



National Organization of Bar Counsel



JOINT NOBC/APRL COMMITTEE ON COMPETENCY

Final Report

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“All professionals must be lifelong learners.”¹

¹ Stuckey, Roy, et al, Best Practices for Legal Education (2007), 66.
http://law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf

Legal Education and Competency Studies

The MacCrate Report (1992)

In 1992, the ABA Section of Legal Education and Admissions to the Bar published its 400+ page *Report of the Task Force on Law Schools and the Profession*. The task force which wrote it concluded that there is no “gap” between law schools and the practicing bar, as has often been suggested.(p.8) Rather, “The skills and values of the competent lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer’s professional career.” (p.3)

The Report begins with an extensive overview of the profession, but at its heart is its “Statement of Fundamental Lawyering Skills and Professional Values” which are essential for competent representation. These are set forth in great detail, and state that a lawyer should (1) attain a level of competence in one’s own field of practice, (2) maintain a level of competence in one’s own field of practice, and (3) represent clients in a competent manner. (p.140)

The Report emphasized the value to law students of practice-oriented instruction, including clinics, externships and simulations. It also recognized the value of part-time employment during the academic year as a complement to classroom instruction. Under the topic of transition into practice, the Report notes that apprenticeships have fallen into disfavor in the United States, but are generally required in the Commonwealth jurisdictions. (p.287)

Despite the task force's conclusion that there is no "gap" between law school and law practice, the Report states that "Some form of transition education program – commonly referred to as 'bridge-the-gap program' and directed to new law graduates – can be found in most states." (pp.289-290) What the Report does not do is to address *when*, in the educational continuum, the level of competence to represent a client is first achieved. Later studies hit that issue head-on.

A short chapter in the report addresses the topic of maintaining competency after law school, i.e., during the long middle years of practice. *MacCrate* says: "Concerns about lawyer competence were the impetus for Mandatory Continuing Legal Education (MCLE) which began in 1975 when Iowa and Minnesota adopted the first programs." (p.309). It notes that "there is little evidence regarding mandatory CLE's effect on competence."(p.311).

Conference of Chief Justices Report (1998)

A National Action Plan on Lawyer Conduct and Professionalism, published by the Conference of Chief Justices, focused on competency in numerous ways. First, it suggested that the high court in each state establish a committee on professionalism, ensure legal education makes reference to broader social issues and their impact on professional and legal ethics, increase the dialogue among law schools, and set a coherent and coordinated direction for the profession. The report suggested that all states adopt a mandatory CLE requirement. It encouraged CLE programs that focus on legal practice skills and office management skills, as well as programs designed to prevent or avoid malpractice and unethical conduct. The report recommended that state bar associations

establish law office management assistance programs, monitoring services for disciplined lawyers, an ethics hotline, and substance abuse and mental health assistance. Lastly, the report recommended transitional training for new lawyers that focuses on the fundamentals of practice, emphasizes professionalism, and provides instruction on office management for a variety of legal settings.

Conference of Chief Justices Implementation Report (2002)

After the Conference of Chief Justices published their *National Action Plan*, they published a report detailing how to implement the plan. First, the report recommended that the Conference of Chief Justices should create a National Action Plan Implementation Committee. Second, it also suggested the creation of a plan implementation entity in each state. It then suggested a six step process for implementation. This included indentifying and prioritizing implementation goals. These goals should be SMART (Specific, Measurable, Attainable, Relevant and Trackable). The next step is to developing initial strategies to implement the plan. Then, the entity should identify any barriers to implementation and identify ways to overcome those barriers. The entity should then begin to implement the national action plan. Finally, the process of implementation should be evaluated and revised as necessary. The report also suggested creating an electronic information network to aid implementation.

Carnegie Report (2007)

Educating Lawyers: Preparation for the Profession of Law was published by the Carnegie Foundation for the Advancement of Teaching after its research team conducted

a comparative study, including field visits, to sixteen diverse law schools in the United States and Canada. The Carnegie team concluded that the current law school curriculum is too focused on the case-dialogue method, which is narrow and does not teach students how to deal with people or complex situations. This method quickly and effectively teaches students how to “think like a lawyer,” but provides no guidance for understanding the social consequences or ethical aspects of the legal conclusions it creates. The Report says that law schools’ assessment of student learning is underdeveloped, but is necessary, not only to measure academic success but to protect the public by ensuring basic levels of competence.

The Report concludes that there should be comprehensive rather than incremental improvements to address lawyering skills and professionalism. Finally, the Carnegie team proposed an “integrative model” for law schools, which “addresses the problem of the larger curriculum, particularly what should happen in the third year. In most schools, curriculum lacks clear shape or purpose.” (p.194)

Stuckey Report (2007)

Best Practices For Legal Education, by Roy Stuckey and others, is based on the premise that “There is a compelling need to change legal education in the United States in significant ways.” That need is demonstrated by the reality that “most law school graduates lack the minimum competencies required to provide effective and responsible legal services.” (p. 2)

The Stuckey report presents a road map, in the form of a black-letter outline which is filled in with extensive quotations from secondary sources, mostly law review

articles. The road ends, at Chapter Nine, by setting forth the “Components of a ‘Model’ Best Practices Curriculum.” Much of what is presented is of more immediate use to academics than to those of us who are involved in attorney regulation and the disciplinary process. However, the goal of the Best Practices Curriculum is certainly consistent with our daily work: “The primary goal of legal education should be to develop competence, that is, the ability to resolve legal problems effectively and responsibly.” (p. 8)

The Stuckey report notes that a goal of every law school should be to prepare its students to enter the legal profession. In doing so, law schools should include training in how to:

- work with clients to identify their objectives, identify and evaluate the merits and risks of their options, and advise on solutions;
- progress civil and criminal matters towards resolution using a range of techniques and approaches;
- draft agreements and other documentation to enable actions and transactions to be completed; and
- plan and implement strategies to progress cases and transactions expeditiously and with propriety. (p.59)

Federation of Law Societies of Canada Final Report (2009)

All common law jurisdictions in Canada have three requirements for admission to the bar: a Canadian law degree or its equivalent, successful completion of a bar admission or licensing program, and completion of an apprenticeship known as articling.

In 2007, the Federation of Law Societies of Canada appointed a Task Force to review the existing academic requirement for entry to bar admission programs and recommend any necessary modifications. Canada has never had a national standard for academic requirements to obtain a law degree, although to date the law societies have been satisfied that the 16 law schools in Canada that grant common law degrees have provided quality programs. (pp.3, 18) In its Final Report, released in October, 2009, the Task Force proposed “a national requirement expressed in terms of competencies in basic skills, awareness of appropriate ethical values and core legal knowledge that law students can reasonably be expected to have acquired during the academic component of their education.” (p.4)

Why did the Federation appoint the Task Force? The very first sentence of the report says “The legal profession in Canada is self-regulating.” Then: “In the 21st century self-regulation is neither a static concept, nor one that can or should be taken for granted.” (p.13) And: “The establishment of this Task Force to consider the development of a national requirement for the entry of applicants to . . . bar admission program is in large part a response to the heightened government scrutiny of regulators.” (p.14)

Ohio New Lawyer Competency Report (2009)

This student paper, completed in early 2009 for the benefit of our Joint Committee, summarized the MacCrate, Conference of Chief Justices, Carnegie, and Stuckey reports.² The author then surveyed all nine ABA-certified law schools in Ohio to

² This paper is included in the Appendix hereto.

determine what they are doing to prepare their graduates for entry into the practice of law in today's market. (p.4) She found that each school had implemented certain "practice skills" classes and each required an ethics course before graduation. However, full integration of ethics and professional skills into the traditional curriculum has yet to occur, with the exception of Case Western Reserve University School of Law. (p.12)

The author then compared the Ohio experience with the September, 2008, draft report ("Consultation Paper") from the Federation of Law Societies of Canada. She noted that Case Western's list of "skills" is very similar to Canada's list of "competencies." (p.16) How to better prepare students to practice competently? The ABA's Accreditation Standards could be amended to require law schools to have an integrated curriculum and to require them to teach specific fundamental skills. (p.14) The schools would retain the freedom to implement these requirements in any way they choose to do so.

The Critical Issues Summit (2009)

In October, 2009, ALI-ABA Continuing Professional Education and the Association for Continuing Education convened an invitation-only, three day conference called the Critical Issues Summit. The conference generated "a series of recommendations for improving the full continuum of lawyer professional development."³

Perhaps echoing the Conference of Chief Justices Report from 1998, the preamble to the Final Recommendations from the Critical Issues Summit begins: "All members of

³ The Final Recommendations are included in the Appendix hereto.

the legal community share responsibilities to initiate and maintain the continuum of educational resources necessary to assure that lawyers provide competent legal services throughout their careers. . . .” The Recommendations include the development of “core practice competencies,” transitional training programs which would begin in law school and continue through at least the first two years of practice, and a bar examination conducted in phases over time. Several of the Recommendations reflect the heavy presence at the conference of CLE regulators and providers.

The Reporter’s Comment to Recommendation #8 may be of particular interest to NOBC and APRL members: “Several conferees involved in lawyer disciplinary matters noted that the percentage of cases involving lawyers’ shortcomings in personal and practice management far outweighs the percentage of cases involving lack of substantive law awareness.” Therefore, mandatory CLE rules should encourage lawyers to develop skills in practice management, practice development, client communication, etc. (p.5) Recommendation #9 addresses the need to implement methods to evaluate the effectiveness of CLE.⁴ Post-Summit recommendations include “designing a model approach to competencies.” (p.6)

Conclusion

All of the studies listed above shared a common thread in suggesting a focus on practical legal skills in addition to knowledge of substantive law. Most offered specific recommendations for improving lawyer competency. The studies concerning law school education and bar admissions, along with the Final Report of the NOBC-APRL Joint

⁴ A study on the effectiveness of CLE was done in New Jersey. Supreme Court of New Jersey’s Ad Hoc Committee on Continuing Legal Education, Final Report and Recommendations (November 2008), <http://www.judiciary.state.nj.us/supreme/CLE%20Committee%20Final%20Report.pdf>

Committee on Aging Lawyers, serve as two bookends for our study of competency. Recent studies, especially the Critical Issues Summit Recommendations, focus on lawyers who are in the middle of their practice years. That study recommended the evaluation of the effectiveness of CLE programs and the addition of programs focusing on practice skills.

NOBC and APRL members are in a position to identify deficiencies in legal education and training which may lead to unintentional attorney misconduct. The various state Supreme Courts are in a position to implement and enforce training and competency standards, regardless of law school accreditation standards. By working together, NOBC and APRL can improve lawyer professionalism and competency.

Recommendations

The leadership of NOBC and APRL should establish a liaison with the Conference of Chief Justices, staffed by the National Center for State Courts in Williamsburg, Virginia.

The leadership of NOBC and APRL should vigorously pursue the involvement of our two organizations in the aftermath of the Critical Issues Summit.

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Appendix