



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #11

REQUESTED ACTION: None, as the report is informational in nature.

Attached is an informational report from the Committee on Legal Education and Admission to the Bar on the work the committee has done to date to address the challenges presented to law schools and law students. This report addresses two topics in particular: early administration of the bar examination and requiring skills training for admission to the bar. Attached to the report are two separate reports outlining these topics in detail.

With respect to skills training, the report recommends that candidates for admission to the bar be required to have at least 12 credit hours of practice-based, experiential course work. The requirement could be satisfied through the completion of clinical courses, supervised externships, internships or other placements such as simulation based courses. No more than three hours can be satisfied through a first year course; no more than three hours can be satisfied through a legal writing course; and at least four hours must be satisfied through a clinical course or supervised field placement. As an alternative to skills training, the requirement could be satisfied by an internship approved by the Appellate Division.

With respect to early administration of the bar examination, the committee notes that in New York, law school graduates generally take the bar examination in July, do not learn whether they have passed until November, and may not be sworn in until early the following year. This can limit their employability. By offering the option of early administration of the bar exam, students would be able to apply for bar admission earlier and be more immediately employable. In addition, if students took and passed the examination after their second year of law school they might pursue clinical courses, specializations, and upper-level skills courses during their third year.

The committee plans to present a comprehensive report at the April 2014 House of Delegates meeting.

The report will be presented by committee co-chairs Eileen D. Millett and Ian Seth Weinstein, together with committee member James Beha.



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
631/761-7125
FAX 631/421-0271
eileenk@tourolaw.edu

EILEEN D. MILLETT

Co-Chair
Epstein Becker & Green, P.C.
250 Park Avenue, 14th Floor
New York, NY 10177
212/351-4547
FAX 212/878-8655
emillett@ebglaw.com

COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR INFORMATIONAL REPORT TO 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) began to address the many challenges in legal education, as early as 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 general, although not unanimous support, for proceeding with an Informational Report to the Executive Committee on the issue of a skills training requirement and early

administration of the bar exam. A few members expressed reservations 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 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 York⁵ 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 Report⁷ 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

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;

<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.

The NY Difference – Foreign Trained Lawyers

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 school¹

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

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.

###