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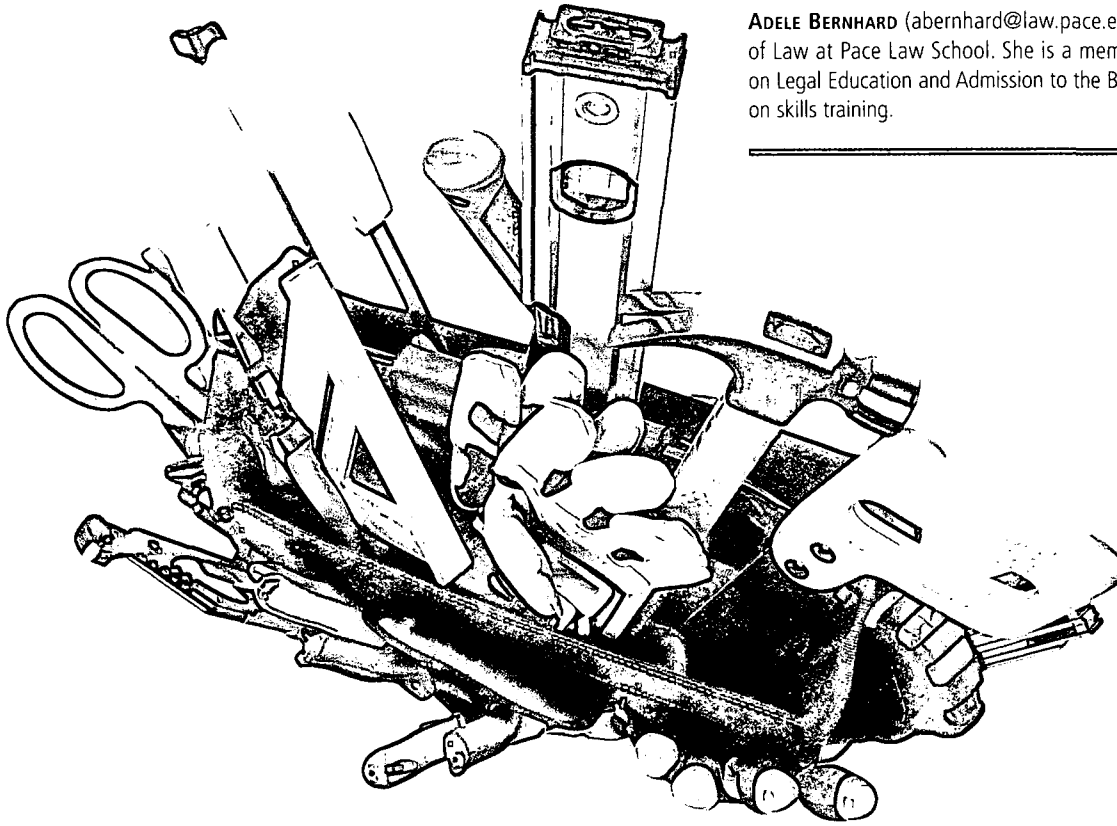
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Should Skills Training Be Required for Licensing?

By Adele Bernhard

The New York State Bar Association Committee on Legal Education and Admission to the Bar (CLEAB) is debating whether skills training should be required for admission to practice law in New York. In light of current dramatic changes to law practice that discourage law firms from investing in training and have encouraged record numbers of recent graduates to enter solo and small firm practice soon after graduation, CLEAB is considering whether a skills training requirement might positively impact the profession – by assisting law graduates to better make the transition from law student to practitioner, furthering the ethical and competent practice of law, and protecting clients.

CLEAB is not alone in considering this question. The Board of Trustees of the State Bar of California charged our sister committee, California's Task Force on Admissions Regulation Reform, with examining whether the State Bar

of California should develop a regulatory requirement for a pre-admission practical skills training program.

The California Task Force held a series of hearings and elicited testimony from many practitioners, legal academics, judges, clients, and members of the public at large. The Task Force also reviewed the extensive literature on the topic of practical skills training for new lawyers. In the end, the California Task Force was convinced and unanimously proposed three new requirements for admission to the Bar. The proposals are outlined in a report titled "Task Force on Admissions Regulation Reform: Phase I Final Report."¹ The proposals include:

1. Pre-admission requirement:

A practical skills training requirement that must be fulfilled prior to admission. The requirement could be met either in law school, where 15 units of course work following the first year of law school must be

- dedicated to developing practical skills and serving clients, or, alternatively, it could be met through employment in a Bar-approved clerkship or apprenticeship program of at least six months in duration;
2. Pre-admission or post-admission requirement: 50 hours of pro-bono or low bono service; and,
 3. Post-admission requirement: 10 additional hours of MCLE courses for new lawyers, over and above the required MCLE hours for all active members of the Bar, specifically focused on practical skills training. Alternatively, credit towards these hours would be available for participation in mentoring programs.²

The California Task Force Report discusses pro bono and “low-bono” service with reference to examples of law school incubator programs, considers what a new practical skills requirement should look like and how to implement it, and reflects on the impact that the new skills requirement might have on diversity of the Bar, costs to students and new lawyers, and possible impediments to national uniformity of admission standards. The Task Force suggests that the new requirements be introduced gradually over a three-year period.

The State Bar of California is not an association. It is a mandatory bar, and it serves as an adjunct of the California Supreme Court in regulating admission and disci-

“Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together.”

– Daniel Webster

In reaching its decision, the California Task Force was persuaded by the “[c]hanges in the economics of the profession [which] are making it more and more difficult for new lawyers to find the training, hands-on guidance and mentoring that is necessary for a successful transition into practice.”³ The Task Force also found that “more than half of the recently admitted attorneys have not found jobs with big law firms or government agencies, and have instead worked in firms of five or less,” which are less able to provide training and supervision.⁴

The Task Force determined that assisting graduates to grow into ethical and competent practitioners is not just the responsibility of the law schools but is a profession-wide responsibility that must be shared. “[C]losing the gap in practice-readiness must involve a collaborative effort in which the law school community, practicing lawyers, and the Bar each have a role – it must be a shared endeavor in which burdens are shared and responsibility is shared as well.”⁵

The new skills requirement could be met through a postgraduate clerkship or apprenticeship alternative, which adds “flexibility in how Bar applicants may meet their preadmission training requirement, accommodates concerns on the part of law schools that we seek to force changes on them that are impractical and bound to increase costs, and most importantly, promotes a greater role by practitioners in pre-admission practical training.”⁶

In reaching its determination, the California Task Force relied heavily on the New York State Bar Association’s Report of the Task Force on the Future of the Legal Profession,⁷ citing the NYSBA’s willingness to examine assumptions about the efficacy of the bar exam, and NYSBA’s emphasis on mentoring as an effective mechanism to help newly admitted lawyers develop professional skills and identity.

pline. The State Bar’s Board of Trustees is taking public comments on the Report until September 5. If adopted, the Board’s decision will go to the California Supreme Court in the form of a recommendation. Ultimately, the Court – which has plenary authority over admissions and discipline – will decide whether to implement it.

The New York State Bar Association Committee on Legal Education and Admission to the Bar will begin a serious study of the Report in fall 2014. All New York law schools have skills courses, and the majority of New York law school students enroll in skills courses while in law school. Whether requiring a certain number of credits or course hours in skills training would change choices students make or re-focus law schools on practical training remains to be seen. Certainly a pre-admission skills requirement will turn the attention of the legal profession to the lawyering skills needed to provide competent ethical service to clients, just as our highly respected pro bono requirement has re-energized the professional community’s dedication to service. Stay tuned. □

1. The report is available at <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000010717.pdf>.

2. *Id.* at 2. (Note that age numbers in published report may differ.)

3. *Id.* at 5.

4. *Id.*

5. *Id.*

6. *Id.* at 12.

7. Published April 2, 2011, the NYSBA report is available at http://www.nysba.org/AM/Template.cfm?Section=Task_Force_on_the_Future_of_the_Legal_Profession_Home&Template=/CM/ContentDisplay.cfm&ContentID=48108.