more from those of the ABA than do those of the New York task force, and, therefore, were of more serious concern to us. We hope that New York will avoid erecting yet another set of requirements that exacerbate the problem – or at least the risk – of balkanization in legal practice.

We acknowledge that much work and careful thought has gone into these proposals. We especially commend the flexibility manifest in Pathway 1. So if the New York Court of Appeals pursues the task force recommendations, we strongly urge that preservation of the flexibility accorded to individual law schools by Pathway 1 remain a centerpiece of the requirements. In implementing this requirement, we believe that law schools should be able to demonstrate their compliance by virtue of their meeting the ABA's six-credit experiential learning requirement,[4] along with the certification described in the Task Force's proposal. We echo the statement at the end of the first page of the Request for Public Comment that "law schools should be permitted the freedom to identify and articulate . . . skills and values." With the encouragement of New York and other states, we are confident that law schools will do exactly that.

Further, we suggest that Pathway 4 be made available in only the most unusual circumstances (and hence "plentiful opportunities" be flexibly interpreted), for it seems fairly onerous to require students to undertake a post-graduation six-month apprenticeship, especially when the apprenticeship is unpaid. Pushing graduates toward Pathway 4 will compound the serious problem of student debt and financial difficulty, a problem with which this Court is certainly well aware.

We thank the Court of Appeals for reaching out to the public for its views and for giving us the opportunity to share our thoughts and concerns. As a group deeply committed to the well-being of the legal system and the profession and, likewise, committed to the welfare of our graduates, we are pleased to reach out constructively to bar leaders and the judiciary to help fashion the best structure for improving lawyer competency and the values of a strong, ethical profession.

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[3] The statement of the AALS steering committee is here: http://www.aals.org/tfarr-statement/

[4] ABA Standard 303 requires that law schools offer "a curriculum that requires each student to satisfactorily complete at least . . . . one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must: (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302; (ii) develop the concepts underlying the professional skills being taught; (iii) provide multiple opportunities for performance; and (iv) provide opportunities for self-evaluation."

Margaret Nyland Wood

From: Rosemary Ellerby <[redacted]
Sent: Tuesday, November 03, 2015 12:22 PM
To: Attorney Admissions
Subject: On behalf of Thomas F. Liotti
Attachments: The Crisis Of Professional Ethics In The Law - Appendix.docx; The Crisis Of Professional Ethics In The Law -AttyDiscipline 7.2.2015.docx

Attached please find my piece on The Crisis of Profession Ethics in the Law for your review.

Sincerely,
Thomas F. Liotti

Thomas F. Liotti, Esq.
Law Offices of Thomas F. Liotti
600 Old Country Road
Garden City, NY 11530
Phone: ([redacted]14
Fax: ([redacted]
Email: [redacted]

A Paper Presented To: **Commission on Statewide Attorney Discipline**

The Crisis Of Professional Ethics In The Law

by: Thomas F. Liotti*

I. Introduction

The movie *Liar Liar* pokes fun at lawyers. Since Watergate it is how the public views us. We are in many ways working our way back to a better image through public service, *pro bono publico* work and the Volunteer Lawyers Project. The 1.2 million lawyers in the United States and more than 100,000 in New York tells us that competition among us for clients and business is greater than it has ever been. There are proportionately fewer jobs which then leads to new lawyers having to pay back student loans; rushing into the market place with few practice skills and little mentoring. This then becomes a recipe for disaster by neglect; legal malpractice and even theft.[1] It is important for this Commission to find solutions to these underlying problems rather than simply expanding the number or severity of penalties to which lawyers may be exposed.

As a profession we have responded to this negativity about us by enhancing our attention to consumerism and professional ethics. Consumerism has been augmented to the extent, for example, of using plain language contracts in real estate transactions, a statement of a client's rights and responsibilities in matrimonial cases and bringing laypersons into both the grievance and fee arbitration process. In many ways the legal profession's efforts to police itself have made it the most regulated of all professions. The question then becomes, have we over compensated for the negativity by creating a Code of Professional Responsibility that hampers or impedes freedom of contract between lawyers and clients and more importantly, the right of advocacy? Is there too much of Big Brother in a profession that has been throughout the ages, heralded for its independence?

In many ways, by bending over backwards to protect the rights of consumers we have interfered with both of these rights. The vagaries in our Code of Professional Responsibility leads to unfounded, sanctimonious and purported moralistic interpretations of first impression by Grievance Committees, Judges and the public at large.[2] Without limiting complaints to specific claims under the Code with references to the applicable Code sections, we have needlessly expanded the work of Grievance Committees instead of imposing rigorous requirements for the intake of complaints in the first instance. Similarly, the Code represents one of the few parts of our body of laws in New York without annotations and commentary. Indeed, disciplinary rulings themselves are difficult to track except as reported in the New York Law Journal. See §90 of the Judiciary Law relative to confidentiality.

This unfortunately then often leads to misinterpretations on the part of the lay public where they then extrapolate from these rulings by alleging grievable conduct which does not exist or by making unfounded derogatory and even defamatory statements about lawyers on the Internet and elsewhere. They often do this anonymously or under the cover of an organization. If consumers file frivolous complaints against lawyers they should be subject to sanctions and damages rather than immunity. Before filing a complaint prospective filers should receive a copy of the Code with directions to refer to particular sections within it. They should also be warned of the consequences for filing frivolous complaints, to wit: sanctions, costs and damages.

Many new lawyers operate their practices on a shoe string, out of their briefcases, their apartments or parents homes, the trunks of their cars and in virtual offices with no actual support staff. Ethical problems today are driven, as always, by economics and substance abuse.

Those who enter law school with the solitary expectation of high financial rewards are frustrated by their failure which then leads to desperate attempts at survival. It has also led to a variety of false advertising on the Internet which cannot be verified. Big firms do not feel this kind of stress, they have a different variety of their own – make partner within seven (7) years or wither and die. As a profession we have lost our way. Few now enter law school or the practice of law to save or change the world, to make legal history for the better or to challenge legal authority and institutions. Today the great bulk of us go along to get along. They join us to become wealthy. Some make it while others crash and burn.

There are few who want to be like Ralph Nader, Morris Dees, Clarence Darrow, William Kunstler, Dean Monroe Freedman, Herald Price Fahringer or the great judges of our time such as William O. Douglas, Bill Brennan, Thurgood Marshall and Earl Warren. There are few who want to recreate the poetry or majesty in the law or who want to be tomorrow's social engineers or who want to be a part of a civil rights movement that today still recognizes the endemic cultural, racial and ethnic divisions within our country. Instead, capitalism and high technology have obscured, diminished and for the most part, eliminated these enviable goals.

Our desire to make our profession more efficient by arbitration, mediation and plea bargaining has caused us to ignore the admonishment of our venerated former Chief Judge Judith Kaye who told us "not to just count cases, but to make every case count." We are not holding onto an adversarial system, jury trials and trial practice that made our democracy a model which no other country has been able to replicate. The oratorical skills of Abraham Lincoln and John Adams have been subsumed by text messaging and emails. Our Bar is not collegial the way it once was. We have distanced ourselves from each other and the empathies which we shared for ourselves, our families and our clients.

Access to our courts is a myth rather than a reality. The Supreme Court of the United States receives 10,000 Petitions for Writs of Certiorari each year and grants between 80 and 150 of them.

The crisis of professional ethics in the law is pervasive, requiring vast systemic changes. It is not something that can be remedied by this one Commission nor is it something that can be cured by looking at the private Bar alone. Prosecutors and Judges are also lawyers yet complaints against them under the Code of Professional Responsibility are non-existent perhaps because the Grievance Committee counsels' are prosecutors themselves. There is even less of a check and balance within the federal judiciary and with federal prosecutors.

It should be recognized that some areas of practice are more problematical from an ethics standpoint than others. For example, while there are a great many sixth amendment claims by criminal defendants there are fewer grievances filed by them than there are in matrimonial and personal injury cases. It is part of the work of this Commission to zero in on where geographically and in what subject areas of the law that proven grievances are most prevalent. In that regard, it is clear that current screening measures have not been adequate to filter complaints based upon an alleged violation of the Code versus those that are made merely to thwart a claim for legal fees or simply to reverse a result with which complainents are unhappy but having nothing to do with misconduct on the part of lawyers. There should be greater recognition given to the fact that the

grievance process is often abused by lawyers and litigants. In that regard this Commission should work to further define such matters as neglect and incompetence under the Code. In that regard this Commission should guard against sanctimony on the part of Grievance Committees and Referees. Allegations of violations of professional ethics should not be based upon myths, theories and ideals. They should be based upon specific, actual violations of the code. Conversion and co-mingling are specific, "My lawyer was rude" is not objective. The field of professional ethics is ripe and rapidly changing day to day. It is about serious business which should not entertain frivolous complaints by disgruntled clients and manipulative lawyers seeking to abuse the process for personal gain.

II. Law Students and Professional Ethics

Admission to law school has been primarily governed by a single criteria such as the LSAT. The Bar Examination has an ethics component but by then it may be too late to detect those who are ethically unqualified for admission to the Bar. Applications for admission to law school should have an ethics component followed by an interviewing process which would inquire of applicants why they want to go to law school and to practice law.

Without seeming too Orwellian here, there are also psychological and other tests such as polygraphs which might measure who the sociopaths[3]and those with psychological disorders[4] are. There are sciences available which can help us to determine whether someone is likely to be ethical and successful in practice.[5] For example, should prospective law students be required to take the psychological test of MMPI-2 and be subject to forensic examinations prior to admission to law school?

Every class in law school should have a professional responsibility aspect to it. Unfortunately, not enough professors of law have the requisite practical experience that might enable them to teach state of the art, real life professional ethics. There are a great many ethical issues that arise day to day. Picking up on ethical issues before they become problems is not taught. Dominick Gentile, a well-known lawyer in Las Vegas was caught in an ethical dilemma when prosecutors were holding press conferences about his client. He hit the books and decided to speak out against the negative publicity being generated. He was suspended from the practice of law. When the case came before the Supreme Court of the United States Justice Kennedy wrote the majority opinion upholding Gentile's role as an advocate. He wrote:

> "An attorney's duties do not begin inside the courtroom door. He or she cannot ignore the practical implications of a legal proceeding for the client. Just as an attorney may recommend a plea bargain or civil settlement to avoid the adverse consequences of a possible loss after trial, so too an attorney may take reasonable steps to defend a client's reputation and reduce the adverse consequences of indictment, especially in the face of a prosecution deemed unjust or commenced with improper motives. A defense attorney may pursue lawful strategies to obtain dismissal of an indictment or reduction of charges, including an attempt to demonstrate in the court of public opinion that the client does not deserve to be tried." *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

What an attorney can say in defense of a client is something that has been grossly misunderstood by both judges and lawyers or deliberately abused by them.[6]

III. Prosecutors

There is little in our Code of Professional Responsibility governing the conduct of prosecutors when they are overzealous or fail to disclose exculpatory evidence. See Disciplinary Rule 3.8 (a) and (b). The Senator Ted Stevens and Duke University Lacrosse cases[7] are examples of this in other states or at the Department of Justice. More locally, the settlement in the Central Park Jogger case of $41 million, a stream of wrongful conviction cases in Brooklyn and the Tankleff case from Suffolk are examples of this. So is the federal jury verdict in the Restivo case of $36 million as a result of a wrongful conviction in Nassau County.

There are tremendous ethical differences between prosecutors and defense lawyers[8]. Prosecutors are rarely prosecuted or referred to Grievance Committees. Prosecutors have immunity from civil liability so they believe that they can circumvent the "no contact rule" by creating their own ethical rules such as the Thornburg Memorandum. A federal prosecutor who placed a spy from the Colombian cartel into the defense camp clearly endangered lawyers and defendants yet he was not grieved.[9] They orchestrate "perp walks,"[10] "Walls of Shame" or policies such as "Flush the Johns," all of which create a "substantial likelihood of prejudicing the trier of facts" under the Code but for which they are never prosecuted. Prosecutors with paid Public Information Officers, a/k/a Public Relations Consultants, publish press releases daily providing far more information than what the public needs to receive. They stack guns, money and drugs[11] up for the cameras and media. They, the police and federal agents make far more gratuitous comments than necessary. They release juvenile records; take statements from defendants without counsel and not on video. None of this misconduct is ever prosecuted by Grievance committees.

While prosecutors and law enforcement not subject to the Canons routinely hold highly prejudicial press conferences, defense lawyers are condemned and even sued for standing up for their clients in rebutting claims that run counter to the presumption of innocence. Clearly there are many Judges, prosecutors and even defense lawyers unaware of the holding of Gentile v. the Nevada Bar Association, *supra*. While "perp walks" and other pre-trial actions by prosecutors and law enforcement that create a "substantial likelihood of prejudicing the trier of facts," free speech on the part of defense lawyers must also be preserved[12]. The use of "gag orders" by prosecutors must be closely scrutinized.[13]

There is routine non-compliance with the ABA Standards For The Prosecution Function (1993). They rarely turnover full discovery of exculpatory evidence even when it is shown to have been wrongfully withheld.[14] When they receive a favorable ruling they will stay with it even if they know or should know that to do so is wrong.[15] Overzealousness, particularly by inexperienced and poorly trained prosecutors is something that should be reviewed in the grievance process.[16] Chief prosecutors should be held accountable for poor administration that adversely affects our system of justice.

Defendants, defense counsel and taxpayers bear the brunt of prosecutorial misconduct. We bear the brunt of paying for wrongful arrests, prosecutions, unwarranted jail sentences, the

settlements and verdicts that result from the misconduct. When 9,000 cases must be retested by a lab due to the un-accrediting of a police lab, taxpayers have to pay for that as well.

Elected prosecutors receive political contributions and endorsements from police unions and the lawyers who then appear against them as adversaries. Former Assistant District Attorneys, Assistant U. S. Attorneys and politically connected lawyers have greater access to the prosecutors' offices and receive better plea bargains than other lawyers without those contacts. This disparate treatment is also unreported and not subject to grievances. An attorney whose wife is a judge or a judge's Law Secretary should not be permitted to appear before that judge.

Since prosecutors have more resources at their disposal than most defendants, nearly every prosecution becomes unfair. There must be a parity of resources between the defense and prosecution.[17]

There must be mandatory, open file disclosure and the rules of secrecy for grand juries should be eliminated with judges presiding over them and defense lawyers being given a greater role in those proceedings. Prosecutors have a due diligence obligation to search, find and turn over to the defense exculpatory evidence. [18]

Prosecutors who abuse their offices for their own political gain should be removed from office. [19] So should prosecutors who overcharge or over prosecute. Prosecutors should dismiss cases when they know that they have no chance of proving them.[20] Prosecutors should try to avoid jail sentences wherever possible opting instead for DTAP and other alternative sentencing such as that which is available in the Mental Health Court[21].

The use of confidential informants and the deals made with them is another area of deep concern. Plea bargains must be viewed as to their fairness to all defendants and the system of justice as a whole. Imputing "gang" or "organized crime" connections to defendants because of their ethnicity is clearly wrong. So is the destruction of evidence.[22] Promising to advocate against deportation on behalf of "cooperating witnesses" and then taking no position at sentencing is a breach of the plea bargain. [23]

IV. Associates

Associates at law firms have enormous responsibilities in that partners rely upon them for legal research and writing but also for their insight into potential or actual ethical problems. Clearly the wrongful hiring or delegation of responsibilities to inexperienced Associates or non-lawyers may incur substantial liability for a law firm. The Chair of the Commission, Administrative Judge A. Gail Prudenti, has poignantly stated:

> "With the time constraints placed upon practitioners, it is permissible and often inevitable that tasks will be delegated to non-lawyers. In such cases, the delegating attorney is charged with the responsibility to insure that those persons are adequately trained and supervised, because he or she may be held accountable for the unethical acts of non-lawyer employees, associates, and even partners. The degree of supervision required is that which is reasonable under the circumstances,

taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter." See, Hon. A. Gail Prudenti, "Risk of Delegating Bank, Bookkeeping Responsibilities," *New York Law Journal*, February 20, 2008, at 4 and 15.

Associates with or without contracts of employment or covenants not to compete or loyalty oaths, may steal clients and trade secrets of the firm. Yet when Associates fail to act or are negligent, it may be too late for the firm or the partners in it to recover. Associates may be covered by the firm's legal malpractice insurance policy but by in large they are not deep enough pockets for firms to cross claim against them or to implead in legal malpractice actions. The bottom line is that Associates who act improperly by, for example, blowing a statute of limitations, skate on liability whereas the law firm and partners for whom they work are on the hook.

As a result, you rarely see Associates grieved against for their actions. The Code should provide a measure of responsibility for Associates when they are negligent or unethical.

All lawyers take an oath which requires them to comply with the Constitution but the license to practice law is not a license to steal. It is a privilege and not a right but every lawyer has responsibilities to clients and fellow attorneys to uphold the honor, civility and truthfulness that are the hallmarks of being a lawyer.

Associates, although they may not have clients of their own or even direct contact with clients must know that negligence or other misconduct will have adverse consequences for them and their firm.

Being an Associate should not be viewed as "easy street" or just a meal ticket. Being a lawyer anywhere is a high honor which carries with it a work ethic that is beyond compare. A lawyer's work is never done. All of us must recognize that we are 24/7 and that our duty to our clients comes ahead of <u>all else</u>, even family. We have no room in this profession for lazy lawyers or those who work just 9 to 5, Monday through Friday.

Experience with some Associates is problematical. In one case, an Associate prior to being terminated from his employment, engaged in what he referred to as "value billing" meaning, for example, that if an omnibus motion originally took ten (10) hours to prepare and now for a different client would be cranked out in one (1) hour, he would bill the new client for ten (10) hours. This Associate faked a car accident and injuries to avoid a trial. He stole cases from a law firm and finally had to be sued to recover fees for which he refused to account. He called himself a partner after he was thrown out of the firm. It is people like this who are dangerous to our profession.

Another Associate spent twenty (20) hours a week watching porn on an office computer. Another brought in a personal injury case, never telling the firm about it, blowing the statute of limitations, then resigning from the firm but leaving it with a legal malpractice action to defend. Another Associate failed to record a deed and blew a scheduling order. While still another walked out with his wife's employment discrimination case which later resulted in a verdict of $5.5 million and a settlement of $1.6 million. Although the firm initiated the action and retained the experts it received no compensation. This same Associate put on his website that he had been "Senior Trial Counsel" to the firm. No such title existed and he never tried a case when he was with the firm.

Another Associate went to work for one of the firm's corporate clients and took the client's file with him but referred it to another firm. Disloyalty may not be grievable but I submit that some acts by Associates should be.

In contrast an Associate who rescued a victim on 9/11 suffered from severe Post Traumatic Stress. He ceased to do his work, took days off and neglected his clients. He was compelled to resign from the Bar. He should have been saved. As a profession we are not sufficiently forgiving of lawyers who succumb to mental illness or substance abuse. We need to extend more of a helping hand to these attorneys including senior practitioners and elderly lawyers who may have suffered a severe illness or death of a spouse or family member. Kindness, forgiveness and compassion for fellow practitioners should be more a part of the grievance process. Young, inexperienced prosecutors do not appreciate these issues and have little or no empathy for lawyers afflicted with them.

V. Judges

Generally unless Judges act outside of their jurisdiction they have no civil liability. In other words they must act in an ultra vires manner which makes it nearly impossible to hold judges accountable for their miscreant acts including issuing clearly erroneous decisions and orders or imposing unwarranted costs or sanctions. [24]

Our costs and sanctions, Part 130-1.1 and C.P.L.R. §8201, et seq., Rules and statutes are being misapplied, disproportionately imposed and used unfairly by some judges. The Code of Judicial Conduct provides inadequate remedies against judges who act for political reasons or simply are vindictively using their unbridled power against lawyers to proactively reshape the law to their liking such as a Judge who believes that the English system of awarding costs against the losing party is superior to our system which allows for the imposition of designated costs when agreed upon by the parties or by statute.

We are putting up barriers that do not give access to the Courts. Today, access to our Courts and trial practice issues are being decided by arbitration and mediation. Judges are retiring from the Bench to enter into lucrative arbitration practices ($1,000.00 per diem) plus their pensions and Social Security. They sometimes retire when they may be subject to prosecution by the Judicial Conduct Commission or others. The Judicial Conduct Commission will then cease their prosecutions when they retire, leaving their misconduct unchecked and unreported. That should not be the case but it should also be matters that the Grievance Committee reviews because Judges do not leave their oaths as lawyers behind when they take the Bench or leave it.

Mean spirited[25] and dishonest judges need to be challenged. Judges who accept campaign contributions[26] from lawyers and others in return for assignments, refereeships or other appointments should be removed from the Bench; prosecuted for bribery and disbarred. This is the root of all evil within our system of justice.

The system for discipline against federal judges and prosecutors is non-existent.[27] While Grievance Committees have jurisdiction over the overzealous federal prosecutors who are admitted to practice in New York, there are virtually no disciplinary matters against federal

prosecutors or judges.[28] There is no federal equivalent of the Judicial Conduct Commission. There should be.

Recently, the Appellate Division, First Judicial Department gave full faith and credit to the public censure of a lawyer by the Fourth Circuit Court of Appeals in Richmond, Virginia for which there was no legal precedent in New York.[29] The Appellate Division allowed for the Fourth Circuit's application of New York's Disciplinary Rules although neither the Judges presiding over that disciplinary case in the Circuit nor the prosecutors from the Department of Justice who instigated the disciplinary action were admitted to practice in New York. They misconstrued both our Disciplinary Rules and our case law under them.

IV. Bar Associations

When lawyers act individually or collectively they may violate Disciplinary Rules if they do so with fraud and deceit or for misguided political reasons. For example, when a Judiciary Committee of a Bar Association denies a well-qualified judicial candidate its approval for political reasons having nothing to do with merit, their conduct should be grievable.[30] Likewise, a local bar association that never before had a grievance committee but established one for the sole purpose of condemning a lawyer who was involved in a dispute with a judge, should be subject to discipline. The Judge, later removed from the Bench and disbarred sought to make the lawyer look bad among his colleagues. The bar association went along with this twisted strategy in order to curry the favor of the Judge.[31]

VII. Elected Officials And Lobbyists Who Are Also Lawyers

Ever since In Re Cooperman 83 N.Y.2d 465, 633 N.E.2d 1079 (1994), lawyers are not permitted to charge non-refundable fee retainers. In addition, they are permitted to pay referral fees, now called "participation fees," if the referring attorney has participated in the case. However, these rules are not applied to elected officials who are also lawyers or lobbyists who are lawyers and former elected officials. Grievance Committees do not review the conduct of these officials although they may be receiving legal fees and/or campaign contributions in return for government contracts, favorable legislation or other considerations. This of course is a form of bribery which should be the subject of discipline but is not because our Grievance Committees and their counsel are also political. They do not charge the rich and powerful.

Similarly, lobbyist lawyers representing special interests and not the public's, should also be subject to close scrutiny. Corporations paying exorbitant fees or making contributions do not complain to Grievance Committees even when they do not obtain the desired results. They seek to stay under the radar so as not to antagonize their paid lobbyists or the elected officials whose favors they are seeking.

Conclusion

The legal profession's ethics are in a state of crisis. In some respects we have gone too far and in others, we have not gone far enough. Simply providing more rules and penalties will not solve the psycho-social and economic problems faced by the profession today. While there

are class distinctions in society, there are also class distinctions within our profession where lawyers in big firms have little to do with the day to day problems of small firms or solo practitioners. It is not that big firms lawyers are more ethical only that their practices are camouflaged by esoterics and teams often employed by the same corporation for decades. Incestuousness among firms with outside counsel and the corporations they represent lends itself to a complaint free environment in large law firms. Yet it is often these lawyers who head grievance committees and police the conduct of small firms and solo practitioners. This by itself reflects an inequality in the grievance process as it currently exists.

The Commission should broaden its report to focus on causes and effects. It should also equally consider all lawyers in its review regardless of their position, title and influence.

The Moreland Commission was disbanded because its members and the Governor could not withstand the investigation in which it was engaged. This was a black mark against the Governor and the members of the Commission. It reflected a dishonesty similar to what we saw in Watergate. It set us back from a professional responsibility standpoint.

It will be easy for this Commission to attack high profile lawyers, small firms and solo practitioners. It will be far more difficult to focus on the big picture of the crisis in our profession from the very top of it to the very bottom.

Dated: July 29, 2015
Garden City, New York

Respectfully submitted,

Thomas F. Liotti
600 Old Country Road, Suite 530
Garden City, NY 11530
Phone: [redacted]
Fax: [redacted]
E-mail: [redacted]

*Thomas F. Liotti is an attorney in Garden City and a Village Justice in Westbury, Long Island, New York. Mr. Liotti is a former member of the Nassau County Bar Association's Professional Ethics Committee. On April 23, 1997, Thomas F. Liotti was appointed by Hon. Charles P. Sifton, Chief Judge of the United States District Court for the Eastern District of New York (as per Administrative Order No. 97-5) to the "Panel of Attorneys who are members of the Bar of this Court to advise and assist the Committee on Grievances of the Board of Judges in connection with the discipline of attorneys pursuant to Rule 1.5(a) of the General Rules of the United States District Court for the Eastern District of New York."

[1] In Re Carrie Sutherland, an attorney disciplinary matter before the 9th & 10th Judicial Districts Grievance Committee. Dr. Leah Blumberg Lapidus and Willard DaSilva, Esq. both testified as experts. Psychological and other defenses offered. See Liotti, Thomas F., New Lawyers And Their Transition Into The Marketplace, NYSBA Criminal Justice Section Journal, Summer, 2001, Vol. 9 No. 2 at 115.

[2] Mr. Liotti testified as an expert on legal fees in the Matter of Edward M. Cooperman, 83 N.Y.2d 465 (1994). He was qualified as an expert by Associate Justice Emeritus, Hon. Moses Weinstein (dec.) of the Appellate Division, Second Department, in a proceeding before the Grievance Committee. See also, Liotti, Thomas F., Legal Fees: Contractual and Illusory, The Queens Bar Bulletin, November, 2009 at 5 and 17.

[3] Martha Stout, Ph.D., The Sociopath Next Door, (Harmony Books, 2005); Aaron James, Ph.D., Ass-Holes, A Theory, (Anchor Books, 2014) and Eli H. Newberger, M.D., The Men They Will Become (Perseus Publishing, 1999). See also DSM-V (2013.

[4] Judge Mojo: The True Story of One Attorney's Fight against Judicial Terrorism by Thomas F. Liotti, (iUniverse, 2007), American Board of Criminal Lawyers, The Roundtable, Vol. MMVIII, No. 3, March, 2008 at 5. See book

review by Herald Price Fahringer and Erica T. Dubno, The Roundtable, a publication of the American Board of Criminal Lawyers, April, 2008, Vol. MMVIII, No. 4 at 2; The Attorney of Nassau County, April, 2008 at 9 and a book review by Herald Price Fahringer in The Champion, a legal magazine published by the National Association of Criminal Defense Lawyers, July, 2008, at 71. On April 11, 2008, Mr. Liotti was interviewed by Marlene Smith on her radio show, Marlene's Electronic Salon, KBOO, FM out of Portland, Oregon. See also By the Book, Widener Law Alumni and Friends Find Success Writing More Than Legal Briefs, a short book review of Judge Mojo in the Widener University School of Law Alumni Magazine, Fall, 2008 at 44 - "Equally gripping yet true, Thomas F. Liotti '76's (iUniverse, Inc., 2008) describes the ordeal he and his family underwent after a judge suffering from bipolar disorder went off his medication and set about trying to ruin the life of the high-profile criminal defense attorney. Liotti writes of how the simple dispute between him and Judge B. Marc Mogil - who began referring to himself as "Judge Mojo" - blew up into a dangerous obsession on the part of the jurist, who threatened Liotti and his family, cyberstalking them and pursuing him through bar associations. Mogil's behavior remained unchallenged, in spite of such claims as being a concert pianist and possessing the ability to fly fighter jets, until at last he was ousted from the bench and disbarred. Only then did the true extent of the judge's mentally impaired judgment become revealed. Liotti weaves his own awful experience with facts from the record and historical examples to artfully illustrate the danger of judicial misbehavior." See also, Cory Twibell, Liotti's Mojo Cites Details Of Judge Conflict, The Westbury Times, July 1, 2010 at 3. In reviewing the book, noted civil rights attorney, Ronald Kuby stated: "a fascinating and frightening book that chronicles the brave struggle of a prominent civil rights attorney to fight back against a terrorist in black robes. Judge Mojo provides a terrifying look at what happens when the Judge is angry, armed and psychotic. A must-read for every law student and every student of the law." Grievance Comm. for the Ninth Judicial Dist. v. Mogil (In re Mogil), 97-04366, Supreme Court of New York, Appellate Division, Second Department, 250 A.D.2d 343; 682 N.Y.S.2d 70 (1998) LEXIS 13540, December 16, 1998, Decided. See, Freedman, Mitchell, Newsday, September 11, 1995, Did Judge Harass Lawyer?; Tayler, Letta, Newsday, September 13, 1995, Markings Cited In Threat Letters; Tayler, Letta, Newsday, September 14, 1995, Lawyer, Judge Square Off; Tayler, Letta, Newsday, September 15, 1995, Lawyer Accused of Judge Bias; Kwal, Jessica, Newsday, September 16, 1995, Judge Claims Fax Is a Phoney; Tayler, Letta, Newsday, September 18, 1995, Public Battle at the Bar; Tayler, Letta, Newsday, September 18, 1995, Judicial Hearings Are Rare; Tayler, Letta, Newsday, September 19, 1995, Judge Denies Devilish Threats; Kowal, Jessica, Newsday, September 19, 1995, Around The Island - Crime & Courts, Rare Decision Makes Judge's Case Public; Newsday, Editorial, September 20, 1995, Hearings on Judges' Misconduct Should Be Public; Kowal, Jessica, Newsday, September 20, 1995, Mogil: Liotti Asked to See Gun; Kowal, Jessica and Tayler, Letta, Newsday, September 21, 1995, Devil Of A Time At Hearing; Kowal, Jessica, Newsday, September 22, 1995, Of Lawyers and 'Looney Tunes'; Kowal, Jessica, Newsday, September 23, 1995, Judge Contradicted; Topping, Robin, Newsday, Around The Island, Crime & Courts, September 28, 1995, Judge Is Flying Too High for Low Profile; Tayler, Letta, Newsday, October 10, 1995, Flamboyant Judge's Battle; Kowal, Jessica, Newsday, December 22, 1995, Ruling Against Judge; photo and caption, Disciplinary Panel Urged to Recommend Nassau Judge's Removal, January 12, 1996 at 6; Topping, Robin, Mogil's Fax To Foe Questioned, Newsday, January 12, 1996 at A7; Topping, Robin, Newsday, February 22, 1996, State Panel Wants Judge Removed; Milton, Pat, Daily News, February 22, 1996, Judge Linked To Threats Axed; Goldstein, Matthew, New York Law Journal, February 22, 1996, Removal of Nassau County Judge Urged by Judicial Conduct Panel; Hoffman, Jan, The New York Times, February 22, 1996, The Judge and the Lawyer: Some Not-So-Judicious Letters; Matter of the Proceeding Pursuant to §44, subdivision 4, of the Judiciary Law in Relation to B. Marc Mogil, a Judge of the County, Court, Nassau County, New York Law Journal, Disciplinary Proceedings (for full decision), February, 26, 1996; Daily News, Long Island Section, 'Hate Mail' Judge Suspended, March 27, 1996 at A24; New York Law Journal, Today's News, March 27, 1996 at 1; Miller, A. Anthony, The Attorney of Nassau County, Judge Marc Mogil Appeals Ouster, March, 1996; Bowles, Peter, Judge Fails To Win LI Libel Case, Newsday, Long Island, August 21, 1996 at A23; Slackman, Michael, Newsday, High Court Reviews Ouster Case, September 6, 1996 at A16; The Associated Press, Judge's 60M Suit Is Tossed, Daily News, Long Island, October 2, 1996 at QLI 1; Topping, Robin, Suspended Judge's Lawsuit Tossed Out, Newsday, October 7, 1996 at A18; Bowles, Pete, Deposed Judge Loses Pistol Permit, Newsday, October 31, 1996 at A28; Miller, A. Anthony, Court Of Appeals Ousts Mogil, The Attorney of Nassau County, October, 1996 at 1; New York State Bar Association, New York State Law Digest, Vendetta Against Lawyer, Both Overt and Secretive, and Lying to Commission on Judicial Conduct, Costs County Judge His Job, No. 443, November, 1996 at 3; Miller, A. Anthony, Court Strips Former Judge's Law License, August, 1997 at 3; Suspension and prosecution for disbarment ordered by the Appellate Division ,Second Department (By Mangano, P.J.; Bracken, Rosenblatt, Miller and Ritter, J.J.). The Appellate Division, among other things, stated: "The respondent also committed actions involving dishonesty, fraud, deceit, or misrepresentation in that he repeatedly gave false testimony under oath to the Commission on Judicial Conduct during its investigation and reported false information to the Nassau County Police Department." See New York Law Journal, August 1, 1997 at 23; Topping, Robin, Stop Practicing Law, Mogil Told, Newsday, August 6, 1997 at

A22. An article concerning the suspension of former Judge Mogil from the practice of law and the Appellate Division authorizing the Grievance Committee to initiate disbarment proceedings against Mogil. See Today's News, New York Law Journal, August 6, 1997 at 1. See also, Former Nassau County Court Judge B. Marc Mogil, Removed From The Bench in 1996 for His Bizarre Harassment of Garden City Attorney, Thomas F. Liotti, Has Been Disbarred, New York Law Journal, December 28, 1998 at 1 and 9; Kara Bond, Suspended Nassau Judge Disbarred For Conduct, Newsday, December 29, 1998 at A27 and A. Anthony Miller, Appellate Division Disbars Mogil, The Attorney of Nassau County, January, 1999 at 3. New York Court of Appeals decision, Matter of Mogil, 88 N.Y.2d 749, 673 N.E.2d 896, 650 N.Y.S. 2d 611 (1996). Docket number for Appellate Division disciplinary matter (97-04366). Hearing held on March 23, 1997 and October 15, 1997 before Special Referee, Hon. Morrie Slifkin re: disbarment proceeding of B. Marc Mogil. Letter To the Editor, Newsday, April 27, 2000 at A46 entitled: Witness Protection. The letter suggests Judicial Disciplinary Hearings may be open to the public, as Newsday suggested in an editorial, providing complaints are screened, pass preliminary stages and negative character testimony about complaining witnesses, unless germane to the changes, should be disallowed. Michael Frazier, Attorney Fights Reinstatement of Former Judge, October 31, 2007 at www. newsday.com and Michael Frazier, Target of Judge's Ire Fights Restoring Law License, Newsday, November 2, 2007 at A18.

[5] See Malcolm Gladwell, Outliers, The Story of Success (Little Brown & Company, 2008).

[6] See People v. Anthony Galasso (Nassau County, 2007, Hon. George Peck presiding) Alleged Grand Larceny, 22 Count Indictment, concerning theft of $4.3 to $8 million in escrow money from brother's law firm. See Alfonso A. Castillo, Bookkeeper Faces Charges, Newsday, October 25, 2007;Richard Weir, He's Caught In Luxe Life Lies, Lawyer's bro charged with skimming $4.3 million from firm fund, The Daily News, October 25, 2007 (lead story Long Island News) NS 1; Peter Sloggatt, Indictments Handed Down In $4 M Law Firm Embezzlement, The Attorney of Nassau County, October, 2007 at 1 and Vesselin Mitev, Firm: No Reason To Suspect Theft By Bookkeeper, New York Law Journal, November 13, 2007 at 1, 16 & 15. See News In Brief, Bookkeeper Who Stole From Firm Pleads Guilty, New York Law Journal, March 3, 2008 at 4. See also Ann Givens, Bookkeeper Sentenced, L.I. Briefs, Newsday, June 7, 2008 at A13 and Vesselin Mitev, Ex-Bookkeeper Is Sentenced For Stealing From Kin's Firm, New York Law Journal, June 9, 2008 at 1 and 3.

Galasso Langione & Botter LLP v. Liotti (Supreme Court, Nassau County, 019276/07, Justice Palmieri) See Vesselin Mitev, Defamation Suit Proceeds Against Liotti, New York Law Journal, August 26, 2008 at 1 and 2. Also see Decisions of Interest, New York Law Journal, August 29, 2008 at 1, 25 and 29. Law Firm's Defamation Suit Against Attorney Defending Its Ex-Employee Permitted to Proceed - Defendant Liotti, an attorney, moved to dismiss a defamation action against him by plaintiff law firm for a statement made to a newspaper about the criminal prosecution of his client, plaintiffs' employee, Anthony Galasso, for embezzlement. Liotti allegedly stated that Anthony acted with the "full knowledge and consent" of his superiors. The court previously ruled the firm met its *prima facie* burden of proof, denying Liotti's motion to dismiss and striking several affirmative defenses, including an argument his statements were true. It noted Anthony's affidavits were contradicted by his own sworn testimony before the sentencing Judge. When questioned if he committed the crimes on his own, Anthony replied yes; and when asked if anyone else helped, he replied no. Liotti claimed that if he did make the alleged statements, he did not know they were false as he was relying on discussions with Anthony. The court granted Liotti renewal based on affidavits from Anthony, but adhered to its prior determination, denying dismissal. See New York Law Journal, November 19, 2008 at 1, 25 & 27 - Court Sanctions Attorney $14,000, Calls Third-Party Action 'Frivolous' - In a defamation action by plaintiff law firm against defendant, attorney Liotti impleaded plaintiff's counsel, Brewington, as a third-party defendant. The court previously granted Brewington's motion to dismiss the complaint and for sanctions against Liotti for his 'frivolous' action of instituting the third-party action. Liotti moved to reargue, among other things but failed to address the court's finding that institution of the third-party action was sanctionable. Brewington claimed legal fees and disbursements over $36,000. The court ruled Brewington could only recover costs limited to litigating the third-party action, crediting Brewington's evidence as to costs incurred. It also took judicial notice of his hourly rate of $400 per hour from another court's finding in an unrelated matter. The court also noted while a sanction may not exceed $10,000, that limitation did not apply to an award of costs, as here. Thus, it granted Brewington a judgment of $14,098.69 as sanctions against Liotti. See also, Vesselin Mitev, Liotti Sanctioned $14,000 for "Frivolous' Action, New York Law Journal, November 14, 2008 at 1 and 5. See also, Vesselin Mitev, Lawyer Disqualified From Representing Client's Relatives In Law Firm Case, New York Law Journal, February 9, 2009 at 1 and 7; the decision in Galasso, Langione & Botter, LLP v. Galasso (disqualification by Justice Warshawsky), New York Law Journal at 1, 25 and 28 News In Brief; Vesselin Mitev, Ex-Client Sues Law Firm Over Lost Escrow Money, New York Law Journal, March 10, 2009 at 1 and Decisions in the News, New York Law Journal, August 24, 2009 at 36 - Acting Supreme Court Justice denies motion to vacate a judgment on the basis of renewal and reargument. See News In Brief, Judge Refuses To Vacate Sanctions Against Lawyer, New York Law Journal, August 21, 2009 at 1. Dan Wise, Panel Upholds Sanction, Raises Possibility of Additional Penalty, New York Law Journal, February 28, 2011 at 1 and 9. Joel Stashenko, Judge Stays Lawyer's Defamation

Trial, New York Law Journal, March 2, 2011 at 1. Galasso v. Liotti, A.D. Nos. 2008-05740, 2009-05736, 2009-08420 and 2009-10304. Three Orders from Appellate Division denying motions to renew and reargue, New York Law Journal, May 13, 2011 at 29; Andrew Keshner, Firm Settles Defamation Claims Against Attorney, News In Brief, New York Law Journal, January 9, 2012 at 1 and 4. Joel Stashenko, Court of Appeals, Advocates Pressed on Implications of Galasso Sanction, N.Y.L.J., September 12, 2012 at 1 and 8. The article includes a reference to Mr. Liotti as follows: "Garden City attorney Thomas Liotti filed an amicus brief supporting the position of the grievance committee. "Liotti at one point represented Anthony Galasso. His brief argued that 'callous and neglect and blatant mismanagement of firm accounts' by Peter Galasso and others at the firm resulted in the misappropriation of clients' funds that has been attributed solely to Anthony." Joel Stashenko, Court of Appeals, Galasso Suspension Sent Back to Panel for Reconsideration, N.Y.L.J., October 24, 2012 at 1 and 2 and Yancey Roy, Lawyer Guilty of Misconduct, Newsday, October 24, 2012 at A30; Joel Stashenko, Galasso Loses Last Appeal to Two Year Suspension, N.Y.L.J., February 21, 2013 at 1. The New York Court of Appeals upheld the two year suspension of Peter J. Galasso on February 19, 2013.

David D. Siegel, New York State Law Digest, Attorney Discipline. Lawyer Must Supervise Staff Entrusted With Fiduciary Duties and Answer for Staff Defalcations That Hurt Client, December, 2012 at 2 and 3.

[7] See Liotti, Thomas F., A Lesson For Duke, Opinion – Viewpoints Page, Newsday, January 24, 2007 @A33.

[8] See Liotti, Thomas F. and Zeh, Christopher, Uneven Playing Field: Ethical Disparities Between The Prosecution And Defense Functions In Criminal Cases, Touro Law Review, Vol. 17, No. 2, Winter 2001 at pp. 467-501.

[9] See Tarlow, Barry, RICO Report, Invasion Of The Defense Camp, The Champion, April 1997 at 50

[10] See Liotti, Thomas F., Perp Walks and Photo Ops Should Be Outlawed, Opinion, The Roundtable, a newsletter of the American Board of Criminal Lawyers, August, 2009 Vol. MMIX, No. 8 at 2 and The Attorney of Nassau County, June, 2009 at 9. See Liotti, Thomas F. End the Perp Walk, Verdict, October 2014, Vol. 20 No. 4 at 29-32.

[11] See Liotti, Thomas F. and Smith, Drummond C., Government Dirty Tricks And The War On Drugs, Verdict, a magazine published by the National Coalition of Concerned Legal Professionals, July, 2009 at cover, 1, 26-44.

[12] See Liotti, Thomas F., Lawyers And The First Amendment - Mutually Exclusive Terms? The New York disciplinary cases of Holtzman and Kunstler are harbingers of a national trend. The Champion, August, 1992 at 23. Also published in the New York Law Journal, December 30, 1991 at 2.

[13] People v. Urbelina Galindo Emiliano, (Nassau County, Hon. Raymond Harrington). Prosecution's application for a "gag order" pursuant to DR7-107 against defense counsel is denied. See New York Law Journal, June 24, 1994 at 1; Newsday, June 24, 1994; New York Law Journal, Monday, June 27, 1994 at 33, col. 1 (for full decision). See also, Liotti, Thomas F., A Perspective On Yagman: The Outer Limits of Judicial Criticism, The Attorney of Nassau County (May 1996) at 6 and 19.

[14] See People v. John Daly, (County Court, Nassau County, Hon. Donald DeRiggi), 20 A.D.2d 542, 799 N.Y.S.2d 537 (2nd Dept. 2005); 5 N.Y.3d 882 (2005); 57 A.D.3d 914 (2d Dept., 2008).

[15] See People v. Nathan Powell, 55 AD3d 632 (2008) and People v. Ira Raab (1994), 163 Misc. 2d 382, 621 NYS2d 440 (1994).

[16] Liotti, Thomas F. and Drummond C. Smith, (Mis)Identification In Criminal Cases, a Leading Cause of Wrongful Convictions, Verdict, April, 2013, vol. 19, no. 2, cover and lead article and 1-11.

[17] See Liotti, Thomas F., Does Gideon Still Make a Difference? New York City Law Review, Edited by the students of The City University of New York School of Law, a Journal of Law in the Service of Human Needs, Volume Two, Summer, 1998, Number Two, pp. 105-137. Liotti, Thomas F., After 50 Years What Gideon Means to Local Practitioners, Verdict, vol. 19, no. 3, July, 2013 at 20-27.

[18] See Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419 (1995); Liotti, Thomas F., The Uneven Playing Field, Part III, Or What's On The Discovery Channel, St. John's Law Review, Vol. 77, No. 1, Winter 2003, pp. 67-74.

[19] See Liotti, Thomas F., Ex Post Facto Prosecutions, The Westbury Times, May 20-26, 2015 at 2A.

[20] See Liotti, Thomas F. and Drummond C. Smith, (Mis)Identification In Criminal Cases, a Leading Cause of Wrongful Convictions, Verdict, April, 2013, vol. 19, no. 2, cover and lead article and 1-11.

[21] See Liotti, Thomas F., Op-Ed Viewpoints article, Newsday, Tuesday, May 25, 1993 at 75 & 76 entitled: "Dillon Should Follow Hynes On Drug Plan". This article explains and supports a Drug Treatment Alternative To Prison (DTAP) program started in Kings County by District Attorney Charles J. Hynes. See Editorial, Mr. Obama Takes On The Prison Crisis, The New York Times, July 17, 2015 at A26.

[22] See Liotti, Thomas F. and Smith, Drummond, Spoliation of Evidence by Prosecutors, Verdict (a magazine published by the National Coalition of Concerned Legal Professionals, July, 2008 at 1, 3 and 4 and New York Criminal Law Newsletter (a publication of the Criminal Justice Section of the New York State Bar Association), Summer, 2008, Vol. 6, No. 3 at 9.

[23] See Santobello v. New York, 404 U.S. 257 (1970).

[24] See Liotti, Thomas F. and Drummond C. Smith, Sanctions and Costs: The Enemy of Advocacy, The New York State Bar Association Commercial and Federal Litigation Section Newsletter, Summer, 2011, vol. 17, no. 2 @ 1, 12, 13 and 14. See also Liotti, Thomas F., Enjoining State Courts Under The All Writs Act: How To Stop Frivolous Litigation, New York State Bar Association, Commercial and Federal Litigation Section Newsletter, a publication of the Commercial and Federal Litigation Section of the New York State Bar Association, Summer, 2010, Vol. 16, No. 2 at 1, 9, 10 11 and 12 and the Nassau Lawyer, October, 2010 at 3, 16 and 17.

[25] See Liotti, Thomas F. and Smith, Drummond, Judicial Civility, The Attorney of Nassau County, July, 2009 at 6, 10 and 11.

[26] See John Sirica, *et al.* The Judges/Politics and The Bench, Newsday, September 20, 1999 at A07; Black Robes, Back Rooms, Newsday, September 19, 1999 at A4-5; Route to Bench: Take Party Line, Newsday, September 20, 1999 at A6-7; Justice, Politics, Case and the Bar, Newsday, September 21, 1999 at A7, 30, 31, 32 and 33; Judges & A Jury of Their Peers, Newsday, September 22, 1999 at A7, 36 and 37; Courting a Job? It's Who You Know, Newsday, September 23, 1999 at A7, 46, 47 and 48; Select Cast Gets Lucrative Roles, Newsday, September 24, 1999 at A7 and 43 and The Judges/How They Rate, Newsday, December 13, 1999 at A06

[27] See Liotti, Thomas F., U.S. Judges Need an Objective Oversight Agency, National Law Journal, Letters, July 8, 1996 at A18.

[28] See Liotti, Thomas F., U.S. Judges Need An Objective Oversight Agency, National Law Journal, July 8, 1996 at A18 and Liotti, Thomas F., Needed: Legislation To Discipline Judges, The Attorney of Nassau County, July, 1996 at 7.

[29] News in Brief, N.Y.L.J., September 27, 2013 at 1 and 6. N.Y. Panel Censures Liotti for Fourth Circuit Misconduct and Disciplinary Proceedings, Matter of Thomas F. Liotti, an attorney and counselor-at-law, M-534, reciprocal public censure. See also, Liotti, Thomas F., America's Most Dangerous Place, Verdict, Vol 21, No. 2, April 2015, at 25-31 and Petition for a Writ of Certiorari in the Supreme Court of the United States by Mr. Liotti, available online at News in Brief, N.Y.L.J., September 27, 2013 at 1 and 6.

[30] See Liotti, Thomas F., A Perspective: Judicial Screening: Close But No Cigar, New York State Bar Association Criminal Justice Section Journal, Vol. 5, No. 2 (Winter, 1997); Liotti, Thomas F., In My Opinion, Judicial Politics Over Experience, The Mouthpiece, Vol. 16, No. 5, September/October, 2003 at 27.

[31] See Liotti, Thomas F., Free Speech, Advocacy, Politics and the Nassau Lawyers Association of Long Island, Inc., (1996). See also, Liotti, Thomas F., Judge Mojo: The True Story of One Attorney's Fight against Judicial Terrorism (iUniverse, 2007).

Appendix

1. Liotti, Thomas F. and Zeh, Christopher, Uneven Playing Field: Ethical Disparities Between The Prosecution And Defense Functions In Criminal Cases, Touro Law Review, Vol. 17, No. 2, Winter 2001 at pp. 467-501.

2. Liotti, Thomas F., The Uneven Playing Field, Part III, Or What's On The Discovery Channel, St. John's Law Review, Vol. 77, No. 1, Winter 2003, pp. 67-74.

3. Liotti, Thomas F. and Smith, Drummond C., Government Dirty Tricks And The War On Drugs, Verdict, a magazine published by the National Coalition of Concerned Legal Professionals, July, 2009 at cover, 1, 26-44.

4. Liotti, Thomas F. End the Perp Walk, Verdict, Vol. 20, No. 4, October, 2014, at 28 – 32.

5. Liotti, Thomas F., After 50 Years What Gideon Means to Local Practitioners, Verdict, Vol. 19, no. 3, July, 2013 at 20-27; see also Liotti, Thomas F., Does Gideon Still Make a Difference? New York City Law Review, Edited by the students of The City University of New York School of Law, a Journal of Law in the Service of Human Needs, Volume Two, Summer, 1998, Number Two, pp. 105-137.

6. Liotti, Thomas F. and Smith, Drummond, Judicial Civility, The Attorney of Nassau County, July, 2009 at 6, 10 and 11.

7. Liotti, Thomas F., Free Speech, Advocacy, Politics and the Nassau Lawyers Association of Long Island, Inc., 1996 (an unpublished report).

8. Liotti, Thomas F., America's Most Dangerous Place, Verdict, Vol. 21, No. 2, April 2015, at 25-31 (edited for publication) and the unedited version also attached together with a copy of the Petition For Certiorari in the Supreme Court of the United States from the same Fourth Circuit case.

9. See In Memoriam, Monroe H. Freedman, April 10, 1928 – February 26, 2015, Verdict, a Magazine published by the National Coalition of Concerned Legal Professionals, Vol. 21, No. 3, July, 2015 at 14-17, 20-21.

Margaret Nyland Wood

From: Hon. Jenny Rivera
Sent: Sunday, November 08, 2015 2:38 PM
To: Margaret Nyland Wood
Subject: FW: Request for Public Comment on proposed revised admission requirements in NY - LLM/foreign-trained lawyers considerations
Attachments: In House Counsel - Research OverviewMarch2015.docx; ABA Research_In House Counsel_March2015.xlsx; ATT00001.txt

Circulate to the Task Force members, pls.

JR

-----Original Message-----
From: Stephan Grynwajc [mailto:[redacted]]
Sent: Sunday, November 08, 2015 12:22 PM
To: Hon. Jenny Rivera <[redacted]
Cc: Eileen D. Millett <[redacted]>; Patricia Salkin <[redacted]>; Attorney Admissions <attorneyadmissions@nycourts.gov>
Subject: Request for Public Comment on proposed revised admission requirements in NY - LLM/foreign-trained lawyers considerations

Dear Judge Rivera,

I follow up on your kind invitation to comment on the NY Court of Appeals' Request For Public Comment on "whether New York's admission requirements should be amended to include, among other things, an experiential learning component, or whether it is appropriate to include as a licensing requirement an assessment of applicants' lawyering skills and understanding of the practical aspects of a legal career." I am offering this perspective as a foreign-trained lawyer's personal contribution and under no circumstances as a representative of the New York State Bar Association's Committee on Legal Education and Admission to the Bar. Having said that, I do speak as a foreign-trained lawyer admitted to practice in three countries besides NY, i.e. in France, England and Wales, and Quebec (Canada), two of which, France and Quebec, are civil law jurisdictions.

In particular in relation to Pathway 5 suggested by the Task Force on Experiential Learning and Admission to the Bar (the "Task Force"), the fact that this pathway to admission would be limited to those foreign-trained lawyers who "have been authorized to practice and have been in good standing (as such)" in their foreign jurisdiction of origin is an issue in that it does not adopt a criteria which accounts for the diversity of ways foreign lawyers lawfully practice in a majority of foreign jurisdictions around the world. Particularly as relates to in-house lawyers, a recent informal survey of the regulation of lawyers in 70 jurisdictions (see attached) which was conducted in support of a resolution amending ABA Model Rule 5.5 ("unauthorized Practice of law; Multi-jurisdictional Practice") as well as the ABA Model Rule for the Registration of Foreign In-House Lawyers, which resolution was adopted by the Council of the ABA Section of International Law on October 20, shows that in-house lawyers are members of the bar and admitted to practice as such in only 28% of the surveyed jurisdictions, essentially common law jurisdictions. In most jurisdictions, and in particular civil law jurisdictions, lawyers cannot practice in-house and simultaneously be members of the bar, a status which is reserved for lawyers who practice in law firms. In some countries, such as France, Italy or Sweden, to name a few, a lawyer who worked in private practice and moves in house must surrender his or her license as a barred attorney. In these and the majority of surveyed civil jurisdictions, i.e. South American, Asian, West African and European jurisdictions, lawyers who practice in-house either cannot be members of the bar, or they are not required to maintain membership with the bar during the time that they work in-house. Still, they are lawyers like their colleagues of the bar,

except that they derive their authority to lawfully practice law from national law and not from a membership in a bar. Therefore, there is not a regulatory body such as a bar able to deliver a certificate of good standing to attest to their authority to practice.

I have attached both the survey of the foreign jurisdictions as relates to the regulation of in-house lawyers in particular, as well as the overview that accompanied the survey that was presented to the ABA Section of International Law.

On that basis I would urge the Task Force to consider amending the requirement outlined under Pathway 5 to instead allow foreign lawyers who have been engaged in the lawful practice of the law (or lawfully practicing law) outside the United States and have practiced in that jurisdiction full time for one year, or part time for two years. This way you will not only be able to admit foreign lawyers who are practicing in law firms as well as in corporations. In lieu of a certificate of good standing from a regulatory body such as the bar for barred attorneys from common law jurisdictions, which allow or require their lawyers to remain members of the bar while in-house, you may consider asking for certificates of in-house employment or an attestation from the General Counsel to the extent there is one. This way you would capture most jurisdictions' lawyers, mostly coming from civil law jurisdictions, and avoid having to grant waivers to the majority of foreign lawyers who have engaged in the lawful practice of the law in their country.

As relates to Pathway 4, I would urge the Task Force to also consider replacing the requirement that the six-month apprenticeship be completed post-graduation which, as relates to foreign-trained lawyers, negatively impacts those lawyers from civil law countries who had to complete a LLM before they could take the bar exam and not those from common law jurisdictions such as England, Australia or Canada who did not have to complete a LLM. For the former category of foreign-trained candidates their LLM graduation would be used as the basis whereas the latter category could simply use their foreign graduation as the basis. Judge Rivera, I remember you saying in the meeting this week that the reason the experience should be post-graduation was because you were expecting that experience to leverage the applicant's education on US law. But this would not be the case for lawyers from other common law countries who did not study in the US nor would it be for LLM graduates who could not find a work opportunity in the US after their graduation and had to return to their country to gain that experience, most likely under foreign law and not US law.

On that basis it would seem fairer to me that Pathway 4 requires instead that the experience be gained post graduation from their JD (US students) or foreign JD equivalent (foreign-trained students) or simply pre-admission, leaving flexibility in both the timing and content of that six-month apprenticeship.

Lastly, as per my comment in relation to Pathway 5, if the foreign lawyer completes his or her apprenticeship in-house in a country where in-house lawyers could not be members of the bar, the requirement in Pathway 4 that such apprenticeship be under the supervision of an attorney "admitted to practice and in good standing" in the foreign jurisdiction may likely not be met, and therefore a similar alternative standard or wording than that suggested for Pathway 5 may be considered.

I hope the above can resonate favorably with the Task Force in the interest of achieving the expected outcomes of these amendments in a way that accounts for the diversity of ways in which foreign lawyers lawfully practice law in their country while avoiding the administrative burden for the Court of Appeals to have to grant waiver after waiver to foreign-trained lawyers who cannot technically meet the new requirements.

I wish to thank you in advance for your attention and I remain at your disposal should you wish to discuss any of the above.

Kind regards

Stephan Grynwajc

The Regulation of In-House Counsel – Overview of International Trends

In order to better understand the regulation of the legal profession in different legal jurisdictions, and in particular the regulation of in-house legal advisors, information has been compiled for 70 countries, including:

- ***Entry to Legal Profession***: information regarding the body that oversees admission to the legal profession, and the requirements for an individual to be admitted into the profession.
- ***Regulation of In-house Counsel***: whether or not a lawyer who is working as in-house counsel is permitted to be a member of the bar. In certain jurisdictions in-house counsel are permitted, but not required, to be members of the bar, and this has been reflected in the data collected.
- ***Rules Regarding Foreign Lawyers***: the data for each country also indicates whether there are rules that would permit foreign lawyers to register in the jurisdiction, as an indication of what kinds of reciprocal benefits are available to US-licensed attorneys (or other foreign lawyers) in that jurisdiction.

The overarching trend based on the information collected is that there is a division between common law jurisdictions and civil law jurisdictions: whereas civil law jurisdictions generally restrict in-house lawyers from maintaining active bar membership, most common law jurisdictions require bar membership for in-house counsel. The following provides a brief summary of the trends on a regional basis.

1. Europe

We collected data on 24 European countries. [1] More than 60% of the European countries (63%) surveyed do not require in-house counsel to be members of the bar,[2] some countries like Italy, France or Sweden do not even allow a lawyer to be a member of the bar while practicing in-house. This trend is mostly observed in civil law countries. Thus, for most of the countries in Europe, an in-house attorney would not be able to obtain a certificate of good standing from a bar association, or provide evidence of a current professional license.

The other 37% of European countries surveyed either require bar membership for in-house counsel (e.g. the United Kingdom and Ireland, both common law jurisdictions), or allow in-house counsel to remain members of the bar, provided that certain conditions are met. For example, German lawyers are permitted to work in-house and remain members of the bar provided that the attorney is able to demonstrate that his permanent employment relationship does not endanger his independence – so admission to the bar for an in-house lawyer in Germany is conditional, and not automatic.[3]

The countries that do not allow bar membership for in-house counsel still impose stringent requirements for lawyers to be admitted to the practice of law. Most countries require candidates to the bar to complete a year or more of professional legal training, and the completion of a bar exam, in

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[1] Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Norway, Lithuania, Luxemburg, the Netherlands, Poland, Portugal, Romania, Spain, Sweden, and the United Kingdom.

[2] Austria, Belgium, Croatia, Czech Republic, Finland, France, Hungary, Italy, Lithuania, Luxemburg and Sweden all prohibit in-house counsel from remaining members of the bar.

[3] A 2004 Report prepared by the Council of Bars and Law Societies of Europe , "Regulated legal professionals and professional privilege within the European Union, the European Economic Area and Switzerland, and certain other European jurisdictions", provides more detail regarding the regulation of in-house lawyers in various European jurisdictions. (available at: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/fish_report_enpdf1_1184145269.pdf)

addition to a law degree. The number of years of training required varies between jurisdictions – Italy requires the shortest amount of training (18 months), while Austria requires 5 years of training in order to become a lawyer. It is interesting to note that most lawyers, who would suspend their bar membership in order to start employment as an in-house counsel, would probably already have completed these intensive training and educational requirements in order to qualify as a lawyer at the outset. In some countries, such as France, a lawyer who would have started her career in house without going through private practice and the bar exam (in France the bar only regulates lawyers in private practice) is, upon completing a number of years of practice as an in-house lawyer, eligible to be automatically admitted to the bar based on her legal education and years of experience as a lawyer, without examination and without the need to complete the many months of training in a bar school that are otherwise required.

2. **Asia**

We collected data for 7 Asia –Pacific countries.[4] Among those countries, the trend was again towards not requiring a bar registration to practice as an in-house counsel, with more than 50% of the countries not requiring such membership. Unsurprisingly, common law jurisdictions such as New Zealand and Australia require bar membership for in-house lawyers, while in-house lawyers in Korea, a civil law jurisdiction, are able to maintain their bar membership.

In contrast, China, Japan and India do not allow bar membership for in house counsel (notwithstanding the fact that India is a common law jurisdiction). Neither of the two most populous countries in the world allows in-house counsel to maintain their lawyer's professional license.

3. **Africa & Middle East**

We collected data on 32 countries located in Africa and the Middle East.[5] Africa is composed of a majority of civil law countries, which reflects the general trend of no requirement of registration to the bar in order to practice as an in-house counsel. More than 80% of those countries do not require such memberships, many of them prohibiting in-house lawyers from remaining members of the bar, which would make it impossible for in-house lawyers in those jurisdictions to obtain a certificate of good standing from a bar association..

The legal education is the same for all lawyers, whether they practice in-house or in private practice. Most of those countries require at least a master in law (LLM), in order to be able to practice law.

Americas

Data was compiled for 7 countries in the Americas,[6] only one of which, Canada, is a common law jurisdiction. In contrast with Europe, many civil law jurisdictions in the Americas permit in-house counsel to remain members of the bar, however one significant difference is that in many of the Latin American jurisdictions membership in a bar is not mandatory, and professional licenses are not necessarily issued by the Bar, but by the court system instead. For example, in Chile, licenses to practice law are granted by the Supreme Court, and the legal profession is not overseen by a bar committee, at either the Federal or Regional level (there are regional bar associations, but they do not have regulatory powers).

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[4] Australia, Japan, India, New Zealand, People's Republic of China, Thailand, and Republic of Korea.

[5] Algeria, Benin, Burkina Faso, Burundi, Cameroun, Comoros, Israel, Ivory Coast, Djibouti, Gabon, Guinea, Equatorial Guinea, Madagascar, Mali, Niger, Republic of Centrafrica, Democratic Republic of Congo, Republic of Congo, Rwanda, Senegal, Seychelles, Chad, Togo, Lebanon, Morocco, Tunisia, Kigali, Kenya, Tanganyika, Uganda, Qatar and Zanzibar.

[6] Argentina, Brazil, Canada, Chile, Colombia, Mexico and Peru.

Conclusion

The information compiled demonstrates that in much of the world (more than 70% of the researched countries) in-house counsel would not be able to obtain a certificate of good standing, because professional licenses and bar membership are prohibited for in-house counsel.

The data also indicates that many jurisdictions impose comparable education requirements to the US in order for a lawyer to be admitted to the practice of law, and in many instances, in particular in Europe, impose rigorous legal training requirements for all lawyers. Even though many lawyers who are now working in-house could not provide a current certificate for a bar or comparable licensing authority, they have already completed the domestic training and education requirements necessary to gain entry to the profession.

Country	Region	Title	Legislation/ Rules that Govern	Body that Governs the Legal Profession	Requirements to Practice	Are In-House Counsel Required/Permitted to be a member of the bar?	May a foreign lawyer obtain a limited license to establish and practice as foreign legal consultant?	Misc
Algeria	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Argentina	*Americas*	Abogado	Legal profession is governed at the state level	(State bar associations)	Applicants must earn a law degree (a Masters) from an accredited Argentine university (or validate a degree obtained from a foreign university) and register with the local Colegio de Abogados (Bar Association) of the legal district in which they intend to practice	Yes	Foreign lawyers can practice in Argentina as consultants on foreign or international law, but will not be permitted to appear before the courts, file briefs or enjoy confidentiality privileges. A foreign lawyer does not need any type of license to offer advisory services in foreign and international law. There is no category such as a foreign legal consultant.	
Australia	*Asia*	Barrister and Solicitor	Legal Profession is governed at the State Level	Law Council of Australia	In Australia, prospective lawyers must complete a law degree (Bachelor of Laws (most common), Juris Doctor, or less commonly the Diploma in Law through the Legal Practitioners Admissions Board and complete the practical training requirement which is met by completing an approved practical legal training (PLT) course or articles of clerkship. There is a two-step process for admission to practice. Graduates must first obtain admission as a lawyer in an Australian state/territory, which requires both possession of a recognized law degree and verification of good character, plus evidence of completion of a post-graduate PLT course. In the second stage, lawyers then apply to the applicable state organization for practising certificates either as a solicitor (which requires nothing further beyond the application) or as a barrister (which requires a passing score in the relevant state	Yes	Yes - under the Australian Model Law, Foreign Lawyers (any lawyer licensed in a jurisdiction outside of Australia) may carry out work, the nature of which would ordinarily be done or transacted by an Australian legal practitioner, but only in relation to the law of the country in which the lawyer is formally qualified to practise. (Not yet in place in all jurisdictions)	Link to model law for foreign lawyers: http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/Foreign-Lawyers-and-the-practise-of-foreign-law.pdf

Austria	*Europe*	Rechtsanwalt	Is there legislation governing the legal sector Rechtsanwaltsordnung (RAO) (Legal Profession Act) 24 June 1996 and Bundesgesetz über den freien Dienstleistungsverkehr und die Niederlassung von europäischen Rechtsanwältinnen und Rechtsanwälten sowie die Erbringung von Rechtsdienstleistungen durch international tätige Rechtsanwältinnen und Rechtsanwälte in Österreich (EIRAG) (The Federal law on the free movement services and	Austrian Federal Bar Association (Österreichischer Rechtsanwaltskammertag)	An individual must have 1) Austrian or EEA citizenship; b) Full civil capacity; c) Completed the required period of study of Austrian law ; d) Have undertaken the required training; e) Have successfully competed the Austrian Bar Exam; f) Participated in the training courses organised by the Bar; g) Possess the required civil liability insurance. In order to qualify a lawyer must have completed five years' legal professional work and have passed the bar examination.	No	Yes - Non EEA foreign lawyers are permitted to provide advice on foreign and international law but legal documents pertaining to Austria must be signed by Austrian licensed lawyers. They must clearly designate the country in which they are licensed to practise and they are not allowed to represent an Austrian consumer before Austrian courts and authorities. Required to register with the domestic bar organization.	Link to article regarding Attorney Client Privilege and In-House Counsel in Austria: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCgQFjAA&url=http%3A%2F%2Fwww.lexmundi.com%2FDocument.asp%3FDocID%3D1691&ei=CWD8VJGhKMuXNs2ZhJgI&usg=AFQjCNH830c-m0FqbMDK6wEETrMfJvGM3w&bvm=bv.87611401,d.eXY
Belgium	*Europe*	Avocat/Avocaat /Rechtsanwalt	The Belgian Judicial Code Act of 4 July 2001 on the Structure of the Bar	Institut des juristes d'entreprise/Instituut voor Bedrijfsjuristen (voluntary membership organizatoin for in-house counsel)	In order to hold the title of Belgian 'avocat', 'avocaat' or 'rechtsanwalt', a lawyer must be a citizen of Belgium or of another Member State of the European Union (article 428 of the L 02-07-1975). Becoming a lawyer requires the completion of 5 years of university study and registration with the relevant local Bar in order to become a trainee lawyer. Trainee lawyers are then required to undertake 3 years of supervised practice, undertake a number of training courses and pass professional examinations before they can be registered as full lawyers in their own right.	No	Qualified lawyers with European nationality and a professional title recognised in 98/5/EC must register with the Belgian Bar if they intend to establish in Belgium. Lawyers pursuing their activities on a full-time basis who are not nationals of a Member State of the European Union may (but do not have to) request registration on the list of associated members of the Brussels Bar (liste des membres associés du barreau de Bruxelles, sometimes referred to as "B-List"). Registration is necessary for lawyers who wish to enter into agreements of partnerships or cooperation with fully qualified lawyers, European lawyers or practise Belgian law indirectly. The practice of Belgian law is subject to limitations for associated members of the Brussels Bar: they must solicit	Link to ethical rules (updated annually: http://www.barreaudebruxelles.be/index.php?option=com_content&view=article&id=84&Itemid=106)
Benin	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		

Brazil	Americas	Advogado	(1) The Brazilian Bar Association and Advocacy Statute, law number 8906, 4 July 1994 ; and (2) the Brazilian Bar Association's Code of Ethics and Discipline, which is also expressly sanctioned by law number 8906.	Ordem dos Advogados do Brasil (Brazilian Bar Association) - OAB	In Brazil, law is taught as an undergraduate degree. It is normally structured as a five year course of study. Upon successful completion of the law degree students are awarded a Bachelor of Laws (Bacharel em Direito). A Bachelor of Laws graduate must the pass the Brazilian Bar Examination in order to be admitted to the Brazilian Bar Association ((Ordem dos Advogados do Brasil – OAB) and be licensed to practise. The lawyer should then register with a State Chapter of the OAB.	Yes	Foreign lawyers not requalified with OAB may work in Brazil but only as foreign legal consultants (consultor de direito estrangeiro) following authorization granted by the OAB. The consultant has very limited powers, being entitled solely to consultancy referring to the law from his original jurisdiction and international law. In order to apply for this authorization, the foreign national must present evidence of (1) being regularly entitled to practise as a lawyer in his or her country, (2) having a Brazilian resident visa, (3) not having been convicted of a serious criminal offence nor having incurred a penalty applied by the respective Bar Association, and (4) having good reputation according to a certificate issued by the respective Bar Association and signed by	
Bulgaria	Europe		Code of Civil Procedure of 1952. Today in the new Code of Civil Procedure of 2008 (promulgated, State Gazette (SG) No. 59/20.07.2007, effective 1.03.2008, amended and supplemented, SG No. 50/30.05.2008)			No registration to the bar is required		
Burkina Faso	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Burundi	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Cameroun	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Canada	Americas	Lawyer (In house Counsel)	Legal profession is governed at the provincial level	(Provincial Law Societies)	Most provinces - Law Degree (JD/LLB) and completion of 1 Year of articling	Yes		
Chad	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Chile	Americas	Abogado (lawyer)		Supreme Court (there are regional bar associations, but they do not have regualotry authority)	chi	No (Optional)	A foreign lawyer does not need to obtain a limited license entitling him/her to offer advisory services in foreign and international law (i.e., become a foreign legal consultant)	

Colombia	Americas	Abogado	Decree 196 of 1971 (Statute for the Practice of Law) Decree 1137 of 1971 (This Decree regulates some provisions of Decree 196 of 1971) Law 1123 of 2007 (Disciplinary Code of the Legal Profession)	Consejo Superior de la Judicatura	1) Have a law degree from a Colombian School of Law duly recognized by the Government. Foreign lawyers can apply to obtain the professional licence by homologating his/her law degree. For that purpose the academic title obtained in a foreign University must be subject to an administrative proceeding carried out before the Colombian Ministry of Education in order to obtain recognition. In addition, the applicant must take several tests on local law. 2) To have legal residence in Colombia.	Yes	Under Colombian Law there is no requirement for a limited licence to establish and practise as a foreign legal consultant.	
Comores	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Croatia	Europe	Odvietnik	Law on the Legal Profession (Zakon o odvjetništvu, Official Gazette "Narodne novine" No. 9/94, dated January 27, 1994 and No. 117 dated October 13, 2008	Croation Bar Association	The right to be enrolled in the list of attorneys shall be given to the person fulfilling the following conditions: 1. that the person is of Croatian citizenship; 2. that the person possesses business capacity; 3. that the person's health conditions are such as to allow the performance of law practice activities; 4. that the person has graduated from a Faculty of Law of the Republic of Croatia; 5. that upon graduation the person has completed at least three years of apprenticeship in a law office or has had legal jobs in judicial bodies or has worked for at least five years on other legal jobs; 6. that the person has an active knowledge of the Croatian language; 7. that the person has passed the Bar Examination in the Republic of Croatia; 8. that no investigation and criminal procedure are conducted against the person as ex officio prosecution; 9. that the person is	No	No (Only Only EU, EEA and Swiss nationals are permitted under the terms of Croatia's accession to the EU to practise as registered European lawyers. They may practise their home country law, European law and Croatian law in association with a Croatian lawyer.)	
Czech Republic	Europe	Advokát	Act No. 85/1996 Sb. of 13th March 1996 on the Legal Profession (English version available at http://www.cak.cz/scripts/detail.php?id=1993)	The Czech Bar Association	1) have a university degree in law, 2) have undertaken professional training as a legal trainee for a minimum of 3 years, 3) have passed the professional examination of the Czech Bar Association and 4) have been registered in the Register of Czech Bar Association.	No	A lawyer who has been admitted to the Czech Bar as a "Foreign Lawyer", (i.e. not from the EU, the European Economic Area Agreement, Swiss Confederation nor permanently established in a home country) according to Article 5a of the Act on the Legal Profession shall be entitled to provide legal services only in the law of the country in which he/she obtained his/her entitlement to provide legal services and in the area of international law.	
Democratic Republic of Congo	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		

Denmark	Europe	Advokat	Danish Administration of Justice Act; cf. Consolidated Act No. 1261 of 23 October 2007	Danish Bar and Law Society ('Advokatsamfundet')	in order to have the right to practice as a lawyer, an individual must be legally competent, not bankrupt, have a Danish Bachelors and Masters degree in law, have completed 3 years of practical experience, have passed an examination and a practical test in litigation. (Licenses are issued by the Ministry of Justice, Civil and Police Department)	Yes	Foreign lawyers must register as providers of legal services with the Danish Business Authority Register of Foreign Service Providers. They are entitled to provide legal services only in the laws of the country in which they are qualified and in international law. They are not registered by the Bar and are not recognised as lawyers.	
Djibouti	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Equitorial Guinea	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Finland	Europe	Asianajaja/Advokat	Advocates act (laki asianajajista) 12 December 1958	The Finnish Bar Association	Membership of the Bar Association requires the candidate: 1) To be more than 25 years old; 2) To have Finnish or EU nationality; 3) To have completed a Master of Laws degree (LL.M.), which entitles the holder to take up judicial office; 4) To be known as a person of integrity; 5) To have four years' experience in the legal profession and other judicial activities; 6) To pass an examination; 7) to be independent from government and any other influences apart from his or her client 8) Not to be bankrupt and to have full civil capacity.	No	There are no restrictions on foreign lawyers practising law in Finland on a temporary basis.	
France	Europe	Avocat	Law no. 2011-94 of 25 January 25 2011 and Law no.2011-331 of 28 March 2011 modify Law 71-1130 of 31 December 1971 and decree n° 91-1197 of 27 November 1991.	Licenses are issued by local bar authorities	In order to become an avocat, an individual needs to have a maitrise in law (4 year law degree), hold the certificat d'aptitude à la profession d'avocat CAPA (certificate of aptitude for lawyers) which is granted on passing the Bar exam (examen du barreau), and to have completed a 2-year internship with a fully qualified lawyer. Nationals of a EU or a EEA member state who are fully qualified lawyers in their own jurisdictions do not need to hold the CAPA certificate but must pass an exam on French law (article 11 of the Act).	No it is not even allowed to be registrered to the bar.		
Gabon	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		

Germany	*Europe*	Rechtsanwalt (In house counsel - Syndikusanwalt)	Federal Lawyers' Ordnance ("Bundesrechtsanwaltsordnung", BRAO)	Individual must have completed around nine semesters of university education in Law or related subjects, leading to the first state exam ("Erstes Staatsexamen") which is administered by the Ministry of Justice. This is followed by a two-year period of legal clerkship ("Referendarzeit"), followed by the second state exam ("Zweiten Staatsexamen")	An individual needs to have a maitrise in law (4 year law degree), hold the certificat d'aptitude à la profession d'avocat CAPA (certificate of aptitude for lawyers) which is granted on passing the Bar exam (examen du barreau), and to have completed a 2-year internship with a fully qualified lawyer.	Yes (but in order to be admitted to the Bar the person must prove that his permanent employment relationship does not endanger his independence when acting as Rechtsanwalt according to paragraph 7 Nr.8 Federal Lawyers' Act.)	Yes. A foreign lawyer from a state which is a signatory to the GATS agreement may establish in Germany under his home title and can practise home country law and international public law provided that the foreign lawyer exercises a profession in his home country which in education, competencies and legal position is comparable to the position of a Rechtsanwalt in Germany. The Federal Ministry of Justice determines which legal professions which are acceptable.	
Greece	*Europe*					Yes, there is no distinction between Lawyers, and In-house counsel.	.	
Guinea	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Hungary	*Europe*	ügyvéd	Act XI of 1998 on Attorneys at Law.	The Hungarian Bar Association	must be a member of the bar association and have taken an oath (Section 13 (1) of the Act). Section 13 (3) provides for the conditions to be admitted as a member of the bar:"The bar association must, upon request, admit as an attorney anyone who: a) is a national of any State that is a party to the Agreement on the European Economic Area; b) has a law school degree; c) has taken the Hungarian bar examination; d) who has been engaged in legal practice for at least one year as an attorney, articled clerk or assistant attorney; e) is a member of the Hungarian Attorney's Insurance and Assistance Association or has other liability insurance that is accepted by the bar association; f) has office space suitable for conducting a full-time legal practice in an area in which the bar association operates; g) is not excluded for any of the reasons specified in Subsection (4).	No.	Under Hungary's WTO commmitments, foreign lawyers from outside the EEA may provide services under the title of "Foreign Legal Counsel". The scope of practice is given by Section 92 (1) of the Attorneys Act which states: A foreign legal counsel may provide legal advice concerning the law in the country in which he is a registered attorney, international law, and legal practice in connection with these". A foreign legal counsel may only pursue those activities and is not a member of the bar association (Section 92 (2) and (3))	

Iceland	Europe	In-house counsel	http://www.scandinavianlaw.se/pdf/46-16.pdf	None	Completed legal studies with a final examination or a master's examination from the legal faculty of a university recognised in Iceland in accordance with the Act on Universities	Yes (optional)	Yes, but it would depend from which country the lawyer is from and other requirements: "a party in litigation may entrust any person practicing as a lawyer in any other member state of the European Economic Area, who has the right to represent litigants in court, with his representation in a corresponding Icelandic court, provided that person is, during court sessions, assisted by a lawyer practicing in	
India	Asia	In-house counsel	http://us.practicallaw.com/6-541-7745?q=&qp=&qo=&qe=#a1042456		degree in law by taking up a five-year Bachelor of Law (B.A. LL.B) degree course after completing your higher secondary education (Class 12) or by pursuing the three-year B.A. LL.B after obtaining a bachelor's degree in any discipline.	No	Yes, however Foreign law firms or foreign lawyers are not permitted to practice the profession of law in India, either on the litigation side or in advisory capacity, without being enrolled as advocates under the IAA. However, there was no bar under Indian law on foreign law firms or foreign lawyers to visit India for a temporary period to advise their Indian clients on matters relating to foreign law or international legal issues. http://www.americanlawyer.com/id=1202543868722/FOREIGN-LAWYERS-CAN-FLY-IN-AND-FLY-OUT-OF-INDIA-TO-ADVISE-ON-FOREIGN-LAW-BUT-NOT-INDIAN-LAW#ixzz3TZiIXGpl	
Ireland	Europe	Solicitor	The Solicitor Act, 1954 http://www.irishstatutebook.ie/1954/en/act/pub/0036/index.html	The Law Society of Ireland https://www.lawsociety.ie	University degree + 3 years apprenticeship	Yes	Yes, it is possible to practice as a foreign lawyer, but different requirements must be met depending from which country the lawyer is from. https://www.lawsociety.ie/Public/Foreign-Lawyers/	
Israel	Middle East	Lawyer	http://www.llrx.com/features/israel3.htm#legalprofession	National Bar	Israel requires an undergraduate law degree (LL.B., which is a three-and-a-half-year program), a one-year apprenticeship, and the passing of the bar examination	Yes	Yes, it is possible but only counseling about the law of the country the lawyer is from, or registered to practice. http://www.nbn.org.il/aliyahpedia/employment-israel/degrees-licensing/working-as-a-foreign-licensed-lawyer-in-israel-the-new-law/	
Italy	Europe	In-house counsel	http://www.diritto24.ilsole24ore.com/art/avvocatoAffari/professioneLegale/2014-07-15/compiti-giurista-impresa-regolamentazione-115642.php		one-cycle five years master degree (Laurea a ciclo unico Magistrale in Giurisprudenza)), an 18 month apprenticeship, and passing of the professional exam	No it is not even allowed to be registrered to the bar.	Yes, a foreign lawyer can practice law in Italy. Some requirements must be met for Lawyers from outside of the European union. http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Italy.aspx	
Ivory Coast	Africa				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		

Japan	Asia	In-house counsel	http://jila.jp/index.html	Japanese In-house Lawyer Association	Japan requires an undergraduate degree in any field (which requires 4 years of study), a Juris Doctor (which lasts 2 or 3 years), the passing of the national bar exam; a 12-month apprenticeship which incorporates additional coursework and passing the graduation examination of apprenticeship	No	Yes, it is possible for a lawyer to counsel on the law from their country.	
Kenya	Africa				The training for lawyers is all the same at the Under graduate ranging from 3 – 4 years and post graduate vocational legal training institutions in East Africa; although lawyers then have the prerogative to pursue specialized training at post graduate levels in areas like ICSA, MBA, etc. The latter would have an advantage in being hired an in-house lawyers	Yes, there is no distinction between Lawyers, and In-house counsel.		
Kigali	Africa				The training for lawyers is all the same at the Under graduate ranging from 3 – 4 years and post graduate vocational legal training institutions in East Africa; although lawyers then have the prerogative to pursue specialized training at post graduate levels in areas like ICSA, MBA, etc. The latter would have an advantage in being hired an in-house lawyers	Yes, there is no distinction between Lawyers, and In-house counsel.		
Lebanon	Middle East	Corporate counsel			Master in Law degree	No	Yes, it is possible but with strict requirements. http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Lebanon.aspx	
Lithuania	Europe	In-house counsel	www.lexmundi.com/Document.asp?DocID=1948		To practise law in Lithuania, one needs to be recognised by the Bar Association. The list of requirements is laid down in Article 7 (1) of the Act; one needs to: 1) be a national of the Republic of Lithuania or of another EU Member State; 2) To hold a bachelor's or master's degree in law, or a lawyer's professional qualification degree (one-cycle university education in law);3) To have a record of at least five years of service in the legal profession or have served an apprenticeship as an advocate's assistant for a period of at least two years. Service in the legal profession shall include activities specified in the list of legal professions approved by the Government of the Republic of Lithuania. The length of service in the legal profession shall be calculated from the moment a person has acquired a bachelor's or master's degree in law, or a lawyer's professional qualification	No	Yes, it is possible but with strict requirements. http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Lithuania.aspx	

Luxemborg	*Europe*	In-house counsel	http://www.acc.com/vl/public/Article/loader.cfm?csModule=security/getfile&pageid=16059&title=Confidentiality%20of%20advice%20given%20by%20in-house%20legal%20counsel%20practicing%20in%20the%20European%20Union			No	NO, it is not possible for lawyers coming from outside the European union. Yes, for lawyers coming from the European union. http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Luxembourg.aspx	
Madagascar	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Mali	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Mexico	*Americas*				Complete your undergraduate degree in legal studies, which will take 4 to 5 years (most undergraduate degrees take 5 years to complete in Mexico). The number of semesters needed to complete your degree will be dependent on your passing the coursework and on the semester hours needed for the degree. These are set by the university law program.	No registration to the bar is required		
Morocco	*Africa*	In-house counsel	http://www.ecla.org/files/files/Profession/Legal%20Privilege/attorney_client_update8_07.pdf			No	Yes, Although no rules exist for that. http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Morocco.aspx	
The Netherlands	*Europe*	In-house counsel	file:///Users/noceur-dor/Downloads/GPG_ACP_LADR_Netherlands.pdf		Undergraduate law degree (Bacheloropleiding or LL.B, which is three years of study), the master of law degree (doctorandus in law before implementation of the Bologna Process and conferring the meester title, which is a one year LL.M. program), and a three-year apprenticeship	Yes (possible)	NO, if the lawyer is not from a European Union country. http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Netherlands.aspx	
New Zealand	*Asia*	Solicitor or Barrister	Lawyers and Conveyancers Act 2006 and the regulations and rules made under that Act. http://www.legislation.govt.nz/act/public/200	New Zealand Law Society https://www.lawsociety.org.nz/for-lawyers	Bachelor of Laws Degree and Professional Legal Study Course	Yes	Yes, it possible under certain circumstances. http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/New_Zealand.aspx	
Nigeria	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Norway	*Europe*					Yes, there is no distinction between Lawyers, and In-house counsel.		

People's Republic of China	*Asia*	In-house counsel			In the People's Republic of China, one must first obtain a recognized degree (a bachelor's, master's, or doctoral degree), pass the National Judicial Examination, and complete a one-year apprenticeship	No	Yes it is possible, under certain requirements. http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Peoples_Republic_of_China.aspx	
Peru	*Americas*	Abogado (lawyer)	The 1997 Código de Ética y Responsibilidad Profesional del Abogado (Code of Ethics and Professional Responsibility for Lawyers).	Local bar associations issue licenses	5 year university education, registration with the Assemblea Nacional of Rectores and the Superior Court of Lima and incorporation into a Bar Association of Peru.	Yes	Foreign lawyers do not need to obtain limited licenses enabling them to offer advisory services in foreign and international law.	
Poland	*Europe*	Adwokat (advocate) and radca prawny (legal adviser).	The Law on Advocates (ustawa z dnia 26 maja 1982 r. - Prawo o adwokaturze; Act of Parliament on Legal Advisers.		(1) Completed higher legal studies in the Polish Republic and received a master's degree or foreign law degree recognized in the Polish Republic; and (2) passed the bar examination set either by the Polish Bar Council or National Chamber of Legal Advisors. Bar membership is gained by three years of training followed by the bar exam; five years of legal professional experience followed by the bar exam; a PhD in law followed by either the bar exam or three years of legal professional experience; or possession of high academic qualifications in legal sciences.	Yes	Foreign lawyers may practice under their home country title in their home country law or international law. EEA lawyers may additionally practice Polish law in association with Polish lawyers.	
Portugal	*Europe*	Advogado (Lawyer) or solicitadore (Legal Agent).	Law 49/2004 of 24 August: Lawyers' Act.	Portugese Bar Association	An undergraduate degree in Law and Registration as a member of the Portuguese Bar Association.	Yes	Foreign lawyers may practice in Portugal under their home country title in the law of their home country or public international law. EEA lawyers may establish under their home title and ddditionally practice local law in association with a Portuguese lawyer.	
Qatar	*Middle East*	A single title- 'Lawyer' or 'Advocate'	The Law on Lawyers, No. 23 of 2006		Practicing lawyers must be registered in the table of lawyers. In order to register a lawyer must (1) be a Qatari citizen, or citizen from another member of the Gulf Cooperation Council with reciprocal rights and who meets the approval of the commission; (2) Have a degree in law from a recognized university; (3) Be in possession of full civil capacity and be at least 21 years old; (4) Be of good character; (5) Not have been convicted of a crime or offence involving moral turpitude unless rehabilitated; (6) To have completed the required training. Lawyers must enroll each year.	No	Foreign lawyers who are working in registered international law firms in the jurisdiction of Qatar may be entered on the register. These lawyers are entitled to practice home, international and Qatari law, but not to appear in court, except in the limited circumstances prescribed by Article 8.	

Republic of Centrafrica	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Republic of Congo	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Republic of Korea	*Asia*	Attorney at law.	Attorney at law act (2000).	Korean Bar Association	The system was changed in 2009 and requires a candidate to complete a graduate level law school program (three years) at an approved university in Korea and have passed the Korean Bar Examination. The first candidates seeking to qualify under the new system graduated from law school in 2012. The two systems will operate concurrently until 2017 when the traditional qualification process will be phased out. Any person who has qualified to become a licensed lawyer and wishes to commence legal practice must register with the Korean Bar Association. The referring local bar association may comment in writing to the KBA on the applicant's eligibility for registration	Yes	A foreign lawyer may obtain a license to establish and practice as a foreign legal consultant (FLC). FLCs may only provide legal services with respect to: the laws and treaties of their country of license; universally approved international customary law; and international arbitration proceedings whose applicable law is the law of their country of license or international public law and the jurisdiction of the arbitration is the Republic of Korea. The registration process is two stage: First an application needs to be made to the Ministry of Justice and following its prior approval an FLC may register with the Korean Bar Association.	
Romania	*Europe*					No registration to the bar is required but to a In-house counsel organization		
Rwanda	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Senegal	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Seychelles	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Spain	*Europe*				Under the new EU Bologna program, students in Spain must now follow a 4-year program which grants them the so-called "Grado en derecho"(law degree). No distinction is made between in-house and private practice.	Yes, there is no distinction between Lawyers, and In-house counsel.		

Sweden	*Europe*	Advokat	The Swedish Code of Judicial Procedure, Chapter 8. Charter of the Swedish Bar Association.	Swedish Bar Association	Chapter 6, Section 2 of the Swedish Code of Judicial Procedure provides that: 'To be admitted as a member of the Bar Association the applicant must: (1) be domiciled in Sweden or another state in the EU or EEA; (2) have passed the exams prescribed to qualify for appointment as a judge; (3) have completed the practical and theoretical training necessary to practice as a member of the Bar Association; (4) have established a reputation as a person of irreproachable character; and (5) in other respects be considered suitable to practice as a member of the Bar Association. Item 3 of this Section must be read together with Section 3 of the Bar Association charter which says that 'a person may be admitted as a member of the Bar Association only if he or she has practiced law in a satisfactory way for at least five years after passing the above-mentioned proficiency	No it is not even allowed to be registrered to the bar.	There is no requirement for a foreign lawyer to obtain a license as a foreign legal consultant in order to establish and practice law in Sweden as there is no monopoly on the provision of legal services. Persons from another state in the EU, EEA or Switzerland must comply with provisions on ownership of Swedish law firms when they practice in Sweden (Chapter 6, section 9 of the JPC). An 'advokat' may not practice his profession in cooperation with other persons than other 'advokats'.	
Tanganyika					The training for lawyers is all the same at the Under graduate ranging from 3 – 4 years and post graduate vocational legal training institutions in East Africa; although lawyers then have the prerogative to pursue specialized training at post graduate levels in areas like ICSA, MBA, etc. The latter would have an advantage in being hired an in-house lawyers	Yes, there is no distinction between Lawyers, and In-house counsel.		
Thailand	*Asia*					No registration to the bar is required		
Togo	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Tunesia	*Africa*				Generally 4 to 5 years in law school leading to a Master degree	No registration to the bar is required		
Uganda	*Africa*				The training for lawyers is all the same at the Under graduate ranging from 3 – 4 years and post graduate vocational legal training institutions in East Africa; although lawyers then have the prerogative to pursue specialized training at post graduate levels in areas like ICSA, MBA, etc. The latter would have an advantage in being hired an in-house lawyers	Yes, there is no distinction between Lawyers, and In-house counsel.		

United Kingdom	*Europe*	Solicitor or Barrister	Legal Services Act 2007.		In order to become a Solicitor in England and Wales an individual must have: (1) A recognized degree in law (QLD) which may either be obtained by completing three years full-time academic study as a first degree or as a full-time one-year postgraduate conversion course (Graduate Diploma in Law (GDL); (2) Completed and passed the examinations at the end of the one year fulltime vocational course, the Legal Practice Course (LPC); (3) Completed a two-year traineeship (training contract) with a recognized training provider; (4) Undertaken the professional skills course during the training period. Individuals must register with the Solicitors Regulation Authority on entry to the LPC at which point they will also be required to meet certain character and suitability tests. Licensing is required annually by the Solicitors Regulation Authority and requires:	Yes	There is no requirement for a foreign lawyer to obtain a license to practice as a foreign legal consultant. The only licensing requirements are on EEA lawyers (who must become Registered European Lawyers – a status which entitles them to practice in the reserved areas of the law of England and Wales) and on non-EU lawyers (and lawyers from other jurisdictions of the UK) who wish to enter into partnership with English solicitors (who must then register as Registered Foreign Lawyers).	

Boston University School of Law
Graduate & International Programs

765 Commonwealth Avenue
Boston, Massachusetts 02215
T [redacted]

BOSTON UNIVERSITY

November 9, 2015

Electronically Submitted

Margaret Wood, Esq.
Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

RE: Comments from Boston University School of Law on the Skills Competency Requirement Proposed by the NY Court of Appeal's Task Force on Experiential Learning and Admission to the Bar

Dear Attorney Wood:

Boston University School of Law respectfully submits the following comments regarding the Court of Appeal's proposed competency requirement for admission to the New York bar.

As an initial matter, BU Law applauds the Court's focus on ensuring that all applicants for admission to the bar -- not only JD graduates but also graduates of foreign law schools – have the necessary skills and training to be effective, ethical and responsible practitioners. We also support the Task Force's "effort[s] to accommodate the varying educational backgrounds of applicants for admission," by creating several distinct ways to satisfy the proposed competency requirement.

With specific regard to JD graduates, BU Law fully supports the comments from the Council of the ABA Section of Legal Education and Admissions to the Bar, and respectfully urges the Court to clarify that one of the pathways to admission is a JD degree from an ABA-approved law school *without more*. The ABA's recently revised standards require each student to graduate with a minimum of 6 credits of experiential education. The new standards also mandate that schools define learning outcomes and, under Standard 315, "conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and . . . use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum." The ABA's role in providing a single source of educational requirements for applicants to sit for the bar in all U.S. jurisdictions is an increasingly important one as the demand for easy mobility has taken on urgency in light of a rapidly changing job market and profession. It would indeed be ironic if the move to adopt the Uniform Bar Examination with its promises of easy portability of bar results

were undercut by establishing a set of other requirements that create a barrier to entering the bar of New York.

The remainder of these comments focuses on foreign trained LLM graduates: We have serious concerns that the proposed scheme will create more barriers than pathways for a significant number of foreign LLM graduates who seek to satisfy the competency requirement. We believe that Pathway 5, as currently formulated, is not a viable option for a large number of LLM graduates who have been qualified to take the NY bar under Section 520.6 of the Court's Rules for the Admission of Attorneys and Counselors at Law. These lawyers, many with non-trivial foreign work experience, will turn to the other pathways. They will discover, however, that none of the alternatives offers a realistic path either.

Unless adjusted, Pathways 1, 2, 4 and 5 will inadvertently erect barriers to the furtherance of multijurisdictional practice that has long served the business and legal communities of NY and beyond.[1] To prevent this from happening, we recommend several adjustments to the pathways, beginning with Pathway 5.

Pathway 5

Pathway 5 enables applicants who are "authorized to practice law" outside the U.S., are in good standing, and have "practiced" in a foreign jurisdiction for a minimum length of time to meet the competency requirement.

Issue: Under its current formulation, Pathway 5 will actually exclude a large number of highly experienced foreign-trained lawyers from meeting the Court's competency requirement.

Discussion

The term "authorized to practice law," as understood in the U.S., takes on different meanings elsewhere the world, including in several Asian jurisdictions where many foreign NY bar applicants have received their legal training. In Japan, Korea and China, for example, only a minority of law graduates pass their home country's national bar exam and therefore hold a license authorizing them to work in private law firms or as judges or prosecutors. In fact, many (if not most) law graduates from these countries who qualify to take the NY bar exam do not hold a license to practice law. Instead, they typically work as in-house counsel for large international companies, where they engage in lawyer-type activities such as providing legal advice to the company's directors or business managers; or drafting and negotiating legally binding international business agreements – activities that, in the U.S., only law graduates who have passed a state bar exam may perform. Because they are "not authorized to practice law" as we know it, such Asian law graduates, despite their years of practical experience, would not be able to avail themselves of Pathway 5, as currently formulated.

The same holds true for Chinese lawyers who have passed China's national bar exam and work for global (non-Chinese) law firms, including such NY-based firms as Davis Polk and Wardwell

[1] We do not propose adjustments to Pathway 3, which pertains to NY's Pro Bono Scholars program, as that program does not apply to foreign LLM graduates seeking admission to the bar.

or Shearman & Sterling. Local rules prohibit them from maintaining their status as "lawyers" if they work for foreign firms. (They may only work as "legal assistants.") If they work more than two years, they must surrender their Chinese bar licenses. No longer in "good standing," they would be unable to pursue Pathway 5.[2]

Pathway 5's application to the licensing schemes of these important foreign jurisdictions leads to an odd result: the very group of law graduates Pathway 5 was designed to capture -- legal professionals with enough practical training to satisfy the competency requirement – will hit a dead end traveling down that path.

Recommendation

We recommend maintaining Pathway 5's minimum length of work experience, but adjusting its "authorized to practice law" standard to account for non-licensed professionals. Specifically, we recommend that NY accept the same proof it now requires when evaluating a foreign law graduate's eligibility to take the NY bar – namely, that the candidate has "fulfill[ed] . . . the educational requirements for admission to the practice of law in a country other than the United States."[3]

Possible language to consider is as follows:

> "Documentation that you are authorized to practice law in a foreign jurisdiction may include the following: (a) If you are admitted to practice law in a foreign country, a copy of your admission certificate; or (b) If you are not admitted to practice law in a foreign country, proof of the educational requirements for admission to practice law in your country and proof from the bar admission authorities or from the educational institution from which you received your legal education or training that you have fulfilled these educational requirements."

This would help effectuate Pathway 5's essential purpose: enabling foreign-trained lawyers to satisfy the competency requirement based on their work experience.

Pathway 1

Pathway 1 allows an applicant to satisfy the competency requirement by submitting a certification from his or her law school that the school has developed an appropriate ABA-compliant plan – and that the applicant has acquired "sufficient competency" in the professional skills and competencies set forth in the plan.

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[2] See http://www.top-law-schools.com/legal-work-in-china.html for a summary of the kinds of restrictions Chinese lawyers face when working for foreign law firms.

[3] See Section 520.6(b)(1) (requiring foreign-educated law graduates seeking bar eligibility to "show fulfillment of the educational requirements for admission to the practice of law in a country other than the United States.")

Issue: Pathway 1 does not recognize that many foreign-trained lawyers have pursued law school studies whose curricula include skill and values training needed for competent and ethical participation in the legal profession.

We believe that foreign-trained LLM graduates who fall outside the scope of Pathway 5 because they lack "real world" post-graduation work experience should, in certain situations, still be able to pursue Pathway 1 through an analogous school-based certification process.

Discussion

Pathway 1 will likely be the path most traveled by JD applicants. Its formulation, however, is inapt for international LLM students; there is no requirement that the programs they attend at ABA-accredited schools provide the kind of skills-based instruction contemplated by the Pathway 1.[4] This does not mean, however, that LLM graduates have not acquired "sufficient competency" to participate in the legal profession through their prior educational backgrounds.

Pathway 1 should be reformulated to acknowledge the extent to which the global legal educational reform movement over the past 20 years has resulted in the spread of U.S.-style legal education around the world. Among the reform movement's most salient features has been the creation in several jurisdictions of law schools as "post-graduate professional schools" deliberately modeled after the U.S. three-year JD program.[5] This has happened in Japan, Korea, China,[6] Australia, Canada and, most recently, in Qatar, with Hamad bin Khalifa University's establishment of a three-year JD program through a strategic, partnership with Northwestern University Law School.[7]

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[4] It would be unrealistic to expect US law schools to design their LLM curricula to meet the ABA's standards 302(b), (c) and (d). Even if they were willing, such efforts could raise concerns about compliance with the ABA's "acquiescence" standard (Standard 313) for non-JD programs, which protects a school's JD program from undue "interfere[nce]" by non-JD activities.

[5] See "Foreign Law Schools Follow the US Playbook," The American Lawyer, http://www.americanlawyer.com/id=1202424363465/Foreign-Law-Schools-Follow-the-US-Playbook#ixzz3plwBw2M9.

[6] Peking University School of Transnational Law ("STL") in Shenzen, China, which opened its doors in 2008, offers a three-year JD program, alongside a Chinese Juris Master (JM) degree. According to its web site, STL "is unique in China and unique in the world, offering an American-style J.D. degree [with a] curriculum . . . taught entirely in English [that] is similar in content to the J.D. curriculums of the best U.S. law schools." See http://www.china-us-law.org/institute/the_peking_university_schoo.html.

[7] According to HBKU's web site, "successful participants of the three-year program will graduate with a JD that is comparable with the best of those offered internationally and that equips them to make the most of a wide range of career options in the public sector, multinational institutions and in academia." Visit http://www.hbku.edu.qa/en/JD.

The curricula at these schools share many of the characteristics of U.S. law schools, including an emphasis on interactive, problem-based instruction and practical skills training.[8] Some, such as the University of Melbourne, offer curricula that specifically identify the types of learning outcomes contemplated by the American Bar Association's Standards 302(b), (c) and (d) and referenced in Pathway 1.[9]

While a comprehensive survey of the global legal reform movement is outside the scope of these comments, it is clear that over the past two decades, foreign schools have turned to the U.S. to inform their curricula and that, as a result, U.S. schools no longer hold a monopoly on training students in the kinds of practical skills, professional competencies and ethical values contemplated in Section 302.

Applicants should be allowed to satisfy Pathway 1 by demonstrating that they have obtained this competency training from their home schools. While only a small number of schools may (now) be able to certify that their curricula include the skills and professional values embodied in Standard 302 – let alone that they have a way to measure students' attainment of these competencies – creating an analogous pathway for foreign applicants will send an important message in support of schools that have successfully borrowed from the U.S. model. It may also incentivize other schools to follow suit, and thus help raise the standards of training in

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[8] According to HBKU's JD brochure, "Professional skills training will simultaneously be delivered throughout all courses, using foundational content to provide the subject matter for the learning of such skills as contract drafting, trial advocacy, alternative dispute resolution, negotiations, and presentations. Innovative teaching methods will be used wherever possible, and will include ***simulation role-playing***, commercialization-based modes, and ***clinical-practice modes***." (Emphasis added.) The brochure is accessible at http://www.hbku.edu.qa/en/JD.

The curriculum at the Transnational Law School includes in its three-year JD program a range of US-type experiential offerings such as a Small Business Entrepreneurship Clinic (designed to give students "real-world experience representing early-stage ventures while offering valuable legal services to Shenzhen's entrepreneurial system"), externships ("offers students the opportunity to gain legal education through real-life practice experiences") and required internships. http://stl.pku.edu.cn/academics/degree-and-residency-requirements/.

[9] The University of Melbourne publishes its JD learning outcomes at http://www.law.unimelb.edu.au/jd/becoming-a-lawyer/the-jd-student-attributes-and-achievements. The list includes competencies that go beyond the minimum competences of Standard 302. Included among "the attributes that a JD graduate should have" are a "[p]rofound respect for truth and intellectual integrity, and for the ***ethics of scholarship and legal practice; [h]ighly developed cognitive, analytic and problem-solving skills***; [c]apacity for independent critical thought, rational inquiry and self-directed learning; [e]xtensive knowledge of the discipline of law, including a substantive knowledge base and the capacity to track, comprehend and evaluate changes that occur over time; ***[h]ighly developed legal skills in finding, analyzing and using law, in a variety of different contexts; [i]nformed respect for the principles, disciplines, values and ethics of the legal profession***; [and an ***a]bility and self-confidence to comprehend complex concepts, to express them lucidly, whether orally or in writing,*** and to confront unfamiliar problems." (Emphasis added.)

jurisdictions where the lawyer's role in upholding the rule of law is woefully undervalued. The Court should seize this opportunity to take the lead among U.S. jurisdiction in support of elevating the competencies of lawyers worldwide.

Recommendation

Develop an analogous Pathway 1 for foreign-trained lawyers, enabling them to satisfy the skills competency requirement by submitting a certification from their law schools that (1) the law school has developed a plan identifying and incorporating into its curriculum the skills and professional values that, in the school's judgment, are required for its graduates' basic competence and ethical participation in the legal profession; and (2) the applicant has sufficient competency in those skills and sufficient familiarity with those values.

Pathway 2

Pathway 2 allows a U.S. law school graduate to satisfy the competency requirement by submitting proof from her law school that she completed 15 credits of practice-based experiential coursework designed to foster professional competency training (six of which may be earned through summer jobs).

This pathway should be reformulated in two ways to make it applicable to foreign LLM graduates. First, it should recognize that in many foreign jurisdictions, aspiring lawyers are required to complete substantial practical training programs before they are eligible for licensure. Second, it should set a separate minimum practice-based experiential coursework requirement appropriate for LLM applicants, based on a 24-credit program of study.

Practical Training Programs

Discussion

Many LLM students who qualify to take the NY bar have undergone mandatory law-related work experiences as part of their legal training.[10] In fact, it is fair to say that many foreign jurisdictions – both common and civil law-based -- are ahead of the U.S. in requiring practical training through mandatory post-graduation apprenticeships. Pathway 2 should recognize this

[10] In many common law jurisdictions, such as Canada, one must complete an apprenticeship with a practitioner, lasting from 9 to 15 months, before being "called to the bar." In England, aspiring barristers must complete a "Bar Professional Training Course," followed by a year of practical training, while potential solicitors must complete a one-year "Legal Practice Course," followed by a two-year apprenticeship under a training contract, during which they must also complete an additional "Professional Skills Course." Mandatory 18-month apprenticeships for aspiring lawyers are common in European civil law systems (i.e., Italy, Greece). In Germany, law graduates are ineligible to take the exam that leads to an authorization to practice law (the Second State Exam), until they complete a two-year period of supervised practical training, known as the *Referendariat*. Mandatory apprenticeships from 6 to 12 months prevail in Latin America, as well (i.e., Peru and Chile). See the International Bar Association's web site for detailed information on licensing requirements in foreign jurisdictions. http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_EnglandWales.aspx.

and allow a foreign applicant to substitute for the coursework requirement a mandatory apprenticeship completed prior to his or her LLM studies. It should allow applicants to substitute apprenticeships they have completed up to two years prior to the commencement of LLM studies. This flexibility mirrors the approach that the Advisory Committee on New York State Pro Bono Bar Admission Requirements took when it allowed foreign LLM students to meet the *pro bono* requirement one year prior to commencing their LLM programs.[11]

Recommendation

Allow foreign LLM students to satisfy the skills competency requirement via Pathway 2 by submitting proof that within two years of commencing their LLM studies they have successfully completed an apprenticeship of at least six-months in duration as required by the foreign jurisdiction's competent bar authority.

The Current Credit Requirement

Discussion

If Pathway 2 is to have any applicability to foreign LLM students, including those who have not completed apprenticeships prior to their LLM studies, the minimum experiential coursework credit requirement needs to fit the framework of a one-year, 24-credit program of study, not an 83-credit JD program. Otherwise, it is meaningless.

Pathway 2's current formulation is not viable for foreign-trained lawyers who qualify to take the NY bar by enrolling in a two-semester, 24-credit LLM program pursuant to Section 520.6. As of now, most foreign students must devote at least half their LLM credits – 12 of 24 – to courses that meet Section 520.6's cure provisions. This leaves 12 credits for any program-specific requirements or for electives. A 15-credit experiential coursework requirement for LLM students would consume all their remaining credits. More importantly, it would probably be unfeasible for many schools to implement such a scheme given the demand for experiential opportunities among the JD student population.

Recommendations

- Adjust the practice-based coursework credit requirement to comport with a two-semester 24-credit residential program by requiring the completion of 4 (four) credits of practice based experiential coursework. A four credit requirement would be roughly proportional to a 15 credit requirement under an 83-credit JD program; and

- Develop a process by which the Court can review and approve the practical skills based classes available to LLM students (similar to how the Court now reviews and approves

[11] See the updated guide to the Court's *pro bono* requirement, wherein the Pro Bono Advisory Committee determined that *pro bono* work performed by foreign students one year **before** they begin their course of study may count toward meeting the 50-hour obligation for entry to the New York bar. http://www.nyli.com/nylawyer/adgifs/decisions/091313probonofaq1.pdf.

courses that qualify for foreign lawyer qualification under Section 520.6.) These courses would include experiential and skills-based learning opportunities that schools offer pursuant to ABA Standard 302.

Pathway 4

Pathway 4 allows applicants to meet the competency requirement by completing a post-graduation six-month apprenticeship, either in the U.S. or in a foreign jurisdiction.

On its face, Pathway 4 looks promising for foreign LLM graduates: it offers a way to satisfy the competency requirement by securing and completing either a (1) six-month post-LLM apprenticeship in the U.S. under the careful watch of a licensed lawyer who can certify that the apprenticeship has met specified standards of supervision, substantive work, guidance, self-reflection and feedback; or a (2) comparable experience back home. Realistically, however, these options are untenable for LLM graduates. LLM graduates unable to satisfy the competency requirement based on their practice experience through Pathway 5, will find an obstacle, not an alternative, in Pathway 4.

Discussion

Because the U.S. legal hiring market is designed to assess potential JD talent, not LLM talent, short-term post-graduation internships in the U.S. for foreign LLM graduates are few and far between. Firms and other legal employers are willing to invest in the kind of supervised apprenticeships envisioned in Pathway 4 as part of their summer-, term-time or post-graduation internship programs for JD students, but not for foreign LLM students whose stays in the U.S. are generally limited by visa regulations. LLM students will turn to their U.S. *alma maters* to fix this problem, but it is not realistic to expect U.S. law schools to create formal post-graduation apprenticeship programs for their foreign LLM students. Even if the market were ripe for such LLM apprenticeships, administering such a program would require substantial resources – and potentially raise concerns about a school's compliance with ABA Standard 313.

Unable to secure internships in the U.S., LLM graduates will try to avail themselves of Pathway 4 in their home countries. Many will obtain short-term placements, but these engagements will involve oversight based local norms and traditions that are unlikely to track the explicit supervisory obligations enumerated in Pathway 4. This does not mean that the trainee will be unable to prove meaningful supervision. In fact, a supervisory requirement is integrated into many foreign apprenticeship regimes.[12] Relying on the foreign jurisdiction's local standards for

[12] In France, for example, bar candidates must attend one of the country's *Ecoles des Avocats* – a regional school that oversees professional training for lawyers -- after their university law studies. The 18-month long program concludes with a required six-month internship supervised by a senior French lawyer. See "How to Qualify as a Lawyer in France," http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_France.aspx, In the Netherlands, the three-year "apprenticeship in law . . . consists of three core elements," one of which is "[w]ork in a law office under the supervision of a *patroon* (an admitted lawyer)." (Emphasis added.) See the International Bar Association's web site at http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Netherlands.aspx.

effective apprenticeship training would be a more workable formula than one which externally imposes the kinds of specific supervisory obligations (seven in all) listed in Pathway 4.

Opening up Pathway 4 to recognize an applicant's completion of a formal six-month apprenticeship prior to the commencement of LLM studies will further the pathway's basic purpose – that is, ensuring a minimum amount of supervised work that instills the competencies and values needed for competent and ethical participation in the legal profession.

Recommendations

- Allow LLM students to substitute a pre-LLM foreign practical training apprenticeship – one that is mandated by the foreign jurisdiction's competent bar authority, as noted in the discussion of Pathway 2, above – for the six-month post-graduation apprenticeship set forth in Pathway 4.
- Allow applicants to complete in their apprenticeships up to two years prior to commencing LLM studies, as recommended for Pathway 2.

Conclusion

We recommend that the means by which foreign LLM students can avail themselves of the various pathways be set forth separately, not intermixed with JD pathways. This will reduce confusion and uncertainty among LLM applicants (and their U.S. schools) regarding how they may meet the competency requirement.

Guidelines could be stated as:

"Applicants who have been qualified to take the NY bar exam based on the Section 520.6, may meet the competency requirement as follows:"

> Under Pathway 1, by submitting a certification from their law schools that (1) the law school has developed a plan identifying and incorporating into its curriculum the skills and professional values that, in the school's judgment, are required for its graduates' basic competence and ethical participation in the legal profession; and (2) the applicant has sufficient competency in those skills and sufficient familiarity with those values.
>
> Under Pathway 2, by (1) submitting proof that within two years of commencing their LLM studies they have successfully completed an apprenticeship of at least six-months in duration as required by the foreign jurisdiction's competent bar authority; or (2) submitting proof from the law school that the student has completed at least 4 (four) credits of practice based experiential coursework during his or her LLM studies.
>
> Under Pathway 4, by submitting proof that within two years of commencing their LLM studies they have successfully completed an apprenticeship of at least six-months in duration as required by the foreign jurisdiction's competent bar authority.

Thank you for considering these comments.

Respectfully submitted,

John N. Riccardi
Assistant Dean for Graduate
and International Programs
Boston University School of Law
[redacted]

FORDHAM UNIVERSITY
THE SCHOOL OF LAW

OFFICE OF THE DEAN

MATTHEW DILLER
DEAN AND PAUL FULLER PROFESSOR OF LAW

November 9, 2015

BY EMAIL at attorneyadmissions@nycourts.gov

Margaret Wood, Esquire
Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

Re: Comment to Proposed Skills Competency Requirement for Admission to the New York Bar

Dear Ms. Wood:

This letter is in response to the Court of Appeals' Request for Public Comment dated October 9, 2015, regarding the proposal of the Task Force on Experiential Learning and Admission to the Bar that the Court adopt a skills competency requirement for admission to the New York bar.

We have joined with the other deans of New York's law schools in more comments to the proposal. We agree that pathway 1 is critical to the proposal for the reasons identified in the letter. In addition, we believe pathway 1 is critical to prevent a balkanization of requirements on legal education that the ABA standards were intended to prevent. It would be ironic if at the same time New York is transitioning to the Uniform Bar Exam, which enhances the portability of a law degree, states were to fracture over educational requirements for admission thereby requiring students to tailor their law school academic experiences to a series of unique requirements for each state where they may seek admission. This is potentially a much larger issue with respect to skill requirements than the pro bono requirement the Court previously adopted.

We write separately as well to raise a few concerns with respect to how the proposed rule would be applied to foreign-trained applicants seeking admission to the New York bar. We realize that Pathway 1 would apply to J.D. and LL.M. students alike, and thus focus our comments on certain concerns we have regarding proposed Pathways 4 and 5:

Pathway 4:

150 WEST 62ND STREET, ROOM 8-143 NEW YORK, NEW YORK 10023 (212) 636-6875 FAX: (212) 636-6921 EMAIL: [redacted]

Pathway 4 may be a viable option for many foreign-trained applicants, and we appreciate that the Task Force included within the scope of this proposed requirement work performed in foreign jurisdictions. However, we have some concerns regarding this rule.

Work Performed Prior to the LL.M. Program

Many students who are not admitted to practice law in their jurisdictions or who are admitted but who have not practiced for at least one year (and therefore are ineligible to pursue proposed Pathway 5) nonetheless have extensive professional experience. Many law schools or bar authorities in other countries in fact require practical experiences that are much more extensive than what would be required of J.D. students pursuant to Pathway 1. For example, in Germany, prior to admission to practice, students must complete a two-year clerkship in which they rotate through positions in a variety of practice settings.[1] In many Latin American countries, students undertake meaningful substantive internships as early as the first or second year of their LL.B. studies. In the U.K. law graduates are required to undertake training contracts and in Canada students similarly pursue articling. We ask that the Court adopt a rule that would permit applicants to use these valuable experiences to fulfill the skills requirement.

Tenure of the Apprenticeship

Pursuant to the proposed language, a graduate must complete one single 6-month apprenticeship. We believe that a student could benefit equally from multiple apprenticeships of a shorter duration. Many positions that international LL.M. graduates take are temporary in nature and may be shorter in duration than 6 months. We ask that the court consider allowing students to string together two or more apprenticeships in fulfillment of this requirement.

Attorney Admission Requirements

One other concern is with the mandate that work be supervised by "an attorney admitted to practice and in good standing in the jurisdiction where the work is performed."

In many jurisdictions, including China, Japan, Korea, and many European jurisdictions, bar admission is not required to perform work that would be considered the practice of law in the United States. Rules vary from one jurisdiction to the next, but in many countries bar admission is not required for in-house lawyers. In fact, in some of these countries, bar admission is reserved for a small percentage of those who graduate law school, with the vast majority of law graduates practicing law (as we would define it) in companies. These non-admitted legal professionals would be well suited to supervise an apprenticeship pursuant to Pathway 4, but would not be permitted to do so under the proposed rule.

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[1] *See* http://dajv.de/legal-education-in-germany.html.

In order to accommodate this situation, we ask that the Court frame the rule such that work done pursuant to Pathway 4 may be supervised by a law graduate undertaking law-related work in a setting in which formal bar admission is not required.

We also seek clarification that lawyers authorized to practice law by virtue of completing a prescribed course of education satisfy the supervision requirement anticipated by proposed Pathway 4 even if there is no formal bar admission requirement in that jurisdiction (as, for instance, is the case in Mexico).

Pathway 5

Attorney Admission Requirements

Our concern with regard to Pathway 5 echoes our concern with regard to Pathway 4 that many legal professionals in foreign jurisdictions are lawfully engaged in what we would consider the practice of law without formal bar admission. We ask that the Court address this situation and amend the language of the proposed rule so that it includes such individuals.

***

We respectfully thank the court for its consideration of our comments. If you have any questions, please feel free to contact me or Kandice Thorn, Director of International and Non-J.D. Programs, at [redacted]

Sincerely,

Matthew Diller
Dean and Paul Fuller Professor of Law
Fordham Law School

Trevor Morrison
Dean
Eric M. and Laurie B. Roth Professor of Law
New York University School of Law

The City University of New York

CUNY SCHOOL OF LAW

CUNY

Joseph A. Rosenberg
Professor of Law
Associate Dean of Clinical Programs

[redacted]

2 Court Square
Long Island City, New York 11101-4356

November 9, 2015

Ms. Margaret Wood
Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Submitted by email only to: attorneyadmissions@nycourts.gov

Re: Comment on Proposed Skills Competency Requirement for Admission to NY Bar

Dear Ms. Wood:

Thank you for the opportunity to comment on the Task Force's proposal to require a skills competency requirement for New York bar admission. My comment and proposal are made in my individual capacity, and not as a representative of CUNY Law School.

I support requiring a minimum level of experiential learning as a requirement for admission to the New York Bar. The five pathways to admission, while raising questions about precisely how they will be developed and applied, appear to encompass a variety of ways to certify experiential learning competency for the very diverse pool applying for admission to the New York bar.

While I understand that the public comment opportunity is focused on the "five pathways proposal," I propose that the Task Force consider an additional pathway to bar admission: a New York Access to Justice Alternative Bar Exam modeled after the University of New Hampshire Law School's Daniel Webster Scholars Program.

I am aware that the Advisory Committee on the Uniform Bar Exam, in its April 2015 Report (p. 69-70), noted that under Judiciary Law § 53(3), the New York Court of Appeals is required to "prescribe rules for a uniform system of examination." However Judiciary Law § 53(5) provides that:

> **Nothing contained in this chapter prevents the court of appeals from dispensing, in the rules established by it,** with the whole or any part of the stated period of clerkship required from an applicant, **or with the examination where the applicant is a graduate of the Albany law school, Union university, or of the New York university school of law, or of the school of law of Columbia university, or of the university of Buffalo school of law, or of the Cornell law**

> **school, or of the Syracuse university college of law or of the Brooklyn law school, or of the Fordham university school of law, or of any law school, duly registered by the regents of the university of the state of New York which requires a three year course for graduation and produces his diploma upon his application for admission to practice** (emphasis in bold added).

As I read § 53(5), the Court of Appeals has the authority to waive the "uniform" bar examination for graduates of New York law schools. This waiver could be exercised for law school graduates who successfully completed a New York Access to Justice Alternative Bar Exam modeled after the University of New Hampshire Law School's Daniel Webster Scholars Program.

The Advisory Committee identified several other concerns, each of which I respond to below:

•Concern: A subjective element that would allow, for example, a clinic or supervised externship to substitute for all or part of the bar exam, would raise fairness and quality control issues.

> Response: Although the UBE is a "uniform" exam, there is a subjective element in how the test is created and graded, particularly the MME and MPT essay questions. During the public hearings on adopting the UBE, and in discussions about the recent drop in bar scores, questions have been raised about fairness and quality control issues related to the MBE. As in New Hampshire, the portfolio of law students participating in an alternative bar program would be evaluated by bar examiners, which would mitigate this concern.

•Concern: Logistical problems due to the large number of applicants make it impractical to have an alternative bar exam.

> Response: An alternative bar exam would be limited, pursuant to Judiciary Law § 53(5), to graduates of NY law schools, and, similar to the Pro Bono Scholars Program, the number of law students participating could be limited (either by law schools or the BOLE), during a pilot period and thereafter as necessary to manage it effectively.

•Concern: Adopting a practical component as a substitute for all or part of the bar exam would mean that NY could not adopt the UBE.

> Response: An alternative bar exam would be in addition to the UBE, and would not implicate grading or scoring on the UBE. New Hampshire offers

both the UBE and an alternative bar exam through the Daniel Webster Scholars Program.

•Concern: There was not consistent support for this type of proposal among law school administrators and faculty.

Response: The UBE proposal did not have the full and consistent support of law school administrators and faculty, yet there was sufficient support and it has been adopted and will replace the NY bar exam beginning July 2016. The Pro Bono Scholars Program, another innovative reform, also has its detractors, yet it is taking root and providing law students with an opportunity to accelerate their admission to the NY bar and devote their final semester to full time public interest practice.

The Daniel Webster Scholars Program at UNH Law School is a successful model that connects assessment to curriculum with the goal of preparing students for practice. Students take a two year developmental sequence of courses, participate in multiple practice activities, including simulations, externships, and clinics, and create a portfolio that demonstrates their competence to practice and be admitted to the bar. Each student's portfolio is evaluated periodically by state bar examiners.

The Daniel Webster Scholars program demonstrates how law schools can collaborate with the practicing bar, the judiciary, and state bar examiners to create an alternative path to bar admission that gives students the opportunity to demonstrate basic competency in the knowledge, skills, and professional values necessary to be a lawyer. Although New Hampshire is very different than New York, this model can be adapted and developed by New York, initially as a pilot program, and potentially as an alternative to the UBE for graduates of New York law schools.

Attached is my proposal for a New York Access to Justice Alternative Bar Exam ("NY A2J ABE"). I urge the Task Force to consider this proposal as part of its efforts to reform licensure requirements for admission to the New York Bar.

Thank you for your efforts to continue New York's leadership role in preparing law students for practice and bridging the access to justice gap.

Respectfully,

Joseph A. Rosenberg

A Proposal For A New York Access to Justice Alternative Bar Exam ("NY A2J ABE")

Joseph A. Rosenberg·

1. Introduction: A Practice Based Alternative Path to Bar Admission

The time is right for a New York Access to Justice Alternative Bar Exam program ("NY A2J ABE"). The NY A2J ABE will be a law school practice path to bar admission, similar in structure to the Daniel Webster Scholars program at the University of New Hampshire Law School ("DWS").[1] New York would join New Hampshire in offering the Uniform Bar Exam and an alternative practice path to bar admission for graduates of New York law schools.

In NY, for over 20 years, numerous committees, task forces, commissions, reports, studies, and proposals have focused on the bar exam, including most recently, expedited bar admission in the Pro Bono Scholars Program ("PBSP")[2] and the Uniform Bar Exam ("UBE").[3] Beginning in July 2016, New York will replace the New York bar exam with the UBE and require that applicants to the bar pass a separate, online examination on New York law.[4] The UBE and online New York law exam represents a major change, provides expanded opportunities for portability, and fulfills the requirement under Judiciary Law § 53 that New York offer a standardized bar exam.

This proposed alternative bar exam builds on the spirit of innovation represented by the UBE and creates a practice path to bar admission for students in New York law schools that more directly connects the knowledge, skills, and values needed by practicing lawyers with admission to the bar and continues NY's leadership role in legal education and practice.[5]

· Associate Dean for Clinical Programs, City University of New York School of Law.

[1] *See* Daniel Webster Scholars Honors Program, University of New Hampshire School of Law, *available at* http://law.unh.edu/academics/jd-degree/daniel-webster-scholars; John Burwell Garvey and Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 Duke F. Law & Soc. Change 101, 115-117 (2009), *available at* http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1004&context=dflsc. A just published study of the DWS program by Educating Tomorrow's Lawyers/Institute for the Advancement of the American Legal System confirmed it is successful at preparing students for bar admission and law practice. *See* AHEAD OF THE CURVE: TURNING LAW STUDENTS INTO LAWYERS (2015)("ETL DWS Study"), *available at* http://educatingtomorrowslawyers.du.edu/images/wygwam/pdf_resources/Ahead_of_the_Curve_Turning_Law_Students_into_Lawyers.pdf.

[2] *See* http://www.nycourts.gov/attorneys/probonoscholars/index.shtml.

[3] *See e.g., Developing Legal Careers and Delivering Justice in the 21st Century: A Report by the New York City Bar Association Task on New Lawyers in A Changing Profession* (Fall 2013), *available at* http://www2.nycbar.org/pdf/task-force-report-executive-summary-developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf; New York State Bar Association, *Report of the Task Force on the Future of the Legal Profession* (April 2011), *available at* http://www.nysba.org/futurereport/.

[4] *See* http://www.nybarexam.org/UBE/UBE.html.

[5] *See e.g., The Future of Legal Education and Admission to the Bar*, Eileen D. Millett and Eileen R. Kaufman, Ed., 85 NYSBA Journal (September 2013).

During the past several years, forces of change have begun to reshape law school curricula and the legal profession, including the following:[6]

•The need for law schools to prepare students for clients, practice, and the profession in a rapidly changing environment and economy.

•Escalating student debt, which coupled with a shrinking job market, has made law school a less attractive option, with a resulting decline in enrollment at law schools (e.g., 10 of 15 NY law schools experienced decline in enrollment between 2013 and 2014).

•The Access to Justice gap for poor and middle class people in matters relating to, in the words of Chief Judge Lippman, "the essentials of life," which law schools have addressed both by offering a greater variety of clinics, supervised externships, and practicums, and by encouraging law students to pursue public interest careers or provide pro bono services as part of their core commitment to the profession.[7]

A great deal of research has been conducted on how to improve legal education.[8] The organized bar, judiciary, and many law schools have responded collaboratively to the critiques of legal education and the profession, which have mostly focused on the failure of law schools to prepare students for practice and the perceived waste of time and money arising from that failure,[9] and the disconnect between the number of law graduates and the growing unmet legal needs of poor and middle class people.

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[6] *See e.g.*, A Joint Convocation Convened by The Judicial Institute on Professionalism in the Law and The New York State Bar Association and its Committee on Legal Education and Admission to the Bar, *The Coming Changes to Legal Education: Ensuring Professional Values* (New York State Judicial Institute, White Plains, New York, May 22, 2014).

[7] *See e.g.*, 2014 Report to Chief Judge Jonathan Lippman from Task Force to Expand Access to Civil Legal Services in New York, *available at* http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS%20TaskForce%20Report%202014.pdf

[8] *See e.g.*, *The Future of Legal Education and Admission to the Bar*, Eileen D. Millett and Eileen R. Kaufman, Ed., 85 NYSBA Journal (September 2013); ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (CLEA 2007), *available at* http://cleaweb.org/best-practices; WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Jossey-Boss 2007); AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (July 1992), REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (the "McCrate Report").

[9] *See e.g.*, ABA Standards and Rules of Procedure for Approval of Law Schools 2014-2015, Ch. 3, *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf; NYSBA Committee on Legal Education and Admission to the Bar, *Recommendations for Implementation of the Report of the Special Committee to Study the Bar Examination and Other Means for Measuring Lawyering Competence* (February 2012), *available at* https://nysba.org/WorkArea/DownloadAsset.aspx?id=51614.

The DWS program and this proposal directly connect assessment during law school with professional knowledge, skills, and values.[10] Students will successfully complete a required sequence of courses and demonstrate that they meet certain performance criteria and to qualify for bar admission through a portfolio that each student creates and develops during the last two years of law school. The NY A2J ABE curriculum will provide students with the opportunity to practice and develop their lawyering skills through a "planning, doing, and reflecting" model with a rich array of formative assessment, self-assessment, and summative assessment, all within simulated and actual practice contexts that include Access to Justice, Poverty Law, or similar dimensions.

NY law schools already offer courses, practicums, supervised externships, clinics, and hybrids that could be incorporated in, refined, and unified as a sequential curriculum that will demonstrate a student's capacity to practice law and serve as a practice path to bar admission. Individual schools will be able to design a curriculum within a general framework endorsed by the Court of Appeals, the BOLE, law schools, and the NYSBA. This curriculum will include "A2J ABE lawyering seminars," which will consist of courses and seminars adapted to meet the practice context requirements of A2J ABE courses or newly designed A2J ABE seminars. A2J ABE seminars will focus on developing the skills, knowledge, and values necessary for admission to the bar through lawyering activities and formative, reflective, and summative assessments. A student's work will be documented in each student's A2J ABE portfolio.

2. Key Features of the NY A2J ABE

•Modeled after DWS. The NY A2J ABE framework is adapted for NY from the Daniel Webster Scholars Program at the University of New Hampshire Law School.

•Flexible framework. As with the PBSP, a general framework enables individual NY law schools to shape their A2J ABE curriculum. The program's framework is designed to promote innovation and also fit easily with a law school's mission, identity, and existing courses, supervised externships, clinics and the PBSP.

•Developmental curriculum. A2J ABE students complete a required sequential curriculum, including required courses from a "menu" that includes lawyering seminars, doctrinal courses, supervised externships, clinics and doctrinal various hybrids (e.g., a particular subject matter course could include a single credit supervised externship component).

•Lawyering seminars. Students will participate in four A2J ABE lawyering seminars during their final two years of law school. These can be newly designed A2J ABE lawyering seminars, existing lawyering seminars, or other courses that include "formative and reflective assessment in a practice context."[11]

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[10] *See* William Sullivan, *Align Preparation and Assessment With Practice: A New Direction for the Bar Examination*, 85 NYSBA Journal at 41 (September 2013).
[11] ETL DWS Study, n. 1 above, *p.* 8

•Assessment. Each student will create and develop an A2J ABE portfolio that will be assessed periodically, and at the end of the final year, to determine if the student has met or exceeded the program requirements for admission to the NY bar. Students will engage in self-assessment and receive formative and summative assessment throughout the program from multiple sources (e.g., law school professors, judges, practicing attorneys, and standardized clients).

•Technology. Participating schools will be encouraged to teach and utilize law practice technology as part of the A2J ABE lawyering curriculum. For example, eportfolios, videotape of lawyering activities (e.g., interviewing standardized clients, use of software that enables students and professors to embed videos with written assessment), and case management software to track time and activities in courses with simulations and in clinics and supervised externships as part of a "digital lawyering curriculum" component).

•Complements PBSP. The A2J ABE will complement the PBSP as follows:

•Practice immersion. Students will have the option of a full time final semester immersion into practice in a law school clinic or supervised externship (in their final semester), or allocate their clinical and/or supervised externships across multiple semesters during their final two years.

•Application process. As with the PBSP, each participating school may establish its own criteria for accepting students into the program, subject to the general requirements of the A2J ABE.

•Expedited admission to NY bar. Students must successfully complete the requirements for law school graduation, the A2J ABE program, and § 520.3, NY Rules for Admission of Attorneys. Successful A2J ABE students will be granted expedited admission to the NY bar without sitting for the bar exam.

3. Formative & Summative Assessment of Student Performance Portfolios

Students will create and develop a performance portfolio that demonstrates competence in core legal knowledge, lawyering skills, and professional responsibility and values. Performance portfolios will include materials including, but not limited to, written materials (e.g., student work in A2J ABE courses), videos of lawyering activities (e.g., interviews with standardized clients), other law school activities (e.g., moot court), and evaluations from A2J ABE courses (including law schools clinics and/or supervised externships). Student work and evaluations from internships (e.g., summer) may be included in a student's portfolio.

Each student's performance portfolio will be assessed for progress towards identified benchmarks and outcomes (what students should know, what they should be able to do, and how they should do it). The assessment rubric could be based on measures that a student "exceeds," "meets," or "approaches" program requirements. Students will engage in self-assessment and reflection, and receive formative, reflective, and summative assessments.

A student's portfolio will be assessed at least twice by an A2J ABE faculty member from a student's law school in consultation with a member or designee of the BOLE. A final assessment of a student's qualification to be admitted to the bar will be made independently at the end of the final semester, by a member or designee of the Board of Law Examiners, in consultation with the Academic Dean or designee at each participating law school.[12]

Students who "exceed" or "meet" requirements in their final assessment will be admitted to the NY bar, subject to meeting any other NY BOLE requirements. A student who does not successfully complete program's requirements will have to sit for the bar exam to be admitted to practice in NY. Final assessments of portfolios will be completed in time to allow students to apply for the July bar examination.

A student's progress will be assessed within lawyering skills categories, for example:[13]

- Professional Responsibility & Relationships
- Clinical Judgment: Creativity/Innovation, Problem Solving, Strategic Planning
- Legal Research, Understanding & Analysis of Substantive & Procedural Law
- Communication: Oral & Written
- Interviewing, Advising, & Counseling
- Negotiation & Alternative Dispute Resolution
- Pre-Trial Litigation Skills
- Trial Advocacy—Oral Argument, Trials, Hearings, Administrative Proceedings
- Organizing & Managing Work; Collaboration

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[12] Assessments will be made within a framework approved by a "NY A2J ABE committee," including, representatives of the courts, law schools, the BOLE and the NYSBA, or their respective designees. New Hampshire bar examiners report they can only assess a maximum of five DWS portfolios each year, so a collaborative effort will be necessary to develop an efficient process for the NY A2J ABE.

[13] These lawyering skills and capacity categories generally encompass those identified by McCrate, Carnegie, Best Practices, ABA Standard 302, and Shultz & Zedeck, *see* n. 8 above.

4. GPA, Credit, and Course Requirements: DWS @UNH Law and NY A2J ABE[14]

NY A2J ABE students may follow a litigation or transactional path, provided they take required A2J ABE courses, including at least 12 credits of a law school clinic and/or supervised externship, plus at least the minimum of MBE related courses[15] and NYBE related courses[16] required by a particular law school.

Requirements	DWS @UNH Law	NY A2J ABE
GPA	Graduate with a cumulative GPA of at least a B (3.0) (3.0 is not required for admission). DWS Courses: No grade below a B- (2.67) in any DWS designated courses.	Graduate with cumulative GPA of at least a B (3.0)(law schools decide minimum GPA for admission). A2J ABE Courses: Schools can set minimum grade for A2J ABE designated courses.
First Year Requirements	Credits required for all UNH Law students). Total: 31 credits	Credits required for all students at each law school. Total: 31 credits
Upper Level Courses	Required of all UNH students: Administrative Process 3 Criminal Procedure 3 Prof Responsibility 3 Writing Requirement 3 Total: 12 credits	Required by each law school for all students (subject to waiver by law school): Minimum of 3 courses; all required upper level courses in this cluster (regardless of number) must total at least 9 credits. Total: 9 credits
Additional Required Courses	Required of DWS: Evidence 3 Personal Income Tax 3 Business Associations 3 Wills, Trusts, & Estates 3 Clinic/Externship 6 Total: 18 credits	Required for A2J ABE: At least 3 elective courses plus a Clinic/Externship; all courses in this cluster (regardless of number) must total at least 21 credits.[17] Total: 21 credits

[14] Credits and sequencing for NY A2J ABE courses are illustrative and will be subject to a law school's curriculum design within the general framework of the program.

[15] E.g., Civil Procedure, Contracts, Constitutional Law, Criminal Law, Evidence, Real Property, and/or Torts.

[16] E.g., Business Associations, Criminal Law & Procedure, Matrimonial & Family Law, NY Civil Practice & Procedure, Wills, Trusts, & Estates.

[17] These courses will include subject areas currently tested on the essay portion of the NYBE.

Course requirements: DWS @UNH Law and NY A2J ABE (cont.)

Requirements	DWS @UNH Law	NY A2J ABE
Required Courses for Alternative Bar Program Students	DWS Pretrial Advocacy 4 DWS Miniseries 2 DWS Negotiations & ADR Workshop 3 DWS Trial Advocacy 3 DWS Bus. Transactions 3 DWS Capstone - Advanced Problem Solving and Client Counseling 2 Total: 17 credits	A2J ABE seminar in each of final 4 semesters (4 credits each)[18] plus at least one other A2J ABE course; all courses in this cluster (regardless of number) must total at least 16 credits. For example: Pretrial Advocacy A2J Miniseries (multiple topics within single course) Negotiations/ADR Trial Advocacy Business Associations/NFP Drafting Problem Solving/Counseling Total: 16 credits
Total credits	Total: 78[19] credits	Schools set minimum Total: 77 credits
Additional credits needed	Total: 6[20] credits	Depends on law school Total: 6 credits (or minimum required by law school)[21]
Total needed to graduate	84 Total: 84 credits	Depends on law school Total: 83 (NY minimum)

[18] A2J ABE lawyering seminars could be existing seminars adapted to meet the requirements of A2J ABE or specially designed A2J ABE seminars; the requirement will focus on developing and demonstrating the skills, knowledge, and values necessary for admission to the bar through lawyering activities that are documented in each student's A2J ABE portfolio. A2J ABE seminars will include a Poverty Law, Access to Justice, or similar component. A2J ABE seminar in final semester can be satisfied with a law school clinic or supervised externship.

[19] The DWS information on the UNH Law School website states this figure as "77" but the credit hours total 78. *See* http://law.unh.edu/academics/jd-degree/daniel-webster-scholars/curriculum.

[20] The DWS information on the UNH Law School website states this figure as "7" but the credit hours needed to graduate would be 6 to reach 84 total credits. *See* http://law.unh.edu/academics/jd-degree/daniel-webster-scholars/curriculum.

[21] Part 520 of the Rules of the Court of Appeals requires a minimum of 83 credits for law school study, § 520.3(c)(1). A maximum of 30 of the 83 credits may be granted for "law school clinical courses, field placement programs and externships, including classroom component[s]. § 520.3(c)(4).

Required sequence of courses: DWS @UNH Law and NY A2J ABE

Required Sequencing	DWS @UNH Law	NY A2J ABE
2nd Year Fall	DWS Pretrial Advocacy (4); Personal Income Tax (3) = Total: 7 credits	School chooses from menu of courses, must include required A2J ABE lawyering seminar (4 credits) plus 1-2 other A2J ABE courses. Total: 6-12 credits
2nd Year Spring	DWS Trial Advocacy (3); DWS Miniseries (2); DWS Negotiations (3) = Total: 8 credits	School chooses from menu of courses, must include required A2J ABE lawyering seminar (4 credits) plus 1-2 other A2J ABE courses. Total: 6-12 credits
By end of 2nd Year	Business Associations (3); Wills, Trusts, & Estates (3); Evidence (3); = Total: 9 credits	School chooses from menu of elective courses (at least 3) Total: 9 credits
3rd Year Fall	DWS Business Transactions (3) = Total: 3 credits	A2J ABE lawyering seminar (4 credits). Total: 4 credits
3rd Year Spring	DWS Advanced Problem Solving and Client Counseling (Capstone) (2) = Total: 2 credits	A2J ABE lawyering seminar (can be clinic or supervised externship). Total: 4 credits
By end of 3rd Year	Clinic/Externship at least 6 hours total[22] (6) = Total: 6 credits	Clinic/Externship 12 credits minimum.[23] Total: 12 credits

[22] Includes course work plus any prerequisites.
[23] Includes course work plus any prerequisites.

5. Proposed Sample Timeline For Initial Implementation of NY A2J ABE

Fall Semester Academic Year 1	Spring Semester Academic Year 1	Fall Semester Academic Year 2	Spring Semester Academic Year 2
Approved by Court of Appeals & BOLE, in consultation with NY law schools & NYSBA. A2J ABE committee formed to implement pilot program. Law schools that wish to participate submit proposed A2J ABE curriculum to A2J ABE committee.	A2J ABE Committee decides on proposed curricula submitted by law schools. Law schools hold information session. "Rising" 2L students apply & schools accept participants.	A2J ABE begins with entering class of 2Ls. Law schools hold information session for next class.	Next class of "rising" 2L students apply & schools accept participants for second class of participants.

Margaret Nyland Wood

From: Ken Delafrange <[redacted]
Sent: Monday, November 09, 2015 10:57 AM
To: Attorney Admissions
Subject: Amending New York's admission requirements

November 9, 2015

[redacted]
Champlain, NY 12919
[redacted]

State of New York
Court of Appeals
Margaret Wood
Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany NY 12207
attorneyadmissions@nycourts.gov

Dear Honorable Wood:

The Court of Appeals has asked "whether New York's admission requirements should be amended to include, among other things, an experimental learning component, or whether it is appropriate to include as a licencing requirement an assessment of applicants' lawyering skills and understanding of the practical aspects of a legal career."

New York admission requirements should be amended. The Bar exam should be terminated and not replaced with additional hardships that simulate practice.

The cost of obtaining a legal education has always been expensive, and for many out of reach. It has become progressively more difficult to afford a legal education. We see the results of the oppressive cost. The legal education is an elastic good. People have begun to choose other professions. The costs of law school are outweighed by the opportunity to earn a living in a less regulated and still lucrative profession. This has resulted in lower enrollment, and more people earning non-ABA degrees.

The admission process is mired by an exam that professes to do many things for the people of the state of New York. It serves the interest of those who make their living from the exam. It does not protect the public because every year persons who are struck off the rolls as attorneys are those who already passed this exam. The bar exam never tests the tactical burden, something only practice can assess. The present exam is messing with people livelihoods. It does not assess a persons ability to practice. It assesses a persons ability to test.

Today's New York Law Journal reports: "Ten of New York's 15 law schools had their pass rates decline from last year on the July 2015 bar examination, according to figures that the law schools provided to the Law

Journal. Three institutions—Touro Law School, New York Law School and Albany Law School—had a double-digit or near double-digit slide.

Read more: http://www.newyorklawjournal.com/id=1202741839953/Most-New-York-Law-Schools-See-Decline-in-Bar-Pass-Rates#ixzz3r0fvKhDY"

One can observe over the last 20 to 30 years that there have been requirements added to the admission to practice. The Bar does not prune away the bad admission material instead it just keeps adding content without repairing the problems it created. The Unified Bar Exam is a perfect example.

The Unified Bar exam contains no law. It contains principles where students can't even find an authority. The elements of a crime in one state are different than that of another state. It is teaching exam takers to use unascertainable law (no law) and apply it. This should never be done in practice. The Bar Exam exists without transparency and peer scrutiny. The number of students who pass this exam has decreased, and even more are avoiding the test all together. Students that do well are good test takers. Test taking is not a measure of how one will practice.

The medical practice has a process of interning. While it may be difficult to impose offering upon solo practitioners, large law firms may love interns – because they can exploit the candidates. This exploitation is similar to what the economy does with recruits in other industries. It permits a person and the industry to fairly evaluate each others capabilities in a way that no Bar Examination could.

The Bar Exam allows for Disability Accommodations. However, in the ordinary course of business, they require medical practitioners to do what is not customary in the medical profession. The Board of Law Examiners requires the doctors to define how the diagnosis was identified. This is employed as a screening tool. It results in avoiding accommodations. Persons with disabilities already suffer and the expense and time to interact with the Board of Law Examiners. This practice is discriminatory and goes against the spirt of the American With Disabilities Act.

The legal profession must get a grip. The regulations that it has been imposing on candidates for decades has caused the profession to be divided, not diverse.

I have never met any attorney ever who indicated that the Bar Exam was of assistance to their profession. It is time New York State recognize that the Bar Exam – in this present day of exceedingly costly tuition – is discouraging good people from becoming Attorneys. It is time terminate the bar exam and not impose further burdens on candidates.

Sincerely,

Ken Delafrange

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Phoenix, AZ

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Billings, MT

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Norman, OK

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Tuscaloosa, AL

Raymond C. Pierce
Raleigh, NC

Mary R. Russell
Jefferson City, MO

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

Ms. Margaret Wood
Court Attorney for Professional Matters
New York Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

November 9, 2015

Re: Comment on Task Force Proposal

Dear Ms. Wood:

I chair the Council of the American Bar Association Section of Legal Education and Admissions to the Bar ("Council"). I write on its behalf to comment on the Court Task Force's proposal to add a "skills competency requirement" to the requirements that an applicant must satisfy before admission to practice in New York.

The comments offered here are presented on behalf of the Council (Council member Diane Bosse abstaining), which acts separately and independently of the American Bar Association on matters related to law school accreditation. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

Since 1952, the Council has been recognized by the United States Department of Education as the accrediting body for J.D. programs in the United States. For a much longer period, beginning in 1923, the Council has been adopting and enforcing law school accreditation standards and approving law schools that operate their J.D. programs in compliance with those standards. Over this extended period, state supreme courts and bar admissions offices have endorsed the Council's work by accepting graduates of ABA-approved law schools as having met the state's *education* requirements for admission to practice.

The prerogative to establish bar admissions standards rests with each state, of course, but the ABA accreditation process has salutary effects. Most notably, ABA-approved law schools and their students can be confident that their J.D. degree qualifies the holder to sit for the bar examination wherever that graduate chooses to practice. In this market, that may be essential to find a good job opportunity. From the states' perspectives, each state's bar admissions processes can avoid the time and expense of establishing and enforcing standards, relying on the Council to set appropriate standards for law schools to meet.

The Council takes steps to assure that the continuing support of the accreditation process by the states is merited: (a) we include judges and bar admissions officials in

the process as members of the Council and its key accreditation-related committees, and as members of the teams that visit schools as part of the periodic review of schools' programs; and (b) we operate an open and inclusive process for the development and review of the standards that law schools must meet.

Over time, these standards have evolved to meet the changing needs and desires of the profession, including state regulators. Recently, in response to the call for law graduates to have more practical training, the Council adopted Standard 303(a)(3), which obligates schools to require students to complete a minimum of six credits of skills courses as part of their J.D. programs. The Council adopted the six-credit minimum standard now found in Standard 303(a)(3) after an open notice and comment period and vigorous debate. Factors cited by those supporting the six-credit minimum included that this new standard increased the previous requirement and is in addition to requirements for legal writing courses and a course in professional responsibility. The six credits is a minimum requirement, of course, and schools may choose to require more if that is consistent with their mission and legal education program, and students may elect to take more, if doing so fits their educational objectives. Those opposing the fifteen credit standard cited lack of sufficient curricular offerings at many law schools and the increased expense to law schools of having to create more experiential learning courses for students, in this era when holding the line on law school expenses is so critical to students. Also cited was the fact that some students do not intend to use their legal training to practice law or wish to practice in areas in which many schools do not offer fifteen hours of experiential courses, and requiring them to effectively devote a semester to clinical/experiential offerings may reduce their ability to take courses that they perceive to be of more use or relevance to them.

The Task Force proposal sent out for comment imposes a new skills competency requirement that bar applicants must meet that exceed the Standard set by the ABA. That requirement can be met in a number of ways. As it relates to graduates of ABA-approved law schools, two "pathways" are provided. Neither of those pathways are met by a student simply presenting a J.D. degree from an ABA-approved law school, even though (for students who begin their law studies in the Fall 2016 semester and thereafter) that degree demonstrates that the student has completed at least six credits of experiential learning courses as part of the school's required J.D. program.

As we understand the proposal, a law school will not satisfy the court's rule simply by operating in compliance with Standard 303(a)(3). Thus, an ABA-approved J.D. degree, without more from the law school, will not meet the requirements of the proposed rule.

Pathway 1, in addition to requiring an ABA-approved law school operate a J.D. degree program that meets the ABA Standards that will include six credits of skills courses, requires the law school to do three additional things for their students:

> (a) separately develop, beyond what Standards 302 and 303 require, "a plan identifying and incorporating into its curriculum the skills and professional values that, in the school's judgment are required for its graduates' basic competence and ethical participation in the legal profession," as ABA Standard 301(a) requires;
>
> (b) publish that plan on its website; and
>
> (c) certify that the particular bar applicant has "acquired sufficient competency in those skills and familiarity with those values."

Pathway 2, while relieving the school of the responsibilities of developing a plan, publishing that plan, and certifying each graduate's competency, instead requires schools to certify that the graduate completed fifteen rather than a minimum of six credits of skills courses, six credits of which the law school may allow to

be earned in non-credit bearing summer employment programs that meet certain (not yet specified) criteria. Thus, this pathway demands that law schools require that an applicant have completed either (a) fifteen credits of skills courses in the J.D. curriculum or (b) nine credits of skills courses in law school plus six credits' worth of summer law employment that the school would have to review under criteria that will be adopted sometime in the future.

Both pathways impose requirements on all 205 ABA-approved law schools that are not imposed by the ABA Standards. They require different and additional certifications by the 15 law schools in New York, as well as the 190 other ABA-approved law schools across the country if their students at some point decide to apply for admission in New York, as happens at almost every law school every year. They may require additional staff and processes that add to the cost of delivering the J.D. degree. They impose risk on students who, as they are going through law school, cannot know whether or not they will have a post-graduate opportunity to work in New York.

Perhaps the proposal was understood to create a "safe harbor" for students attending ABA-approved law schools that would be subject to the requirements of Standard 303(a)(3). If that is the intention, one of the pathways could simply and straightforwardly say that presenting a degree from an ABA-approved law school satisfies the Court's requirements.

If the Task Force did not intend to create a safe harbor, but rather intended to require all law schools nationwide that wanted to preserve their graduates' opportunity to obtain admission to the New York Bar to adopt academic requirements and develop administrative processes to conform to the proposal, then we respectfully urge that the Court not adopt the proposal at this time. We encourage you to let the new requirements of Standard 303(a)(3) take hold. You should consider, going forward, whether the students trained under that rule come to your bar admissions process and enter the profession with what you would conclude to be sufficient skills for a beginning lawyer to possess. We encourage you to follow and participate in the Council's ongoing work on the Standards. The Council would welcome and would appreciate your interest and direction.

While each state retains the authority and has the responsibility to set its requirements for admission to practice, significant benefits flow to students, the bar admissions processes of each state, the public, and law schools in continuing to support the ABA law school accreditation process. It would be ironic that the *de facto* national set of legal education requirements for bar admission would fragment at the same time that the Uniform Bar Examination, which the Court of Appeals just recently embraced, gains traction. Both uniform standards and the Uniform Bar Exam recognize the reality that the legal profession is increasingly a national one and that a national set of standards is an efficient way for the states to discharge their responsibilities. The ABA accreditation process has served the profession well. We ask for your continuing support of this process, which has proved its ability to adapt to meet the needs of the profession.

We would be pleased to provide any additional information that would be helpful and to meet with members of the Task Force as you determine might be useful.

Sincerely,

Rebecca W. Berch

Rebecca White Berch
Arizona Supreme Court (retired)
Chair, Council of the ABA Section of Legal Education and Admissions to the Bar

ALBANY LAW SCHOOL

80 NEW SCOTLAND AVENUE, ALBANY, NEW YORK 12208-3494
TEL: 518-445-2311 FAX: 518-445-2315 WWW.ALBANYLAW.EDU

November 9, 2016

Margaret Wood
Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

Re: *Comment on New York Court of Appeals Task Force on Experiential Learning & Admission to the Bar's Proposal Regarding a Skills Competency Requirement*

Dear Judge Rivera, Members of the Task Force on Experiential Learning & Admission to the Bar, and Ms. Wood:

Thank you for giving Albany Law School the opportunity to comment on the proposal of the Court of Appeals' Task Force on Experiential Learning and Admission to the Bar. We commend the Court and its Task Force for its efforts to ensure that attorneys who are admitted to the New York bar possess the skills and values required for "effective, ethical and responsible practice."

We also commend the Task Force for providing multiple pathways by which applicants can satisfy the new skills competency requirement. Albany Law School strongly supports the goal of ensuring that our students graduate ready to succeed in their chosen field. To this end, we have adopted a strategic plan calling for a competency-based curriculum, and our faculty is working diligently to identify the skills and knowledge necessary for competence in each of our six career domains: criminal and civil litigation; business, tax, and financial markets; innovation and entrepreneurship; health; government law and policy; and public interest. We are proud to offer a range of programs, including clinics, simulation courses, field placements, moot court, and other opportunities for rigorously structured and supervised experiential education, all of which provide opportunities for our students to gain the skills necessary for successful careers. As we have engaged our work toward building a competency-based curriculum, we are making full use of our experiential offerings. At the same time, we have remained especially cognizant of both changes in the legal marketplace and our students' varied career aspirations. We have learned from this work and are developing curricula in each domain that will allow our students to tailor their education to their individual goals. Throughout

this process, the importance of flexibility in pedagogically sound curricular development has become increasingly clear. Necessary competencies for practice are domain specific. For this reason, we appreciate the Task Force's wisdom in including in its proposal the option of Pathway 1. Pathway 1 affords our faculty, and that of other law schools, the flexibility to develop the most appropriate, effective, and domain-specific educational programs for ensuring our graduates possess upon graduation the skills and values required for ethical, effective, and responsible practice.

At the same time, we are concerned about two aspects of the proposal: time to implement, and the exclusion of part-time work as qualifying for substitute credit under Pathway 2. As to time, the Task Force has acknowledged that law schools need time to implement these processes and programs by applying them only to students who begin their study of law on or after August 1, 2016. Even so, we are concerned that the proposed implementation date does not provide law schools with sufficient time to develop appropriate and effective methods to allow students to pursue these paths. Specifically, with respect to Pathway 1, while Albany Law has developed learning outcomes pursuant to ABA Standard 302, additional time is necessary to develop a plan to create methods to assess whether "the applicant has acquired sufficient competency in those skills and sufficient familiarity with those values." Albany Law's year-long process for developing learning outcomes, which included the appointment of a faculty assessment committee, meetings and workshops to review drafts of our now-adopted knowledge, skills and value-based outcomes, was thorough and inclusive. We plan to develop a similarly thorough process for developing methods to assess whether students have acquired sufficient competency in those outcomes, which will likely take some time.

Similarly, while Albany Law School supports the proposal to add additional practice-based experiential coursework opportunities, more time is necessary to ensure that our educational program provides students with sufficient opportunities to pursue Pathway 2. This process will include a thorough review of our current course offerings, with input from our alumni and employers to determine what additional courses would provide students with professional competency training, working with faculty to create more experiential learning opportunities within their classes, and potentially developing and creating new courses. We therefore respectfully request that the Task Force consider giving the law schools another full year, and delay imposition of the requirement to students who begin their study of law in or after August 2017. This will allow Albany Law and the other New York law schools adequate time to carefully and thoroughly implement processes and programs that will ensure students the opportunity to pursue the various paths provided for in the Task Force's proposal.

Secondly, we respectfully request that the Task Force provide law schools the flexibility to substitute appropriate credit hours for part-time legal work under Pathway 2. Although the proposed rule would allow law schools to substitute 6 of 15 hours for full-time summer employment, it does not give law schools the discretion to substitute any credit for part-time legal employment during the summer or the school year. For many Albany Law students, paid part-time employment during the academic year provides extremely worthwhile educational opportunities. During the summer, many of our

students achieve tremendous educational gains through part-time employment in legal settings. These part-time employment experiences are often at least as valuable from an educational point of view as full-time summer employment, and such part-time employment allows our students to attend law school without increasing their debt. The current proposal denies law schools the opportunity to evaluate the educational worth of part-time employment, and could potentially force students to give up paid jobs for unpaid field placements. We respectfully request that the Task Force revise Pathway 2 to defer to law schools to define what constitutes the 15 hours of experiential work, allowing room for credit for certified, non-credit bearing legal work, whether part-time or full-time, paid or unpaid.

Thank you for the thoughtful work you have put into this important issue, and for considering these comments. Please let us know if we can provide any further information.

Very truly yours,

Alicia Ouellette
President and Dean

Connie Mayer
Associate Dean
Academic Affairs

Rosemary Queenan
Associate Dean
Student Affairs

CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA)
COMMENT ON
BAR ADMISSION SKILLS COMPETENCY PROPOSAL
OF
NEW YORK COURT OF APPEALS
TASK FORCE ON EXPERIENTIAL LEARNING AND ADMISSION TO THE BAR

November 9, 2015

The Clinical Legal Education Association (CLEA) appreciates the opportunity to comment on the skills competency proposal from the New York Court of Appeals Task Force on Experiential Learning and Admission to the Bar.

CLEA is the nation's largest association of law teachers with over 1,300 members. Many of our members teach law clinic and externship/field placement courses in New York's law schools. Almost all CLEA members teach at schools with graduates impacted by the proposed bar admission rule since over half of New York State's bar examinees are from out-of-state law schools. Founded in 1992, CLEA's mission is to establish clinical legal education as a fundamental component of the education of lawyers. For over 20 years, CLEA and its members have worked with the American Bar Association (ABA), state bars and committees, and individual law schools to reform law school curricula, accreditation standards, and bar admission rules in order to improve the professional abilities of law school graduates.

Although CLEA strongly supports efforts of state courts to adopt bar admission requirements that will require law students to be better prepared for the practice of law, the Task Force's Pathway 1 simply mirrors the experiential training requirement already required by the American Bar Association (ABA) and would not result in any enhanced competency to practice law. As set forth below, CLEA urges that Pathway 1 be deleted in favor of Pathway 2 and that a three-credit clinical training requirement be added for all J.D. applicants to the New York bar.

Judges, Lawyers and Bar Committees Overwhelmingly Agree that Students Need More Skills Training than ABA Accreditation Standards Require

There is broad agreement that applicants for admission to the bar too often are not ready for the effective, ethical practice of law.

By an over 3 to 1 margin, federal and state judges agree that "more coursework on practice-oriented skills" would most benefit law schools, while "expansion of core curriculum" was a distant second.[1] State judges feel particularly strongly that more practice-based coursework is needed — state appellate judges favor more skills courses over more core doctrinal courses by an over 3 to 1 margin, and state trial judges by over 8 to 1.

In a survey of hiring partners and law firm associates, 95% believe recent graduates lack key practical skills.[2] "Most attorneys involved with hiring and management of new lawyers agree

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[1] Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 Stanford L. Rev. 317 (2011), *available at* http://www.stanfordlawreview.org/sites/default/files/articles/Posner-Yoon-63-Stan-L-Rev-317.pdf.

[2] LexisNexis, *Hiring Partners Readiness for Real World Practice Survey* (2015), *available at* https://www.lexisnexis.com/infopro/literature-reference/white-papers/b/whitepaper/archive/2015/06/02/hiring-partners-reveal-new-attorney-readiness-for-real-world-practice-white-paper.aspx.

practical skills can be effectively honed through clinics, internships, clerkships, and experience in actual or simulated application to a case."[3] A survey of corporate counsel and private practice attorneys reported that 90% believe law schools fail to teach the practical skills needed to practice law in today's economy.[4] The ABA's Young Lawyers Division unanimously resolved in 2013 that law schools should "require at least one academic grading period [15 credits] of practical legal skills clinical experiences or classes as a law school graduation requirement for all matriculating Juris Doctorate (or an equivalent degree) students."[5]

In addition to the New York State Bar's Legal Education and Admission to the Bar Committee, numerous other state bar committees have called for more clinical training in law school. An Ohio State Bar Association task force on legal education recommended that each student, prior to taking the bar exam, be required to complete a law clinic or faculty-supervised externship in law school or a practice experience through a bar association program that involves law school faculty and the practicing bar.[6] An Illinois State Bar Association report concluded that "the training that law students receive in law school today is increasingly not worth its high cost."[7] It recommended law schools prioritize simulations, live-client clinics, and other courses that give students the opportunity to learn in the context of real life problems. Likewise, the California State Bar Board of Trustees unanimously recommended to its supreme court that all students seeking admission to the bar be required to have taken 15 units of coursework in practice-based experiential courses.[8] The State Bar explained that it was motivated to act because there are fewer and fewer opportunities for new lawyers to gain structured competency training early in their careers leaving them "without the solid foundation necessary to represent clients in a competent manner and with nowhere to turn to build that foundation. From the standpoint of regulatory policy, this situation presents serious issues of public protection that cannot be ignored."[9]

Law students recognize the inadequacy of the training they receive under ABA Accreditation Standards. Two-thirds believe that law school teaches students legal theory but not the skills needed to practice law.[10] Forty percent of students report that their legal education has contributed only "some" or "very little" to their acquisition of job- or work-related knowledge and skills, in spite of the very significant amounts of tuition paid (and debt incurred in the process) for the education they need to prepare for practice.[11]

Therefore, while some within the legal academy defend the ABA's minimal requirements, there is a clear consensus among judges, practicing lawyers, bar committees, and

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[3] *Id.*

[4] LexisNexis, *State of the Legal Industry Survey* (2009), *available at* http://www.lexisnexis.com/document/state_of_the_legal_industry_survey_findings.pdf.

[5] ABA, Young Lawyers Division, Resolution 1YL (2013).

[6] Ohio State Bar Ass'n, *Report of the Task Force on Legal Education Reform* (2009), available at https://www.ohiobar.org/General%20Resources/pubs/OSBA_Legal_Education_Task_Force_Report.pdf.

[7] Ill. State Bar Ass'n, *Final Report, Findings & Recommendations on The Impact of Law School Debt on the Delivery of Legal Services* (2013), *available at* http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%203-8-13.pdf.

[8] State Bar of Cal., *Task Force on Admissions Regulation Reform: Phase II Final Report* (Sept. 25, 2014). Bar-approved or law school-approved clerkships or apprenticeships may substitute for up to 6 of the 15 units.

[9] State Bar of Cal., *Task Force on Admissions Regulation Reform: Phase I Final Report* 1 (June 24, 2013).

[10] *State of the Legal Industry Survey*, *supra* n. 4.

[11] Law School Survey of Student Engagement (LSSSE), *Annual Results* (2011).

recent graduates that ABA Accreditation Standards do not sufficiently prepare students for the practice of law.

Pathway 1 Merely Duplicates ABA Accreditation Requirements and Would Fail to Increase the Competency of Any New Lawyer in New York

What is described at Pathway 1 adds nothing significant to the existing requirement that applicants hold a degree from an ABA-accredited law school and fails to contribute to the objectives of ensuring that bar applicants possess the requisite skills for practice.

Pathway 1 would require an applicant to submit a "certification" showing that his or her school "has developed a plan identifying and incorporating into its curriculum the skills and professional values that, in the school's judgment, are required for its graduates' basic competence and ethical participation in the legal profession . . . and has made this plan publicly available on its website," and that the applicant has acquired sufficient competency in those skills and familiarity with those values.

Although expressed in different language, Pathway 1 mirrors current ABA Accreditation Standard 301(a) and (b) that schools "establish and publish learning outcomes" designed to achieve the objective of preparing students for admission to the bar and for "effective, ethical, and responsible participation as members of the legal profession." Under the new ABA Standards, schools must establish learning outcomes that include, among other things, the school's determination of "professional skills needed for competent and ethical participation as a member of the legal profession." Standard 302(d).

The ABA's Guidance Memo on implementing these new standards explains that every school must publish its learning outcomes "in those places on its website and in its publications where the law school describes its mission and its curriculum."[12] Thus, Pathway 1's requirement to "establish and publish learning outcomes" simply mirrors what schools must already do under ABA Standards.

ABA Standard 314 requires each school to use both summative and formative assessment to measure a student's, not just the school's, progress toward outcomes. As explained by the ABA's Guidance Memo, each school shall "measure the level of attainment of these learning outcomes [including professional skills and values] being achieved by students. This requires schools to collect evidence that demonstrates the level of attainment."[13] In addition, the ABA requires every accreditation site team to "report how the law school assures that each student receives substantial instruction" in the learning outcomes required by Standard 303.[14] As such, schools, subject to the ongoing oversight and enforcement of the ABA, are already required to measure and demonstrate a student's attainment of competence in the skills chosen by the school as its learning outcomes.

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[12] ABA, Section of Legal Education and Admissions to the Bar, *Managing Director's Guidance Memo, Standards 301, 302, 314, and 315* 4 (June 2015), *available at* http://www.americanbar.org/groups/legal_education/accreditation/consultants_memos.html.

[13] *Id.* (emphasis added).

[14] ABA Section of Legal Education and Admissions to the Bar, *Site Evaluation Workshop for Law School Representatives & New Site Evaluators* 9 (2015) (emphasis added), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_site_evaluation_workshop_online_agenda_book.pdf.

Therefore, other than requiring a new piece of paper from each bar applicant's school saying that the student has successfully met the ABA's required learning outcomes for professional skills (i.e., completed 6-credits of skills coursework starting with J.D. students graduating in 2019), Pathway 1's certification requirement merely reiterates what is already mandated by the ABA. To the extent there is to be any monitoring at the level of individual progress towards professional skills of the over 7,000 applicants from potentially as many as 200 accredited law schools each year, Pathway 1 also would impose very burdensome new oversight and enforcement demands on the Board of Law Examiners and the Court without any corresponding benefit to the bar or residents of the state.

Because the bar application process for J.D. graduates already requires a degree from an ABA accredited law school, the additional requirement that schools produce a certification that they comply with ABA accreditation requirements will do nothing to ensure that applicants to the New York bar are any more prepared for the practice of law than any graduates of an ABA-accredited school seeking admission elsewhere. It is a paper exercise.

Indeed, because Pathway 1 duplicates the ABA learning outcome requirements, it actually undermines the objectives of the Task Force. Accordingly, it should be dropped as a means to meet a new practice skills competency requirement.

J.D. Bar Applicants Should Be Required to Have a Clinical Experience in School

A glaring absence in ABA Accreditation Standards and present bar admission rules is a requirement that a J.D. student have a clinical experience, either through a law clinic or faculty-supervised externship/field placement, while in law school. At a minimum, the Task Force should require a law clinic or faculty-supervised externship/field placement experience of at least three credits for every J.D. applicant under Pathways 1 and 2.

Two National Association for Law Placement (NALP) studies demonstrate the importance of requiring law clinic or externship experiences for all students and the superiority of such experiences over simulation courses. In a survey of new nonprofit and government lawyers, over 83% rated legal clinics as "very useful" (average rating of 3.8 out of 4) in preparing them for the practice of law, with externships/field placements rated "very useful" by 72% (3.6 out of 4) and skills courses by only 48% (3.3 out of 4).[15] In a similar survey of new associates in private law firms, about two-thirds (63%) rated legal clinics as "very useful," followed closely by externships/field placements (60%) with skills courses lagging far behind (38.5%).[16]

In a survey of students preparing for the bar exam, 97% said they favor a law school model that incorporates clinical experience.[17] Simulation courses can be useful training tools, but they are insufficient alone to fully prepare students for the profession. As the New York State Bar Association's Committee on Legal Education and Admission to the Bar determined in

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[15] NALP, 2011 *Survey of Law School Experiential Opportunities and Benefits: Responses from Government and Nonprofit Lawyers* (2012), *available at* http://www.nalp.org/uploads/2011ExpLearningStudy.pdf.

[16] NALP, *2010 Survey of Law School Experiential Opportunities and Benefits* (2011), *available at* http://www.nalp.org/uploads/2010ExperientialLearningStudy.pdf.

[17] Kaplan, *Bar Review Survey* (2013), *available at* http://press.kaptest.com/press-releases/kaplan-bar-review-survey-63-of-law-school-graduates-from-the-class-of-2013-believe-that-law-school-education-can-be-condensed-to-two-years,

similarly recommending a four-credit clinical course requirement for all J.D. applicants,[18] law clinics and faculty-supervised externships better prepare law students for the practice of law than simulation courses alone and should be required by any new admission rule.

Studies show the value of a clinical experience. The Law School Survey of Student Engagement (LSSSE) found that students with law clinic or externship experience report greater gains in: higher order thinking skills; speaking and writing proficiency; and competence and confidence in solving complex real world problems. Clinical participation was also found to correlate with a higher degree of preparation in: understanding the needs of future clients; working cooperatively with colleagues; serving the public good; and understanding professional values.[19]

Law schools, in New York or elsewhere in the United States, have no grounds to object to a clinical experience requirement. Such a requirement would impose no new burdens on any New York school nor any new costs to students. According to data submitted to the ABA in fall 2014 and certified by each school's dean as "true, accurate, complete and not misleading,"[20] every New York school has sufficient capacity in its existing law clinic and externship courses to provide every entering J.D. student with a clinical experience prior to graduation.[21] Appendix 1 provides the reported capacity of the New York law schools to deliver a clinical experience for every entering student (in that table, a number over 100% represents more available positions in clinical courses than entering first-year students).

The same pattern holds nationally. Of the 37 schools with ten percent or more of its graduates taking the New York exam,[22] 34 schools (92%) reported that they have sufficient capacity to provide a clinical experience to every J.D. student before graduation (Appendix 2). The three remaining schools report sufficient existing capacity to provide a clinical experience to over 90% of their graduates, yet at most only 18%, 31% or 65% of their students ended up sitting for the New York exam. All 205 ABA-accredited law schools, then, can easily guarantee a clinical experience to every J.D. student wishing to take the New York bar exam.

In the face of close analysis, costs also fade as an objection to requiring a clinical experience for all new J.D. educated applicants or for a school to guarantee such an experience. A comprehensive review of tuition, clinical course offerings, and enrollment data from all law schools found no effect on tuition from guaranteeing or requiring a clinical experience, and no difference in tuition between schools that already have sufficient capacity to provide a clinical

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[18] New York State Bar Ass'n, Comm. on Legal Educ. and Admission to the Bar, *Informational Report to the New York State Bar Association Executive Committee on a Skills Training Requirement for Admission to the New York Bar* (Dec. 2013), *available at* http://www.nysba.org/workarea/DownloadAsset.aspx?id=46440.

[19] Law School Survey of Student Engagement, *Annual Results* (2006, 2010, 2012). The studies found no relationship between summer work experiences and higher order learning, only with law school clinical experiences.

[20] ABA, Dean's Signature Page, Annual Questionnaire (2014), *available at* http://qa.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governanced ocuments/2014_aq_dsp.authcheckdam.pdf.

[21] Data on the number of positions offered and filled in law clinics and field placement courses are available in the Standard 509 Reports for 2014 at: http://www.abarequireddisclosures.org/. Percentages were determined by calculating the sum of "# of positions available in faculty supervised clinical courses" plus "# of field placement positions filed - full-time & part-time" divided by "JD Enrollment 1st-year Total."

[22] Based on 2011, 2012, and 2013 bar exam data in ABA Required Disclosures, *Bar Passage Rates* (2014), *at* http://www.abarequireddisclosures.org.

experience to each student and those that do not.[23] In addition, there is no tuition growth associated with the increased availability of experiential or law clinic courses for students or the increased participation of students in law clinics. The study concluded that providing a clinical experience to every student was a question of a school's willingness to provide that educational experience, not of the costs associated with those courses.

Oversight and enforcement of a new clinical experience requirement would be minimal. The ABA's recently adopted Standard 304(b) sets out the requirements for a law clinic course; the ABA is in the process of providing similar guidance on field placements. Therefore, a new bar rule would only need to require certification of successful completion of a law clinic or faculty-supervised externship/field placement course of at least three credits.

Thus, there is no practical basis for not requiring a clinical experience before a student is licensed to represent clients. Furthermore, it is illogical for New York not to implement such a bar admission requirement. As Dean Erwin Chemerinsky stated, "there is no way to learn to be a lawyer except by doing it."[24] He pointed out the irrationality of not requiring all students to handle real cases with real clients by remarking that "it is unthinkable that medical schools could graduate doctors who had never seen patients or that they would declare that they just wanted to teach their students to think like doctors."

15 Credits of Practice-Based Experiential Coursework Should Be Required of All J.D. Applicants to the Bar, As Similarly Mandated by Other Professions

The ABA has done too little to address the need for more practice-based education. After decades of calls for reform, the ABA's new requirement in Accreditation Standard 303(a)(3) would allow a J.D. graduate to sit for the bar having only taken one or two courses (6 credits) in professional skills and no clinical experience through a law clinic or externship. Six credits represents only 1/14th of the 83 total credits required for a degree. By adopting the ABA's learning outcomes for professional skills, Pathway 1 would further enshrine this inadequate requirement.

A comparison of the 6-credit requirement adopted in Pathway 1 with the experiential requirements in other professions demonstrates the need to require Pathway 2's 15-credits for all J.D. graduates. Indeed, as detailed below, even if graduates were required to obtain 15-credits of practice-based coursework, new lawyers would still lag behind other professions in New York in the amount of pre-licensing professional skills education and training.

Medicine: Medical school education consists of two years of classes and then two years of professional experience (one-half of each student's medical education) in clinical rotations,[25] followed by a year of accredited post-graduate training in a hospital internship.[26]

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[23] Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 Denver L. Rev. 1, 29-39 (2014), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2318042.

[24] Law School Survey of Student Engagement, *Annual Results* (2012) (foreword by Erwin Chemerinsky, Dean, University of California-Irvine School of Law).

[25] David M. Irby, Molly Cooke & Bridget C. O'Brien, *Calls for Reform of Medical Education by the Carnegie Foundation for the Advancement of Teaching: 1910 and 2010,* 85 Academic Med. 220, 224 (2010).

[26] 8 NYCRR Part 60.3.

Dentistry: Over half of dentistry school curriculum consists of actual patient care,[27] followed by at least one year of residency.[28]

Veterinary: All veterinary students must have at least one academic year (or at least one-quarter of a student's veterinary medical education) in hands-on clinical education.[29]

Pharmacy: Pharmacy students must spend at least 300 hours in the first three years and at least 1,440 hours (36 weeks) in the last year of school in clinical settings,[30] followed by six months in a pharmacy internship program.[31]

Architecture: Architecture students take at least 50 of their 160 total required semester credit hours (approximately one-third) in design studio courses,[32] and must have eight total years of study and practice before they are eligible to apply for a license.[33]

Social Work: Masters of Social Work students must accrue at least 900 hours, or 18 of their required 60 academic credit hours (approximately one-third), in field education courses, the "signature pedagogy" of social work professional education,[34] followed by three years of full-time, supervised clinical work experience to become a licensed clinical social worker.[35]

Thus, for other professions, at least one quarter, and as much as one half, of a student's required education must be in professional skills or clinical courses, as compared to the ABA and Pathway 1's one-fourteenth. These requirements in other professions apply to every student regardless of the student's planned specialty area. Even Pathway 2's 15-credit requirement would only be one-sixth of a law student's total academic units, still far below that required by other professions.

Almost all other professions also require additional, post-graduate clinical or other practice experience prior to licensure. Therefore, Pathway 2's required 15 credits of practice-based experiential coursework is a modest, yet still critical, first step toward achieving in legal education the level of professional experience required in the education of other licensed professions in New York.

It would not be too difficult or expensive for all law schools to deliver the experience-based education that we urge. Indeed, many CLEA members teach in schools that have worked successfully to find cost-effective ways to meet, and exceed, the more ambitious goal of Pathway 2. For example:

CUNY: Students must take a 12-to-16-credit law clinic or field placement and a 4-credit lawyering skills seminar, for a total of at least 16-20 experiential credits.

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[27] American Dentistry Ass'n, Accreditation Standards for Dental Education Programs Std. 2-4; Massachusetts Bar Ass'n, *Report of the Task Force on Law, the Economy, and Underemployment* 4 (2012).
[28] NY Education Law § 6604.
[29] Accreditation Policies and Procedures of the American Veterinary Medical Ass'n, Sec. 7.9, Std. 9.
[30] Accreditation Council for Pharmacy Education, Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree, Guidelines 14.4 & 14.6.
[31] 8 NYCRR Part 63.2.
[32] National Council of Architectural Registration Boards, NCARB Education Standard.
[33] NY Education Law § 7304.
[34] Council on Social Work Education, Educational Policy and Accreditation Standards, Educ. Policy 2.3., Accreditation Std. 2.1.3.
[35] 8 NYCRR Part 74.3.

University of District of Columbia: Students must enroll in a 7-credit law clinic in their second year and a second 7-credit law clinic in their third year, as well as a required 2-credit moot court course, for a total of at least 16 experiential credits.

Washington & Lee: Third-year students are required to take 20 credits in simulated or real-practice experiences that include one law clinic or externship, three problems-based electives, and two skills immersion courses.

Denver: Any student may opt in to the "Experiential Advantage Curriculum" in which students take 24 credits of experiential learning courses in their second and third years, including a law clinic or externship.

Pepperdine: Beginning with the 2017 entering class, all students are required to complete 15 credits of practice-based, experiential coursework.

Given the range of schools represented in the sample above, it is clear this can be done at public and private schools, schools in urban and rural areas, schools whose graduates work in the local region and those who work across the country, schools with part-time programs, and schools charging among the lowest tuition in the country. Of course some schools will need to reorient some of their curricular priorities. But deferring implementation of the 15-credit experiential requirement for three years provides the time necessary for schools to shift priorities without additional costs to students (as shown above with clinical courses). As Washington & Lee found when it implemented its new 20-credit requirement within three years, the costs of the new curriculum were "no more expensive to run than our first or second years."[36]

We note that in requiring all J.D. applicants to comply with Pathway 2, one aspect should be revised. In keeping with the discussion and data regarding the proposal set out in the previous section, Pathway 2 must also require a minimum three-credit practice experience through a law clinic or faculty-supervised externship/field placement.

While we have focused on the two pathways that would drive curricular decisions for J.D. students, we note the significant number of foreign educated lawyers who sit for the New York bar exam. About 1,500 foreign-educated lawyers passed the exam last year. Although many will practice abroad, data do not show how many will stay in New York or how many in this group had any focused preparation for the practice of law. This is a problem for New Yorkers and the New York Bar. Unfortunately, the pathways may not be as helpful with this problem as it could be. Rather than the current proposal to restrict application to sit for the exam according to rules that draw lines among the differing foreign regimes for the regulation of its lawyers, we suggest it might be useful to explore a curricular alternative pathway for foreign-educated lawyers that would encourage thoughtful and practical development of practice-based education for LL.M. students.

We also note a process oriented concern. This comment is based upon the Request for Public Comment issued on October 9, 2015, the only public document released. However, it would be helpful in providing meaningful comment to have the benefit of any other material the Task Force has developed or relied on. It also appears that, consistent with past practice regarding court admission rules, further guidance will be developed should the rule be passed. CLEA looks forward to timely disclosure of draft guidance material and the opportunity to participate in ongoing conversations as any rule and other material may develop.

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36. James E. Moliterno, *A Way Forward for an Ailing Legal Education Model*, 17 Chap. L. Rev. 73, 78 (2013).

In conclusion, the legal profession and residents of New York cannot simply hope that individual law students will be able to, and will choose to, take the courses necessary to develop the professional skills they need for the competent, ethical practice of law. And given the widespread complaints about the inadequate preparation of students under the ABA Accreditation Standards, one cannot claim to have taken steps to improve the competency of new lawyers by merely adding a reporting mandate to the inadequate ABA accreditation requirements.

For the good of the profession and protection of the public, all J.D. applicants for the bar should be required to have a law clinic or faculty-supervised externship experience and Pathway 2's 15 credits of practice-based legal education.

Appendix 1

New York Law Schools	Law Clinic Positions Available plus Externship Positions Filled[37]	Number Fall 2014 1st Year Students	Percentage Clinical Capacity vs. Number 1Ls
Albany	245	121	202%
Cardozo (Yeshiva University)	715	320	223%
Brooklyn	1042	399	261%
City University of New York (CUNY)	202	105	192%
Columbia	468	383	121%
Cornell	237	203	117%
Fordham	548	367	149%
Hofstra	355	288	123%
New York Law School	846	245	345%
New York University	528	452	117%
Pace	286	174	164%
St. John's	339	216	157%
SUNY-Buffalo	210	143	147%
Syracuse	304	169	180%
Touro	312	187	157%

[37] Annual Questionnaire instructions define law clinic and externship/field placement courses and direct schools not to count the related classroom component as a separate clinical course. *See* http://qa.americanbar.org/groups/legal_education/resources/questionnaire.html.

Appendix 2

Non-New York Law Schools (≥10% of First-Time Exam Takers Sitting for New York Bar in 2011, 2012 or 2013)	Number of Fall 2014 1st Year Students	Maximum Number Taking New York Bar Exam 2011-13	Law Clinic Positions Available plus Externship Positions Filled	Percentage Clinical Capacity vs. Number 1Ls
Northeastern University	128	79	860	672%
Yale	200	125	859	430%
New Hampshire	232	17	71	326%
Univ. of District of Columbia	90	11	229	254%
Northwestern University	242	79	584	241%
University of Minnesota	193	32	438	227%
Villanova University	155	36	340	219%
Washington and Lee University	101	24	212	210%
William & Mary	213	38	442	201%
Stanford University	179	46	371	201%
Emory University	223	67	446	200%
Indiana University-Bloomington	183	19	364	199%
Catholic University of America	140	27	249	178%
Wake Forest University	178	19	300	169%
Howard University	129	55	216	167%
American University	430	151	687	160%
Georgetown University	580	272	908	157%
Roger Williams University	143	20	213	149%
Boston University	208	54	297	143%
University of Chicago	190	47	270	142%
Notre Dame	200	35	280	140%
Tulane University	185	52	257	139%
Harvard	563	303	780	139%
Case Western Reserve University	153	31	208	136%
University of Michigan	318	130	424	133%
Washington University-St. Louis	270	63	360	133%
Boston College	230	62	296	129%
Vermont	143	36	177	124%
Duke University	221	78	272	123%
George Washington University	567	158	693	122%
Penn State University	191	32	226	183%
University of North Carolina	201	26	233	116%
Vanderbilt University	171	44	196	115%
Western New England University	120	26	135	113%
New England-Boston	266	47	257	97%
University of Pennsylvania	250	148	229	92%
University of Virginia	307	87	278	91%

Margaret Wood
Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

November 9, 2015

Re: *Comment on New York Court of Appeals Task Force on Experiential Learning & Admission to the Bar's Proposal Regarding a Skills Competency Requirement*

Dear Judge Rivera and Members of the Task Force on Experiential Learning & Admission to the Bar:

As deans of law schools in New York State, we write to offer our comment on the Task Force's proposal for a new skills competency requirement for admission to the New York Bar.

We share the Task Force's goal of ensuring that all members of the New York Bar have the knowledge, skills, and professional values necessary to be competent and ethical practitioners, and to provide excellent legal representation to their clients. We would be concerned about the imposition of inflexible mandates on law schools, without regard to their specific circumstances or to differences in the professional trajectories of their graduates. Therefore, we applaud the Task Force for including in its proposal a mechanism that respects law schools' individual pedagogical choices and allows schools flexibility to provide their students with an educational program geared to each school's goals, resources, and needs. We are also concerned about conflicting curricular regulations from multiple local authorities, particularly given the American Bar Association's national jurisdiction over accreditation standards. We therefore support the Task Force's incorporation of a mechanism that is generally consistent with the new ABA standards regarding learning outcomes

To be clear, all of us strongly support the goal of ensuring that our students graduate ready to join the Bar as responsible and competent attorneys. To this end, each of us has worked with our faculty to develop curricula and to nurture a range of programs, including clinics, simulation courses, externships, and other opportunities for rigorously structured and supervised experiential education, all of which seek to provide opportunities for our students to gain the skills necessary for successful careers. We have done so in ways that acknowledge both changes in the legal marketplace and our students' varied career aspirations, allowing our students to tailor their education to their individual goals without compromising the quality of that education.

Indeed, there is a very broad range of skills that students may be called upon to use in practice. Depending on the area in which they plan to practice, some students should focus on skills that may not be included within certain conventional definitions of "professional skills." for attorneys, including accounting, economic analysis of law, and corporate finance. To other

students, of course, the relevant skillset will be more focused on litigation practice, including client consultation, drafting pleadings and motions, and constructing effective oral arguments—the skills traditionally taught and honed in experiential, simulation-based, and clinical courses. This wide variety of needed skills would not be well served by a one-size-fits-all requirement.

More inflexible skills mandates that do not account for the varied career ambitions of our students not only would constrain student choice, but also would risk undermining the quality of the work law school clinics provide to clients. If students were obliged to enroll in clinics solely to satisfy a skills requirement, rather than because of their independent interest in the clinical experience and a particular clinic's subject matter, the quality of schools' clinics might suffer. In addition, rigid mandates would require schools to reallocate resources in ways that may be inconsistent with the schools' particular goals, character, and students' career paths, or to expend resources in ways that could increase the cost of legal education.

We support the Task Force's proposed rule because, unlike some of the requirements contemplated elsewhere, it embraces the dual goals of preparing students to be ethical, effective, and responsible practitioners while also affording law schools the flexibility they need to construct their curricula in a manner that best fits each school's goals, enrollment structure (i.e., whether the student body includes part-time or evening students who work full-time during the day), character, and the career paths of its graduates. In particular, the proposed rule's Pathway 1 establishes a mechanism that will ensure lawyer competency while respecting law schools' pedagogical choices. We agree with the Task Force's general approach of providing an array of pathways for satisfying a skills requirement, and for including in that array options that recognize the various paths that students take before and after law school. Pathway 1 is, in our view, a vital component of that option set.

We take very seriously our schools' obligation to ensure that our students graduate from law school having acquired the practical skills needed to succeed in their chosen field. Pathway 1 will allow our schools to accomplish this important goal in the ways that are best tailored to the needs of our students, whether they are focused on litigation, transactional practice, or some other field within the law. Thus, we see the inclusion of Pathway 1 as key to the success of the goals underlying the Task Force's work.

Thank you for the thought and time you have given this important issue, and for considering these comments. Please let us know if we can provide any further information.

Very truly yours,

Nicholas Allard
President and Joseph Crea Dean, and Professor of Law
Brooklyn Law School

(*signatures continue*)

William C. Banks
Interim Dean
Director, Institute for National Security and Counterterrorism (INSCT)
Board of Advisors Distinguished Professor
Syracuse University

Anthony W. Crowell
Dean and President
Professor of Law
New York Law School

Matthew Diller
Dean and Paul Fuller Professor of Law
Fordham University School of Law

James A. Gardner
Interim Dean
Bridget and Thomas Black SUNY Distinguished Professor
SUNY Buffalo Law School
The State University of New York

Eric Lane
Dean and Eric J. Schmertz Distinguished Professor of Public Law and Public Service
Maurice A. Deane School of Law at Hofstra University

Melanie Leslie
Dean and Professor of Law
Benjamin N. Cardozo Law School

Gillian Lester
Dean and the Lucy G. Moses Professor of Law
Columbia Law School

Trevor W. Morrison
Dean
Eric and Laurie B. Roth Professor of Law
New York University School of Law

Alicia Ouellette
President & Dean
Albany Law School

(*signatures continue*)

Eduardo M. Peñalver
Allan R. Tessler Dean and Professor of Law
Cornell Law School

Patricia E. Salkin
Dean and Professor of Law
Touro College
Jacob D. Fuchsberg Law Center

Michael A. Simons
Dean and John V. Brennan Professor of Law & Ethics
St. John's University School of Law

David Yassky
Dean
Pace Law School

NEW YORK STATE BAR ASSOCIATION
NYSBA One Elk Street, Albany, New York 12207 • 518.463.3200 • www.nysba.org

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

EILEEN D. MILLETT
Co-Chair
Epstein Becker & Green, P.C.
250 Park Avenue, 14th Floor
New York, NY 10177
[redacted]

PATRICIA E. SALKIN
Co-Chair
Touro College J.D. Fuchsberg Law Center
225 Eastview Drive
Central Islip, NY 11722
[redacted]

November 9, 2015

Margaret Wood, Esq.
Court Attorney for Professional Matters
Court of Appeals Hall
20 Eagle Street
Albany, NY 12207

Re: *Comment on New York Court of Appeals Task Force on Experiential Learning & Admission to the Bar's Proposal Regarding a Skills Competency Requirement ("Proposal")*

The comments below represent the views of the Committee on Legal Education and Admission to the Bar and have not been reviewed or adopted by the New York State Bar Association

Dear Judge Rivera, Members of Task Force on Experiential Learning and Admission to the Bar and Ms. Wood:

The New York State Bar Association Committee on Legal Education and Admission to the Bar (CLEAB) benefited greatly from the presentation by, and discussion with, Judge Rivera on Wednesday, November 4, 2015, about the Proposal. We share her view that the Bar has an important role to play with law schools to ensure that all applicants for admission are better prepared for effective, ethical and responsible practice of law. We want to preface our comments about the specifics of the Proposal by reiterating that as a Committee (i) we think that adding to the requirements for admission to the New York Bar a "skills competency" component is a very important and positive step for the legal profession, (ii) we agree that this is an area where the New York Bar can and should take a leading role, and (iii) we appreciate the strengths of focusing on licensure (making these requirements a condition of admission to the Bar rather than a requirement to sit for the Bar Examination ("Exam").

While most candidates for the Bar will meet this requirement in law school, and law schools will need to respond to these changes, we agree that (i) this should not be framed as a law school requirement and (ii) the Proposal's plan for a variety of "pathways" is both

necessary and wise. The law schools have greatly strengthened their skills curricula and we think most law students would be able to qualify under Pathway 2 (and those students' programs would warrant law school certification under Pathway 1). The law schools deserve great credit for the steps already taken to develop and make available to all their students numerous "experiential learning" options and other courses directed toward practice skills. The next step, and the issue the Task Force very properly addresses (as did the CLEAB's Report mentioned below), is assuring that candidates for the New York Bar have made sufficient use of these options to have prepared *themselves* for admission to our Bar.

It is precisely because we see the Proposal as a major step forward for the profession and see in the Proposal's details such effort to "get it right" that our Committee members were eager to express to Judge Rivera their various (and by no means invariably consistent) views about how the Proposal might be improved: we want to see this done well because we think that what is adopted now by the Court of Appeals will set a standard for other states and, though not "set in stone," is not likely to be adjusted or changed for some time.

As comments are due on November 9, CLEAB can only offer in this letter an abbreviated review of some of the major questions and concerns that were discussed at that lively and very useful meeting. A more expansive discussion of the Committee's views can be found in our 2014 Information Report to the State Bar on a possible skills competency requirement for bar admission (Appendix A).

Specificity and Compliance

We recognize that "Pathway 1" (certification by the A.B.A. approved law school of its graduate) is likely to be a very common path – and we suspect for J.D.s it will quickly become the predominant path – to satisfying this component. We share the view that law schools and law students should be allowed great flexibility in designing programs that will satisfy this path. But we are deeply concerned that a path which captures an aspiration many of us share but lacks (a) specific requirements beyond those already being added by the A.B.A. Standards (which has its own skills list and which also requires and is committed to monitoring student progress toward those outcomes), and (b) monitoring or enforcement provisions, will not achieve the goals of the Proposal. Law schools as a group are well-intentioned and serious about pedagogy and preparation for practice. But if those intentions and the A.B.A. Standards were enough, there would be little reason for the Proposal.

We deeply appreciated the Judge's comment that she would be "looking carefully at" the programs presented by the law schools on their websites, but there are many, many law schools sending candidates to the New York Bar. Scrutiny from our highest court, even if feasible and even if strict, does not come with any apparent enforcement powers. CLEAB is concerned that insofar as Pathway 1 is used, for many candidates (and law schools certifying them) nothing of substance will have changed in circumstances where change was called for. While endorsing flexibility of programs, many Committee members were of the view that certification under Pathway 1 should contain additional, though open-ended, requirements about the student's program, e.g., additional credits in "practice-readiness" courses, some

minimum number of credits in a "clinical" client-centered program, or some other easily measured, bright line test.

From CLEAB's perspective, there is so much in the Proposal that addresses issues about which we have long been concerned, that we hesitate to talk about "squandering" an opportunity. Many Committee members are quite concerned that unless additional content is added to Pathway 1, too little will be accomplished. And whether or not something more is added to Pathway 1, there is evident need for greater guidance to schools, students and the Bar about how this structure fits with the new accreditation process, the nature of the certification and whether or how there might be review and approval of programs adopted by law schools.

We note, for example, that the Request for Comment does not say whether, as seems to have been assumed at our meeting, Pathway 1 certification from law schools for "graduates" is intended only for those completing a J.D. or is also a potential path for graduates of qualified LLM programs. This is among the basic features of the Proposal about which there seem to differing interpretations. If Pathway 1 applies to both populations, our concerns about specifying requirements and content are exacerbated - especially since LLM programs are not subject to the A.B.A. Standards and most or all current programs do not meet the new Standards. On the other hand, some members of the Committee feel that the Task Force should allow Pathway 1 to serve LLMs.

Six deans, who are ex officio members of the committee, and one voting member dean of the committee dissented from the discussion of Pathway 1, and adhere to the position set forth in the separate comments that the committee understands the Task Force will be receiving from the Deans.

Compensated Part-Time Legal Work

Deans and others raised questions about the treatment of compensated part-time work during the school year. A significant group of students gain very valuable legal experience through paid legal or business employment for which they do not receive credit. Although there are some knotty details to be considered, a number of CLEAB members are concerned about ensuring we support people who are working so hard to gain access to our profession. It seems likely their work should qualify as "experiential learning" both for purposes of Pathway 2 and, perhaps, as part of what qualifies a candidate for certification under pathway 1, even though law school "credit" is not available.

The Distinctive Place of Foreign Trained Lawyers in New York

Distinctive to New York is the admixture of 10,000 or more graduates of A.B.A.-approved J.D. programs who sit for the NY Exam each year with approximately 4750 graduates of foreign law schools who have also qualified to take the Exam. Notably, more than half of the LLMs graduated from a non-NY school, with about 100 different LLM programs having at least one candidate sitting for the Exam in a typical year. CLEAB has studied the question of a skills

requirement for licensure of foreign law degree holders who have earned a qualifying LLM. We have also considered the significant number of Exam candidates who are qualified to sit for the Exam based on their "foreign" training alone (i.e., without a LLM or, indeed, any training in a U.S. law school) (collectively, "FT candidates"; see discussion in Appendix A). Careful study did not cut the knot of our concern for equity and ensuring effective and ethical practice, and our recognition of how diverse the paths into and from LLMs are and what very significant challenges these students already face.

Although many committee members do not agree with this proposition, we accept for now the commitment of the Court's Task Force to applying the same licensure standards for admission to the New York Bar for FT candidates as will apply to JD candidates. Accepting that constraint for purposes of discussion, we are concerned that despite the best efforts of the Task Force the several additional Pathways are not yet sufficient to allow those FT candidates who pass the Exam to satisfy this additional requirement (there being insufficient time within an LLM program that otherwise qualifies under the Court's rules for FT candidates to provide skills programs to the extent required under the various Pathways).

We would suggest that the Task Force consider (i) whether LLM programs should be able to certify their graduates under Pathway 1 and if so what content should be required for such certification (recognizing that LLM programs are not subject to the A.B.A. Standards), (ii) making explicit provisions for post-LLM coursework (or, in the case of the roughly 300 FT candidates each year who did not need an LLM to sit for the Exam and who passed the Exam, non-LLM coursework) that can be counted toward satisfying Pathway 2 and/or be combined with some time in an "apprentice" program, (iii) reconsidering whether "apprenticeship" programs in the candidate's original country of study that precede U.S. study might, with appropriate certification, be counted under one pathway or another (while we appreciate the instinct that the apprenticeship should occur after U.S. training, if "post-graduate" apprenticeships can be completed in a foreign country, and we join the Task Force in believing that they should be, there is certainly an argument for allowing properly-certified "pre-graduate" apprenticeships to qualify), (iv) consider how to specify more clearly what non-U.S. apprenticeships would be acceptable for those FT candidates who passed the Exam without an LLM (300-plus such candidates being a significant number) -- can they, for example, be apprenticeships that preceded passing the Exam? In a more technical but still very important vein, it was noted that Pathway 5 uses language that does not travel well. In a number of jurisdictions, including much of South America, France and Japan, bar membership is either not a part of how legal practice is structured or the practice is so different that the language of Pathway 5 would be much more limiting than seems intended.

More broadly, some questions were raised about whether the distinctive problem of LLMs and other FT candidates can or should be the subject of final rulemaking at this time or, put differently, if final rules are adopted now, how the effective date of August 2016 (for "commencement of legal study") will work with respect to LLM programs and foreign legal study. We find the various permutations of this effective date somewhat confusing as to FT candidates, and acknowledge that many LLM programs will have to make substantial curricular changes in order to assist their graduates with qualifying for admission to the New York Bar. It might make things clearer to set the effective date in terms of when candidates will first sit for the Exam and to use a date like July 2019.

CLEAB recognizes and salutes the careful and extensive work that has already gone into this process. This rule addresses a set of concerns we share and about which we have had much discussion. We hope our questions are of use to the Task Force as it continues this important work. We look forward to continued and productive participation in this very important process and would, of course, be very pleased if we can provide additional information or answer questions.

Very truly yours,

Co-Chairs

Eileen D. Millett

Patricia E. Salkin

New York State Bar Association
One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

EILEEN R. KAUFMAN
Co-Chair
Touro College School of Law
225 Eastview Drive
Central Islip, NY 11722
[redacted]

EILEEN D. MILLETT
Co-Chair
Epstein Becker & Green, P.C.
250 Park Avenue, 14th Floor
New York, NY 10177
[redacted]

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

INFORMATIONAL REPORT TO THE NEW YORK STATE BAR ASSOCIATION EXECUTIVE COMMITTEE

December 2013

Prepared for January 30, 2014 Executive Committee meeting

This informational report includes this Introduction, a report on a requirement for skills training for new attorneys and a report on early administration of the bar exam.

Introduction

Our profession is changing and legal education must change with it. Law school enrollment is down more than 24% from historic highs and this year's entering class is the smallest in 30 years or more. Law firms are hiring fewer associates, there are fewer jobs for lawyers overall, lawyer income is down and many law school graduates are drowning in debt. The once bright and coveted degree to which we all once aspired is in danger of being tarnished. We cannot simply blame the economy and ignore the evidence of disruption, simply hoping the storm will pass.

The practicing bar has a major role to play in restoring the dignity and worth of a professional law degree. Improvement will not come all at once, but we can begin the journey by taking steps toward strengthening legal education through reform. Results will not be immediate and there may be missteps along the way, but as New York lawyers, we must ask ourselves if we will lead or follow? Should we wait to see what the ABA will do in its accrediting or national policy-making roles? Should we wait to see how recent California initiatives play out or should we play a leadership role, as the New York bar has always done in the past?

New York is well positioned to help steer the current national debate as our bar attracts many lawyers from across the nation and around the world. Of the students who take the New York state bar and are admitted in New York, one-half graduate with JDs from NY ABA-accredited schools, and the other half graduate from out of state and foreign law schools. New York's role as an international bar is unparalleled. More than 85% of all foreign trained lawyers who seek admission in the United States come to New York. New York is the gold standard for lawyers from around the world and it is incumbent upon us to ensure that a license to practice law in New York continues to be a strong signal of competence, integrity and professionalism. Whether an older client desperately needs family planning, or a municipality needs advice about siting wind turbines, or an individual on the brink of bankruptcy is facing a foreclosure, if their lawyer is licensed in New York, they should be assured of quality representation.

The Committee on Legal Education and Admission to the Bar (LEAB) has begun to address the many challenges in legal education, as early at the spring of 2012. LEAB created subcommittees to examine, among other things, a skills training requirement and early administration of the bar exam. We also sought to educate the practicing bar about the many aspects of the current challenges facing legal education and the profession. We called upon thought leaders, educators, and regulators to add their voices to the debate by writing scholarly articles that we gathered in one journal, the 2013 Special September Bar *Journal*. A LEAB member writing in the *Journal* asked *should skills training be required for licensing?* as California is currently considering. In an article entitled *Alternatives for Scheduling the Bar Exam*, other members discussed the possibilities for early administration of the bar exam. We followed the *Journal* with planning a Presidential Summit that will bring together the leading thinkers of the day from the academy, the bench and the bar for a live forum where practitioners can both listen and engage in a dialogue about the pressing issues facing the profession. We are involved in

planning an all-day spring convocation that will bring together all of the stakeholders and help to promote coordinated responses to the current crisis.

The next logical question is what can the NYSBA recommend that actually responds to the crisis. LEAB has thought long and hard about a variety of possible reforms of legal education. The Committee urges your consideration of two proposals, which are discussed in detail in the attached material: early administration of the bar exam — giving students the option of taking the bar exam at the end of their second year of law school, and a skills training requirement — requiring a minimum number of credits of skills training as a condition of admission to the New York Bar. Early administration would permit law graduates who chose to exercise this option to enter the profession more quickly while a skills requirement would address the widely shared view that law graduates must be better prepared for practice. While the two proposals are separate and can stand alone, they make sense together and would offer law students and recent graduates more options and strengthen their readiness to serve clients.

At the December 5, 2013 LEAB committee meeting, following a full and lengthy discussion, the entire committee voted. There was genera, although not unanimous support, for proceeding with an Information Report to the Executive Committee on the issue of a skills training requirement and early administration of the bar exam. A few members expressed reservation about the cost associated with a skills training requirement, and the Committee is still considering the complex issue of how to apply a skills requirement to foreign trained lawyers, and with regard to early administration of the bar exam, the committee agreed that this should decidedly not be viewed as a basis for eliminating the third year of law school, but rather as a stepping stone towards devoting the third year to preparing students for specialization and practice.

LEAB has also taken the lead in connecting the judiciary and leaders of the Bar with the innovative Daniel Webster Scholars Program at the University of New Hampshire School of Law. This program provides law students with an integrated set of theoretical and applied classes coupled with robust assessment at every stage. Graduates become licensed members of the New Hampshire Bar upon successful completion of the program, without taking the traditional bar exam.

LEAB has studied the national landscape and identified the two proposals we discuss in the attached material, Early Administration of the Bar Exam, a Skills Training Requirement, as well as the Daniel Webster Scholars Program as three of the most promising areas for reform. We will not be bringing a substantive proposal regarding the NH program before the NYSBA's Executive Committee because LEAB met with the NY Court of Appeals last spring and, more recently, requested that the

Court consider soliciting proposals from the 15 NY law schools for pilot programs that incorporate some aspects of NH program. We are awaiting a reply from the Court of Appeals.

LEAB urges the NYSBA Executive Committee to examine our two proposals— Early Administration of the Bar Exam and a Skills Training Requirement—to think about the tough questions of where market forces and other pressures have taken the legal profession, and ask: can we in New York and can our profession afford to ignore the current challenges? We believe that the two proposals represent concrete action that will begin to address the challenges facing legal education.

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

INFORMATIONAL REPORT TO NEW YORK STATE BAR ASSOCIATION EXECUTIVE COMMITTEE ON A SKILLS TRAINING REQUIREMENT FOR ADMISSION TO THE NEW YORK BAR

December 2013
Prepared for January 30, 2014 Executive Committee meeting

Prior Proceedings

In spring 2013, the Committee on Legal Education and Admission to the Bar (LEAB) created a subcommittee to explore a skills requirement for licensure as a New York attorney. The subcommittee made a preliminary report to LEAB in May and began work in earnest in the fall, reviewing current proposals for increasing skills education for new lawyers as well as reviewing a number of reports and studies. The subcommittee formed two working groups, held a number of meetings and exchanged many emails in fulfilling its charge to develop a proposal for a skills training requirement for licensure as a New York Attorney. The subcommittee drafted a report recommending that a 12 credit skills requirement emphasizing the performance lawyering skills and including significant real world practice experience was both desirable and feasible, given the current regulatory structure and resources.

While the subcommittee came to ready agreement on a requirement for those who seek admission to the NY Bar after earning a JD at an American law school, it reported to the full Committee that it remained unresolved on the distinctive NY issue of foreign trained lawyers. As we discuss below, about 85% of all foreign trained lawyers who pass an American bar exam become licensed in New York State. Last year 1,604 foreign trained lawyers passed the NY bar exam. CA, the next largest jurisdiction, had 142. While some favor establishing a reduced experiential requirement for the subset of foreign trained lawyers who qualify to sit for the NY bar exam by earning an LLM degree, others advocate a consistent requirement for all who are admitted to practice law in New York. It is a complex and important issue in New York.

LEAB considered the report of the subcommittee at a regularly scheduled meeting of the full Committee held on December 5, 2013. LEAB was warmly supportive of the concept of a 12 credit skills requirement, although a few Committee members expressed reservations and did not join in endorsing the concept. The Committee began discussion of the issue of foreign trained lawyers and agreed that it is a complex issue, meriting further study and deliberation.

LEAB now offers this informational report to the Executive Committee of the New York State Bar Association. The first part of the report discusses the issue of required skills training for new lawyers and offers suggested language for the core of a skills training requirement which could be fulfilled in law school or after graduation but before admission for all who seek admission to the New York Bar. The last part of this report contains a discussion of the unresolved issue of a skills requirement for foreign trained lawyers and invites comment on that important matter.

Introduction

Law graduates must be better prepared for the practice of law. The New York State Bar Association,[1] along with the American Bar Association,[2] The Council on Legal Education,[3] the California Bar,[4] the Association of the Bar of the City of New York[5] and the Illinois Bar Association,[6] as well as a host of law schools agree with the most widely cited contemporary studies on legal education, the MacCrate Report[7] and the Carnegie Foundation Report.[8] The best professional preparation integrates theory and practice in a rigorous program that prepares young lawyers to manage the cognitive, affective and moral demands of modern practice and provides for continuous professional development from the entry into professional school through the early years of practice. The development of clinical and experiential legal education has given us the tools to make that theory a reality for all new lawyers.

While it is easy to agree on the general goal of integrative, deep professional learning, it is harder to prescribe just how it should be done. Every lawyer knows how hard it is to craft clear, workable rules. Shaping the complex system of legal education and attorney licensure is particularly challenging because it is governed by overlapping sets of rules promulgated by coordinate authorities. Most notably, law school accreditation standards, which determine who may issue a recognized law degree are set by the Council on Legal Education and attorney licensure standards are set by the States.[9] New York plays a distinctive role in this system

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[1] N.Y. State Bar Ass'n, *Report of the Task Force on the Future of the Legal Profession* (Apr. 2, 2011), available at: http://www.nysba.org/substantivereports/

[2] *Draft Report of the ABA Task Force on the Future of Legal Education* (Sept. 23, 2013), available at: http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation.html

[3] The Council on Legal Education of the ABA Section on Legal Education and Admission to the Bar is now seeking comment on two versions of a proposed new Standard for Law Schools that would require an increase in required skills courses from one credit to either 6 or 15 credits. The proposed Standards are available at: http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html

[4] The Task Force on Admissions Regulation Reform of The State Bar of California has authorized the creation of an implementation plan, having adopted a recommendation for a 15 credit skills requirement for admission to the California Bar. The report and other material are available at http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx

[5] See generally, *Developing Legal Careers and Delivering Justice in the 21st Century: a Report by the New York City Bar Association Task Force on New Lawyers in a Changing Profession,* (Fall 2013) available at: http://www.nycbar.org/index.php

[6] Final *Report, Findings & Recommendations on the Impact of Law School Debt on the Delivery of Legal Services,* Illinois State Bar Association (June 2013), available at: http://www.isba.org/newscenter/releases/2013/illinoisstatebarassociationboardacc

[7] A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM (1992), this is more commonly known as the MacCrate Report.

[8] WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS; PREPARATION FOR THE PROFESSION OF LAW 129 (2007), more commonly known as the Carnegie Report.

[9] The regulatory structure governing legal education and admission to the bar is complex. The Council on Legal Education of the Section on Legal Education and Admission to the Bar of the American Bar Association is recognized by the Department of Education, pursuant to 34 C.F.R. § 602, as the accrediting agency for schools awarding the JD. By statute, the Council exercise its authority as a separate and independent body from the ABA. Most states only permit graduates of ABA accredited law schools to sit for the bar exam. *SEE* N.Y. STATE COURT RULES FOR ADMISSION OF ATTY'S AND COUNSELORS AT LAW, Rule 520.3 (2012), *available at*

because of the large number of lawyers, both US and foreign trained who study law or seek admission in New York. Admission to the New York Bar is the international gold standard for lawyers and we are well positioned to maintain our leadership role if we act wisely at this critical juncture.

The NYSBA Committee on Legal Education and Admission to the Bar urges adoption of a new admission requirement for membership in the New York Bar. We urge that before admission to the NY Bar, every applicant must have substantial experience with real world legal problems in well supervised setting where high standards of practice are modeled and fitness to practice law is assessed. We anticipate that most new lawyers who sit for the NY Bar Exam after receiving a JD will have this experience in law school but we also provide for an alternative path to licensure through practical study situated in the profession. We anticipate that those who sit for the exam after receiving an LLM will have an opportunity for some skills training but whether or not it is likely that many will fulfill the requirement during their LLM studies depends very much on how many credits are required of LLM graduates, the issue discussed in the second section of this document.

The Committee is well aware of other significant efforts to improve professional readiness among new lawyers. As we explain below, the requirements we propose are consistent with the emerging rules of both the national academic accreditor and our sister states, while also addressing and furthering the unique role the New York Bar plays on the national and international scene. We emphasize that we have crafted these requirements with the real world problems of law students, law schools and clients upper most in our deliberations. Most law schools and most applicants to the bar are already reasonably well situated to meet these requirements with current resources.

Our Proposal [for those holding degrees from American law schools]

All candidates for admission to the Bar of the State of New York who seek admission based upon earning a Juris Doctor Degree from an ABA approved law school would be required to have taken at least 12 credit hours of practice-based, experiential course work, out of the 83 required by Rule 520.3, designed to develop law practice competencies. This requirement would be in addition to the current NY licensure requirements for two credits of professional responsibility.

The 12 credit hour requirement can be satisfied through successful completion of faculty-directed and supervised clinical courses, supervised externships, internships and other placements as well as through simulation based courses, with the following requirements:

- No more than three credit hours can be satisfied through a first year course, whether clinical, externship, simulation or legal writing;

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http://www.nybarexam.org/Rules/Rules.htm. Few states, notably California, permit graduates of state accredited law schools to also seek admission to the bar. That is just the accreditation piece of the puzzle. Each state controls its own bar exam and bar admission process, although there is some coordination through the MBE.

- No more than three credit hours, including any first year credit hours, may be satisfied through legal writing courses;

- At least four of the units must be satisfied through a clinical course or well supervised field placement, which includes student involvement in client representation or with other real world, current legal problems of significance. If otherwise appropriate, the skills work may also be counted toward meeting the 50 hour pro bono requirement, but pro bono work as such can only be counted as meeting this "skills" requirement if it is part of a program that provides the instruction, performance, evaluation and feedback required of a clinical course or a field placement.

These requirements supplement and do not replace the requirement of 520.3(c)(2)&(3).

Alternative to in-school "skills" credits:

- All candidates for admission to the Bar of the State of New York who seek admission based upon earning a Juris Doctor Degree from an ABA approved law school could, as an alternative to the 12 credit hour in school skills requirement, satisfactorily complete a profession based internship.

- The internship must be approved by the Appellate Division of the New York Supreme Court in which the placement is located or its designee and offer a well supervised, educational setting in which applicants have direct involvement in client representation or with other real world, current legal problems of significance and in which the applicants readiness for the profession is authentically assessed.

- The internship must be substantially full-time for at a period of six months and may include accredited simulation courses, which include repeated skills performances and critique of those performances. If otherwise appropriate, the approved internship may also be counted toward meeting the 50 hour pro bono requirement.

These requirements supplement and do not replace other admissions requirements.

Data we have reviewed indicates that many law schools, including most NY law schools, already have the curricular capacity to meet this requirement.[10] The growth of experiential programs, including simulation courses, clinical courses, drafting and other advanced legal writing courses and field placement/externship programs has positioned us well to be leaders in this area.

Comparing Current Proposals

The Committee is aware that both the ABA Council on Legal Education, which is the federally approved accrediting agency for law school JD programs, and the California Bar are

[10] Robert Kuehn, *Pricing Clinical Legal Education*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2318042

considering various skills requirements for new lawyers. This rule is complementary to those efforts.

The ABA Council on Legal Education is currently considering raising the current 1 credit skills requirement to six or 15 credits. The Council sent out a proposal for a six credit requirement some months ago and more recently sent out an additional proposal for a 15 credit requirement. Knowledgeable observers think the 15 credit proposal is unlikely to win approval, although predictions of this sort are always hazardous. As currently proposed, the Standards would require six or fifteen credit hours of lawyering skills simulation work, faculty supervised clinical work or faculty overseen field placements. All the credits must be earned after the first year and all no student involvement with real clients or real world current legal issues is required. The Council accreditation requirement would pose no conflict with the proposed NY licensure requirement.

The California Task Force on Admissions Regulation Reform has recently proposed a 15 credit licensure requirement for California aimed at practice readiness and pitched at a relatively high level of generality. The California proposal, like this Committee's proposal for New York, envisions that most, but not all applicants for the Bar would satisfy the requirement in law school. California, like this Committee, would also create a path to licensure situated in the profession by creating approved professional internship opportunities.

Law school courses satisfying the California 15 credit requirement would include traditional, non-experiential coursework that while certainly valuable as a preparation for practice, does not directly address the lawyering skills gap. Although the CA requirement is still under development, it appears it may include supervised scholarly writing, unlimited first year skills credits and other work not qualifying experiential under either the accreditation standards or the NY Rules, while all courses satisfying the proposed NY Rule would qualify in California. Thus, as with the accreditation standards, all those who satisfied the New York Rule proposed here would also satisfy the California 15 credit requirement.

A notable congruity between the CA proposal and this proposal is that both are licensure requirements and both could be satisfied through an approved post graduate field experience.

It is also worth noting that both New York and California permit "law office study," but vanishingly few prospective attorneys take advantage of this route to admission. One such person passed the California examination in 2012 and 4 did so in New York that year. Qualifying under these rules requires significant involvement in actual practice; New York requires four years in the law office under a supervising attorney. Clearly, law office study satisfies this new skills training proposal.

<u>The NY Difference – Foreign Trained Lawyers</u>

While the Committee found ready agreement on the treatment of those applying to the NY Bar with a JD degree from an American law school, more difficult issues are posed by those who apply to the NY Bar having earned their first professional degree in a foreign country. Law

school accreditation standards apply only to JD programs and control neither LLM programs nor state licensure requirements.

In 2012, 1,604 foreign trained lawyers passed the New York bar exam in 2012, out of 4,675 foreign trained lawyers who sat for the NY bar exam that year.[11] California had 142 pass, the District of Columbia had 51 foreign-trained candidates pass its examination, and the rest of the United States had a total of 98 foreign trained lawyers pass bar exams. Even though many states have rules under which foreign trained candidates can qualify to take that state's bar exam and gain admission, very few foreign trained lawyers seek admission anywhere besides New York. Thus, skills training for foreign-trained candidates for bar admission is a distinctively New York issue.

The subject of foreign-trained lawyers seeking admission to the New York Bar is complex. Looking past the sheer numbers of such candidates taking the New York Bar Examination each year (consistently they number over 4500, and as such are 30% of the total number of examinees), it is important to note that while many jurisdictions allow foreign-trained candidates to sit for their examination after completing an approved LLM course, New York appears to be unique in allowing some candidates to sit for its Exam by virtue of having completed a sufficient course of study in a "common law" jurisdiction (the Court of Appeals has set rules, administered by the Board of Law Examiners, as to what "substance" and "duration" of such study is sufficient). While the majority of New York's foreign-trained candidates have completed an LLM, data provided by the Board of Law Examiners (BOLE) shows that there were 1039 foreign trained lawyers who sat for the New York Bar examination in 2012 solely by virtue of sufficient training in a common law jurisdiction, of which 331 passed the examination. These 331 applicants were thus eligible to be admitted to the New York Bar without completing any coursework or other training in the US of any kind (although they did have to satisfy, in some fashion, the pro bono requirement). By comparison, in 2012 there were 3636 foreign-trained candidates who sat for the Exam after completing an LLM program that meets the requirements of NY Rule 520.6(2)(b)(3), of which 1273 passed. These candidates had some exposure to the substance of New York law and practice (since this is a required element of an LLM program if it is to be acceptable under the New York rules), but given the other ground that must be covered, very, very few of these candidates will have been involved in any practical skills-focused training during their one year LLM.

It seems reasonable to assume that nearly all of the foreign-trained candidates who passed the examination (1604 in combination) then applied for, and gained, admission to the New York Bar.

In addition to distinguishing between those two groups, one of which completes some form of legal education the US and one which does not, it is also worth noting that a significant subgroup of foreign-trained candidates who pass the New York Bar examination and obtain admission here apparently intend to return to their home countries to practice without engaging in the practice of law in New York. Such new members of the Bar typically opt out of requirements for CLE (including the initial phase of "Bridge the Gap") by certifying in the OCA

[11] National Conference of Bar Examiners, 2012 Statistics at 10 (April 2013), available at: http://www.ncbex.org/publications/statistics/

registrations that they are not practicing in New York. OCA does not keep records that would allow us to isolate the numbers involved, and our information from the LLM programs is anecdotal only, but we believe that the number of such new members of the Bar who do not remain in New York is relatively high. Whether candidates who seek admission to the New York Bar but are prepared to certify that they will not practice in New York (or, perhaps, in the United States) should be relieved of some or all of the proposed "skill requirement" (as they are relieved of on-going CLE requirements but are not relieved of the pro bono requirement for admission) is itself a matter for debate.

In all events, on the roughest possible basis our estimate is that somewhere between 750 and 1300 of the 1604 foreign trained lawyers who passed the NY Bar Exam in 2012 did plan to practice in New York, and a number like this is obviously a significant portion of the pool of newly-minted New York practitioners each year. Given the current NY requirements for LLM programs, the fact that such programs are typically completed in one year, and the Committee's (admittedly imperfect) understanding that legal education in most other common law jurisdictions is most often an undergraduate degree (with any "practice" component coming only in a post-degree context), it is very likely that almost none of those foreign-trained new lawyers, with or without an LLM, has had substantial lawyering skills training.

In our subcommittee and Committee discussions, there was broad agreement that NY's role as the gold standard for international legal practice was and remains an important distinction for the NY Bar. We also agreed that all practicing members of the NY Bar, however each qualifies, must meet high standards of professional practice. But views varied on just how to insure that foreign educated lawyers who are otherwise qualified for licensure are also ready for the profession.

Some members urged that requirements be shaped to meet the context of each subgroup of applicants. For those who qualify by virtue of a foreign first law degree and an LLM, a four credit clinic or fieldwork requirement could be met within the current 24 credit, one year LLM program. Given that the entire course of study is one third as long and these applicants have completed other work in their home country, a four credit requirement was advocated by some as a significant step forward and not overly burdensome.

Other members noted that most who apply for a NY law license after completing an LLM and passing the bar exam have no other practical legal training and often suffer the disadvantage of not having grown up in our legal system. They urged that all lawyers, regardless of where they received their first or terminal degrees, must be profession ready when they become admitted NY lawyers and the same requirements for practical training should apply to all. These members urged that well supervised post-graduate field placements would be appropriate training for those applicants to the NY Bar.

Conclusion

The subcommittee's work has been productive and we are optimistic about forging a framework for moving forward. We think a proposal from New York in the coming months could be quite significant and help advance the current discussion in a very concrete way. While

many reports have been drafted, this recommendation, along with those from the Council and California, would be *mandatory.* Exhortations about "innovation" and "opportunities," however welcome, are not enough.

This skills requirement would be a significant step toward realizing the MacCrate Commission idea of a *continuum* of professional education. It is particularly fitting that the New York State Bar Association be at the forefront of recognizing and meeting the profession's obligation to help address the current crisis for young lawyers. There is general acknowledgment that JD programs need stronger skills requirements. But JDs are only one important piece of the complex picture in NY, where foreign trained lawyers play an important and distinctive role. Our longstanding commitment to providing access to the profession for lawyers from around the world is a source of strength. If New York is to maintain its leadership role, it must assure that the many otherwise qualified candidates, whatever their legal education, who wish to practice in New York but have not met the New York requirements, will be ready for the profession.

Memorandum

From: NYSBA Committee on Legal Education and Admission to the Bar

To: NYSBA Executive Committee

Date: January 30, 2014

Re: Proposal to offer the bar exam optionally after the second full year of law school[1]

INTRODUCTION

Reforming legal education has recently become a hot topic in legal and academic circles, and even among the public. It has become an urgent priority within law schools, to benefit their students and prospective students, and to enhance the quality of the education they provide. Although many questions about law school curriculum incite debate, everyone agrees that graduates' high debt load and limited job opportunities pose a serious challenge for the profession. The national conversation has generated proposals for changes both major and minor. Proposals for major changes include, among others, shortening law school to two years, changing the third year of law school to an apprenticeship model, and allowing students to take the bar examination during or before the third year.

The NYSBA Committee on Legal Education and Admission to the Bar has a broad-based membership representing all the law schools in New York as well as bar examination officials and a wide range of practicing attorneys from around the state. This Committee has deliberated at length about ways to move forward. This

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[1] After a brief new introduction, this memorandum presents the text of the article "Alternatives for Scheduling the Bar Exam," by Mary Campbell Gallagher, J.D., Ph.D., and Professor Carol A. Buckler, which appeared in the New York State Bar Association *Journal*, September 2013.

memorandum presents one proposal that the Committee believes has the potential of benefiting new lawyers, making them more employable sooner, and thus helping to relieve their burden of debt. Focusing in this instance on a challenge for new lawyers in New York State, we note that new graduates customarily take the bar exam in July following graduation from law school. They do not learn whether or not they have passed the exam until November, and they may not be sworn in until the following spring. This may limit their employability. The Committee accordingly supports a proposal to add an option for students to take the bar exam after two full years of law school. This proposal would retain as a second option the current system of taking the bar exam after the completion of the full three-year J.D. program. This second-year option may give students more job opportunities upon completion of their third year of law school and graduation, and it may also broaden their choices of coursework during their third year.

If law students can take the bar exam in July following the second year of full-time study or the equivalent amount of coursework in part-time study, new graduates will receive their bar results during their third year. They can accordingly apply for admission to the bar immediately following receipt of the JD degree. This will make them more immediately employable in agencies and small law firms. As members of the bar they can interview clients or even appear in court.

We emphasize that this second-year proposal creates an additional option, not a requirement. Students could still choose to take the bar exam after the third year of the JD program. This option has the further advantage that it would not entail changing the

content of the bar exam, and it would not change the prerequisites for admission to the bar, including the JD.

The arguments in favor of offering the second-year option are as follows.

Many students have the skills and knowledge to pass the bar earlier in their law school careers. If students could take the exam closer to taking foundational courses in law school, they might need less time for review. Those who pass an earlier administration of the exam would no longer need to worry about the exam, and might be free to pursue clinical courses, specializations, and upper-level skills courses. This in turn could encourage and facilitate law school innovation in the third-year curricular choices. Students with externships or part-time jobs during their third year might be more attractive as job candidates if they had already passed the bar exam and could begin work as a practicing lawyer almost immediately. Having a positive bar result after the second summer might even facilitate students' obtaining part-time paid employment during their third year, which could in turn reduce financial pressure and possibly debt burden.

For some students, as noted above, there would be a substantial financial benefit because they would be eligible to be licensed as soon as they graduated. Some employers, especially smaller law firms, will not hire applicants who cannot counsel clients immediately and possibly represent them in court. Some firms will not even interview applicants who lack a license. A delay of many months in a law graduate's ability to advise and represent clients can make a painful difference to his or her ability to start earning money and repaying student loans.

Once the second-year law student took and passed the bar exam, the only further steps to being a licensed attorney would be the Character and Fitness interview and the swearing-in, which would take place after graduation. Students could graduate from law school one week and, at least in theory, be sworn in the next. They might even decide to take another state's bar exam in the July following graduation.

There may be an advantage for bar candidates who failed an early administration, too. Those students could spend time in their third year working on acquiring additional knowledge and analytical skills, aiming to improve their chances of passing the exam on their second try. If successful, such students might still pass the bar exam before having to begin repaying student loans. They would have two chances to pass the exam within the traditional schedule, rather than one. Some have suggested, though, that students choosing this option might not take the first try seriously, and so they might fail at higher rates.

To be sure, any expansion of options relating to career planning and professional development can complicate decision-making for law students and complicate the law school's counseling function as well. Students taking the bar exam during their second summer would have to do significant advance planning to be confident that they had taken a broad enough range of coursework to be prepared for the bar. Thus, an early bar option would support a law school's emphasizing the need for students to master, early in their law school careers, the basic knowledge and analytical skills tested on the bar exam. On the other hand, many students only have the basis to assess their progress at the end of their first year of law school or the end of their first summer, while preparing to take the bar during the second summer could require them to make some

curricular decisions earlier, perhaps as early as the spring semester of their first year, when they are choosing courses for their second year.

In addition, many students now use the second summer of the three-year program to gain valuable work experience. If students decided to study for and take the bar exam instead, they might lose the opportunity to work in a law office, to earn money to help support themselves through the final year of school, to study abroad, or to take an internship or another clinical experience. They would also need to refine and enhance their academic and career counseling of students to respond to a more complex array of choices.

If this proposal moves forward, among the questions to be resolved are how eligibility to sit for the exam would be determined (number of credits, required core coursework, minimum GPA, other eligibility) and who would determine eligibility.

CONCLUSION

The Committee would like to develop this proposal in more detail. Overall, we believe this proposal offers significant promise of reform, and that having such an option available may benefit students in their path to admission to the bar.

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ST. JOHN'S
UNIVERSITY

8000 Utopia Parkway, Queens, NY 11439

Michael A. Simons
Dean and John V. Brennan
Professor of Law and Ethics
St. John's Law School

Tel 718-990-6601
Fax 718-990-6699
[redacted]
www.law.stjohns.edu

November 9, 2015

Via e-mail to attorneyadmissions@nycourts.gov
Margaret Wood, Esq.
Court Attorney for Professional Matters
New York Court of Appeals
20 Eagle Street
Albany, New York 12207

Dear Ms. Wood:

I am writing in response to the request for comment, dated October 9, 2015, concerning a new bar admission requirement concerning experiential learning.

St. John's is deeply committed to providing its students with the education they will need to be successful members of the profession. However, any new admission rule from the Court of Appeals will become a *de facto* regulation for our law school, since so many of our graduates seek admission to practice in New York.

I have joined with the deans of many other law schools in New York State in submitting a comment expressing our view of the importance of Pathway 1 being a part of any new rule. I write separately to offer this additional comment on the process being used to create this new rule. In particular, it is difficult to offer specific substantive comment on the proposal, because the proposed rule itself has not been circulated. Instead, the public has been provided with only a summary of what the rule would contain. There are numerous questions left unanswered by the summary, including: (1) how the certification process under Pathway 1 would differ from the ABA's recently enacted assessment standards; (2) what the Court would expect a law school to show in order to demonstrate that an applicant had demonstrated "competency" with the school's learning outcomes under that pathway; (3) whether the rule applies to LL.M. graduates who sit for the bar exam under the "cure" provision of 22 NYCRR § 520.6 and, if so, how the educational requirements in that section would be changed;[1] (4) what the criteria are for certifying summer work experiences under Pathway 2; and (5) the types of courses that would and would not qualify as "experiential" under Pathway 2.

[1] Although the summary notes that the new requirement "should apply to all new applicants for admission to the bar, whether educated in the United States or abroad," it is unclear whether this is meant to apply to LL.M. applicants or just those foreign-educated applicants who possess a law degree that meets the durational and substantive requirements of 22 NYCRR § 520.6(b)(1). We draw the Court's attention to 22 NYCRR § 520.6(b)(3)(vii), which includes restrictions on the number of clinical courses that an LL.M. student may take.

Accordingly, we ask that the Court publish the text of the proposed rule, not just a summary, and extend the notice and comment period for a reasonable amount of time to allow us and other interested parties to offer meaningful comment on the specific provisions of the rule itself. Such an approach would be consistent with the overall philosophy of the New York State Administrative Procedures Act[2] and the long-standing practice of the American Bar Association's Section of Legal Education and Admissions to the Bar and its Standards Review Committee. Given the breadth of the subject matter of the Task Force's proposal, providing an opportunity for comment on the actual rule will ensure that all interested parties—especially law students and their schools—have the benefit of knowing precisely what would and would not be expected of them if the rule were adopted.

Thank you for your consideration of this request.

Sincerely,

Michael A. Simons

[2] *See* N.Y. A.P.A. § 202(1)(f)(v). While we recognize that the State Administrative Procedures Act is not binding on the judiciary, *id.* § 102(1), the overall philosophy of the Act is one that we presume all branches of government aspire to.