

C L E A
Clinical Legal Education Association
<http://cleaweb.org>

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Teri Greenman
Executive Offices
State Bar of California
180 Howard St.
San Francisco, CA 94105-1639
Email: teri.greenman@calbar.ca.gov

Dear Board Committee on Regulation, Admission and Discipline Oversight:

The Clinical Legal Education Association (CLEA) writes in support of adopting the recommendations of the State Bar of California Task Force on Admissions Regulation Reform, contained in its Phase 1 Report, approved June 11, 2013. CLEA is an organization of over one thousand members engaged in clinical legal education. Our members teach clinic and externship courses as full-time, part-time and adjunct professors in law schools across the United States and internationally. Many of our members also serve in leadership roles within their law schools, bringing a depth of knowledge about experiential learning to larger-scale efforts to reshape and reform legal education from within.

CLEA applauds the California Task Force Report for recognizing the importance of practical skills education as an issue of public protection meriting attention by state bar admissions officials. As the Task Force noted, the “practice-readiness gap” between law school and law practice remains a serious concern, despite the successful efforts that many law schools have made in expanding their curricula to include more skills and real-practice education. The Task Force’s conclusion that legal education must include attention to competencies beyond the cognitive capacities of legal analysis, reasoning, and issue-spotting are reinforced by decades of studies of legal education and the legal profession.

A comparison with the experiential requirements in other professions demonstrates the modesty of the Task Force’s proposal that fifteen law school academic credits be devoted to skills-based courses. Even with the adoption of the Task Force’s proposed standard, law schools would still lag behind all other professions in pre-licensing professional skills education. As the attached chart demonstrates, for all the 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 proposed Task Force requirement of only one-sixth of a law student’s total

academic units. Most other professions also require additional, post-graduate clinical or other practice experience prior to licensure. The Task Force recommendation to require fifteen law school units to be taken in law clinics, field placements, or simulated practical skills courses is a modest and critical first step toward achieving in legal education the level of professional experience required in the education of other licensed professions.

In addition, we urge that California require that at least one-third of the proposed units (5 credits) be devoted to real practice experience through a law school clinic or externship. Most law schools already possess the capacity to deliver such instruction. A recent study by Professor Robert Kuehn,¹ demonstrates that 79% of law schools already have the capacity to offer a clinic or externship experience to every member of their law school entering classes, and 84% of law schools can offer such an experience to over 90% of their students.² Moreover, the thirty-one law schools that have taken the step of either mandating or guaranteeing clinics or externships of all law graduates have done so without charging higher tuition to their students.³ In short, the Task Force is not asking law schools to take on additional requirements that will raise their tuitions, but rather do more what they already can do to provide students with valuable real-practice-experience-based education.

We are sensitive to the important role that the Task Force envisions for collaboration between law schools, practicing lawyers, and the Bar, in bridging their students from the classroom to law practice. As part of that collaboration, the current proposal permits the pre-admission competency training requirement to be met by “a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school.” As currently drafted, this requirement might be interpreted broadly to qualify any employment during law school, whether or not it is educational in nature. To avoid reverting to the problems of inconsistency and exploitation posed by the apprenticeship system of the past, the Bar has a crucial role to play in creating standards, safeguards, and oversight to ensure that appropriate educational support is provided to novice interns or clerks.

Clinical and externship teaching has developed a series of best practices based on educational theory, which explains that students learn best when their exposure to real practice environments is “designed, managed, and guided” rather than just experienced.⁴ Well-designed

¹ Robert Kuehn, *Pricing Clinical Legal Education*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2318042.

² *Id.* at 31-32.

³ *Id.* at 28-30. Since Professor Kuehn’s study was completed, two additional schools have adopted a clinic/externship requirement or guarantee, for a total of 33 schools. See Karen Tokarz, et al., *Legal Education at a Crossroads: Answering the Clamor for Reform with Expanded Experiential Legal Education and Required Clinical Education*, 43 Wash. U.J. L. & Pol’y (forthcoming 2013).

⁴ Roy Stuckey, et al., Best Practice for Legal Education: A Vision and a Roadmap 165 (2007), citing James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 Wm. & Mary L. Rev. 71, 78 (1996).

clinical and externship programs are deliberately structured so that students are exposed to the theoretical frameworks underlying practical skills like client interviewing, negotiation, factual investigation, and case planning; include or encourage specific feedback on students' performance; and provide opportunities for reflection and integration of the students' experiences. Such structures cannot be assumed to be available in the context of law practice, where attorneys who supervise law students are deeply embedded in their own practice of law and dependent on their interns or clerks for productive labor. The separation between the goals of education and the demands of employment is reinforced by ABA regulations that prohibits the simultaneous award of academic credit and pay.⁵ To maintain the Task Force's concern with protecting the public, as well as protecting the potential clerks or apprentices in these Bar-approved programs, any pre-admission course or real practice experience that counts toward the 15-credit limit or substitutes should incorporate necessary components that underlie sound experiential teaching and learning.

The California State Bar does not need to look far for such standards. ABA Standard 302(a)(4), which requires that all law graduates receive "substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession," has provided interpretations that further define what "substantial instruction" entails. To meet the current ABA standard, the instruction "must engage each student in skills performances that are assessed by the instructor." Interpretation 302-3. Proposed amendments to the ABA Standard would further clarify the characteristics involved in educationally sound skills instruction, stating that to count toward the ABA professional skills requirement courses "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-reflection."

It would considerably ease the State Bar's oversight as well as the administrative burden on law schools in self-certifying their courses for California purposes if California would incorporate this national standard, with which law schools are already familiar, in certifying their coursework for purposes of the California pre-admission requirement. And, such standards could guide the California State Bar in its implementation of rules for qualifying bar-approved clerkships, apprenticeships, or externships.

⁵ ABA Standards for Accreditation of Law Schools, Interpretation 305-3.

CLEA welcomes the opportunity to continue to assist the California State Bar in its efforts to address the important issues related to admitting practice-ready lawyers.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Kruse".

Katherine Kruse
CLEA President

Experiential Education Requirements for Professional Schools

Law	Medicine	Veterinary	Pharmacy	Dentistry	Social Work	Architecture	Nursing
minimum of 1 credit of 83 required for graduation --- 1.2% of the student's course load --- in prof'l skills ¹	2 of 4 years in clinical settings ²	minimum of 1 of 4 years in clinical settings ³	300 hours in 1st year; 1,440 hours (36 weeks) in last year in clinical settings ⁴	57% of education in actual patient care ⁵	900 hours (18 of 60 required credits) in field education courses ⁶	50 of 160 credits in studio courses (national licensing board's calculation of minimum needed for licensure) ⁷	varies by state - e.g., Cal. 18 of 53 credits (1/3); Texas ratio of clinical to classroom of 3 to 1 ⁸
1/83	1/2	1/4+	1/4+	1/2+	1/3	1/3	1/3+

(prepared by R. Kuehn, Washington Univ. School of Law (July 2013))

1. ABA Accreditation Std. 302(b)(4); ABA Consultant's Memo # 3 (Mar. 2010).

2. Molly Cooke, David M. Irby and Bridget C. O'Brien, "A Summary of *Educating Physicians: A Call for Reform of Medical School and Residency*" (2010).

3. American Veterinary Medical Association, "Accreditation Policies and Procedures of the AVMA Council on Education," Sec. 7.9, Std. 9 (2012).

4. 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 (2011).

5. American Dentistry Association, "Accreditation Standards for Dental Education Programs" Std. 2-4 (2008); Massachusetts Bar Association, "Report of the Task Force on Law, the Economy, and Underemployment - Beginning the Conversation" 4 (2012).

6. Council on Social Work Education, "Educational Policy and Accreditation Standards," Educ. Policy 2.3., Accreditation Std. 2.1.3 (2012).

7. National Council of Architectural Registration Boards, "NCARB Education Standard" 24 (2012) ("The *NCARB Education Standard* is the approximation of the requirements of a professional degree from a program accredited by the National Architectural Accrediting Board (NAAB).").

8. 16 Cal. Code of Regulations § 1426; Texas Board of Nursing, "Rules and Regulations Relating to Nurse Education, Licensure and Practice," § 215.9(c).