Weep not that the world changes - did it keep a stable, changeless state, it were cause indeed to weep.

WILLIAM CULLEN BRYANT, MUTATION

Nothing changes but the changes, Slick.

GARY BUSEY TO KRIS KRISTOFFERSON
A STAR IS BORN (1976)
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INTRODUCTION

It is the discussions themselves, and this culture of conscious reassessment, which will best ensure the future of Missouri’s legal profession and maximize the service we provide to society.

William R. Bay and Hon. Paul C. Wilson
Task Force Co-Chairs

The legal profession has a long and proud history and, whatever changes the future brings, the future of our profession is as bright as we make it. The core principles of this profession as expressed in our oaths, the Code of Professional Responsibility, and elsewhere are as strong and relevant today as ever. We seek to serve society through our commitment to the rule of law, the protection of civil and constitutional rights, and the peaceful resolution of disputes among individuals and between individuals and their governments. The law exists to preserve and protect liberty, and the legal profession exists to bring the promise of the law into reality.

In September 2014, at the joint meeting of the Missouri Judicial Conference and the Missouri Bar, then Chief Justice Mary Russell invited the Board of Governors of The Missouri Bar to join the Supreme Court in creating a task force dedicated to examining issues facing the future of the legal profession in Missouri. Task force members were appointed in early 2015 and organized into subcommittees focusing on the future of the
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profession from four discrete perspectives: (1) legal education and entry into the profession; (2) leaving or limiting the practice of law; (3) the impact of technology on Missouri’s lawyers and courts and; and (4) increasing accessibility of legal services and the sustainability of law practice.

Missouri lawyers and judges are not the first to study these issues, nor is this Report the last and final word on the future of our profession. By definition, the future remains before us and the changes it will bring remain to be seen. But, whatever perils there may be in attempting to forecast the future, it is safe to assume that—like the rest of society—the pace of change in the legal profession will continue to accelerate and the scope of change during the careers of those now entering the profession likely will exceed the changes seen by any of the generations in whose footsteps they now follow.

From its inception in Missouri and long before, the practice of law predominantly has been a local endeavor. Attorneys were educated locally, licensed locally, and advised local clients about local laws and legal issues. Lawyers were licensed generalists. They were expected to know all facets of the law of their jurisdiction, but little or nothing about the law of other states or countries. A career in the law was expected to be a life-long enterprise. After education and licensure, the career began with a long period in which a young lawyer would gather skills and responsibility under the tutelage of more experienced colleagues. This was followed by a middle period of productivity and expertise, which was followed in turn by a period of mentorship and oversight with decreasing direct responsibility for client matters. Retirement was rare and usually involved the transitioning of matters to partners or others and the surrender of one’s license to practice. And, once removed from practice in this way, a lawyer seldom had the need or desire to return.

Technological “advances” are not new to the legal profession. One by one, innovations such as carbon paper, photocopiers, and word processors changed the way lawyers practiced law. Even though new technologies changed the logistics of practice, technology itself had little or no impact on the role of the legal profession or, more importantly, on the way the profession was viewed by society as a whole.

Finally, for much of our past, the profession has believed that legal services were reasonably accessible to those who needed them. Many of those who could not afford the services they needed were provided for with public assistance in the form of public defenders and legal aid services. The overwhelming majority of lawyers were able to sustain a practice—large or small as each saw fit—which covered their costs, provided an income, and allowed the lawyer to provide services at a reduced fee or without fee where the client’s needs and resources dictated.
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Today, even though the core principles of our noble profession remain the same, the traditional description of the legal profession set forth above has changed – or soon will change – beyond recognition. What will replace it? To find the answer, we must study the society around us because the law and the legal profession do not have not, and never will exist apart from the society we serve.

The world is becoming smaller. As society becomes increasingly national and transnational, the practice of law will follow. The world is becoming more mobile. As the workforce becomes more transient and specialized, so, too, will lawyers. The world is becoming more efficient. As society demands faster and cheaper answers to broader and more complex questions, the law and lawyers must respond in kind.

But society’s demand for efficiency exacts a toll. The resulting profits accede only to those at the highest end of the scale, and society’s safety nets protect only those at the very lowest. But the legal profession, if it is to remain true to its unchanging principles, cannot serve only those at the far ends of the spectrum and ignore the growing majority of unserved and underserved in the middle. Law which serves only some, serves none. Historically, individual practitioners have been able to fill the void in part by providing services for reduced or no fees, but they cannot continue to fill an ever-widening gap while the number of paying clients and the margins on those services are dwindling. The law and the practice of law must remain sustainable if we are to continue to play the role society needs us to play. And sustainability is not solely a function of economics. The legal profession always has exacted an emotional toll on its practitioners in the form of stress and its many manifestations. Traditionally, this has been offset by the nobility of this calling and our pride in our profession. In the future, however, the practice of law will not be sustainable if we allow the intangible costs of practicing law to exceed the intangible benefits of this high calling.

The Report which follows contains an Executive Summary of the observations and recommendations of each of the four subcommittees, and the full reports (and exhibits) from each subcommittee. The issues or trends spotted in each report are not intended to be exhaustive, and the recommendations arising out of those observations are not intended to be perfect solutions to known and pending problems. Such was never the charge to this Task Force. Instead, as each subcommittee’s work shows, the purpose of this Task Force is to examine current and reasonably anticipated trends and identify areas of law or practice which may need to be re-examined in light of those changes.

This Report is being presented to the Supreme Court and the Board of Governors, but the views expressed herein are not – and should not be
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taken as - the views of either. Instead, the discussion and recommendations of each subcommittee are the work of that subcommittee alone. It is hoped that the Court and the Board will use this Report to guide the work of their committees as they examine and re-examine the rules and policies that govern this great profession.

If this Task Force and its Report are to have a lasting impact, however, it will not be the result of any single trend spotted or recommendation made. A single, one-time look at the future of this profession - no matter how prescient - cannot realistically be expected to bring about significant change in what we do or how we do it. However, if the work of this Task Force succeeds in sparking within the judiciary and the bar a culture of conscious reassessment, an on-going effort to see and prepare for the waves before they hit the shore, then we will better be able to keep the legal profession in harmony with (if not actually out in front of) the ever-increasing pace of change in which society now finds itself.

Accordingly, the recommendations of each subcommittee are important for the discussions those recommendations are intended to provoke. It is the discussions themselves, and this culture of conscious reassessment, which will best ensure the future of Missouri’s legal profession and maximize the service we provide to society.

Hon. Paul C. Wilson William R. Bay
Task Force Co-Chairs
MEMBERS

SUBCOMMITTEE ON EDUCATION AND ENTERING THE PROFESSION
Hon. Cynthia Martin, Co-Chair
Countess Price, Co-Chair
Thomas Vincent Bender
Kathryn Busch
Matt Depaz
Hon. Judy Draper
Kellie Early
Hon. Phil Hess
Peter Joy
Alexandra Nieves
Hon. Jalilah Otto
Jerina Dominique Phillips
Dean Ellen Suni
Hon. Michael Wolff

SUBCOMMITTEE ON LEAVING AND LIMITING THE PRACTICE OF LAW
Hon. Clifford Ahrens, Co-Chair
Jennifer Gille Bacon, Co-Chair
Dana Tippin Cutler
Doreen Davis Dodson
Michael P. Downey
Hon. John Holstein
Robert Kenney
Christina R. Neff
Alan Pratzel
Christian A. Stiegemeyer
Sheldon Stock
Hon. James Welsh

SUBCOMMITTEE ON LEGAL TECHNOLOGY AND ITS IMPACT ON THE LEGAL PROFESSION
Hon. Daniel Scott, Co-Chair
Shira Truitt, Co-Chair
Keith Bae
Hon. Jon Beetem
Hon. Julian Bush
Hon. Jeffrey Bushur
Michael David Cole
Tina Gardner Fowler
Sandra Si Yun Oh
Hon. Thomas Redington
Hon. Ellen Levy Siwak
John F. Wilcox, Jr.

SUBCOMMITTEE ON ACCESS TO LEGAL SERVICES AND SUSTAINABILITY OF LEGAL PRACTICE
Hon. David Evans, Co-Chair
Antwaun Smith, Co-Chair
Kim Bousquet
Jose Caldera
Hon. Christine Carpenter
Hon. Larry Harman
Hon. Karen King Mitchell
Hon. Steven Ohmer
Gerald Ortbals
Hon. Mark Pfeiffer
Thomas Robison
Hon. Mary White Sheffield
Hon. Kristie Swaim
Shelby Watson
Raymond Williams

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I. LEGAL EDUCATION AND ENTRY INTO THE PROFESSION

The Legal Education and Entry into the Profession Subcommittee was tasked with identifying issues currently impacting and likely to impact legal education and entry into the legal profession and the practice of law over the next 20 years, and to make short-term, mid-term and long-term recommendations concerning those issues. The Subcommittee considered and discussed various societal and economical shifts/changes/factors occurring over the past 40 years affecting legal education and entry into the profession, and the positive and negative consequences and ramifications thereof.

Also considered was what the future might, or more appropriately, should look like and those potential consequences/ramifications. Considered issues included law school education and cost, diploma privilege, the role of law schools in the life-long education of licensed attorneys, the accreditation standard, competencies versus doctrinal training, new lawyer orientation, clinical and practical skills training, business management and development and professionalism, job preparedness/readiness, the concept of state service for young lawyers, re-entry into the profession, incentives to go to underserved areas, admission of foreign educated lawyers, portability of admission to practice (impairments and facilitators), the trade versus profession debate, types of lawyers (traditional/non-traditional, limited license/paraprofessional), types of legal jobs, consumer access to legal services, and technological advances.

The Subcommittee loosely divided the broad scope of this charge into three subject areas: (1) legal education, (2) licensure and admission to the practice, and (3) legal employment and the market view of job readiness. We reviewed and summarized current and emerging information concerning these subject areas and sought to identify programs, initiatives and best practices/perceived solutions being explored or having been undertaken in other jurisdictions concerning these areas. This Subcommittee Report discusses our findings, and our recommendations are as follows:

1. Require newly licensed lawyers to participate in a mentoring program within their first year of practice;
2. Encourage and support law schools in the development of additional and practical learning experiences such as law school incubator and residency programs;
3. Develop programs designed to encourage newly licensed lawyers to practice law in underserved rural areas;
4. Avoid adopting, or supporting the adoption of state-specific “add-ons” to securing a legal education or admission to the Bar;
5. Work to position Missouri to be a leader in national discussions which promote legal education and bar admission standards that encourage exploration of education models that will better prepare law students for the practice of law in the future;
6. Support programs and initiatives that seek to protect and restore the value of a law license as an embodiment of the profession’s integral role as the caretaker of the Rule of Law; and
7. Hire staff whose duties and responsibilities would be to oversee implementation of the short-term, mid-term, and long-term goals recommended by this Task Force.

II. LEAVING OR LIMITING THE PRACTICE OF LAW

The Leaving or Limiting the Practice Subcommittee of the Future of the Profession Task Force, focused on three areas, and its report makes findings and recommendations in each of those areas.

A. Retirement and Pro Bono
The Missouri Bar, like the general population, is aging. The data reflect that nearly one-third of the Bar’s membership is age 55 or older. At present, an attorney desiring to retire from the active practice of law has limited choices. Rule 5.25 permits a lawyer to surrender his or her license, but is neither desirable nor workable because application of the rule results in disbarment of the attorney. Under Rule 6.03, any lawyer not currently stricken from the roll of attorneys may take inactive status by making a written request to the clerk of the Supreme Court. Under Rule 6.01(d), a lawyer becomes exempt for purposes of paying the annual enrollment fee at age 75, after practicing for 50 years or more, upon becoming a retired judge, or upon becoming a retired commissioner of a Missouri court of record.

In 2013, the Advisory Committee drafted and submitted to the Court a new Rule 6.035, which would have permitted an attorney to retire from the active practice of law. The Committee’s goals in drafting Rule 6.035 were to: (a) create a retirement status for lawyers who elect to leave the practice - without the requirement of paying annual enrollment or inactive fees; (b) eliminate the need for the practice of refraining from collecting inactive status fees from senior lawyers; (c) encourage payment of inactive fees for those lawyers who are either planning to later return to active status or are unsure about returning; and (d) enable and encourage senior lawyers to provide pro bono services in association with certified legal service agencies. The Court has not yet adopted the Advisory Committee’s proposed Rule 6.035.

B. Trustee Rule
The Missouri Bar’s 2015 Economic Survey showed that among both full-time and part-time sole practitioners, 54% report having a
designated successor lawyer in case of their disability or death and 46% do not have a designated successor.

C. Long-Range Planning
The Long-Range Planning (LRP) subgroup defined its charge to be looking “down the road” at issues impacting lawyers’ decisions or ability to leave the practice of law. The group initially identified two areas to consider: temporarily leaving the practice, and planning for retirement or disability. The keys to addressing these important issues in the future will be leadership and communication from the Missouri Bar.

Current examples for communication efforts concerning issues related to lawyers’ decisions or ability to leave the practice of law include the following: website; articles; Mo Bar publications; video; PowerPoint presentations; CLEs and/or webinars; standalone presentations or sections to be included in other select presentations or sections to be included in other select presentations, such as at OCDC Ethics School; materials distributed at MOLAP information booths; Solo and Small Firm Conference presentation.

The three recommendations of this subcommittee are as follows:
1. Recommend a revised Rule 6.035. Under this draft rule, lawyers 65 and older may elect to retire and avoid MCLE obligations and inactive fees. Lawyers taking retirement status are authorized to provide pro bono legal services under certain circumstances set forth in the Subcommittee’s report and proposed rule;

2. Recommend a revised trustee rule, Rule 5.26, to permit an attorney to name a trustee to transition his or her law practice due to disability, disappearance, death or discipline. Any member of the Bar in good standing may serve as a trustee. Lawyers who are employed at a law firm (referred to as a “Fiduciary Entity”) or in an organization not engaged in the private practice of law are not included. Upon the disability, disappearance, death or discipline of a Lawyer, the circuit court in the circuit where the Lawyer maintained an office may appoint either the trustee designated by the Lawyer or, if no trustee has been so designated, may appoint one or more other members of the Bar to serve as a trustee and to transition the Lawyer’s law practice; and

3. Recommend that The Missouri Bar develop a long-term communication strategy to:
   - Educate its members about the importance of retirement planning with emphasis on newer members, including specific strategies targeting young lawyers and those at later stages of their careers;
   - Educate its members, new and older, about the proposed surrogacy rule and how it works; and
   - Educate its members about the proposed retirement rule and how it works.
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III. TECHNOLOGY AND ITS IMPACT ON THE PRACTICE OF LAW

Accelerating technological change may irrevocably alter the legal profession and landscape sooner than we expect. Competence regarding technology has become an explicit lawyer ethics consideration in a growing number of states. Yet even the largest firms struggle to keep abreast of technology issues. It is virtually impossible for all other lawyers.

The Missouri Bar is the logical entity to bridge this gap, and perhaps the only one with sufficient standing, market power, membership, and resources to do so. What lawyers cannot do alone may be achieved, at least in part, through committed action by the organized statewide bar.

This subcommittee makes the following recommendations to the Missouri Bar:
1. Prioritize the ongoing, meaningful tracking and consideration of mid-to-long term technology issues via permanent qualified committees or other appropriate means, preferably in communication (and cooperation where appropriate) with the judiciary on matters of shared or common concern;
2. Actively assist membership as to relevant technology, not only by offering education, but also by evaluating technology services and providers and otherwise assisting lawyers in exercising due diligence and reasonable care as to tech-related issues and concerns;
3. Survey members with appropriate regularity and as needed on “Future of the Profession” and other significant issues, including but not limited to technological competency;
4. Remain vigilant to privacy concerns of clients and the public as technology advances and expands; and
5. Encourage and help firms and attorneys to value, commit to, and achieve healthier work-life balances and quality of life for both lawyers and staff and take steps to preserve the enduring principles of decorum and civility in the practice of law.

IV. ACCESS TO LEGAL SERVICES AND SUSTAINABILITY OF LEGAL PRACTICE

This subcommittee was tasked by the Missouri Supreme Court and the Missouri Bar with studying and recommending ways for the legal profession to provide more accessible legal services to every person and business that needs the important (and often life changing) legal services lawyers provide.

The need for quality legal services remains acute but, for many, access to those services is
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perceived to be either unaffordable or otherwise inaccessible. Legal needs remain unmet, and in increasing numbers, individuals are turning to self-help or using on-line legal service providers as an alternative to local, licensed counsel.

With the goal of increasing access to quality legal services, the Subcommittee solicited, received and reviewed suggestions from Missouri lawyers and the changes being proposed or evaluated in other states. This approach led to the realization that many of the rules and practices that surround the Missouri legal profession were adopted and justified under circumstances far different from those confronting practitioners and potential clients today.

As a result, the Subcommittee on Access and Sustainability respectfully recommends the following to the Missouri Bar:
1. Advocate a change to the United States Tax Code adding “legal services” to the list of authorized expenditures made under group cafeteria plans;
2. Endorse the use of legal insurance by reputable providers;
3. Expand the existing community partnership program to include bar sponsorship of small business incubators;
4. Coordinate (with the assistance of local bar associations) the use of rapid response teams to provide legal services in areas of special or emergent needs;
5. Expand and simplify the Missouri Bar website to allow potential clients ready access to information necessary to evaluate and retain counsel; and
6. Support the work of the Supreme Court’s Commission on Racial and Ethnic Fairness, assist in the implementation of the recommendations of this Commission, and continue working to implement the recommendations of the Joint Commission on Women in the Profession.

The subcommittee also further recommends a review of the following Supreme Court Rules to determine whether the following rules impose greater costs than benefits in today’s rapidly changing environment, plus one new rule as described below:

1. Rule 4-1.5(8) to determine whether the prohibition against flat rate fee agreements remains justified;
2. Rule 4-5.5 to determine whether licensing nonlawyers under the supervision of licensed practitioners will support the profession in increasing access to needed legal services, and what multijurisdictional restrictions (if any) can be justified in an increasingly national and global marketplace;
3. Rules 4-7.2 and 4-7.3 to determine whether current restrictions on advertising remain justified in a this age of increasingly sophisticated marketing;
4. Rule 4-7.4 to determine whether lawyers and consumers of legal services would benefit from the creation of a system of certified or reviewed specialization and allowing practitioners to market the same;
5. Rule 5-5.4 to determine whether the present restrictions on access to capital stifle innovation and put practitioners at a disadvantage in competing with unlicensed market disrupters; and
6. Creation of a new rule to add mental health issues to the annual requirement for continuing legal education.
I.
REPORT OF THE SUBCOMMITTEE ON LEGAL EDUCATION AND ENTRY INTO THE PROFESSION
I. INTRODUCTION
This Subcommittee (“the Subcommittee”) was tasked with identifying issues currently impacting and likely to impact legal education and entry into the legal profession and the practice of law over the next 20 years, and to make short-term, midterm and long-term recommendations concerning those issues. We considered and discussed various societal and economical shifts/changes/factors occurring over the past 40 years affecting legal education and entry into the profession, and the positive and negative consequences and ramifications thereof. Also discussed/considered was what the future of legal education, job preparedness, types of lawyers and legal jobs, consumer access to legal services, legal related technological advances and related areas might or more appropriately should look like, and those potential consequences/ramifications. We loosely divided the broad scope of this charge into three subject areas: (1) legal education, (2) licensure and admission to the practice, and (3) legal employment and the market view of job readiness. We reviewed and summarized current and emerging information concerning these subject areas and sought to identify programs, initiatives and best practices/perceived solutions being explored or having been undertaken in other jurisdictions concerning these areas. This Report discusses our findings and recommendations.

II. THE SUBCOMMITTEE’S FINAL REPORT
The Subcommittee’s Final Report is divided into two sections: (A) identification of the issues currently impacting and likely to impact legal education and admission to the practice over the next twenty years; and (B) short-term, mid-term, and long-term recommendations with respect to those issues.

A. The issues currently impacting and likely to impact legal education and admission to the practice over the next twenty years

1. Current Issues
The list of current issues impacting legal education and admission to the practice identified by the Subcommittee meeting was extensive, even overwhelming. As such, the Subcommittee divided itself into three work groups corresponding with the three subject areas within its scope. Each work group was: (i) asked to review and summarize salient literature/data addressing the identified current and emerging issues, and (ii) to identify programs or initiatives being explored or having been undertaken in other jurisdictions to address those issues. The work group summary reports vary in form, but are detailed and comprehensive in their discussion. The work group summary reports are attached as Exhibits A, B, and C, and are important references, as they support this Report’s summary discussion, infra, of the current and future issues facing legal education and admission to the practice.

The work group summary reports comprehensively developed those issues, and addressed responses that have been considered and/or undertaken in other jurisdictions. Not surprisingly, the comprehensive work group summary reports intersect and overlap, revealing the inherent interrelationship between legal education, bar admission, and legal employment issues. (Similarly, the issues considered by this Subcommittee intersect and overlap with those considered by other subcommittees, particularly the subcommittee on Access to Representation and the Economic Sustainability of the Practice of Law.) The competing and overlapping tensions comprehensively described in the work group summary reports need not be regurgitated here. However, the complexity of the current issues impacting legal education and admission to the practice can be effectively synthesized in a summary, narrative fashion.
Between 1975 and 2014, the number of accredited law schools in the United States increased from 163 to 204, creating more seats to be filled with law school applicants. A relatively steady economy, a fairly strong legal employment market, and the ease with which money could be borrowed to fund professional education and commensurate living expenses, led to a steady increase in the number of persons applying for admission to law school. Between 1975 and 2010, admissions in ABA accredited law schools soared from approximately 38,000 to approximately 52,000 students.

During this same time frame, the cost of procuring a legal education increased significantly, disproportionate to the rate of inflation. In 1985, the cost to attend a public law school averaged about $2,000 a year for in-state tuition and the cost to attend a private law school averaged about $7,500 a year for in-state tuition. By 2012, the cost to attend a public law school averaged about $23,000 a year for in-state tuition and the cost to attend a private law school averaged about $40,000 a year for in-state tuition, an increase at nearly 2 1/2 times the rate of inflation. Many believe that the development of U.S. News and World Reports law school rankings in the 1990’s played a significant role in the disproportionate increase in the cost of a legal education. Because the rankings consider “brick and mortar” expenditures and the number of tenured professors, law schools have felt increasing pressure to raise tuition to cover increased infrastructure and personnel costs. The relative ease with which money could be borrowed to fund a legal education minimized the friction that might otherwise have been felt from the increases. At the same time, because the rankings measure law school “performance” based on measurables such as LSAT scores and GPA's for admitted students, law schools have felt increased pressure to compete to admit academically strong applicants. This has also contributed to the rising cost of a legal education as increased tuition has yielded resources that could be used to fund scholarships based on academic merit versus financial need. As a result, the rising cost of securing a legal education is being increasingly and disproportionately born by students who are not as academically strong, and who are less-likely to secure high paying jobs after graduation. As a further result, more and more law students are graduating with staggering levels of student loan debt, which impacts the standard of living for these new professionals. By 2012, 86% of law students graduated with a median debt of nearly $130,000. High debt burdens have contributed to lifestyle changes for millennials, who are the majority of members entering the legal market. A consequence of this is that new graduates/millennials may not be able to take lower paying legal jobs that assist underserved populations which include poor and rural communities. Also, increasing debt and the immediacy to begin repayment following graduation forces some graduates into undesired jobs that restrict future upward mobility and creates job dissatisfaction.

The ramifications of these developments were magnified by the 2009 recession when the bottom began falling out of the legal employment market, leaving many debt burdened law graduates un- or under-employed. Add to this that new graduates are entering a crowded and competitive market with fewer entry-level private practice jobs than in the past because efficiencies created by technology and globalization have reduced and replaced the need for certain traditional legal jobs. The combination of declining employment opportunities and the high cost of a legal education led to a sharp decline in the number of applicants applying to law schools. From 2010 through the fall of 2014, the number of applicants to law school was in steep decline, falling to just under 38,000 – the same number of law students who were attending law school in 1975 when there were 36 fewer accredited law schools with seats to fill. This left the highly saturated law school market scrambling. Some law schools responded by reducing class sizes. Other law schools responded by reducing admission standards, admitting more students whose LSAT scores fall within the bottom 25th percentile in order to fill seats. Unfortunately, scores within the bottom quartile on the LSAT correlate to increased difficulties in law school, in passing the bar exam, and in securing employment.
In July 2014, the bar passage rate fell nationwide. The average scaled score on the Multistate Bar Exam (the “MBE”— better known as the multiple choice portion of the exam) fell to 141.5, two to three points lower than where the mean had hovered since 2006. Some were quick to challenge the bar examination itself, though outside independent expert analysis commissioned by the National Conference of Bar Examiners (“NCBE”) confirmed no measurement abnormalities that would account for the drop. Information published by the NCBE, and more recently, a study by the advocacy group Law School Transparency, have demonstrated a correlation between the increase in admission of law students in the bottom LSAT quartile and the drop in the bar pass rate. NCBE also points out that beginning in 2011, Law School Admission Council (“LSAC”) (the organization that administers the LSAT) changed how it reports LSAT profiles and began using the highest scores rather than the average scores of applicants who took the LSAT – a practice that complicates the comparison of historical statistics about the strength of admitted classes. An added concern is that data reported by LSAC and highlighted in the Law School Transparency report shows that high LSAT scorers have decided against applying to law school at greater rates than low scorers. The top 20% of LSAT test-takers declined at more than 2.5 times the rate of the bottom 20%. In other words, there has also been a “brain drain” in addition to an overall decline in the number of persons applying to law schools.

During this same time frame, the economic stresses placed on law firms by the recession left legal employers less tolerant of devoting resources to the historical role legal employers have played in the practical training of newly licensed lawyers. This was complicated by the negative stereotypes of millennials (who make up the majority of new lawyers), as having a lack of appreciation for privacy, the need for constant connection, a demand for instant feedback, a less superior work ethic, placing an emphasis on achievement recognition, and a lack of respect for others and older generations. This has resulted in a wave of complaints by legal employers that law schools were not producing “job ready” lawyers, and that newly licensed lawyers are not trained concerning civility and professionalism. As a result, employers turn to practice ready laterals who are readily available for most positions due to the downturn in the legal market.

This refrain has placed enormous pressure on law schools (and on the American Bar Association’s “ABA” Section on Legal Education and Admission to the Bar which sets law school accreditation standards) to re-evaluate what should constitute a legal education. The debate centers on whether legal education should focus more heavily on “skills” and experiential training in lieu of doctrinal training— a discussion that exposes a larger conceptual debate over (i) whether the practice of law is primarily a skills-based trade or a doctrinal-based profession; and (ii) whether bar associations and legal employers should be expected, even required, to formally collaborate with law schools to educate and train newly licensed lawyers. The debate has also focused on whether skills related to non-traditional legal jobs, as well as technology related practice skills should be part of legal education and training.

During this time of declining law school enrollment, increasing student loan debt, and a grim employment picture, we are separately confronting an access to justice problem. While there do not seem to be sufficient jobs for new lawyers, at the same time there also do not seem to be sufficient legal services to meet the needs of citizens who either cannot afford representation or do not have access geographically to representation. Also present is the growing trend by those of moderate means (and above moderate means) to choose to self-represent by utilizing Internet-based legal services, forms, and information, assuming legal “services” are pursued at all. Technological access to legal services and information is enabling people to represent themselves, and is automating many tasks previously performed by lawyers, especially new lawyers, further
depressing a weak job market while technology is also weakening our geocentric approach to regulating the profession. Thanks to technology, it is now easier and more common for lawyers to represent clients located anywhere, from an office located anywhere, and the need for physical office space and libraries is diminishing. We thus have attorneys without jobs, clients without attorneys, and clients acting as their own attorneys, all of which affects the overall delivery of appropriate legal services.

Add to the national debate issues concerning foreign educated lawyers. The existing approach toward admission of foreign law graduates to state bars ranges from complete rejection to admission on motion. (Missouri bar admission rules allow admission by exam, assuming satisfaction of specified educational and other requirements.) The overriding concern is to ensure that foreign educated attorneys seeking to practice law in the United States have a legal educational experience comparable to that required of those educated in the United States.

These complicated issues have combined to yield a perfect storm of tension among legal education/bar admission/legal employment constituent groups, which has led, not surprisingly, to ample finger pointing as blame is sought and attributed. In reality, the current issues are complex and interrelated in origin, rendering clear “cause-effect” attribution nearly impossible.

Nonetheless, some state bar admitting authorities and law schools have hurriedly moved to respond to the current crisis by considering and/or adopting perceived solutions. Such measures have included, among other things: (i) considering a reduction in the number of credit hours required to complete law school such that a JD degree could be secured in two years instead of three years; (ii) accelerating the ability to sit for the bar examination while still in law school; (iii) increasing experiential training opportunities available as a part of the law school curriculum; (iv) considering abandonment of the bar examination all together in favor of a diploma privilege for in-state law school graduates; (v) creating limited license and paraprofessional opportunities to permit the authorized practice of law in tailored “skill driven” areas by individuals who do not have a law license; (vi) creating legal incubators to assist newly licensed lawyers in the transition from law school to the practice; (vii) considering dramatically different legal education models that include formal internships or residencies (the “medical model”); (viii) adopting measures that increase the portability of bar admission from state to state, including the uniform bar examination and admission on motion privileges; (ix) adopting relaxed admission privileges to facilitate portability for transferred military personnel and family members; and (x) considering financial incentives such as loan forgiveness to encourage practice in underserved areas.

In addition to these state-specific responses, national efforts have also sought to respond to the current tensions. For example, the ABA Section on Legal Education and Admission to the Bar has approved modifications to its accreditation standards to permit awarding course credit for bar examination preparation offered as a part of the law school curriculum, and to permit authorized course credit for remote on-line studies. NCBE is exploring the expanded use of technology in taking the bar exam, and continues to assess the content of the exam itself, including the findings of a recent comprehensive Job Analysis survey that asked newly licensed lawyers what skills, abilities, and knowledge domains are significant to their practice. The Conference of Chief Justices (“CCJ”) has adopted a resolution in support of promoting the adoption of the Uniform Bar Examination as a means of enhancing portability of practice.

All of these responsive measures are well-intended. However, it is worthy of note that at least with respect to a few of the contemplated responsive measures, the intended desire to ease some
of the current issues facing legal education and admission to the bar may well operate at cross purposes with other current issues. For example:

- The prospect of reducing the number of credit hours required to secure a JD degree may respond to the high cost of securing a legal education, but could disregard the concern that three year educated law students are already perceived as not “job ready.”

- The development of limited license or paraprofessional programs may respond to the high cost of legal education and to concerns that not all law school graduates can find “general law license” jobs. However, parsing the practice of law into skills-based tasks that can be lawfully performed by limited license holders or paraprofessionals might place increased pressure on an already tight legal employment market by putting limited license holders in competition with those who secure a law license. In addition, though limited license or paraprofessional programs may respond to a separate crisis – the “access to justice” crisis – such programs generate increased pressure on legal educators and bar admitting authorities. Standardized and normative processes for educating, testing, licensing, and regulating limited license legal professionals are presumably essential to regulating those who would be providing limited legal services to the public.

- Abandoning the bar examination in favor of diploma privilege admission for in-state law graduates may accelerate the time within which a new law school graduate can begin work, and may relieve law school graduates of the expense of licensure and bar exam preparation courses in light of already high student loan debt. Yet, diploma privilege favors only in-state graduates, a state-specific benefit that is of no assistance to in-state graduates who will be practicing in another state, or to out-of state graduates desiring to practice in the diploma privilege state. Diploma privilege may be perceived as an impediment to portability that could promote (along with other state-specific legal education and bar admission requirements) a wave of parochialism amongst bar admitting authorities, creating obstacles to portability at a time when the legal employment market is already tight, and when the national and international refrain in favor of a borderless profession is strengthening. Further, one might question the wisdom of eliminating the bar examination at a time when some law schools are lowering admission standards in response to a shrinking applicant pool.

- The accreditation standard which now permits law schools to award credit for bar preparation courses was intended to eliminate the expense law students incur for “for profit” bar preparation courses – a cost that currently averages approximately $2,500. However, several law schools have not embraced preparation of students for the bar examination as a part of the law school mission and have instead “outsourced” bar preparation courses for law school credit to for-profit bar preparation companies, with the expense being born by the students.

These observations about the potential consequences of remedial measures are not intended as an indictment of the measures. Rather, these observations are intended to underscore the importance of thoroughly vetting remedial measures as the desire to address one issue facing legal education and bar admissions may unwittingly have the attendant effect of exacerbating another issue.

There is yet another wrinkle in the current crisis facing legal education and admission to the practice that should be mentioned. In responding to the separate and distinct “access to justice” crisis, a few states have imposed substantial pro bono service requirements on in-state law schools, and on out-of-state law students who wish to be licensed in the state. These state-specific legal education requirements materially exceed the normative requirements of an ABA accredited legal education. Though noble in purpose, these initiatives are perceived by some to create significant
obstacles to portability of admission at a time when many law students do not have a job when they complete their legal education.

Lastly, the wave of “add-on” state-specific admission requirements creates an air of parochialism – a sense that states are “closing rank” in preference to in-state educated law students over out-of-state educated law students. This perception hearkens back to a time decades ago when admission on motion (reciprocity admission) was the exception, and not the rule. Whether or not so intended, state-specific bar admission requirements that impose material obstacles to portable admission exacerbate current tensions, and the conflict already inherent in a profession that is being pushed to become borderless even though it is regulated on a state by state basis.

2. Future Issues

The complex tensions currently impacting legal education and admission to the practice are expected to ease as the economy improves, and as the natural forces of supply and demand reduce the number of law school seats and the number of law school applicants. Those in the business of measuring and anticipating such matters predict relative equilibrium between available legal employment and the number of newly licensed lawyers sometime between now and 2021. The spotlight on the high cost of securing a legal education and the resultant high level of student loan debt has prompted consumer driven initiatives, including newly adopted accreditation standards that are designed to enable future law school applicants to be better informed consumers.

Because current heightened tensions are expected to ease (at least in part) naturally and relatively soon, some pause is warranted before considering the adoption of dramatic state-specific changes in legal education and/or bar admission practices. This is particularly so since: (i) state-specific changes are inherently limited in their ability to impact national challenges effecting legal education and admission to the practice; and (ii) state-specific changes can complicate portability of admission. That is not to say, however, that no recommendations are warranted in response to current tensions impacting legal education and admission to the practice.

Beyond the current tensions, there are broader questions about the future of the profession. What will or should legal education and the practice of law “look like” in the future? Is the practice of law a trade that can be readily deregulated or a profession requiring regulation and licensure? Should legal education shift focus to competencies versus doctrinal training? What should be the role of law schools in the life-long education of licensed attorneys? What is the “value added” by a law license to services historically provided by licensed attorneys? These questions and others warrant present contemplation and preparation as in the absence of same, Missouri will lose the ability to meaningfully impact the future of legal education and admission to the practice.

B. Short-term, mid-term, and long-term recommendations

Recommendation #1: The Missouri Bar and the Missouri Supreme Court should explore requiring newly licensed lawyers to participate in a mentoring program within their first year of practice.

a. Intended Objectives: The intent of this recommendation is to address the transition of newly licensed lawyers into the practice. Legal education should not be expected to generate fully “practice ready” lawyers, either in terms of doctrinal competence, or other legal competencies. As with any profession, the educational base must be supplemented with real world experience. And though some real world experience can be attained through experiential learning in law school, it is unrealistic to expect that a three year legal education can provide newly license lawyers with any more than basic required competencies, skill sets, and substantive knowledge. The profession
of law – that is practitioners – must be encouraged to embrace their important role in transitioning newly licensed lawyers. Mentoring programs would facilitate that message, while providing relative structure to the topics/skills deemed appropriately relegated to the mentoring phase. The goal is to better prepare newly licensed lawyers for the real world utilization of their license to practice law, and to create a better collaborative partnership between law schools and practitioners in generating “practice ready” lawyers.

The Subcommittee feels strongly that a mentoring program should not be imposed as a pre-admission/licensure condition. To do so would place undue burden on law schools to shoulder the weight of a mentoring program, could impair portability of admission, and could add to the delay between sitting for the bar examination and licensure.

In contrast, crafting a mentoring program that must be completed post-admission within the first year after a license to practice is attained will encourage collaboration with practitioners, restoring practitioners as a necessary and appropriate partner in the legal training model. A post-admission mentoring program would also encourage the development of professional relationships that could serve as a life-long practical resource for newly licensed attorneys.

b. Issues that Require Consideration:

1. Would the mentoring obligation be a strictly regulatory obligation subject to enforcement by the Court (similar to annual CLE requirements), or should thought be given to permitting the mentoring requirement to be satisfied by certifications that particular substantive areas and skills have been mastered or completed.

2. Would mentors be independent of a newly licensed lawyer’s employer, specifically trained for that role, or could mentors be a newly licensed lawyer’s employer who has agreed to undertake that role. This consideration implicates a number of factors which would need to be addressed, including the logistics of locating a sufficient number of independent mentors, particularly in rural practice areas; confidentiality and attorney-client privilege concerns if independent mentors are used; the need to avoid negative compensation impacts on those in a mentoring relationship; the need for mentor standards and qualifications; if employers can serve as mentors, the need for alternatives for newly licensed lawyers who do not have access to a qualified employer mentor because they are unemployed, in solo practice or in a small firm with other newly licensed lawyers, have accepted non-traditional legal employment, or work for an employer who refuses to serve as a mentor. [NOTE: Recommendation #2, below, anticipates creating models that would, by their nature, provide a structure for mentoring that could satisfy this requirement as well.]

3. Mentoring objectives/tasks would have to be identified to create meaningful measurables against which a mentor would assess a newly licensed lawyer’s performance or compliance. These objectives would have to be flexible and tailored to anticipate different areas of practice and nontraditional legal employment. At the same time, processes would need to be developed to permit mentees to address dissatisfaction with mentors.

4. Subjects identified in the discussion of other recommendations in this report that are important to the profession’s future, such as recognition of the duty and obligation of licensed attorneys to embrace the practice of law as a profession with the somber responsibility to promote respect for the rule of law, should be integrated in to the mentoring program. Subjects identified by the Office of Chief Disciplinary Counsel as “hot spots” generating client complaints should be integrated into the mentoring program.
c. Specific Resources Available for Comparison: Oregon, Georgia and Utah have developed extensive post-admission mentorship programs with reporting requirements.

d. Impact of Recommendation on other Task Force Subcommittees: The Subcommittee does not anticipate that this recommendation will conflict with the recommendations of the other Task Force subcommittees.

Recommendation #2: The Missouri Bar, the Missouri Supreme Court, Missouri law schools, and legal employers should explore avenues for supporting law schools in the development of models to provide: (i) additional education; (ii) exposure to technology; (iii) exposure to other resources and information; and (iv) methods of practice to serve modest means clients. Examples of such models include, but are not limited to, law school incubator and residency programs.

a. Intended Objectives: This recommendation would serve the dual purpose of post-admission training and transitioning of newly licensed lawyers while developing models of practice to serve modest means clients (generally those with too much income to qualify for legal aid, but not enough to afford full attorney’s fees, and thus eligible for reduced attorney’s fees).

b. Issues that Require Consideration:
1. The models would require collaboration between the Missouri Bar, practitioners, and Missouri law schools. However, it is not intended that this collaboration be designed to impose regulatory burdens on law schools. Law schools are already proactively exploring models consistent with this recommendation. The recommendation is intended to tap into those proactive efforts in order to enhance their effectiveness statewide without assuming regulatory control over those efforts.

2. How could the Missouri Bar facilitate funding for these programs, and the support and buy in of practitioners whose expertise lends important training resources to such programs.

3. Managing the message so that such programs are not misconstrued as competition for existing law firms, and are instead recognized as integral training models that focus the provision of legal services to a client base that is avoiding engaging necessary legal assistance because it is cost prohibitive and because of ineligibility for free legal services.

c. Specific Resources Available for Comparison: UMKC School of Law currently operates a legal incubator. In addition, a recently formed national incubator consortium would provide a resource for information and materials about incubator/residency program models that have been implemented by law schools across the country. Finally, Georgia is implementing a collaborative incubator program involving all five Georgia law schools and the Georgia Supreme Court and State Bar to provide post-graduation support and training to newly licensed lawyers who are committed to serving communities in need.

d. Impact of Recommendation on other Task Force Subcommittees: This recommendation could contemporaneously advance the recommendations of the access to justice subcommittee, and of the technology subcommittee.
Recommendation #3: The Missouri Bar and the Missouri Supreme Court should explore the development and support of programs designed to encourage newly licensed lawyers to practice law in underserved rural areas.

a. Intended Objectives: At the same time legal employment is difficult to secure, it is ironic that rural areas in our State are underserved by legal professionals. Programs that encourage newly licensed lawyers to practice law in underserved rural areas would ease the employment crisis while providing needed legal services.

b. Issues that Require Consideration:
1. Student debt is a prohibitive factor in accepting lower paying legal positions, or in assuming the risk of a start up practice in a rural area. The Missouri Bar and Supreme Court cannot single handedly remediate or modify federal student loan guidelines. However, our State should position itself to support and encourage a national discussion about programs that would forgive student loan debt on a tax free basis in exchange for providing legal services in rural (underserved) areas, similar in structure to existing models for medical students, and to the “Teach for America” program.

2. The successful Solo and Small Firm Listserve and Conference should be utilized as a resource to connect current “senior” practitioners in rural areas with law students and/or newly licensed lawyers to develop mentoring relationships that could assist retiring rural practitioners in transitioning their practice to a newly licensed lawyer.

3. Programs developed pursuant to this recommendation should consider the importance of developing and supporting two pipelines: (a) a pipeline that would encourage law students from rural areas to return to those areas to practice; and (b) a pipeline that educates and exposes law students from urban areas to the attractions of a rural practice.

4. Programs developed pursuant to this recommendation should not overlook the prospect of using technology as a means by which newly licensed lawyers could provide legal services to rural areas, for example remote conferencing capabilities.

c. Specific Resources Available for Comparison: As mentioned, the medical student model, and the Teach for America model, both provide potential templates for encouraging and participating in a national discussion that could lead to necessary changes in addressing legal education student loan debt as an impediment to practicing law in rural areas. In addition, North Dakota, South Dakota, Texas, and Nebraska have implemented programs to encourage the provision of legal services in rural areas. The American Bar Association also offers information on the subject of encouraging rural legal service support programs.

d. Impact of Recommendation on other Task Force Subcommittees: This recommendation could contemporaneously advance the recommendations of the access to justice subcommittee, the technology subcommittee, and the exiting from the practice subcommittee.
Recommendation #4: The Missouri Bar and the Missouri Supreme Court should avoid adopting, or supporting the adoption of state-specific “add-ons” to securing a legal education or admission to the Bar, as such requirements have the potential of delaying licensure and/or impacting the portability of bar admission.

a. Intended Objectives: The Subcommittee’s research suggests that state-specific add-ons to securing a legal education or admission to the Bar may be well-intended efforts to remediate, in the short-term, current issues and tensions, but that the long term implications of such efforts on portability of admission and on expanding differences in state-level admitting requirements will do more harm than good. Instead, the Subcommittee encourages Missouri to be an active national leader in promoting uniform legal education and admitting standards, as is explained in Recommendation #5.

Recommendation #5: The Missouri Bar, the Supreme Court, and Missouri law schools should position Missouri to be a leader in national discussions: (i) promoting legal education and bar admission standards that encourage exploration of education models that will better prepare law students for the practice of law in the future, while facilitating portability of admission from state to state; (ii) promoting partnerships with accrediting authorities; and (iii) promoting partnerships with the National Conference of Bar Examiners.

a. Intended Objectives: Because the standards for admission to the bar remain relegated to the jurisdiction and domain of each state admitting authority, it is nearly impossible for a single state to unilaterally adopt a program or initiative for “change” that will ease national tensions impacting legal education and admission to the practice. And state-specific efforts to do so can unwittingly exacerbate the fractured nature of admission to the practice inherent in a state-specific admission model. There are, however, programs and initiatives that could have a positive impact if made on a national level, or made reasonably simultaneously by a significant number of states. At the same time, it is important to avoid environments that discourage experimentation and evolution in legal education models that could be better positioned to educate the lawyers of tomorrow.

Missouri has long enjoyed a position of leadership in the field of bar admissions, demonstrated, for example, by its early adoption of the Multistate Bar Examination (created by Dean Covington from the University of Missouri School of Law); in its early adoption of the Multistate Performance Test; and in being the first state to adopt the Uniform Bar Examination. In addition, Missouri law schools have long enjoyed the reputation of being ahead of the curve in affording students access to programs and courses that are later woven into ABA accreditation requirements. We should draw upon our state’s long-standing tradition of national leadership to lead the charge in national discussions involving the future of legal education and bar admissions.

b. Issues that Require Consideration:
1. Several topics fall naturally within this recommendation, including:
   a. Promotion of expanded adoption of the Uniform Bar Examination
   b. Working in partnership with the National Conference of Bar Examiners to facilitate its initiatives examining the content validity, structure, and timeframe for administration, of the Bar examination
   c. Supporting national efforts to ameliorate the financial impact felt by law students who have limited access to federal student loans during the gap period between graduation from law school and admission to the Bar
   d. Supporting uniformity of admission standards, and/or the prospect of national licensure
   e. Supporting uniformity in the regulation of licensed attorneys, while reinvigorating the notion
that practice regulations should be motivated by the need to protect the integrity of the profession.

f. Encouraging State Supreme Courts to take an active and forward thinking role in working with the ABA accrediting authority to explore what an accredited legal education should look like, and to work in partnership with the accrediting authority and law schools to develop commensurate accrediting standards that preserve the value of accreditation as a meaningful normative measure of the quality of a legal education without unnecessarily impairing or constricting fluidity in legal education models pressured to respond to the changing face of the practice.

g. Encouraging national discussion about how best to accommodate both competency training and doctrinal training in accredited legal education models to permit legal educators to effectively prepare law students for the practice of law.

2. As is addressed in a later recommendation, it would be advisable to have an employee of either the Missouri Bar or the Missouri Supreme Court whose duties and responsibilities revolve around implementation of this (and other) recommendations of the Task Force.

c. Specific Resources Available for Comparison: The Subcommittee is not aware of an existing model for implementation of this recommendation. However, there are numerous existing organizations and bodies through whom national coalitions and discussions could be fostered, including, without limitation: (i) the ABA Section on Legal Education and Admission to the Bar, and in particular, the Accreditation and Bar Admission Subcommittees of that Section; (ii) the National Conference of Bar Examiners; and (iii) the Conference of Chief Justices.

d. Impact of Recommendation on other Task Force Subcommittees: A forward thinking effort by our state to lead and encourage the national discussion about the future of legal education and bar admissions could contemporaneously advance the recommendations of the access to justice subcommittee, and the technology subcommittee.

Recommendation #6: The Missouri Bar, the Supreme Court, and Missouri law schools should encourage and support programs and initiatives that seek to protect and restore the value of a law license as an embodiment of the profession’s integral role as the caretaker of the Rule of Law. Present and future programs and initiatives should be measured by their impact on the profession’s ability to serve in this role. And standards for legal education, admission to the practice, and regulation of the practice, should be modeled with the protection and advancement of this role as a primary objective. At the same time, those same groups should encourage and support programs and initiatives that better inform about the value added to a client when legal needs are serviced by a licensed attorney who is ethically bound to be client-centered, who owes a fiduciary obligation to the client, and with whom a client can develop a valued professional relationship.

a. Intended Objectives: The “trade versus profession” debate rages in the legal profession. The practice of law involves the performance of tasks and skills – attributes of a trade. The practice of law also embodies broader competencies that cannot be readily segregated into precise tasks or skills. The practice of law embodies a whole that is greater than the sum of technical skills or content mastery. The practice of law embodies a position of trust and confidence over matters that are not readily understood or capable of performance by those without the requisite training. The practice of law embodies an obligation to protect the institution of justice and the Rule of Law. The practice of law carries with it a duty to perform within ethical bounds, warranting a codified canon of ethics. The practice of law imposes a duty to serve clients and the profession alike. The practice of law is not a science. Though the practice of law incorporates tasks that can be mastered by many
through practice and repetition, the performance of those tasks while applying legal judgment and in performance of the overarching obligation to protect the Rule of Law differentiates the “practice of law.”

Global and market forces are pushing for deregulation of the practice – for the separation of the right to perform certain legal tasks from the need to be licensed to practice. These forces focus on the practice of law as a series of tasks or skills, with little thought given to the intangible value of legal judgment and protection of an institution in the performance of those skills. These forces raise important issues about access to justice, the cost of legal services, the desire for a global legal economy, and other such topics. The topics warrant attention. However, change driven by these topics must be anticipated and realistically managed, at the risk of devaluation of a law license, and the loss of professionalism inherent in the practice of law.

At the same time, cultural and other changes, including technological advancements, have blurred the sense of value added through use of a licensed attorney to address legal needs of legal conflicts.

This recommendation does not seek to define what should properly fall within the domain of the regulated practice of law. This recommendation does not seek to specify a position that the Missouri Bar or our Supreme Court should adopt in response to any particular global or market effort to deregulate the practice of law. Rather, this recommendation is intended to emphasize the importance of posturing ourselves to engage in national discussion about such efforts mindful of the essential role of our profession as the caretaker of the Rule of Law. And this recommendation recognizes that consumers can not be presumed to understand or accept as a given that the provision of legal services by a licensed attorney adds important value to the client.

**b. Issues that Require Consideration:** As is addressed in a later recommendation, it would be advisable to have an employee of either the Missouri Bar or the Missouri Supreme Court whose duties and responsibilities revolve around implementation of this (and other) recommendations of the Task Force.

**c. Specific Resources Available for Comparison:** The Subcommittee is not aware of an existing model for implementation of this recommendation. However, there are numerous existing organizations and bodies through whom national coalitions and discussions could be fostered, including, without limitation: (i) the ABA Section on Legal Education and Admission to the Bar, and in particular, the Accreditation and Bar Admission Subcommittees of that Section; and (ii) the Conference of Chief Justices.

**d. Impact of Recommendation on other Task Force Subcommittees:** A forward thinking effort by our state to lead and encourage the national discussion about the future of legal education and bar admissions could contemporaneously advance the recommendations of the access to justice subcommittee, and the technology subcommittee.

**Recommendation #7:** The Missouri Bar and/or the Missouri Supreme Court should consider hiring an employee whose duties and responsibilities would be to oversee implementation of the short-term, mid-term, and long-term goals recommended by this Subcommittee, and by the Task Force as a whole.

**a. Intended Objectives:** The recommendations anticipated by the Subcommittee cannot be meaningfully implemented without a consistent, long-term investment of time and resources. Charging a single person with the duties and responsibilities of developing and overseeing a plan
of implementation will insure greater chance for success. This is particularly true with respect to recommendations that require positioning the Bar, our Court, and our law schools to lead the way in national discussions on topics of importance facing the future of bar admissions and legal education. Such initiatives cannot be realistically undertaken without forging working relationships – an exercise that requires a consistent “face” and “voice” for this State.

b. Issues that Require Consideration: There will obviously be a fiscal note associated with this recommendation.

c. Specific Resources Available for Comparison: The Subcommittee is not aware of any resources available for comparison, or after which the position herein described would be modeled. Once again, however, Missouri could be a leader in creating a “Future of the Profession Czar” position.

d. Impact of Recommendation on other Task Force Subcommittees: The position anticipated by this recommendation would also be responsible for developing and overseeing a plan to implement the recommendations of the access to justice subcommittee, the technology subcommittee, and the exiting from the practice subcommittee.

IV. CONCLUSION

The Subcommittee embraced the opportunity to explore the important issues relegated to it for consideration. The Subcommittee tenders this report to the Task Force for due consideration.
II. REPORT OF THE SUBCOMMITTEE ON LEAVING OR LIMITING THE PRACTICE OF LAW
The Leaving or Limiting the Practice Subcommittee of the Future of the Profession Task Force has three subgroups which have considered and discussed topics in three areas: retirement and pro bono; succession/surrogate and trustee; and long-range planning. The recommendations of these subgroups have been submitted to the full Leaving or Limiting the Practice Subcommittee for review and approval and are summarized below.

The following are members of the Leaving or Limiting the Practice Subcommittee:

Co-Chair: Hon. Clifford H. Ahrens (Missouri Court of Appeals, Eastern District, Retired) (Hannibal)
Co-Chair: Jennifer Gille Bacon (Polsinelli PC) (Kansas City)
Michael Patrick Downey (Downey Law Group LLC) (Saint Louis)
Christian Andrew Stiegemeyer (The Bar Plan Mutual Insurance Company) (St. Louis)
Robert Kenney (Public Service Commission) (Jefferson City)
Dana Tippin Cutler (James W. Tippin & Associates) (Kansas City)
Christina Rhea Neff (Christina R. Neff, LLC) (Jefferson City)
Alan David Pratzel (Office of the Chief Disciplinary Counsel) Jefferson City
Sheldon Stock (Greensfelder) (St. Louis)
Hon. John C. Holstein (Polsinelli PC) (Springfield)
Doreen Davis Dodson (Polsinelli PC) (Saint Louis)
Hon. James Edward Welsh (Missouri Court of Appeals, Western District) (Kansas City)
Christopher C. Janku (Director of Programs, The Missouri Bar - Staff Liaison)
Anne Chambers (Director, Missouri Lawyers' Assistance Program, The Missouri Bar - Staff Liaison)

Thanks and credit goes to Alan D. Pratzel, Chief Disciplinary Counsel, for his excellent work in drafting revisions to the rules, and for his memos to the subgroups, which are incorporated with minor edits in this report. We also thank Chris Janku and Anne Chambers for their very helpful support work for the subcommittee.
The Missouri Bar, like the general population, is aging. The data reflect that more than one-third of the Bar’s membership is age 55 or older. The Missouri Bar’s 2015 Economic Survey showed that 36.0% of respondents plan to retire when they reach retirement age, and 32.6% are unsure what they will do.

At present, an attorney desiring to retire from the active practice of law has limited choices. Rule 5.25 permits a lawyer to surrender his or her license, but this is neither desirable nor workable because application of the rule results in disbarment of the attorney. Under Rule 6.03, any lawyer not currently stricken from the roll of attorneys may take inactive status by making a written request to the clerk of the Supreme Court. Under Rule 6.01(d), a lawyer becomes exempt for purposes of paying the annual enrollment fee at age 75, after practicing for 50 years or more, upon becoming a retired judge, or upon becoming a retired commissioner of a Missouri court of record.

1 The following statistics regarding the age distribution of current members in good standing came from the Bar’s database as of February 15, 2016:

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Members</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 35</td>
<td>5611 members</td>
<td>18.5%</td>
</tr>
<tr>
<td>35-44:</td>
<td>7079 members</td>
<td>23.4%</td>
</tr>
<tr>
<td>45-54:</td>
<td>6652 members</td>
<td>22.0%</td>
</tr>
<tr>
<td>55-64:</td>
<td>6268 members</td>
<td>20.7%</td>
</tr>
<tr>
<td>65-74:</td>
<td>3264 members</td>
<td>10.8%</td>
</tr>
<tr>
<td>75 and Over:</td>
<td>1402 members</td>
<td>4.6%</td>
</tr>
<tr>
<td>Total:</td>
<td>30276</td>
<td></td>
</tr>
</tbody>
</table>

2 The following data is from the Missouri Bar’s 2015 Economic Survey - Table 1.41:

Retirement Plans:

<table>
<thead>
<tr>
<th>Retirement Plan</th>
<th>Responses</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>I plan to retire when I reach retirement age.</td>
<td>492</td>
<td>36.0%</td>
</tr>
<tr>
<td>I am unsure at this time what I will do.</td>
<td>446</td>
<td>32.6%</td>
</tr>
<tr>
<td>I do not plan to retire.</td>
<td>183</td>
<td>13.4%</td>
</tr>
<tr>
<td>I am of retirement age, but not currently considering retirement.</td>
<td>90</td>
<td>6.6%</td>
</tr>
<tr>
<td>I retired prior to 2014 and maintain my license.</td>
<td>64</td>
<td>4.7%</td>
</tr>
<tr>
<td>Other.</td>
<td>47</td>
<td>3.4%</td>
</tr>
<tr>
<td>I have delayed retirement due to the economic environment.</td>
<td>33</td>
<td>2.4%</td>
</tr>
<tr>
<td>I retired as scheduled in 2014.</td>
<td>8</td>
<td>0.6%</td>
</tr>
<tr>
<td>I was forced to retire in 2014.</td>
<td>2</td>
<td>0.1%</td>
</tr>
<tr>
<td>I voluntarily took early retirement in 2014.</td>
<td>2</td>
<td>0.1%</td>
</tr>
<tr>
<td>Total</td>
<td>1367</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
Emeritus pro bono rules which waive some of the usual licensing requirements for attorneys limiting their practice to volunteer service have been adopted in 37 jurisdictions, including our neighboring states of Illinois, Iowa, and Kansas.\(^3\)

In 2013, the Advisory Committee drafted and submitted to the Court a new Rule 6.035, which would have permitted an attorney to retire from the active practice of law. The Committee’s goals in drafting Rule 6.035 were to: (a) create a retirement status for lawyers who elect to leave the practice - without the requirement of paying annual enrollment or inactive fees; (b) eliminate the need to collect inactive status fees from retired lawyers; (c) encourage payment of inactive status fees by those lawyers who are either planning to later return to active status or are unsure about returning; and (d) enable and encourage senior lawyers to provide pro bono services in association with certified legal service agencies. The Court took no action with regard to Rule 6.035.

At the request of the Retirement Subgroup, Alan D. Pratzel, Chief Disciplinary Counsel, revised proposed Rule 6.035 with the view to resubmitting the retirement rule to the Supreme Court for its consideration. A copy of the revised proposed Rule 6.035 is attached (Exhibit A).\(^4\) The revised Rule incorporates some of the provisions contained in the draft rule creating an “Active Pro Bono License” being considered by a subcommittee to The Missouri Bar’s Access to Justice Committee.

The primary provisions in the revised proposed Rule 6.035 are as follows:

- Lawyers seeking retirement status under this rule must be age 65 or older. That age was chosen to coincide with some retirement schedules; and it encourages the many inactive lawyers under 65 to maintain their inactive status by paying the required inactive fees. In other words, lawyers 65 and older may retire honorably and confidently under this rule. The rule, however, requires them to affirmatively elect retirement status. Lawyers who wish to keep practicing, or who wish to be allowed to return to the active status must follow the process set forth in Rule 6.06.

- Under this rule, lawyers 65 and older may elect to retire and avoid MCLE obligations and inactive fees.

- The court encourages lawyers to provide pro bono services and many attorneys have the desire and skills necessary to provide legal services for the unrepresented. Under the revised Rule 6.035, lawyers taking retirement status are authorized to provide pro bono legal services under certain circumstances set forth in subsection (b). Those circumstances include the following:
  - The lawyer shall use the “retired” designation on all documents filed with the court and shall not represent themselves to be active members of the Bar in court or otherwise.
  - The lawyer must submit a statement to the Clerk of the Supreme Court indicating that the lawyer is currently associated with an approved legal assistance organization. See proposed Rule 6.035(b).
  - The lawyer must obtain certificates of good standing from each state or agency in which the lawyer is admitted to practice law.
  - The lawyer must submit a sworn statement that he or she has read and is familiar with the Rules of Professional Conduct and will abide by the Rules; submits to the jurisdiction of the Supreme Court for disciplinary purposes; will not seek or receive compensation for providing pro bono services; and has completed two hours of ethics CLE.


\(^4\) If the proposed Rule 6.035 is adopted, Rule 6.06 will need to be amended to allow lawyers retired pursuant to Rule 6.035 to return to active status under the guidelines set out in Rule 6.06. Several other Rules will need minor changes to refer to the retirement Rule.
- The lawyer must annually renew his or her authorization to provide pro bono services.
- The revised rule provides specific criteria for certifying and approving legal service organizations.

**TRUSTEE RULE**

The Missouri Bar’s 2015 Economic Survey showed that among both full-time and part-time sole practitioners, 54% report having a designated successor lawyer in case of their disability or death and 46% do not have a designated successor.

At the request of the Succession/Trustee Subgroup of the Task Force on the Future of the Profession, Alan D. Pratzel, Chief Disciplinary Counsel, revised the current trustee rule, Rule 5.26, to allow for and encourage an attorney to name a trustee to transition his or her law practice due to disability, disappearance, death or discipline, a copy of which is attached (Exhibit B). In making the revisions, he primarily relied upon the Indiana surrogate attorney rule (i.e., Rule 23, Section 27).

The primary revisions to Rule 5.26 can be summarized as follows:

- A Lawyer’s designation of a trustee is permissive; in other words, there is no sanction associated with the failure to designate a trustee.
- Section 5.26(a) provides a new definitional section that defines relevant terms in the rule.
- Any member of the Bar in good standing may serve as a trustee.
- Lawyers who are engaged in the private practice of law in Missouri are included within the provisions of the revised Rule 5.26.
- Lawyers who are employed at a law firm (referenced as a “Fiduciary Entity”) or in an organization not engaged in the private practice of law are not included within the provisions of the revised Rule 5.26.
- Section 5.26(b)(1) authorizes the designation of a trustee on a Lawyer’s annual enrollment statement and the designation remains in effect until revoked by either the Lawyer or the designated trustee.
- The Clerk of the Supreme Court shall maintain a list of designated trustees and their addresses.
- Lawyers who fail to designate a trustee shall be deemed to have designated a suitable member of the Bar in good standing who will be appointed by an authorized court to perform the duties of the trustee.
- Upon the disability, disappearance, death or discipline of a Lawyer, the circuit court in the circuit where the Lawyer maintained an office may appoint either the trustee designated by the Lawyer or, if no trustee has been so designated, may appoint one or more other members of the Bar to serve as a trustee and to transition the Lawyer’s law practice.
- The remaining provisions of the revised Rule 5.26 set forth the duties and responsibilities of the appointed trustee and track the existing Rule 5.26.

**LONG-RANGE PLANNING**

The Long-Range Planning (LRP) subgroup defined its charge to be looking “down the road” at issues impacting lawyers’ decisions or ability to leave the practice of law. The group initially identified two areas to consider:

- Issues presented by the many reasons that lawyers, even at a young age, may have for wanting or needing to leave legal practice, often temporarily (e.g., care of young children, or elderly family members, job-related
LEAVING OR LIMITING THE PRACTICE OF LAW

relocation of a spouse to another state, illness or disability, etc.)

• Issues presented by lawyers failing to plan for their eventual retirement, or for the possibility of an illness or disability causing an inability to continue their practice.

TEMPORARILY LEAVING THE PRACTICE
The issue here is actually not leaving law practice, but re-entering it. Missouri Rule 6.03 provides that a lawyer may elect to become inactive with a simple notice to the Supreme Court. Rule 6.06, dealing with returning to active status, set out a tedious, timeconsuming and expensive procedure, which our group proposed addressing.

Serendipity, however, is a wonderful thing. CDC Alan Pratzel, a member of the LRP group, was able to inform us that the Court was already at work on an amendment to Rule 6.06 that would in most cases dramatically streamline the re-entry process. And, on September 10 of this year, the Court issued an Order adopting an amended Rule 6.06, to be effective on January 1, 2016.

The amended Rule, and a memorandum summarizing the changes, are attached to this Report (Exhibit C). The LRP subgroup believes that this streamlined process, creating a much simpler administrative procedure for returning to active status (unless there are prior disciplinary problems), in large part addresses the issues the group had identified. Accordingly, the LRP subgroup offers no additional recommendations on this topic.

PLANNING FOR RETIREMENT OR DISABILITY
The statistics at the front of this Draft Report tell a disturbing story. Only 36% of Missouri’s lawyers in the 2015 Economic Survey plan to retire. Another 32.6% are unsure what they will do. And another 22.4% have either delayed retirement or are not planning to do so at all! Essentially, these statistics suggest that 55% of Missouri lawyers (participating in the Survey) do not have a well-formed or well-thought-out retirement strategy.

Yet, statistics also show that nearly one-third of Missouri’s lawyers are at or near retirement age. The LRP subgroup, recognizing that there appears to be a mismatch between the need for retirement planning and the percentage of lawyers who have done so, has been considering strategies for educating and encouraging lawyers about retirement planning and strategies.

The LRP subgroup has held several meetings, and has included Missouri Bar staff (excellent participation and work by Anne Chambers and Chris Janku) in its deliberations. As a result of those meetings, and meetings held by Bar staff among themselves, the LRP subgroup is recommending that The Missouri Bar develop a longterm communication strategy to:

• Educate its members about the importance of retirement planning with emphasis on newer members, including specific strategies targeting young lawyers and those at later stages of their careers.
• Educate its members, new and older, about the proposed surrogacy rule and how it works.
• Educate its members about the proposed retirement rule and how it works.

Missouri Bar staff has indicated they can use relevant platforms to reach our Bar members, and have also indicated that technology continues to progress, and that different outlets for our message may be available next year.
A list of current examples for our communication effort was developed at the LRP subgroup’s last meeting, and includes the following:

- Website;
- Articles;
- Mo Bar publications;
- Video;
- PowerPoint presentations;
- CLEs and/or webinars;
- Stand-alone presentations or sections to be included in other select presentations or sections to be included in other select presentations, such as protecting yourself professionally or at OCDC Ethics School;
- Materials distributed at MOLAP information booths;
- SOLO and Small Firm Conference presentation.

The members of the Leaving or Limiting the Practice Subcommittee appreciate the opportunity given to them by the Task Force to look at these important issues and provide thoughts and recommendations on this aspect of the future of the profession. Thanks for your consideration.

Respectfully submitted:

Jennifer Bacon
Clifford H. Ahrens

Leaving or Limiting the Practice Subcommittee Co-Chairs
III.
REPORT OF THE SUBCOMMITTEE ON TECHNOLOGY
BACKGROUND AND CREDITS
This subcommittee initially was charged to identify current and future tech-related issues for the legal profession and offer short-term, mid-term, and long-term recommendations. Ultimately, we trended toward current and short-term issues for several reasons:

• From our earliest conference calls, current tech-related issues have dominated. Discussion of longer-term matters often reverted quickly to current problems and concerns, as though lawyers and judges all felt compelled to address these first.

• Even as to the mid-term, we simply cannot predict technological developments and trends with enough confidence to offer firm, meaningful proposals. See Recommendation #1 and supporting comments.

• The ABA and other entities actively track many mid-to-long-term technology concerns. Missouri Bar staff already knows and follows these sources.

• The Missouri Bar has “gotten into” longer-term technology issues since our group was formed and separate from our efforts. For example:
  ◦ Last summer, Missouri Bar leaders attended and enthusiastically reported on a Chicago panel discussion on disruptive innovators (LegalZoom, Avvo, etc.) and the future of the legal profession (see www.abajournal.com/mobile/article/disruptive_innovators_try_to_convince_skeptical_attorneys_of_the_need_to_co/).
  ◦ The Missouri Bar featured a similar plenary session, with nationally-prominent speakers, at its annual meeting last October.

We hope the Bar’s latter efforts, which we applaud, portend the even greater commitment inherent in our recommendations. Technology will increasingly disrupt our legal system and profession for good or ill. You cannot find a safer bet. This certainty and its likely scope drive our key recommendations that the Missouri Bar:

• Prioritize the ongoing, meaningful tracking and consideration of mid-to-long term technology issues via permanent qualified committees or other appropriate means; and

• Actively assist its members as to relevant technology, not only by offering education, but by using its size and market power to evaluate technology services and providers and otherwise assist lawyers in exercising due diligence and reasonable care as to techrelated issues and concerns.

The common denominator of these and all our recommendations is the need and unique ability of the Missouri Bar to more actively educate and support its members regarding current and future technology issues and concerns, especially solos, small firms, and outstate lawyers lacking access to urban or specialty bars for help and guidance.

We thank The Missouri Bar staff, particularly Lucas Boling, for assisting and supporting our subcommittee’s efforts. We have appreciated this opportunity to serve and respectfully tender the recommendations that follow.
Recommendation #1
The Missouri Bar should prioritize the ongoing, meaningful tracking and consideration of mid-to-long term technology issues via permanent qualified committees or other appropriate means. Ideally, this should be in communication (and cooperation where appropriate) with the judiciary on matters of shared or common concern.

Throughout society, technology advances apace. History demonstrates “that technological change is exponential, contrary to the common-sense ‘intuitive linear’ view. So we won’t experience 100 years of progress in the 21st century — it will be more like 20,000 years of progress (at today’s rate).”

Our legal profession will not be immune. Rather, our challenges and those of other professions will increase with every passing year:

[W]e are on the brink of a period of fundamental and irreversible change in the way that the expertise of [lawyers, doctors, and other professionals] is made available in society. Technology will be the main driver of this change. And, in the long run, we will neither want nor need professionals to work in the way they did in the twentieth century and before.

Other experts sketch a future where computers replace highly trained professionals, including lawyers, for a growing number of tasks.

Specific predictions aside, technology will change and even disrupt our profession at an accelerating pace. Many see this as a negative, and it may turn out that way for some. Yet we also see truth in Chief Justice Mary Russell’s view that “technology is the key to our survival as a legal system.” Technology-driven change plays into issues addressed throughout this report, but also holds promise for advancing our legal profession, perhaps foremost as to law-practice sustainability and access to legal services.

Whether technology-driven change is viewed as good or bad by the legal profession, market forces (largely from outside this state and this profession) will intervene as LegalZoom and other disruptive innovators have shown. Our ability to adequately respond may well hinge on our profession’s capacity to adapt to the changing landscape that technology offers. It seems impossible to overstate the changes we could see – and how fast they could happen – if anything like the “exponential” rate posited by Kurzweil and others holds true.

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2 Richard and Daniel Susskind, The Future of the Professions: How Technology Will Transform the Work of Human Experts, Introduction, page 1 (Oxford Press 2015). As an illustration, the Susskinds recall their mid-1990’s prediction that email would become the dominant medium for attorney-client communication – derided then by bar leaders who claimed the Susskinds “failed to understand confidentiality,” but which has proven to be true. Id. Page 3

3 Erik Brynjolfsson and Andrew McAfee, The Second Machine Age (Norton 2014). “As digital labor becomes more pervasive, capable, and powerful, companies will be increasingly unwilling to pay people wages that they’ll accept, and that will allow them to maintain the standard of living to which they’ve been accustomed.” Id. [chapter 14].

If disruptive change to our legal system and profession is not a question of “if,” but “when,” it seems self-evident that the Missouri Bar should prioritize the ongoing, meaningful tracking and consideration of mid-to-long term technology issues via permanent qualified committees or other appropriate means, ideally in communication (and cooperation where appropriate) with the judiciary on matters of shared or common concern.

Recommendation #2
The Missouri Bar should actively assist its membership as to relevant technology, not only by offering education, but also by evaluating technology services and providers and otherwise assisting lawyers in exercising due diligence and reasonable care as to tech-related issues and concerns.

Given the foregoing issues and considerations, it is not surprising that some 15 states already have adopted this new commentary to the ABA Model Rules of Professional Conduct (our emphasis):

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology....

Whether or not Missouri formally follows suit, the practical need for lawyers to stay abreast of relevant technology is almost certain to increase exponentially. If even the largest law firms struggle in this regard, how can solos and small firms be expected to keep up “on the side” while practicing law full-time?

Education
The Missouri Bar must continue and even increase efforts to educate lawyers on tech-related issues. Our attorneys practice in settings from urban to suburban to rural. They include general practitioners, business litigators, prosecutors, defense counsel, transactional attorneys, probate and estate practitioners, and every other kind of lawyer. Although technological advances affect different lawyers differently, common practices, issues, or concerns would include:

• Electronic communication (email, text messages, etc.);
• Risks to confidentiality of client or case-related information; and
• Efficiencies offered by technology, such as automating certain processes and freeing lawyers to spend more time solving client problems.

These are current and ongoing areas where the Missouri Bar’s commitment to educate solos, small firms, and outstate attorneys is critical. These lawyers – a majority of Missouri attorneys – are least likely to have the time or resources to keep abreast or even fully aware of “the benefits and risks associated with relevant technology” as increasingly required as a practical matter and perhaps soon by formal ethics rule, or appreciate how technology might improve their ability to practice in their chosen field and locale.

Other Assistance
Given its size and market power, the Missouri Bar also should actively assist its members by evaluating technology products/services, and encouraging vendors to offer products, services, and

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5 Model Rules of Professional Conduct, 1.1, comment 8.
business terms that allow lawyers to comply with all relevant ethical standards. Cloud computing illustrates the current lawyer dilemma.

According to the ABA, 20 states have issued ethic opinions regarding lawyer cloud computing.\(^6\) Iowa’s opinion was deemed “illustrative” and provided a “list of suggested questions that lawyers should ask all technology vendors, not just cloud computing providers” (our emphasis). We quote just some of these questions:

- Will I have unrestricted access to the stored data?
- Have I performed due diligence regarding the company that will be storing my data?
- Is it a solid company with a good operating record, and is its service recommended by others in the field?
- In which country and state is it located, and where does it do business?
- Does its end user’s licensing agreement (EULA) contain legal restrictions regarding its responsibility or liability, choice of law or forum, or limitation on damages?
- Likewise, does its EULA grant it proprietary or user rights over my data?
- In the event of a financial default, will I lose access to the data, does it become the property of the SaaS company, or is the data destroyed?
- How do I terminate the relationship with the SaaS company?
- What type of notice does the EULA require?
- How do I retrieve my data, and does the SaaS company retain copies?
- Are passwords required to access the program that contains my data? Who has access to the passwords?
- Will the public have access to my data?
- If I allow nonclients access to a portion of the data, will they have access to other data that I want protected?
- Recognizing that some data will require a higher degree of protection than other data, will I have the ability to encrypt certain data using higher level encryption tools of my choosing?\(^7\)

Imagine the difficulty of individual Missouri lawyers and firms getting technology vendors to provide such information in an understandable, apples-to-apples format to meet recommended due diligence under this “illustrative” ethics opinion.

The Missouri Bar, by strength of numbers and expertise, is far better suited to proactively and innovatively assist its members in these areas. CLEs can help, as can the Iowa and other cloud ethics opinions, but such resources simply aren’t enough. We urge the Missouri Bar to implement processes to appropriately evaluate significant technology products and vendors as to ethics-related concerns. These may include, but are not limited to, client data security, confidentiality, access (including removal upon termination of service), and protection from breach, loss, or other risk.

\(^6\) www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/cloud-ethics-chart.html.

This could be a big obligation for the Missouri Bar to take on, requiring more staff, more effort, and more money. But if our mandatory statewide bar association cannot position itself to do these things, time or money-wise, how can individual lawyers or firms be expected to do them in their spare time? The Missouri Bar, perhaps in conjunction with the ABA or other state and local bar organizations, offers economy-of-scale opportunities far greater than lawyers or firms could achieve in dealing with and evaluating technology vendors and products. The Missouri Bar need not screen all products and vendors, or do everything at once, but could start with low-hanging fruit, improving and refining its approach as it goes. Success would not be universal, but this is a void where our Bar could, and in our opinion should, provide real and necessary value to its members. Presumably OCDC and our Supreme Court would give appropriate consideration to an attorney’s good faith efforts to follow any Missouri Bar guidance regarding technology-related ethics issues.

Thus, we believe The Missouri Bar should actively assist its membership as to relevant technology, not only by offering education, but also by evaluating technology services and providers and otherwise assisting lawyers in exercising due diligence and reasonable care as to tech-related issues and concerns.

Recommendation #3
The Missouri Bar should survey its membership with appropriate regularity and as needed on “Future of the Profession” and other significant issues, including but not limited to technological competency.

This recommendation naturally follows from our last one, in light of the accelerating pace of technology as previously noted. Ethics codes now expressly cite technology as a lawyer-competency consideration in 15 states, a number likely to grow, perhaps to include Missouri at some point. The transition of all Missouri courts to electronic filing is nearly complete. Electronic discovery is on the rise. All of these factors and others highlight the growing importance of technology competence if lawyers are to capably practice law.

For these reasons and those previously noted, Recommendation #2 calls on the Missouri Bar to more actively educate and affirmatively assist lawyers as to relevant technology. To do so efficiently (given finite resources and other needs), it would seem wise and even necessary to know where Missouri lawyers currently stand as to technological competence, usage, needs, etc. To this end, the Bar should survey its members initially to glean such data and to establish an appropriate “baseline” without which survey data may be of limited value. This should help the Bar determine how best to allocate resources and tailor educational programs and support services. We offer for consideration our effort at drafting such initial survey questions (see Exhibit A). Whatever initial questions are used, there should be a system of follow up to assess the effectiveness of any Bar programs and services that are developed with goals of (1) ongoing and continuous improvement of such programs and services, in aid of (2) increased technological competency of its members.

That said, specifics and mechanics likely are less critical than the premise itself, that The Missouri Bar should survey its membership with appropriate regularity and as needed on “Future of the Profession” and other significant issues, including but not limited to technological competency.

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8 As we understand, the Missouri Bar currently lacks established baseline data for its members on technology issues. By “baseline,” we mean “a study that is done at the beginning of a project to establish the current status of a population before a project is rolled out,” or more technically, “a descriptive cross-sectional survey that mostly provides quantitative information on the current status of a particular situation – on whatever study topic – in a given population. It aims at quantifying the distribution of certain variables in a study population at one point in time” (both quotes taken from https://evaluateblog.wordpress.com/2013/05/28/baseline-studies-surveys/).
Recommendation #4
The Missouri Bar should remain vigilant to privacy concerns of clients and the public as technology advances and expands.

The Internet is a likely “ground zero” for conflicts between privacy concerns and calls for government transparency. Soon, this concern may be especially true for Missouri CaseNet. Our Supreme Court has identified broad public remote CaseNet access as an important policy goal, such that anyone, anywhere, could have the same remote access to public e-filed documents that lawyers now have. An “eAccess” task force has been formed to study the issues and make recommendations how best to ensure a safe, sustainable and secure system of public access while adhering to the law’s privacy limitations.

It is beyond this task force’s charge to identify “the law’s privacy limitations,” or for that matter, reasonable public and individual expectations regarding personal information that gets into court filings. But court filings can be loaded with personal information, and even allegations of crime or other misbehavior that may never be proven. Examples that merely scratch the surface include:

- Arrest records, criminal charges, or SIS dispositions before they become closed records under existing or future law;
- Embarrassing information or allegations about domestic violence or child molestation which, even if complainant or victim initials are used, can be deduced from the totality of available information (defendant or litigant names, ages, towns, etc.).
- Property or other personal information in dissolution cases that may be subject to misuse by others, or could lead to identity theft, etc.
- Information about crime victims, potential trial witnesses, and jurors.

It is one thing to maintain such information in a controlled-access system, handled primarily by licensed professionals who are officers of the court and subject to effective discipline. It may be something else if anyone, anywhere, with any agenda (potentially including data miners outside the U.S.) can readily obtain all the same information.

While eAccess offers a timely example, it hardly will be the only technological intersection between privacy and judicial transparency. Who is better qualified to foresee problems, and intelligently speak out on behalf of clients and the public at large, than attorneys and their organized bar? Given its unique position, we believe The Missouri Bar should remain vigilant to privacy concerns of clients and the public as technology advances and expands.

Recommendation #5
Given technology’s potential to impact work-life balance, The Missouri Bar should encourage and help firms and attorneys value, commit to, and achieve healthier work-life balances and quality of life for both lawyers and staff and take steps to preserve the enduring principles of decorum and civility in the practice of law.

Quality of life is not a technology issue per se. Yet it dominated our group’s early discussions, never went away, and thus merits mention even if other groups address it in greater detail.
Our Missouri Bar, long attuned to such issues, already offers valuable support and education in this area. Still, it seems beyond cavil that 24/7 text and document transmission can negatively affect work-life balance, and that is just one example. Attorneys struggle with the ability – or lack thereof – to stay plugged into technology 24 hours a day, afraid they will miss communications from clients, opposing counsel, or both. The ability of an attorney to remain plugged in to technology is certainly rewarded by market-driven forces such as client recruitment, retention, satisfaction, or even continued employment with a firm. Yet it may be worth considering whether some court rules and procedures unintentionally reward 24-hour attorney responses. Also, technology seems to have led to lapses or losses of civility and collegiality among some lawyers.

We consider self-evident (1) the advantages of a healthy work-life balance for lawyers, staffs, and families; and (2) newfound work stress and pressure attributable to some technologies.

Importantly, however, the same technology can be a blessing or a curse depending on how it is managed (e.g., a single-parent associate working from home). Work-life balance seems less about technology in this respect and more a human resource concern that law firms can manage more effectively, if they so choose. We offer several nonexclusive (and non-technological) suggestions in Exhibit B.

Specifics aside, given technology’s potential to impact work-life balance, the Missouri Bar should encourage and help firms and attorneys value, commit to, and achieve healthier work-life balances and quality of life for both lawyers and staff and take steps to preserve the enduring principles of decorum and civility in the practice of law.
IV.
REPORT OF THE SUBCOMMITTEE ON ACCESS AND SUSTAINABILITY
Are we doing enough to promote the delivery of legal services that Missourians need? The models guiding our profession for the past century are now threatened as rapidly changing markets and technologies transform the environment in which the law must do its work. Venerable though our traditions, rules and practices may be, they will fail in their mission if not re-examined, re-evaluated, and adapted to satisfy the reasonable expectations of a highly mobile, highly technologized public.

Alarmingly, state and national statistics show that while the public need for legal services is rising, the percentage of citizens willing and able to seek them is declining.¹ ² As documented by the Legal Services Corporation, more than 80% of “the civil legal needs of the eligible population” are currently going unmet.³ We can and must do better. The most recent World Justice Project survey finds that the United States has fallen to 19th among 102 countries in public satisfaction with the legal system in its 2015 Rule of Law Index.⁴

To meet their unserved legal needs, people are also increasingly turning to self-help or alternative legal service providers.⁵ Nonlawyers are becoming “more competitive with lawyers, as more nonlawyer firms have entered the legal services market and the volume of nonlawyer legal services has increased tremendously.”⁶ One online nonlawyer legal service provider states that it has served millions of individual and business customers in the last few years. All signs suggest that this market is growing rapidly.

Potential clients who cannot understand what legal services they need, the licensed professional aid available, or how to obtain qualified counsel and representation, must either do without or turn to surrogate marketers who seem more convenient and less costly. Given such competition, the legal profession is certain to suffer – particularly smaller and solo firms. Indeed, the four most recently reported economic surveys of lawyers between 2008 and 2014 show median income for sole practitioners in Missouri decreasing in each survey period. As similarly noted by the Missouri Chamber Foundation in its 2015 publication of “Missouri 2030” 15-year strategic plan, Missouri has fallen behind competitively in a landscape “where globalization and technological transformations are rerouting the road to competitiveness.”⁷

These trends indicate that, unless we adapt to changed circumstances, the public will be poorly served and the practice of law will continue to suffer. Our profession can neither ignore these foreseeable consequences, nor solve them by thinking within habitual paradigms.

Considering this, the Supreme Court of Missouri and The Missouri Bar tasked the Subcommittee on Access and Sustainability to propose creative, non-traditional responses to these emerging trends. This approach led to the realization that many of our rules and practices were adopted and justified under circumstances far different from those confronting practitioners and potential clients today. After identifying rules and customs which might act as barriers to efficient delivery of legal services, we proceeded with a cost-benefit analysis, asking which of these have become, over time, more burdensome than beneficial.

The following Subcommittee ideas and proposals are neither terribly novel nor fully exhaustive, and are intended to spark, not to complete, such cost-benefit debates. In the course of our work,
we solicited ideas and recommendations from Missouri lawyers as well as reviewed new models adopted or proposed in other states. We further rejected categorical thinking and arbitrary labeling, since “access” and “sustainability” are interdependent. For example, Missouri limitations on lawyer advertising were adopted to preserve public respect for a learned and dignified profession. Yet in an age inescapably dominated by marketing, such limitations are arguably not simply old-fashioned, but counterproductive. The plain fact is that advertising increases public knowledge of legal issues, legal solutions, and available resources, while lack of knowledge both suppresses access to the system and makes that system less sustainable through disuse.

As editor’s preference, we did divide our discussion between “Court Rules” and “Other Proposals.” All recommendations are made for referral to The Missouri Bar, the Supreme Court of Missouri, and the Supreme Court Advisory Committee for further study.

**COURT RULES**

Court rules provide common sense guidance and clarity to the practice of law, but some of these may hobble attorneys, discourage clients, or both. The Subcommittee recommends re-examination of the following court rules, listed in no particular order of priority.

a. Rule 4-1.5(a)(8), as interpreted, makes it difficult for attorneys to offer legal services to clients at fixed rates. Uncertainty as to the cost of legal services can be a substantial deterrent for those in need. The Advisory Committee should re-examine whether this Rule can be changed to provide clients with certainty as to cost without sacrificing the current Rule’s purpose of ensuring that compensation for legal services reflects the actual value of those services.

b. Rule 4-5.5 – Other states, in an effort to expand access to legal services, have explored ways to license nonlawyers to provide specified legal services under certain conditions. For example, nonlawyer legal document providers are approved in Arizona, Florida, and Louisiana. And for the purpose of expanding the affordability of quality legal assistance protecting the public interest, the Supreme Court of the State of Washington adopted rules in 2012 authorizing nonlawyers to provide legal services as Limited License Legal Technicians (LLLTs). Other states are reviewing the Washington model, and task forces in Connecticut, Oregon, Utah, and California have written reports recommending nonlawyers be approved to provide limited legal services. Although the Subcommittee recommends against the independent legal technician approach for this state, the Advisory Committee and the Supreme Court of Missouri should monitor efforts in other jurisdictions to determine whether such efforts are successful in improving access to justice in those states. To improve quality of service, the licensing or certification of lawyer assistants working directly under the guidance and supervision of a lawyer or firm should be studied.

In addition, the multijurisdictional restrictions under Rule 4-5.5 in the Rules of Professional Conduct of Missouri and other states should be re-examined to ensure that they are clear and enforceable in an increasingly national and international world.

c. Rules 4-7.2 and 4-7.3 – Advertising and solicitation have always been difficult issues for the profession. The Rules of Professional Conduct restrict these practices to protect potential clients from harassment and to maintain the integrity of the profession. These Rules, however, were written at a time when advertising (e.g., television and Yellow Pages) was easily distinguishable from solicitation in person or in writing. Since that time, new technologies have blurred this
distinction by facilitating communications resembling generic advertisements, but which instead target very precise markets of potential clients. Accordingly, the Advisory Committee and Court should re-examine these rules to see whether their restrictions remain justified in an age of highly sophisticated marketing.

d. Rule 4-7.4 – The Supreme Court of Missouri does not license or certify that any attorney is a specialist in any particular area of law, and neither the Court nor The Missouri Bar reviews or certifies organizations that purport to give their members status as a “specialist” in particular areas. As a result, the Rules of Professional Conduct currently prohibit an attorney from stating or implying that he or she is a specialist unless the statement is accompanied by a disclaimer that neither the Supreme Court of Missouri nor The Missouri Bar reviews or approves such designations. Internet searches show that attempts to suggest a specialty are widespread in attorney advertising in Missouri and other states, while compliance with the disclaimer requirement (and similar rules in other states) is spotty, at best. Thus, Rule-compliant attorneys are materially disadvantaged relative to their more daring colleagues.

The Subcommittee finds that attorney specialization exists widely in practice and is viewed as beneficial by attorneys and clients, just as medical specialization is valued by doctors and patients. Accordingly, as with the rules on advertising and solicitation generally, the Advisory Committee and the Supreme Court of Missouri should re-examine this Rule to determine whether its limitations are still justified.

e. Rule 4-5.4 restricts attorneys from accessing equity capital from private investors or public markets so as to avoid conflicts of interest between the client’s representation and the investor’s returns. In practical effect, however, this Rule denies capital access to attorneys seeking innovative solutions to client service. No other business or professional industry in America so restrains its own members. The Subcommittee recommends further study of this important issue.

f. New proposed rule – The Subcommittee further recommends consideration of a new rule mandating mental health continuing legal education. Although lawyers as a group notably suffer from depression and substance abuse, Missouri has no mandatory educational rule governing the subject. In addition to existing services provided by the Lawyers’ Assistance Program, we encourage continuing legal education relating to mental health. California, Montana, and Iowa have each added a mental health component to mandatory legal continuing education, and the Subcommittee finds these examples persuasive. Pursuant to recently amended Rule 15, substance abuse and mental health accredited programs now satisfy the “ethics” education requirement in Missouri. However, the Subcommittee believes that incorporating a mandatory component into continuing legal education in Missouri would provide a more open and honest forum for addressing the mental and emotional problems that members of our profession too often endure in shamed solitude.

**OTHER PROPOSALS**

Apart from rule revisions, the Subcommittee has identified other ways in which we can better enable attorneys to provide needed legal services on understandable and affordable terms. Accordingly, we recommend that The Missouri Bar and the Supreme Court of Missouri consider:

a. Endorsing and promoting full federal, state and local funding of legal services for those unable
to pay. The growing unmet need for legal services in both criminal and civil matters is vividly illustrated in courts throughout our nation. While the provision of adequate legal representation is foundational for our profession, the number of people unrepresented or hopelessly self-represented is large and increasing. And while inadequate funding is but one of many barriers, experience with Legal Aid, the Missouri State Public Defender, and pro bono programs show that it is critical. Accordingly, every institution within our profession must renew its unflagging commitment to adequate funding of legal services for the economically disadvantaged.

b. Advocating a change to the United States Tax Code by adding “legal services” to the list of authorized expenditures made under group cafeteria plans. Such a change would increase access to justice by authorizing the use of cafeteria funds to satisfy or reimburse the costs of qualified legal services.

c. Endorsing the use of legal insurance provided by reputable insurers, particularly encouraging the business use of legal insurance as a component of employee benefit group plans. Current legal insurance plans cover only a small percentage of the necessary legal expenses incurred by Missouri citizens. The Missouri Bar is encouraged to consider a pilot project working with reputable providers to promote legal insurance as a means of facilitating access to justice.

d. Supporting and promoting community/bar partnership programs designed to encourage small business incubators. Sole practitioner and small business incubators have been used successfully by young lawyers to build their practices. For example, the Chicago Bar Foundation established a Justice to Entrepreneurs Project (JEP) designed to expand access to affordable legal help. JEP is an 18-month program that provides training resources and support to newer law school graduates committed to serving the needs of low-and moderate-income clients. Incubator sponsors assist new lawyers in securing office sites and provide mentoring to them (like other small businesspersons) in establishing their practices.21 Participation in the incubator can, but need not, be limited to young lawyers. Further support should also be given to law school-based incubators.22 The UMKC School of Law, with assistance from The Missouri Bar and the Kansas City Metropolitan Bar Association’s Solo Practitioner/Small Firms Committee, developed and now operates the Law School’s Solo and Small Firm Incubator.

e. Coordinating Missouri and local bar legal assistance by targeting special or specific needs using rapid response teams. Rapid response legal teams aid people, including returning veterans, struggling through such crises as civil unrest, disastrous weather, and post-traumatic wounds of war and terrorism. Special recognition for those volunteering attorneys should be considered as well as affordable or free continuing legal education and coverage under the State Legal Expense Fund.

f. Maintaining and continuing expansion of The Missouri Bar website allowing potential clients to more easily evaluate and hire their lawyers. As technology continues to simplify our lives, citizens reasonably expect and fully deserve quicker and less expensive ways of finding an attorney. If the perceived cost or difficulty of hiring a lawyer is too high, potential clients will turn to unqualified alternative providers, self-representation, or resignation.

g. Continuing its strong support of the work of the Supreme Court of Missouri Commission on Racial and Ethnic Fairness and the Joint Commission on Women in the Profession. The Court and Bar’s ongoing leadership in these areas is essential to ensure fair, impartial, and equal access to justice and to the legal profession itself. As recently noted by Chief Justice Patricia Breckenridge:
“We all need to do everything we can to ensure that every individual in every case in our system of justice is treated with respect and has his or her case adjudicated fairly and impartially according to the law.”

Change is inevitable, and the future of law practice in Missouri depends on adaptation to new realities. Given such attention, our profession will remain vital and relevant well into the future. Skilled advocates, with ever-improved tools, will be needed in the future, so long as our mission remains to continually improve the legal profession and administration of justice on behalf of all people.

It is not, ‘Can any of us imagine better,’ but, ‘Can we all do better?’
Abraham Lincoln
EXHIBITS

I.
REPORT OF THE SUBCOMMITTEE ON LEGAL EDUCATION AND ENTRY INTO THE PROFESSION
EXHIBITS A-C
1. USNWR Standings – Effect on How Law Schools Operate

A. What do we mean by this issue?
Does U.S. News Rankings impact and influence law schools' decision-making regarding students to admit, professors to hire, and curriculum to teach, and if so, how?

B. What are some key authorities that address this issue?
Rankings play directly into the psychological needs of students and teachers across the board.


"[I]t is hard to overstate the impact of USNWR on legal education."

"The major impact of USNWR has been to incentivize schools to expend great resources pursuing prestige and highly credentialed students, resulting in an enormous upward pressure on tuition."


"USNWR attained its position of importance not just because legal educators pay attention to the rankings, but because students do as well.” Id.

"In summary, the effect of USNWR and other competitive forces has been to encourage law schools to get bigger and more expensive, and to devote more resources to faculty scholarship and merit-based financial aid.” Id.

“Curriculum reform is another area where there are few, if any, market or rankings-based incentives for change. Nothing in USNWR attempts to capture the quality of a school’s educational program. It is hard to imagine that innovations in teaching are reflected in the opinion surveys, given how little most voters actually know about the 200 law schools captured by USNWR.” Id. at 1400-01.

"[S]chools are reducing their class size. . . I believe this is happening principally because of the discipline imposed by the market and, yes, by rankings. . . This is an instance where competitive forces have pushed schools in a positive direction."

"While there are competitive advantages to schools in enrolling fewer students, there are no similar advantages to cutting prices. . . Loyola University Chicago School of Law, has held the line on tuition increases a bit more in recent years than our closest competitors. As a result, our tuition is around $3,000 per year less than those competitors. From a market standpoint this gets us nothing. . . Their [students we most want to attract] net tuition cost is what matters to them, not the sticker price.” Id. at 1400.

“Unfortunately, the impact of rankings will not be reduced unless we figure out a way to be less motivated by the quest for prestige. No one has proposed a credible solution.” Id. at 1402.

1 Special thanks to Dean Suni’s Research Assistant, Alex Laton, for her assistance with this project.
“The difference between the early 80s and today, he concluded, can be summed up in one name: U.S. News, which began ranking law schools in 1987.”


“There are many reasons for this ever-climbing sticker price, but the most bizarre comes courtesy of the highly influential US News rankings.”


“When asked “What is most important to you when picking a law school to apply to?,” 32% cited a law school’s ranking; followed by geographic location at 22%; academic programming at 20%; and affordability/tuition at 13%. At nearly the back of the pack? A law school’s job placement statistics, which came in at 8%.”


University of Colorado Law professor Paul Campos maintains the Inside the Law School Scam blog that address several legal education reform issues. It can be accessed here: http://insidethelawschoolscam.blogspot.com/

This author suggests that rankings of Tier 2 schools really have no significant impact and rather it is the law firms that decide if they will interview students from those schools or not. Differences in rankings below the highest tier of the U.S. News & World Report list, moreover, may be “trivial and insignificant.”

Cameron Stracher, Commentary: There Are Only Two Kinds of Law Schools, Am. Law. (Apr. 9, 2008), https://eb84a96d-a-3ee4da74-s-sites.googlegroups.com/a/elmira.edu/prelaw/home/usefullinks/commentary.thereareonlytwokindsoflawschools.pdf?attredirects=0


“And so we finally arrive at law school, where as it turns out, rankings couldn’t be more important.” The author compares graduate school rankings and then also uses graphs to illustrate that the top 14 law schools from the USNWR rankings claim the best employment rate, and employment numbers at the largest firms.


C. Which, if any, other law schools/states have addressed this issue? How so?

Despite the external incentives for change there is a positive trend of schools ignoring those market incentives and pushing intrinsic values through experiential learning thereby producing more “market-ready” graduates.


“[T]he U.S. News and World Report's annual ranking of law schools overwhelmingly dominates the public discourse on how law schools compare to one another. As a result, U.S. News rankings have assumed ever increasing importance to any law school that wishes to attract students and faculty and to retain support from alumni and university leaders. The criteria U.S. News uses for rankings now has a powerful influence over the management and design of American legal education.”


The current methodology tends to increase the costs of legal education for students. As a recent study by the United States Government Accountability Office has suggested, the U.S. News methodology arguably punishes a school that provides a high quality education at an affordable cost. Because low-cost law schools report a lower expenditure per student than higher cost schools, it is difficult for low tuition schools to top the rankings. A school that works hard to hold down costs may indeed find itself falling in the rankings relative to a peer that increases tuition above the rate of inflation each year. U.S. Gov't Accountability Office, GAO-10-20, Higher Education: Issues Related to Law School Cost and Access (Oct. 2009). Id. at 3.

An Annotated Bibliography: Ranking of Law Schools by U.S. News & World Report by Dorie Betram follows the conclusion of the report and collects sources discussing the history and application of the rankings and their effects.

“One general effect of the USN rankings on law schools is that it has created pressure on law school administrators to redistribute resources in ways that maximize their scores on the criteria used by USN to create the rankings, even if they are skeptical that this is a productive use of these resources.”


“In testimony and materials reviewed by the Task Force, the issue of law school rankings arose repeatedly. Law school deans acknowledged that pressure to climb the rankings can shape decisions about student financial aid, faculty hiring, and myriad other dimensions of law schools in subtle and not-so-subtle ways. A 2010 ABA special committee reported that the U.S. News and World Report ranking methodology tends to increase the cost of legal education for students, to discourage the award of financial aid based upon need, and to reduce incentives to enhance diversity in the legal profession. While acknowledging the pressure exerted by rankings, the Task Force was not presented with any realistic solution for eliminating the rankings. To the extent such rankings produce incomplete or irrelevant information, the antidote would appear to be the provision of more and better information in the marketplace for students to consider in choosing whether and where to attend law school and how to pay for it.”
2. State bar exam and/or accreditation requirements – Effect on curriculum

A. What do we mean by this issue?
To what extent are positive or negative aspects of the law school curriculum and changes therein the result of law school accreditation policies (ABA or AALS membership) or requirements of state bar exams?

B. What are some key authorities that address this issue?
“[ABA Rules] do not really explain the changes that have occurred in law schools during the rankings era. The ABA Standards have not changed in fundamental ways since the advent of the competitive forces discussed above [USNWR Rankings], and thus cannot fairly be credited or blamed for the ways in which legal education has changed.”


The standards form the “architecture” for legal education. This article analyzes the structure of actual and possible law school accreditation systems. Specifically, this article discusses many features of the current ABA Standards and their impact on various things.


“Instead, virtually every one of the country’s 200 A.B.A.-accredited schools, from the lowliest to the most prestigious, has to build a Cadillac, or at least come close.”


“But the core factor in the escalating cost of legal education is that the guild of law school professors long ago
captured the combined regulatory apparatus of the American Bar Association (ABA) and the AALS. We law professors have constructed a legal education model that, first and foremost, serves faculty interests—higher salaries, more faculty protected by tenure, smaller and fewer classes, shorter semesters, generous sabbatical and leave policies and supplemental grants for research and writing. We could not have done better for ourselves, except that the system is now collapsing.”


The below study examines the performance of all 2001-2005 graduates of Saint Louis University School of Law who took the Missouri bar examination as their first state bar examination to explore whether there was a relationship between taking such courses and passing the bar examination on the first attempt. The study also explored whether there were relationships between those graduates’ Law School Admission Test (LSAT) scores, undergraduate grade point averages (UGPA), Law School Admission Council (LSAC) index scores, law school final class rank (by quartiles), and the graduates’ ability to pass the Missouri bar examination on the first attempt.

Douglas K. Rush, Hisako Matsuo, *Does Law School Curriculum Affect Bar Examination Passage? An Empirical Analysis of Factors Related to Bar Examination Passage During the Years 2001 Through 2006 at a Midwestern Law School*, 57 J. Legal Educ. 224 (2007) available at https://a.next.westlaw.com/Document/15cede981ae7311dc80fe8c7818c06073/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fid0ad604090000014ed08b787a04ff9187%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI5cede981ae7311dc80fe8c7818c06073%26startIndex%3D1%26contextData%3D%2520%26transitionType%3DSearch&listSource=Search&listPageSource=a0fcd669a342d30de93b48fc796601cf&list=ANALYTICAL&rank=1&grading=na&sessionScopeId=3754a63b9705f89c4de25eca309a300&originContext=Smart%20Answer&transitionType=SearchTree

“The bar creates the canon of legal education, making certain courses central and exiling others to the periphery. The “core” courses in a law school’s curriculum are very likely to be the courses tested on the jurisdiction’s bar exam.”


IAALS Online, is a blog that posts a variety of articles on improving the American legal system. In the article below, the author links us to Professor Thaler's piece on Building an Administrative Law Practicum to meet the revised ABA standards.

http://online.iaals.du.edu/2015/03/24/experiential-learning-in-administrative-law-meetingthe-revised-aba-standards/

ABA Section of Legal Education and Admissions to the Bar:


The Association of American Law Schools, Current Issues in Legal Education:

C. Which, if any, other law schools/states have addressed this issue? How so?

“Law schools themselves are stymied by certain of these rules, which hinder their ability to experiment with different curricula and to creatively and effectively respond to the changing economy and legal market. At the current time international commerce and technological innovations are changing the ways the world does business, the demands on the profession are changing rapidly and the best way to train future lawyers is under increased scrutiny. Accordingly rules that hinder law schools from experimenting on how best to teach future lawyers must be changed.”


“Changes to state rules can have an enormous impact on legal education. Recently, for example, New York has imposed a pro bono requirement in addition to the ABA Standards. Schools wishing for their graduates to be able to take the New York bar examination have no choice but to comply with these rules.”

Yellen, at 1406.

“Recently, the Supreme Court of Washington approved the concept of Limited License Legal Technicians . . . [I]n essence, the state will license people without a law degree to perform some of the functions that lawyers currently do. It is analogous to physician’s assistants . . .” Id. (Not directly relevant to ABA Standards and impact, but speaks to the issue of State rulemaking impacting legal education).

The ABA Curriculum Committee conducted a comprehensive empirical review of significant aspects of the current law school curricula. Major Findings of the 2010 Survey include:

Required Curriculum

• Tested subject matter of bar examinations does not appear to play a prominent role in a law school’s determination of which courses to require for graduation.

• Law schools have increased all aspects of skills instruction, including clinical, simulation, and externships, to meet recently adopted ABA Standard 302(a)(4), which requires that students receive other professional skills instruction.

• Pro bono service requirements have increased incrementally since 2002 with 18% of law school respondents in 2012 requiring an average of 35 hours of pro bono service to graduate, which is on average, ten more hours of service than reported in 2002.

• In 2010 49% of law schools offered bar preparation courses for credit.


Another example, New York Law School graduates went from passing the bar at a rate well below the statewide average to exceeding the statewide average by more than ten points. The article below suggests a causal relationship from the implementation of NYLS Comprehensive Curriculum Program and other curriculum changes that were modeled after the bar exam. The comprehensive program requires any student who’s cumulative GPAs were in the bottom quartile of his/her section to participate; the program is centered on intensive legal method courses. The article includes some numerical data comparing participants’ to nonparticipants' mean GPAs.
Many schools, in order to address bar passage rates ensuring compliance with ABA Standards, have offered bar exam prep courses. Among these, Campbell University School of Law, North Carolina Central University, Nova Southeastern University, and John D. Marshall School of Law stand out as having unique programs that emphasize bar exam preparation, and are outlined in the below article.


3. Should there be a move to “residency”/apprenticeships?

A. What do we mean by this issue?

Should we adopt a more British model of legal education, where part of the education is residencies or apprentices? Among the issues we might expect to see is who pays, how those who can oversee lawyers effectively get selected, etc.

B. What are some key authorities that address this issue?

“A trending topic: lawyer residency programs along the lines of medical residencies.”


“Let’s scrap this system. We need, at its entry level, the equivalent of a medical residency. Law school graduates would practice for two years or so, under experienced supervision, at reduced hourly rates; repaying their debts could be suspended, as it is for medical residents.”


ABA Group > Standing Committee on the Delivery of Legal Services > Initiatives & Awards > Incubator/Residency Programs:

http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main.html
Proposing a teaching law firm modeled after a teaching hospital, the article below addresses: why access to justice should be a central concern; how we address that concern through the creation of a teaching law firm; the economic realities of sustaining a teaching law firm.


“In order to assist our member as it considers establishing programming to support law students interested in pursuing work as solo practitioners, this report provides an environmental scan of similar law school’s programs and support structures . . .”


“[T]he expansion of training opportunities into the post-graduate sphere through solo/small firm incubators and residency programs operated by law schools and bar associations has recently grown at an astonishing pace.”


On the English Model: “Important developments in the regulation and structuring of English legal education since the turn of the new millennium indicate the penetration of alliances into the legal education landscape. Of most relevance, there has been an increasing focus on the development of legal education in collaboration with “clients.” In this context, “clients” have primarily been defined as the law firms that employ graduates of various education programs, in particular the LPC.”


“As for the apprenticeship option, it’s real but basically no one uses it. From February 2007 to February 2013, the California bar exam was taken 82,154 times, and only 43 of those (0.05 percent) were attempts by people in the apprentice program. The pass rate for non-apprentice test-takers was 50.5 percent; for graduates of ABA-approved law schools, it was 60.2 percent. For apprentices, however, it was 27.9 percent. That may be because those who take that track are just less capable than those going to law schools, but it could also suggest that apprenticeships aren’t great preparation.”


C. Have any other law schools/states addressed this issue?

Arizona State University Sandra Day O’Connor College of Law:

The ASU Alumni Law Group is a nonprofit, fee-for-service law firm, modeled in part on teaching hospitals. This first-in-the-nation venture will help bridge the gap between law school and practice by hiring and training recent ASU law graduates in the practical aspects of lawyering and preparing them to succeed in the 21st Century legal market. The firm will partner with other ASU initiatives focused on improving Arizona’s economy and quality of life and will provide low-cost, high-quality legal services to a wide variety of clients, including those who cannot
afford to pay market rates. The law firm will be self-sufficient after an initial start-up phase and, to the extent it generates excess revenues, will fund student scholarships at the College of Law.


Rutgers Law Associates Fellowship Program:

In January of 2014, Rutgers School of Law-Newark launched the nation’s first post-doctoral fellowship program of its kind, designed to train recent law school graduates as practitioners, while providing a variety of legal services to low to moderate-income New Jersey residents at fees substantially below market rates. The fellows, all of whom are admitted to practice law in New Jersey, devote one year to closely-supervised practice and associated courses in professional responsibility, small firm management, and relevant practice areas. Upon completing the program, these lawyers are fully prepared to join established law practice in either the public or private sector or to launch viable quality practices of their own. Each attorney is given a $30,000 stipend.


The ABA has an Incubator/Residency Programs Directory Available at:

http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_directory.html.

For an example of the structure of a legal services firm collaborating with law schools:


4. Length of Law School (2 v. 3 years)

A. What do we mean by this issue?
What are the possible benefits to or detriments of shifting law school from 3 years to 2?

B. What are some key authorities that address this issue?
“Both the ABA and AALS now permit the content of a standard three-year course of study to be squeezed into two years.” Further, this paper highlights the possible benefits to students and detriment to law schools if the state bar would allow for students to sit for the bar exam after completing 60 credit hours.


“A number of curricular steps schools might consider, either to reduce costs or to enhance students’ preparation for the practice of law, are currently prohibited by the ABA Standards. For example, a school could not eliminate the third year of law school or even make it completely externship based.”

Exploring the dangers of “organizational alliances” and how they might segment and deregulate not only the JD program, but the legal profession as a whole.


ABA Section of Legal Education and Admissions to the Bar:

*Section of Legal Education and Admissions to the Bar, American Bar Ass’n*, http://www.americanbar.org/groups/legal_education.html (follow link to Standards Review Committee).

ABA Center for Professional Responsibility,

*Standing Committee on Professionalism Standing Committee on Professionalism, American Bar Ass’n*, http://www.americanbar.org/groups/professional_responsibility_committees_commissions/standing_committee_on_professionalism2.html

IAALS Online, National Conversations About Continuous Improvement of the American Legal System:

*Institute for the Advancement of the American Legal System, University of Denver*, http://online.iaals.edu.edu/

C. How have any other law schools/states addressed this issue?

“A number of schools – including Northwestern, Pepperdine, and Vermont Law – offer accelerated, two-year JD programs. Southwestern Law School in LA has had one since 1974. California, Vermont, Virginia, and Washington allow people to sit for the bar without attending law school if they undertake an apprenticeship with a judge or attorney; New York allows students who've completed at least one year of law school to do that instead of finishing and Maine allows that for students who've completed two . . .”


University of New Hampshire, Daniel Webster Scholar Honors Program replaces the last two years of law school with a two-year bar practicum. Students submit their various practical work to their bar examiners after each semester, and once the program is successfully completed, students are certified as having passed the New Hampshire Bar Exam (subject to the MPRE and Character-Fitness).

*University of New Hampshire, School of Law*, http://law.unh.edu/academics/jddegree/daniel-webster-scholars.

Northwestern permits 86 Credit hours to be completed in 2 years, but does not reduce the cost of tuition.

*Accelerated JD, Northwestern Law*, http://www.law.northwestern.edu/academics/ajd

Elon University School of Law created a seven-trimester model that allows a student to graduate in 2.5 years.
The model requires the student to work a full-time job in the second trimester while taking a course related to the practice area.


5. The Cost and Financing of Legal Education

A. What do we mean by this issue?
Is the cost of legal education prohibitive and/or too burdensome for would-be lawyers?

B. What are some key authorities and other initiatives that have addressed this issue?
Casual readers of the Wall Street Journal and the New York Times from the last few years are well aware of the damage that legal education did to its brand by substantially expanding the number of persons receiving juris doctor degrees. The first decade of the 21st century was characterized by a large boom in the number of applicants seeking legal education. This was a time when the number of law schools continued to expand, but significantly the number of law schools in Missouri and contiguous metropolitan areas in Kansas and Illinois did not increase. The four Missouri schools, and most of the adjacent states’ schools, substantially increased enrollments. The bust that occurred starting in 2011, and in some areas a bit earlier, was fueled in part by stories in the news media of law school graduates with substantial student loan debt from their legal educations, unable to obtain employment sufficient to make loan repayments comfortably.

To this rather dire picture, one must include an update:
1. With a three-year 40% reduction in law school applicants - which has recently turned upwards slightly - many law schools including most of the Missouri schools, decreased enrollments and maintained their approximate entering credentials as measured by the LSAT and GPA scores.

2. During the last few years, Missouri schools substantially increased their discount rates, that is, the percentage of tuition revenue foregone by scholarships. While precise data are not available, it is generally believed the discount rates from the first ten years of the 21st century were in the 20% range, but now they are in the 40 to 50% range, in one case substantially higher. What this means is that there are a great number of law students receiving education in Missouri schools that is either free or substantially reduced from the sticker price.

3. Students in Missouri schools are getting better counseling in the kinds of loans that they have available. Specifically, federal student loans provide for income-based repayment plans that specify repayments of 10% of one’s discretionary income (generally that amount of income that exceeds the federal poverty level) with ten year loan forgiveness for those who do public service and 20-year loan forgiveness for the rest. The student who opts for loans outside of this federal system is making an uninformed choice.

6. Bar Exam Expenses

A. What do we mean by this issue?
Should we consider lowering Bar exam expenses, and if so, how?

B. What are some key authorities, as well as other states/initiatives that have addressed this issue?
Wisconsin model: In our most recent subgroup conference call, we discussed the utility and functioning of the bar exam. We ought to pay particular attention to Wisconsin, which for decades has offered diploma privilege
admission to graduates of Wisconsin law schools who pursue a prescribed list of courses. This is entirely rational, because the bar exam in its most modern iteration, the Uniform Bar Examination, does little more than replicate law school style examinations. An exception, of course, is the online Missouri Law portion of the exam which in any event is useful. There are no data to suggest that Wisconsin lawyers, educated at Wisconsin universities, are less well-qualified than lawyers in other states, nor do their ethical lapses exceed those of other states. What is different, however, is that the Wisconsin law schools, the University of Wisconsin and Marquette, apparently did not succumb to the boom mentality of the first ten years of the 21st century. Enrollments remained relatively stable. One might inquire as to whether the law schools were sensitive to the law examiners and the Supreme Court of Wisconsin, both of which probably would react negatively to the schools' increasing the supply of law graduates into a market that did not need them. There were no such constraints in Missouri, except perhaps for some jaw-boning by members of the bar discussing state supported law schools.

The bar examination itself has become a substantial financial burden to many students, in part because it is not supported with scholarship assistance, and may require students to borrow outside of the federal loan system.

**Bar exam expense evaluation:** We start with the expense of the bar exam itself. This was raised about 15 years ago to its current high level, which today is $910 (up to $1470 for applications closest to the exam date). The reason this dramatic raise was done was to build up a fund for the purpose of buying a building to house the Board of Law Examiners. This was done a number of years ago, but the fees never were lowered. One might inquire whether the fees all are currently required for administering the bar exam and the character and fitness evaluation. It is, of course, fair to have a system that is supported by the fees of users, rather than by the taxpayers of the state or by the members of the bar, but it is unfair to build up a surplus in such funds that far exceeds the needs of assessing applicants to the bar.

**Bar prep courses:** The bar exam also has spawned an industry, led by BARBRI but with other competitors, that charges about $3000 to take a bar exam prep course. A diploma-privilege system, such as Wisconsin has, would give law school students who wish to become members of the Missouri Bar an incentive to take the courses prescribed by the law examiners rather than to skip some of those courses, take a bar review course and be examined in a bar examination. That would be the applicants' choice. The primary rationale for the bar examination is that the regulators, the Supreme Court and the Board of Law Examiners, either do not trust the law schools admit only qualified applicants and to teach a solid program of legal education or they do not trust the students - - who in most law schools are given a lot of choice in choosing their courses - - to make appropriate choices. Either way, it seems entirely manageable simply to tell the schools and the prospective applicants what courses of instruction are required to be members of the bar, and let it go at that. Wisconsin, of course, limits its diploma privilege admission to graduates of Wisconsin law schools, a perfectly legitimate limitation because a board of law examiners cannot examine the curricula and standards of a larger number of law schools.

**Bar exam location:** Our bar examination system imposes costs on applicants in another significant way which might be traditional or merely thoughtless. That is, we offer the examination only in Jefferson City, Missouri, where the vast majority of law school graduates do not live. We offer the examination in two hotels whose facilities for examination-taking are, to be kind, outdated. Most applicants also have to incur the expense of staying at hotels in Jefferson City. If we are going to continue to charge a small fortune to take the bar exam, we might consider offering the exam in Kansas City, St. Louis, and Columbia, so that nearly all of the applicants can stay in their own homes at night.
7. Teaching professionalism/civility, cultural impact of millennials, and the role of career services offices

A. What do we mean by this?
We all understand some general characterizations of millennials, whether actual or perceived, include: a lack of appreciation for privacy, need for constant connection, demand for instant feedback, less superior work ethic, priority on achievement recognition of one’s accomplishments, and a lack of respect for others and older generations. With this in mind, what challenges does the generation present to the legal profession, and how can these challenges be addressed?

B. What are some key authorities, as well as other states/initiatives that have addressed this issue?

“Experts anticipate that younger attorneys who grew up with Facebook and other social media will continue to violate rules of professionalism through their online activities because they have a reduced sense of personal privacy.” *Id.* at 273.

“Millennials value confidentiality and privacy less than other age groups, in part, because information flow is virtually instantaneous and they generally believe that knowledge is meant to be shared not owned.” *Id.* at 277.

Whose responsibility is it to address this? What additional training is necessary for law students and new lawyers? Instead of having a narrow selection of CLE and law school classes focused on ethics, perhaps centering the majority of CLE programming and professional development courses on ethics, social media, etc. can help the Bar and legal education become proactive on these issues.

The MO Supreme Court Rules were amended to require two hours of ethics CLE credit annually, as opposed to three hours every three years. Still, the requirement of ethics/professionalism credit is less than 15% of the annual requirement for lawyers. Similarly, professionalism is a very small part of the law school curriculum.

“At most law schools, a student's sole exposure to rules of professionalism come in the form of a one semester course in professional responsibility.” *Id.* at 284.

“To best serve students, schools need to integrate legal ethics lessons into courses throughout the curriculum.” *Id.* at 285.

As discussed in the article above, Barry University School of Law initiated a program in 2009, the Student Professionalism Enhancement Program (SPEP), which “…uses the educational forum to rehabilitate students who exhibit behaviors or attitudes that render them likely to be subject to discipline by the Florida Bar as practicing lawyers if their behavior is not corrected or their attitude altered.” *Id.* at 283.

Ethical issues, particularly concerning social media and confidentiality, will need to be more broadly addressed as the millennials continue to enter the legal profession. There may be room for more unique professional responsibility courses and CLE programs that address these issues, as well as more discussion and focus on the importance of exercising general good judgment, demonstrating respect for others, and maintaining civility in the profession.
8. Disconnect between scholarship and real world practice (i.e. professors)

A. What do we mean by this?
There is a strong tension that exists between faculty with a traditional focus on scholarship/research/writing, and those with more practical legal experience. Is there a way to balance this tension, should we promote more opportunities for faculty with practical experience, and if so, how?

B. What are some key authorities, as well as other states/initiatives that have addressed this issue?

“Faculty have decision-making authority for key aspects of the law school.” Id. at 16.

Many clinical professors are untenured, and this affects security and attractiveness of clinical positions, as well as morale among clinical professors who are not viewed as equals or equally valuable within the school.


The main teaching methods in law schools are traditional doctrinal courses, experiential-based courses with simulated clients, and law clinics and externships with real clients. “Each of these complimentary yet distinct teaching methods makes important contributions to legal education, each imparts different skills, and each teaches doctrine and theory differently. Legal education needs all three approaches and needs them intertwined throughout the curriculum.” Id. at 14.

Much of the discussion on this topic centers on the importance of clinical and experiential learning, which is covered elsewhere in this subgroup report. Specifically, the information in the Experiential Learning section sheds light on the importance and need for legal education to move forward with more practical skills. The question that naturally follows is this: How do we categorize and treat the clinical and experiential educators to demonstrate the importance of learning practical skills?

For a history of the status of clinical faculty, see Peter A. Joy & Robert R. Kuehn, The Evolution of ABA Standards for Clinical Faculty, 75 Tenn. L. Rev. 183 (2008).

“As clinical programs became more prevalent in the 1970s, the status of faculty members teaching clinical courses became a matter of some debate, not just among clinical faculty, but also within the legal academy and ABA.” Id. at 190.

The discussion in this article continues to outline the changes across decades, and indicates conflict still exists. “History demonstrates, however, that no other accreditation issue has been as contentious as the ABA’s efforts to secure reasonably similar treatment of clinical faculty with their classroom faculty counterparts. Integration of clinical faculty into the governance life of law schools as a means of encouraging the development of clinical legal education has faced continuous opposition.” Id. at 230.

It might be ultimately worth our time to survey members of the Bar, hiring authorities, and others invested in hiring law graduates to determine the relative value of clinical experiences and clinical faculty, as well as traditional law faculty.
9. Diversity

A. What do we mean by this?
How can we improve diversity in the legal profession by starting at the law school level? What role can/should the Bar play?

B. What are some key authorities, as well as other states/initiatives that have addressed this issue?


Regarding the U.S. News rankings, “The current methodology tends to reduce incentives to enhance the diversity of the legal profession.” Id. at 3. This is one of the top three adverse effects of the U.S. News rankings on law students. Id. at 3.

The disincentive to increase diversity of the student body, and ultimately the legal profession, relates directly to the U.S. News rankings section of this discussion, and the pressure on schools to maintain rankings. While schools may recognize the need and benefits of developing a more diverse student body, they are constantly looking to find a balance between increasing diversity and maintaining scores.

Another consideration is the historically lower percentage of diverse LSAT takers and law school applicants. The pipeline of diverse students from elementary/secondary education, to college, to law school needs to improve.

10. Teaching technology as a practice skill
Technology is one of the 4 major trends that are seen as providing the impetus for change in the legal profession (the other 3 are globalization, changing client expectations and a growing lack of access to legal services). Canadian Bar Association Legal Futures Initiative, Report on Transforming the Delivery of Legal Services in Canada, Aug. 2014. FUTURES: TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA.

Advances in technology are occurring exponentially. These advances increase the pace of practice and client expectations, forcing lawyers to adapt or face extinction. Understanding and implementing new technologies are difficult and time-consuming for lawyers. Clients are often ahead of lawyers in implementing new technologies, and they have increased access to legal information, much of it readily available on the Internet. However, technology also is the “great leveler,” allowing innovative solo and small-firm practitioners to compete with larger firms. The New Normal: Challenges Facing the Legal Profession, Wisconsin State Bar Board of Governors’ Challenges to The Profession Committee Report, July, 2011.

Educational providers should consider creating parallel programs in areas such as legal technology, in college or other environments, or incorporated into law school education, to educate and train new streams of legal service providers which may include lawyers. The day-to-day work of lawyers may change as other providers and technology-based processes supply more routine and simpler legal services, or provide intake services, in turn creating new career opportunities for lawyers. Technology and the participation of non-lawyers will reduce costs. Non-lawyers will provide low-risk services under the supervision of lawyers and quality managers. Technology will render legal information and tools more accessible, and clients will gravitate to them as long as the providers offer assurances of quality. Technology is a key enabler of innovation and should be an integral part of the future management and delivery of legal services. Simple and cost-effective technological solutions must be championed and disseminated to help lawyers structure their practices in order to offer new and more effective legal services. Canadian Bar Association Legal Futures Initiative, Report on Transforming the Delivery of Legal Services, 2014.
Lawyers are experimenting with and adapting various applications and technologies to their practices. The legal profession is actively exploring eLawyering, that is, the practice of law on the World Wide Web. Lawyers are not only marketing, blogging, and engaging in social media, they are rendering online legal advice as well. As observed by the ABA eLawyering Task Force (of the ABA Law Practice Management Section), “We now must be ready to practice in a way that allows our clients a new method of access to legal services by using the technology and communications tools around us.” Every law firm is affected by technological changes. Attorneys must devote time and resources to identifying ways to use new technologies to add value to client work, reduce overhead costs, and improve their ability to compete for legal services.

Virtual law practice. A virtual law practice is a professional law practice that functions entirely online through a secure portal that is readily accessible to both client and attorney anywhere the parties can access the Internet. Virtual law practices generally operate with lower overhead than traditional law firms. Lest one think that virtual law practice is a figment of a futurist’s imagination, the ABA Law Practice Management Section has published a book, entitled Virtual Law Practice, by Stephanie Kimbro. The book provides a wealth of information about how to operate a virtual law office along with ethics issues, marketing ideas, and products that facilitate a virtual law practice. Many solo practitioners have availed themselves of a computer, a modem or WiFi, and a portal to represent clients virtually. And at least one Wisconsin lawyer, Brookfield attorney Martin Ditkof, maintains a virtual office, which allowed him to cut the cord from his home office.

eLawyering According to the ABA eLawyering Task Force, eLawyering is doing legal work – not just marketing – over the Web to communicate and collaborate with clients, prospective clients, and professional colleagues; draft, edit, and finalize documents; engage in dispute resolution; manage legal knowledge; and file court and governmental documents. Lawyers who resist this trend will find that their clients (and potential clients) routinely use the Internet to identify cost-effective legal resources and ways to solve their legal needs. Information is readily available from online legal document preparation and self-help sites, like LegalZoom, Inc., accessible for specific areas of law (in this instance, for business services, trusts and estates, and intellectual property). We now must be ready to practice in a way that allows our clients a new method of access to legal services by using the technology and communications tools around us. ABA eLawyering Task Force

Cloud computing. Cloud computing is getting considerable hype as lawyers explore ways to lower IT costs and increase access to their practices from remote locations or mobile devices. Cloud computing offers a way to avoid investing in hardware and software through pay-as-you-go providers over the Internet. Services generally are scalable, growing or shrinking to match changing technology demands; and the access is instant, receiving services when they are needed, paying only for the services used. In cloud computing, the user’s computer contains almost no software or data (except perhaps an operating system and a browser), operating only as a display terminal for processes operating on a distant network of computers. Those who use web-based email (such as Gmail or Hotmail) or an email client program (such as Outlook or Mozilla Thunderbird) are using cloud email servers. Cloud computing involves the pooling of computers in the “cloud” to achieve an on-demand task. A cloud may be public, community-based, or private. As with other aspects for eLawyering, cloud computing proves law firms and lawyers with distinct advantages and disadvantages. Cloud computing provides identifiable economic benefits to small firms and solo practitioners. At the same time, cloud computing entails a number of legal risks for firms of any size. Risks can be reduced by drafting a contract that resolves privacy, cross-
jurisdictional compliance, search warrants, e-discovery, and data security issues. In addition, lawyers must address protection of privileged documents and the attorney-client privilege. Technology does not solve all problems; people do.

**Artificial intelligence** In the context of the practice of law, artificial intelligence usually refers to either a decision-making support system or an expert system. Generally, decision-making support systems are rule-based software products that use “if-then” constructs to assist attorneys in legal-related tasks. Attorneys use rule-based software systems in various areas of private practice, and judges use these systems to assist with sentencing. For example, Lawgic (www.lawgic.com) probably uses a rule-based construct to assist attorneys in the creation of wills, trusts, and marital agreements. Based upon the choices made by the attorney through an online “interview” format, the software automatically produces documents that cover all of the issues that need to be resolved for that particular type of document.

Not only does technology empower clients, it levels the playing field so that solo and small firms can compete with bigger firms. Virtual offices, e-lawyering, cloud computing and social media were concepts unimaginable less than a decade ago, but now they represent different ways of providing cost efficient legal services. Lawyers entering the profession need to understand technology, for their own practices, and also for the representation of clients, especially in e-discovery matters. Having project management skills may also make sense for those entering the profession now and in the years to come. Change will continue to come to the profession, redefining how lawyers practice, how they use technology, and how they interact with clients and manage their expectations. The world is no longer lawyer centric, and new lawyers must understand that and prepare for the continuing evolution of how legal services will be provided going forward.

### 11. Remote/Online studies

A correspondence law school is a school that offers legal education by distance education, either by correspondence or online by use of the internet or a combination thereof. In the United States, the American Bar Association has historically been the only source of acceptable legal education standard approved by the states to allow passing law school students an opportunity to become a lawyer in the United States. The online/correspondence schools offer are not ABA approved and as of 2015 law schools that are ABA approved cannot offer over 4 online classes that can be applied toward a Juris Doctorate degree. 2008 ABA Standards for Approval of Law Schools

Notes from article entitled ‘ABA Considers Accreditation for Online Law Schools’. Copyright ©2015 GetEducated.com; Approved Colleges, LLC All Rights Reserved. http://www.geteducated.com/justice-law-legal-studies/273-bar-association-may-ease-online-lawschool-restrictions

Currently, most states allow only ABA-accredited law school graduates to take its bar exam and become licensed attorneys, and the ABA does not accredit any 100 percent online law school. The ABA accreditation standards include “Standard 306,” which applies to distance education and allows law schools to offer some online courses in their degree programs—but only 12 credits total. Of these, only four credits can be taken in a semester and students can’t take them in their first year of law school. These restrictions effectively eliminate online law schools from accreditation. The ABA Predicted to Modify Online Law School Standards. Bucky Askew, the ABA’s staff consultant on legal education, predicts that the ABA will, indeed, broaden its standards for online law degrees when it addresses the issue next year.

“In the case of distance education, I think there is interest in reviewing it more comprehensively,” says Askew. “My guess is it will probably result in the standard permitting more [distance education credits] in the future, based on what I’ve observed and heard.” However, says Barry Currier, dean of Concord Law School in California (an online law school that is not accredited by the ABA), simply increasing the number of allowable credits is not
enough. Currier, a former ABA deputy staff consultant on legal education, says allowing only a limited number of units of distance education instruction would mean “it’s going to be a long time before Concord could be qualified for ABA approval.” The ABA reviews its standards every five years. Up until 2000, it did not allow any distance learning credits to be part of a law degree, says Askew. Then the ABA began allowing traditional law schools to offer a few online courses.

“My guess is they decided to start slowly to permit schools to do this on a fairly limited basis and see how it goes,” says Askew. Reasons ABA Reluctant to Accredit Online Law Schools: Currier says the legal profession has traditionally been conservative and slow to adapt to change. Also, he points out, there is no pressure on the ABA to approve online law schools, since bricks-and-mortar schools are having no problem attracting applicants to pay hefty tuition bills. He notes that 100,000 people apply annually to 45,000 open seats at ABA-accredited law schools. Average cost in 2008, according to the ABA: approximately $50,000 to $100,000 for a degree, depending whether a school is public or private. “It’s not like they are suffering from a dearth of applicants,” says Currier. “If they felt like they had to scramble to fill the seats, they might say, What about all those great students who can’t come physically to campus?” But they don’t feel that pressure.” The ABA’s rules also may reflect the belief that classroom interaction is an important part of a legal education—which ABA standards-setters may not realize is achievable through online classes, says Currier. “There is a lack of awareness about how interactive, rigorous and substantial a good online legal program can be.” Also, says Currier, the ABA has a “lack of appreciation for what distance learning can do in terms of opening access, making legal education more affordable and engaging.” Many Concord students, says Currier, are mid-career professionals who need the flexibility online schools provide to manage their jobs and family obligations. In addition, Concord’s tuition of about $40,000 is less than the average for public law schools (though some are cheaper). California, where Concord is based, allows non-ABA-accredited law school grads to sit for its bar exam—the only state that does so. A few other states, including Wisconsin and Vermont, have policies allowing lawyers licensed in other states to sit for bar exams, even if those lawyers earned degrees from online schools.

Notes from Canadian Bar Association Legal Futures Initiative, Report on Transforming the Delivery of Legal Services in Canada, Aug. 2014. FUTURES: TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA

Legal education providers, including law schools, should be empowered to innovate so that students can have a choice in the way they receive legal education, whether through traditional models or through restructured, streamlined or specialized programs, or innovative delivery models. Legal education and training should be regarded as life-long processes, and educators should be empowered to innovate to provide more flexibility and choice in the ways that new lawyers are educated and trained. New and current lawyers also need to embrace the techniques used in other professions for training and improvement. An integrated, practical approach, including multidisciplinary skills training, should be incorporated into curricula to provide “translational knowledge” – the ability to turn critical knowledge of legal concepts, regulatory processes, and legal culture into actual problem-solving ability in practice. Lifelong legal education will become the norm, with additional skills and practical training added to the law school curriculum or delivered afterward to prepare lawyers for the demands of the future (business management, project and process management, communications, technology literacy, etc.)

12. Education of limited license/paraprofessional applicants
The state of Washington offers what it describes as an affordable legal support option to help meet the needs of those unable to afford the services of an attorney. Legal Technicians, also known as Limited License Legal Technicians (LLLT), are trained and licensed to advise and assist people going through divorce, child custody and other family law matters in Washington state. They are described like nurse practitioners, who can treat patients and prescribe medication like a doctor. Licensed Legal Technicians bring a similar option to the legal
world, making legal services more accessible to people who can't afford an attorney. While they cannot represent clients in court, Legal Technicians are able to consult and advise, complete and file necessary court documents, help with court scheduling and support a client in navigating the often confusing maze of the legal system.

http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians

While we continue to appreciate the need to expand access to legal services, we do, however, have reservations about creating a category of non-lawyers who do not work under the supervision of attorneys. We believe that limited licensure systems must clearly define the role of non-lawyers and establish credentials for them which protect the public. (ABA Standing Committee on Paralegals, 2014)

13. Foreign educated lawyers
Currently there are five methods by which foreign lawyers might actively practice in the United States: 1) through a license that permits only limited practice known as a foreign legal consultant rule; 2) through a rule that permits temporary transactional work by foreign lawyers; 3) through a rule that permits foreign lawyers to apply for pro hac vice admission; 4) through a rule that permits foreign lawyers to serve as inhouse counsel; and 5) through full admission as a regularly licensed lawyer in a U.S. jurisdiction. (need cite).

Most states do require a J.D. degree for a US law school in order to sit for the bar exam. There are some states which do allow foreign law graduates to sit for the bar exam, including New York, California, New Hampshire, Alabama, and Virginia. In this case, however, foreign-educated lawyers must begin the process by getting their law degree reviewed and analyzed by the American Bar Association, and it can take up to a year to before the foreign law credentials are even assessed. Once reviewed, the application is either accepted or deferred. If accepted, foreign lawyers are allowed to sit for that state's bar exam in much the same way a domestic applicant would. In New York, one of the jurisdictions most open to foreign lawyers, this would allow foreign lawyers to sit for the bar without being forced to complete any further law school study in the US. (need cite).

Notes from article entitled: Taking Bar Exam in USA as foreign lawyer, by Bhagwan Dass Ahuja,LLM Esq, Feb. 8, 2015:
US states fall into one of two camps regarding foreign lawyer's taking the U.S. Bar exam. In the first camp are those states which require all bar applicants - domestic and foreign - to earn a Juris Doctor (JD Degree) from a law school accredited by the American Bar Association. Because no schools outside of the US have received this accreditation, in practice this policy means that fully 23 states will not consider graduates of foreign law schools as eligible for admission to their state. In the other camp are the five US states which allow a foreign lawyer to take the bar: New York, California, Alabama, New Hampshire and Virginia. These states allow some foreign-educated lawyers to take the bar examination without earning their degree locally. In this case, however, foreign-educated lawyers must begin the process by getting their law degree reviewed and analyzed by the American Bar Association (ABA) with an option to complete either JD or LLM degree from ABA approved Law school. Once reviewed, the application is either accepted or deferred. If accepted, foreign lawyers are allowed to sit for that state's bar exam in much the same way a domestic applicant would. If deferred, applicants may be asked to complete coursework at an ABA-approved law school before sitting for the bar exam. This coursework usually takes the form of a one-year LL.M program at an ABA accredited school of law The LL.M, from the Latin Legum Magister or Master of Laws, is essentially an overview of US law for foreign lawyers and is most often requested of applicants who were educated or practiced in Common Law as opposed to Civil Law countries. If this is the case, once the candidate completes their LL.M and obtains ABA approval, they can take a state bar exam as a foreign lawyer. Even if you complete your Master of Law (LLM) degree from ABA approved law school and pass the bar exam of the State by which you are permitted to do so and get licensed as attorney on record, you cannot practice law independently unless you have a green card.
Foreign lawyers performing U.S. work in foreign entities are deemed a source of competition for U.S. lawyers due to the outsourcing of legal services to foreign entities. Outsourcing is the practice of hiring foreign entities to perform routine legal services such as research and document review. As an example, more than one million lawyers in India are willing to work for much less than American attorneys. In 2007, the U.S. exported $6.7 billion in legal services, while importing only $1.6 billion. While law firms may not be enthusiastic about outsourcing, large firms with corporate clients find themselves under increasing pressure to hold down costs as clients see outsourcing as a way to save money. The New Normal: Challenges Facing the Legal Profession, Wisconsin State Bar Board of Governors’ Challenges to The Profession Committee Report, July, 2011.


Graduates who have passed the bar exam in another state and hold an active law license are eligible to take the bar exam with either (1) full-time practice for 3 of the 5 years preceding application or (2) completion of 24 credit hours in residence at an ABA-approved law school within the 3 years prior to application. Graduates who are not licensed in another state must be admitted to practice law in the foreign country where the foreign law degree was conferred and be in good standing with either (1) fulltime practice for 3 of the 5 years preceding the application or (2) completion of 24 credit hours in residence at an ABA-approved law school within the 3 years prior to application.

14. Trade v. Profession debate
The three great professions are theology, law, and medicine.

Notes from: Widener Journal of Public Law, 2000, 9 WIDENER J. PUB. L. 343

The practice of law as a profession can be traced to medieval times. The ancient legal profession, like theology and the practice of medicine, was regarded as a learned one, and these professions were distinguished from craft and trade associations by the demarcations of society, economy, and education. Dean Roscoe Pound described a profession as a group of men pursuing a learned art as a common calling in the spirit of a public service-no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose. Gaining a livelihood is incidental, whereas in a business or trade it is the entire purpose.


WHAT IS A “PROFESSION”? It is symbolically significant if an occupation is labeled a “profession.” The word, “profession,” as customarily defined and understood, evokes favorable emotions and suggests status. Many occupations avidly seek to be recognized as a profession, and occupations already so acknowledged jealously guard their status as a profession. An auto mechanic may have great expertise and high status within a group that recognizes that skill, but doctors, lawyers, pharmacists and accountants would not concede that even an expert mechanic is a member of a learned profession. When one looks at what commentators say about “professions,” it is interesting how often that they agree that the rise from “occupation” to “profession” carries with it a number of supposedly necessary corollaries. Among these is the concept that it is appropriate for a profession to impose entry restrictions and to engage in other non-competitive practices, such as price fixing, peer review and the elimination or regulation of advertising. These restrictions are justified as part of the definition of “profession.” Thus, George Bernard Shaw cynically defined all professions as “conspiracies against the laity.” The only fruitful
use of the term “profession” today relates to individuals, not groups. As the American Bar Association has
recognized, some lawyers are professionals, and some are not. It is not appropriate - nor is it useful - to label the
practice of law or other occupations as a “profession” if that label is then used to justify restraints of trade that
would not be accepted for all occupations. Yet, we often find that legal restrictions on what certain professions
may do are often rationalized and are seen as inherent in, or part of the definition of, a “profession.” Consider a
few specific examples of the excess baggage attached to the label of “profession.” Another test, or definition, of
“profession” asserts that professional organizations - unlike trade unions - exist primarily for the advancement
of medicine, justice or teaching, not for the advancement of the individual members. Under this definition, the
professional is selfless. The professional serves the public interest and the best interest of patient or client.
Unlike the trade unionist, the professional is not merely in a money-making trade. The professional services
others, and thereby emphasizes quality. Gaining a livelihood is incidental. A professional person offers a certain
service and confers the same diligence and quality of service whether paid or not. What we now call trade or
craft unions would have been called guilds in the Middle Ages. Guild members claimed they existed not merely to
make money but to serve others. Modern unions can make the same claim. Entrance is restricted in certain craft
unions, it is said, to protect quality. Labor leaders have argued that higher wages and shorter work weeks are
bargained for in craft and trade unions and imposed by law in order to help the economy, not merely the individual
worker. Besides, low salaries may encourage poor workmanship. Unions demand increased safety for their
workers and in so doing fulfill the public interest in safe working conditions. Goods and services are rendered by
unionists not just for money but because they service the needs of the public. Such arguments need not be made
cynically. Many of these positions are not only sincerely believed, but acted upon. The unionist is similar to the
lawyer or doctor, not only by having goals that extend beyond mere money, but also by having the obligation, at
times, to say “No,” to the consumer. The unionist and the lawyer both have duties beyond self-interest. Lawyers,
given their obligation to serve the public interest, are under a moral and legal duty not to advise their clients on
how best to commit a crime. Similarly, bartenders, given their obligation to serve the public interest, also are
under a moral and legal duty not to serve alcohol to an intoxicated customer. Car mechanics may be said to
be under a moral duty to advise their clients that a given repair may cost more than the car is worth. That an
occupation is not labeled a “profession” does not mean its members must be hired guns and have no obligations
beyond serving their clients. Of course, some union workers may not fulfill duties of loyalty and service beyond
self-interest and may be more interested in mere cash. But some lawyers, doctors, accountants, and architects
similarly may not meet the expectations of their guilds. Auto mechanics who repair cars, are, as an occupational
class, no less professional than lawyers who sue to collect the unpaid bills for the car repair work. The nature of
person is not altered because of the particular occupation in which he or she is engaged. The professional quality
of dedication to serving client interests - of rendering a service beyond self-interest, of duty, of “a spirit of public
service” - are attributes of individuals, not of occupations. It is often said that professions must maintain dignity,
and both advertising and competition are undignified. Advertising and price competition are not conducive to
dignity, and lawyers’ professional codes outlawed them until the United States Supreme Court invalidated state
prohibitions on advertising based on First Amendment grounds. Advertising restrictions imposed by professional
organizations would not violate the First Amendment (because there is no state action), but they would still be
illegal because they would violate the antitrust laws, as a conspiracy in restraint of trade. Some consider the
prohibition on advertising and the maintenance of dignity to be the essence of a profession.

Notes from: The Vanderbilt University School of Law, Vanderbilt Journal of Transnational Law, October, 2001,
34 Vand. J. Transnat’l L. 931

The practice of law is a learned profession. It requires specialized training and the “lawyer must gain an
understanding of the shared values of the profession. Second, a lawyer must be independent. The lawyer must
zealously represent the client; strict confidentiality must be maintained; and conflicts of interest must be “avoided
absolutely.” Third, lawyers must be regulated “to ensure competence and ethical conduct.” The “practice of
law must be governed by ethical principles.” Regulation “promotes the concept that a lawyer serves the public
interest in addition to the client.” Fourth, a “lawyer has an obligation to the public in addition to obligations to a particular client, and a lawyer has a responsibility to respect the concept of the rule of law.” The “legal profession, operating within the rule of law and a transparent system of justice, strengthens the disparate institutions of the world’s governments and reenforces [sic] the fabric of society.”

The current practice of charging for legal services on the basis of a predetermined amount of money for an hour of effort is inconsistent with professionalism. As long as this practice is continued, the practice of law defines itself as a trade - a trade not far removed from that of a meat market where steaks, chops, and ground meat are packaged in plastic wrap and displayed on a counter at so much a pound. At meetings of bar associations, someone routinely deplors the transformation of our profession dedicated to service into a trade entered upon for profit. If the practice of law is to return to the status of a profession in the great tradition, young lawyers will have to see it done.


Dean Roscoe Pound identified three ideals of a true profession: the spirit of public service, the pursuit of a learned art, and an organization. The spirit of public service, Pound argued, is the most important characteristic, and it must be followed to the exclusion of any emphasis on monetary gains. In other words, competitive forces should have no place in the practice of law. Pound's words have heavily influenced the regulation of lawyers in America. The American Bar Association (ABA) has frequently relied on the need to maintain the spirit of public service in its efforts to increase standards of learning for those who enter the profession.


LAW has ceased being a profession and has become a business. This usually-critical assertion is often heard today, and in significant part it may be true. One measure of its truth - and a partial reason for that truth - may be the fact that at least since 1975, the standards and conduct of the legal profession have been subject to scrutiny under the antitrust laws. It is no disparagement of the practice of law as a profession to acknowledge that it has this business aspect... In the modern world it cannot be denied that the activities of lawyers play an important part in commercial intercourse, and that anticompetitive activities by lawyers may exert a restraint on commerce. (Why Lawyers Should Be Allowed to Advertise: A Market Analysis of Legal Services, 58 N.Y.U. L. Rev. 1084 (1983).

Notes from: Washington Law Review, SEPTEMBER, 1985, 60 Wash. L. Rev. 925

The Professional Exemption: The foundation for the argument that lawyers' services do not constitute trade or commerce is the “learned professions” exemption from antitrust law. Dictum alluding to such an exemption first surfaced in The Schooner Nymph Case, decided in 1834. In that case Justice Story wrote: “Wherever any occupation, employment, or business is carried on for the purpose of profit, or gain, or a livelihood, not in the liberal arts or in the learned professions, it is constantly called a trade.” The classic rationale for distinguishing the professions from business was that business persons are motivated by profits while professionals strive to provide services to the community. The objective of the professional was thought to be inconsistent with the requirement of competition found in antitrust law.

Notes from: Tulane Law Review, April, 1974, 48 Tul. L. Rev. 682

In a case of first impression, decided January 5, 1973, the United States District Court for the Eastern District of Virginia held that the minimum fee schedule of the Fairfax County Bar Association was a per se violation of Section 1 of the Sherman Act, which prohibits contracts, combinations and conspiracies in restraint of interstate
or foreign trade or commerce. The case is significant because professions have traditionally enjoyed a judicially implied exemption from antitrust actions. The United States Supreme Court has stated that the natural meaning and judicial definitions of the word “trade” within the meaning of the Sherman Act exclude the professions. Whether this judicially implied exemption continues today, or has been practically eroded, is one of the issues that will be considered in this comment. As of 1971, at least thirty-four states and hundreds of local bar associations had promulgated schedules, which recommended minimum fees that should be charged by lawyers for professional services. As a result of the district court’s decision in Goldfarb v. Virginia State Bar some state bar associations have already dropped their fee schedules and dozens of local bar schedules are also disappearing. Other state bar associations are contemplating the move to drop fee schedules in light of threatened antitrust action by the Justice Department. Some lawyers are urging the profession not to panic, claiming the fee schedule is merely a suggested guide, and is thereby immune from Justice Department action. However, the classic concern of antitrust law has been to preserve competition among existing business firms by preventing them from joining together to achieve for themselves the fruits of monopoly. This comment suggests that minimum fee schedules are within the scope of the Sherman Act, that such schedules are a form of price fixing and, as such, are a per se restraint of trade. The practice of law is generally local in nature and, as a result, the argument might be made that the practice of law has no significant effect on interstate commerce. Price-fixing activities among the professions that have had a direct economic effect on the interstate flow of goods have been struck down under the Sherman Act. The Supreme Court has stated, “commerce among the States is not a technical legal conception but a practical one, drawn from the course of business.” Thus, if the practice of law is a “trade,” and if, by applying a practical conception of interstate commerce to the legal activities of the profession, we conclude that commercial legal transactions meet the “interstate” requirement, and if the mere existence of an agreement is sufficient to constitute a restraint on trade, then all minimum fee schedules must be in violation of the antitrust laws, unless they are exempt from antitrust laws under the “state immunity” doctrine.

15. Experiential/Applied Legal Skills Curriculum v. Doctrinal Curriculum

While this topic appears to pit experiential or applied legal skills courses versus doctrinal courses, that the best way to look at the topic may be for the bench, bar, and legal educators to consider “how they [legal educators] can most effectively prepare students for practice.” If we take this approach, it leads to the following questions for us to explore.

Questions:
What is the best combination of experiential/applied legal skills and doctrinal instruction in law school?
What is the best allocation of course credits between experiential/applied legal skills and doctrinal instruction in law school?
Should law schools change graduation requirements to reflect a particular ratio of experiential/applied legal skills courses to doctrinal courses?
Should Missouri establish legal education bar admissions requirements that are different from American Bar Association Accreditation Standards as some other states have done or are considering?

2 ROY STUCKEY, ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 1 (2007) [hereinafter BEST PRACTICES].

3 Some of this discussion is based on, summarizes, or is excerpted from an essay I wrote, Law Schools and the Legal Profession: A Way Forward, 47 AKRON L. REV. 177 (2014). Please note that in paraphrasing or quoting from that essay in this memorandum I have not used additional citations to the essay in order to limit the number of footnotes.
Discussion and Resources

There has been an increasing call for law school graduates to acquire and develop more lawyering skills and to be more “practice ready” before they start their first jobs as lawyers. The call for law schools to do more to prepare students for the practice of law is not new, and many commentators have claimed that law schools have been slow to change. In 1921, the Carnegie Foundation for the Advancement of Teaching identified three components necessary to prepare students for the practice of law: general education, theoretical knowledge of the law, and practical skills training. An undergraduate degree satisfies the general education requirement, and a 2007 Carnegie study, Educating Lawyers, found that law schools do a good job of educating law students in theoretical knowledge of law through the Socratic case-dialogue method of instruction. But the 1921 Carnegie study found that law schools needed to incorporate more practical skills training, noting: “The failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly.” More than eighty years later, Educating Lawyers reached a similar conclusion, finding that the emphasis on the cognitive or theoretical aspect of law has limited the emphasis on lawyering practice skills.

In 2007, Roy Stuckey and others published Best Practices for Legal Education, premised upon the primary assumption that most law school graduates “are not as prepared as they could be to discharge the responsibilities of law practice.” Best Practices argues that law schools can improve its education of students by engaging them “in context-based learning in hypotheticals as well as real life contexts.” The best way to do this is to “present students with progressively more challenging problems as their selfefficacy, lifelong learning skills, and practical judgment develop.” Educating Lawyers concurs with this thesis.

Today, most law schools have expanded lawyering skills instruction, though few have adopted requirements that exceed the ABA Standards. Until recently, the ABA only required one credit hour of lawyering skills instruction. Effective with the entering 1L class in 2016, the new ABA requirement is for six credit hours of experiential course(s), which is defined as law school clinic, externships, and simulation courses that “integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standards 302.” The ABA Standards require eighty-three credits for a JD degree, and the six credit requirement for experiential courses represents approximately 7% of the credits required for graduation.

Law schools require less experiential courses than most other professions. Architecture education requires approximately one-third in design studio courses. Medical education requires one-half of the student’s education in clinical rotations, and veterinary medicine requires at least one-quarter of the education in clinical education.

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4 ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF LAW 276 (1921).
5 WILLIAM M. SULLIVAN ET. AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter EDUCATING LAWYERS].
6 Id. at 6-7, 23-24.
7 REED, supra note 3, at 281.
8 EDUCATING LAWYERS, supra note 4, at 89-91.
9 ROY STUCKEY ET AL., supra note 1.
10 Id. at 1.
11 Id.; at 105.
12 Id.
13 EDUCATING LAWYERS, supra note 4, at 95.
14 A 2010 ABA Consultant on Legal Education Memorandum explained that “substantial instruction” in professional skills may be accomplished by requiring at least one credit hour of skills training where “instruction in (other) professional skills must engage each student in skills performances that are assessed by the instructor.” American Bar Association Consultant on Legal Education, Consultant’s Memo 3, Standard 302(a), Standard 304, Standard 504, Standard 509 (Mar. 2010).
Nursing requires approximately one-third of the education in clinical practice courses. Pharmacy schools require 300 hours in the first three years of study in clinical settings and 1,440 hours in the final year of school in clinical settings. A masters of social work requires approximately one-third of the credit hours in field education courses.

In recent years, some state bar regulators have begun to impose or consider imposing pre-admission requirements to become a member of the legal profession that exceed the educational requirements of the ABA Standards. Common to these new requirements and recommendations is the view that law schools should be doing more to prepare students for the practice of law, and that more experiential education should be a part of the preparation.

In 2012, New York adopted as part of its rules for admission that bar applicants must have completed at least 50 hours of qualifying pro bono service. The pro bono requirement went into effect in 2015. The pro bono requirement may be just the first step in additional New York pre-admission requirements. The New York State Bar Association issued the Report of Task Force on the Future of the Legal Profession in 2011. In the report, the Task Force recommended a reevaluation of bar admission rules and called for law schools to require a greater emphasis on applying theory and doctrine in actual practice and the development of professional judgment through simulation, externship, and clinical courses. New York is continuing to examine these recommendations.

Recently, the State Bar of California Task Force on Admissions Regulation Reform issued a report that included proposed admission requirements. The report noted that several past studies found a perceived gap between legal education and law schools preparing graduates for the practice of law. To address this perceived gap, the California Task Force has proposed that applicants complete fifteen credits of competency training units. Law school or bar approved non-credit bearing clerkships or apprenticeships, including summer jobs, could substitute for up to six of the fifteen competency training units. Partial credit toward the fifteen units can be given for experiential components taught within more traditional classroom courses. The Task Force also recommends that any course that will satisfy the ABA experiential course requirement will also satisfy this new proposed requirement. These recommendations are before the California Supreme Court.

At least two other states, Illinois and Ohio, have issued reports that call for reform of the law school curricula. Both reports were critical of law schools for not preparing students better for the practice of law, but neither report has resulted in a specific changes to bar admission requirements. Illinois focused on student debt and found that law school were not adequately preparing students for the practice of law, thereby contributing to graduate unemployment. The Ohio report calls on law schools to require more experiential courses. Both Illinois and Ohio are continuing to consider possible pre-admission requirements.

16. Bar Preparation – the Role of Law School/Outsourcing

Questions:
What role should law schools have in bar preparation?
Are law schools currently fulfilling that role?
If law schools are not currently fulfilling the role they should play in bar preparation, what changes are needed?
How does the law school’s role in bar preparation interact with commercial bar preparation course providers?

Discussion
In general, most legal educators have the view that legal education should not be geared specifically for bar preparation. This position was reinforced by the ABA Standards that, until recently, prohibited law schools from offering bar preparation courses for credit or as a condition for graduation. Now that the ABA prohibition is no longer in effect, some law schools have begun to offer bar preparation courses for credit. Some schools with low
bar passage rates either require all students to take the bar preparation courses or require those students whose law school grade point average is law to take the courses. Some law schools have partnered with commercial bar preparation course vendors to help structure the law school administered bar preparation courses, and some law schools have negotiated lower rates for separately administered post-graduation bar preparation courses for all graduates. Other law schools have purchased commercial bar preparation courses for all of their graduates and have factored into the cost in pricing a student’s tuition over three years of law school. Most of the law schools that have started offering bar preparation courses are in states with low bar passage rates or the schools’ graduates have had bar passage challenges.

While some graduates of all the Missouri law schools do not pass the Missouri Bar Exam on their first try, an overall low bar passage rate is not an issue for any law school in Missouri. Because the bar passage rate itself is not the issue, consideration of the law school’s role in bar preparation may be based on other factors such as the cost of commercial bar preparation courses for students.

Commercial bar preparation courses in Missouri from the major providers are currently priced as follows: BarBri, $2,995; Kaplan Bar Review, $2,845; Themis, $1,695; and AmeriBar, $995 - $2395 depending on the type of bar review course options such as intensive assignments and tutoring sessions. Some of the providers offer discounts for purchasing the bar review course early in law school or provide bar review courses for free or at larger discounts for law student representatives for the bar review courses.

These are not insubstantial expenses, and only graduates who have secured employment at large law firms typically receive financial assistance for bar preparation courses. Students who do not have employment at graduation and who have accumulated large educational debt are often hard-pressed to purchase a bar preparation course. It is not unusual for some students to forego purchasing a bar review course due to their inability to afford it, but it is unclear how many students each year at each law school in Missouri face this challenge. In terms of the initial questions posed, the Subcommittee may want to ask Missouri law schools for information concerning each school’s experience with students who are unable to purchase bar preparation courses.

17. Skills Related to Non-Traditional Jobs for Law-Trained Professionals

Questions:
What are current examples of non-traditional jobs for law-trained professionals and what skills are needed for these jobs?
Are law schools teaching the skills needed for current non-traditional jobs for law-trained professionals?
What are examples of non-traditional jobs for law-trained professionals in the future and what skills are needed for these jobs?
Are law schools teaching the skills needed for the non-traditional jobs for law-trained professionals of the future?

Discussion

Current Non-Traditional Jobs for Law-Trained Professionals and Skills Needed

The attachment [Exhibit 1] “Examples of Non-Traditional Jobs for Law-Trained Professionals” is from the Loyola University of Chicago School of Law website, and it appears to be a good listing of several different examples of non-traditional jobs presently available for law graduates. The examples include positions in alternative dispute resolution (ADR), arts/media, corporate, education, financial services, government, fund development, human resources/recruitment, legislation/lobbying, and non-profit management.
The attachment also lists the skills for the various positions. Law schools currently teach many of the skills through courses taught at virtually law schools, and those skills include: negotiation, mediation, and persuasion/advocacy; research skills and fact analysis; general legal knowledge, understanding laws and regulations, and contract interpretation; writing and communication skills; and risk awareness and risk analysis. Some law schools teach some of the other skills listed, though most do not. Most of these other skills are usually the focus of subjects taught at business schools or other schools in a university. Those other skills include: leadership and management; fundraising; sales, sales promotion, and account management; public relations; and financial planning. Of the skills not usually taught in most law school courses, a focus on leadership and management appears to top the list of those other skills most needed for non-traditional jobs.

Missing from both the list of non-traditional jobs and the skills needed are the emerging law-related jobs that did not exist ten to twenty years ago. For example, e-discovery and e-discovery management is an emerging area where many law firms have been outsourcing their work because they do not have the expertise in-house to conduct e-discovery effectively. Changing technology is affecting the practice of law, and the following section discusses some of the possible types of jobs and skills needed for the future.

**Future Non-Traditional Jobs for Law-Trained Professionals and Skills Needed**

In *Tomorrow’s Lawyers*, Richard Susskind predicts that the very nature of both lawyers’ work and legal employment is changing, resulting in less need for traditional lawyers. The new jobs for lawyers he identifies include: legal knowledge engineers, who can “organize and model huge quantities of complex legal materials and processes”; legal technologists, “experienced and skilled individuals who can bridge the gap between law and technology”; legal hybrids, lawyers schooled and expert in related disciplines; legal process analysts, “individuals who could undertake reliable, insightful, rigorous, and informed analysis of their [law firms and in-house legal departments] central legal processes”; legal project managers, individuals who allocate work to appropriate providers and ensure that providers complete work satisfactorily, on time, and within budget; on-line dispute resolution (ODR) practitioners, “experts in resolving disputes conducted in electronic formats”; legal management consultants, individuals engaged in “strategy consulting . . . and operational or management consulting (for example, on recruitment, selection of law firms, panel management, financial control, internal communications, and document management)”; and legal risk managers, individuals whose “focus will be on anticipating the needs of those they advise, on containing and preempting legal problems.”

Based on his description of these various emerging employment opportunities, law students appear well-qualified to learn the types of professional skills that Susskind predicts they will need as lawyers in the future. But Susskind questions whether law schools will make an effort to prepare students for the future by claiming that law schools are not preparing graduates for the practice of law today. Susskind observes “if graduates are not well equipped for legal practice as currently offered, they are profoundly ill-prepared for the legal work of the next decade or two.”

Based on the initial questions and this discussion, it appears that law schools could be doing more both to prepare students for some of the current and anticipated non-traditional jobs by having more of a focus on leadership and management. Law schools could also do more to embrace emerging technology in the practice of law and prepare students for the types of jobs Susskind predicts will become more available, but those changes would require substantial changes to the typical law school curriculum.

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17 *Id.* at 128-135.
18 *Id.* at 151.
18. Teaching Law Practice Management/Solo Practice Management

Questions:
What role should law schools have in teaching law practice management?
What role should law schools have in preparing graduates for solo practice and solo practice management?

Discussion
Some law schools offer courses in law practice management, and some law schools seek to prepare law graduates for solo practice and solo practice management. In recent years, some law schools and some independent non-profits have started incubator and residency programs to enable recent law graduates to acquire skills and experience needed to start successful solo practices.


City University of New York (CUNY) School of Law initiated the first incubator for recent graduates more than a decade ago. There are over fifty of these programs across the country, most of which are law school based. The ABA has a website, Incubator/Residency Programs, located here http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main.html, which has a directory of programs, incubator/residency profiles, and resources. UMKC initiated an incubator in 2010, and its website states that more than 150 graduates have received substantial training through the Solo and Small Firm Institute.

Given the initial questions and this discussion, the additional issues for the Subcommittee is whether law schools should be required to offer law office management and/or a role in preparing graduates for solo practice and solo practice management? The answers to these two questions may differ. In terms of preparing students for solo practice, it would also be helpful to survey law schools to determine approximately what percentage of its graduates enter solo practice within the first three years of graduation.
Over the course of the past three months, this task force has contemplated and discussed issues affecting legal employment. This report summarizes our efforts and findings, and it identifies key issues facing legal employment in Missouri.

**Objective:** Identify issues with the employment of new professionals and propose solutions to these issues.

**Action:** In preparing this report, the taskforce:

- Analyzed scholarly articles drafted by peers
- Analyzed news reports regarding legal employment
- Surveyed the Young Lawyers Section of the Missouri Bar regarding their law school and employment experience
- Analyzed employment statistics from local law schools
- Discussed employment issues via teleconference
- Interviewed colleagues for insights

**I. INTRODUCTION**

As noted by Honorable Paul Campbell Wilson in his commencement speech, employment in the legal industry is at a crossroads. Employers, and newly minted attorneys alike, are recovering from an economic downturn that has suppressed job growth for traditional and new legal jobs. The National Association for Law Placement estimates the legal market is still down approximately 40,000 jobs from pre-recession employment highs. And while the percentage of graduates hired for full time jobs requiring bar passage has increased to 60%, trends in employment data suggest there is still, and will be, a significant disparity between the supply of and demand for new lawyers.

While the significance and impact of the recent recession cannot be ignored when discussing issues with legal employment, the recession is not the only issue suppressing employment statistics. A crisis over legal education exists within the legal profession. Law schools are not producing graduates that are “practice-ready,” and legal employers are no longer willing to bear the burden of training new graduates during their initial years of employment. Now, more than ever, law firms and corporate clients are looking at law schools to produce “practice-ready” attorneys to fill job positions.

Against this backdrop of underemployment and inadequate training for new graduates, a substantial “access to justice” issue exists in our country with lower to middle class Americans not having access to affordable representation. Not enough jobs serve the needs of the lower to middle class. However, even if more jobs were

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1. See A Profile of the Profession: Law School Enrollment Profiles, Law School Debt, Bar Admission Trends, and Post-Graduate Employment Data, NCBE Annual Bar Admissions Conference, at p. 3 (May 1, 2015).
2. Id. at 3 (“Sector still down approximately 40,000 jobs from pre-recession high.”)
3. James E. Moliterno, *And Now a Crisis in Legal Education*, 44 *Seton Hall L. Rev.* 1069, 1072 (2014) (“Everyone from law firms and their clients to prospective law students and even to the New York Times has turned to the law schools to say, 'It's your tum; you have to do this for us.' The cost once borne by corporate clients of law firms is now increasingly borne by law schools. The call for law schools to produce 'practice-ready' lawyers arrives as the cost of legal education is already too high and application numbers are too low for the current supply of legal education seats.”)
created to serve this group, the cost of law school and the indebtedness required to graduate law school may prohibit new graduates from assuming lower paying jobs serving these communities.⁴

In addition to analyzing the disparity between supply and demand in the legal profession, this task force also considered numerous other issues impacting legal employment. We investigated: (1) job satisfaction among new graduates, (2) the impact of debt on the profession, and (3) hiring processes for new graduates, among others.

This report first identifies barriers to entry for new graduates seeking legal employment. Next, it explores a crisis in legal training of prospective lawyers entering the profession. Finally, it discusses other issues impacting lawyers who recently entered the legal profession. Throughout the report, this task force proposes possible solutions to issues affecting legal employment and entry into the profession. These proposals are not necessarily endorsed by this subcommittee; rather, these possible solutions have been identified as starting points for further discussion.

II. CRISSES IN LEGAL EMPLOYMENT

A. Lack of Full-Time/Long-Term Jobs Requiring Bar Passage

As noted above, the legal sector is still down approximately 40,000 jobs since its pre-recession high.⁵ New graduates enter a crowded and competitive market with fewer entry-level private practice jobs than in the past because efficiencies created by technology and globalization have reduced and replaced the need for certain traditional legal jobs.⁶ For those graduating from law schools in 2014, only 60% found employment (within 9 months after graduation) in full-time/long-term legal jobs requiring bar passage.⁷

Consistent with national employment averages, students graduating from Missouri law schools also struggled to find full-time/long-term employment requiring bar passage. A weighted average of employment statistics from Missouri schools suggests only 68% of students graduating from Missouri based law schools found full time employment requiring bar passage in 2014. While this number exceeds that of the national average (60%), it leaves significant room for improvement.

⁴ Lucille A. Jewel, Fighting Law School Sprawl - Sustainability in the Legal Profession, The Nat’l L. J. L. Sch. Rev. (Nov. 2, 2011) (“The reality is that lawyers who choose to start their careers representing individual clients in the public sector or as small firm/solo practitioners will make around $45,000 or less, which is similar to a social worker’s salary. . . . [W]ith debt loads approaching $100,000 or more, most of today’s law graduates simply cannot afford this career path.”), http://legaltimes.typepad.com/lawschoolreview/2011/11/fighting-law-school-sprawl-sustainability-in-the-legal-profession.html.

⁵ A Profile of the Profession: Law School Enrollment Profiles, Law School Debt, Bar Admission Trends, and Post-Graduate Employment Data, NCBE Annual Bar Admissions Conference, at p. 3 (May 1, 2015) (“Sector still down approximately 40,000 jobs from pre-recession high.”).

⁶ Id. at 16 (“Graduates will be entering the job market at a time when employment prospects are improving, but it will still be a crowded and competitive market. . . . There will be fewer entry level private practice jobs than in the past.”).

The percentage of graduating students not employed in full-time/long-term jobs requiring bar passage in Missouri and other states means many students are either unemployed or underemployed. Underemployment of new graduates may lead to job dissatisfaction for attorneys entering the profession, underdevelopment of new attorneys’ skills, and significant financial hardship with debt repayment, among other negative outcomes. While continued unemployment of certain graduates may lead to the temporary, and perhaps permanent, loss of legal minds from the profession.

This sub-taskforce could not find a study on the impact of the recession on hiring/upward mobility of women and diverse attorneys; however, we suspect that women and diversity candidates are among the groups hurting most from these unemployment/underemployment trends.

Possible Solutions:

• Restrict the number of students entering law schools.
• Allow market forces to correct the oversupply of new law graduates.
• Create new legal jobs, specifically jobs serving lower to middle class citizens.
• Encourage attorneys to connect with practicing attorneys in rural communities. As noted in section IV(A), there is a need for new graduates to assume job responsibilities of retiring attorneys in rural communities.

B. Debt Burdens for Those Entering the Profession

A significant number of graduates enter the profession with sizeable student debt, which impacts the standard of living for new professionals.

While this study on debt likely overlaps with the sub-taskforce on legal education, it is important to recognize the impact of significant debt on legal employment for new lawyers. This subtaskforce has identified numerous impacts of substantial debt on legal employment:

<table>
<thead>
<tr>
<th>Law School</th>
<th>Jobs Requiring Bar Passage</th>
<th>Students in 2014 Graduating Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. Louis University</td>
<td>63% (167/267)</td>
<td>267</td>
</tr>
<tr>
<td>University of Missouri - Columbia</td>
<td>66% (89/135)</td>
<td>135</td>
</tr>
<tr>
<td>University of Missouri - Kansas City</td>
<td>64% (92/143)</td>
<td>143</td>
</tr>
<tr>
<td>Washington University</td>
<td>78% (202/258)</td>
<td>258</td>
</tr>
</tbody>
</table>

• New graduates cannot afford to take lower paying legal jobs that assist underserved populations, which include poor and rural communities.  

• Increasing debt and the immediacy to begin repayment following graduation forces some graduates into undesired jobs that restrict future upward mobility and creates job dissatisfaction.

• The increase in loan forgiveness and defaults for students who cannot afford to pay their loans invites federal regulation of law schools and the legal industry.

• High debt burdens have contributed to lifestyle changes for millennials, who are the majority of members entering the legal market.

The NCBED notes student loan debt has now surpassed $1.16 trillion. Even more disturbing is 86% of law school students graduate with a median debt of $128,125 according to 2012 numbers.

The rapid increase in law school fees and tuition coupled with the decline of available highpaying legal jobs has resulted in many students being unable to pay their law school loans. Further, as more debt is written off by the federal government, the federal government may be forced to step in and restrict lending and/or regulate the legal industry, potentially similar to its recent regulation of the for-profit education industry.

Two major factors contribute to high debt burdens: (1) high tuition and fees; and (2) other transaction costs related to acquiring a legal license.

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14 See generally Executive Summary: Report and Recommendations Minnesota State Bar Association Task Force on the Future of Legal Education, MINNESOTA STATE BAR ASSOCIATION, at 13 (June 30, 2015) (“First, the cost of law school is most likely to have an impact on individual law students and lawyers. It can affect whether someone matriculates, what career path a graduate follows, and a wide variety of personal decisions a lawyer makes.”) http://www.mnbar.org/docs/default-source/governance-documents/report-of-the-future-of-legal-education-taskforce.pdf?sfvrsn=0.


16 James E. Moliterno, And Now a Crisis in Legal Education, 44 SETON HALL L. REV. 1069, 1088-89 (2014). In part, legal education has existed in its own nearly invulnerable economy because of the historical absence of transparency about law graduates’ prospects. But this false economic environment has also existed because of the ready availability of government-guaranteed student loans. Compared to private loans, federal loans offer the ability to collect the capital necessary for law school at a lower interest rate and without potential prepayment penalties. With cumulative student debt at an estimated $1.2 billion nationwide, politicians and financial experts alike are keeping a close eye on the potential for the system to collapse.


19 This median debt figure is second only to medical students, where 87% of students graduate with a median debt load of $135,000. Jason Delisle, et al., The Graduate Debt Review, NEW AMERICA EDUCATION POLICY PROGRAM, at 9 & 14 (March 14 (noting 86% of all law school graduates have debt), https://s3.amazonaws.com/s3.documentcloud.org/documents/1096326/gradstudentdebtreview.pdf; see also Executive Summary: Report and Recommendations Minnesota State Bar Association Task Force on the Future of Legal Education, at 12 (June 30, 2015) http://www.mnbar.org/docs/default-source/general-policy/recommendationsand-report-from-the-future-of-legal-education-task-force.pdf?sfvrsn=0.


21 Id. at 478. (“When the government is experiencing lower levels of repayment for law school graduates, and the graduates themselves are complaining about the terms of the loans, what is the likelihood that the federal government will continue to issue a blank check to U.S. law schools?”).
1. Law School Tuition, Fees & Living Expenses

Upon examination of law school attendance costs, it is not surprising the median debt per borrower exceeds six figures.

<table>
<thead>
<tr>
<th>Law School</th>
<th>Cost of Attendance (2015)</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. Louis University</td>
<td>$60,670(^{22})</td>
</tr>
<tr>
<td>University of Missouri-Columbia</td>
<td>In: $37,381 / Out: $55,011(^{23})</td>
</tr>
<tr>
<td>University of Missouri-Kansas City</td>
<td>In: $35,543 / Out: $53,296(^{24})</td>
</tr>
<tr>
<td>Washington University</td>
<td>$74,983(^{25})</td>
</tr>
</tbody>
</table>

Many factors drive increases in tuition costs and fees for law schools, and these are best outlined by the ABA’s Task Force on the Future of the Legal Profession’s Report and Recommendation.\(^{26}\)

Possible Solutions:

- Place reasonable limits on the amount of money law students can borrow so law schools adjust their pricing model.\(^{27}\)
- Shorten law school to two years so students pay less in tuition.
- Recommend outcome-based requirements for federal student loan eligibility.\(^{28}\)

2. Transaction Costs: Bar Preparation Classes, Bar Exam, and Licensing Fees

In addition to law school tuition, fees and expenses, new graduates incur numerous costs associated with becoming a new lawyer.\(^{29}\) These costs, unlike the costs of attendance for law schools, are within the purview of the Missouri Bar. Policies adopted by this task force could alleviate some of the following:

<table>
<thead>
<tr>
<th>Exam/Fee</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multistate Professional Responsibility Examination (MPRE)</td>
<td>$80</td>
</tr>
<tr>
<td>Missouri Bar Exam Registration Fees(^{30})</td>
<td>$910</td>
</tr>
<tr>
<td>Average Bar Prep Course(^{31})</td>
<td>$2,511</td>
</tr>
<tr>
<td>Missouri Bar Licensing(^{32})</td>
<td>$280</td>
</tr>
<tr>
<td>Total</td>
<td>$3,781</td>
</tr>
</tbody>
</table>

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\(^{23}\) Tuition and Costs, University of Missouri - School of Law, (noting that students can reduce their living expenses by $5,000 by executing the “Thrifty Budget” approach available on the website), available at http://law.missouri.edu/financialaid/cost/.

\(^{24}\) Costs and Budgets, UMKC School of Law, http://law.umkc.edu/prospective-students/financial-aid/costs-budget/.


\(^{26}\) Report and Recommendations, American Bar Association Task Force on the Future of Legal Education, AMERICAN BAR ASSOCIATION, at 11 (Jan. 2014) http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf. One factor influencing law school pricing, for example, is differential pricing. Differential pricing has driven up costs of attendance so law schools can cut tuition/award scholarships to select desirable students with high LSAT scores and GPAs. While the ability to attract these students makes the law school more competitive in the USNWR rankings, this pricing practice drives up costs for the majority of other students attending law school.

\(^{27}\) Id. at 40.

\(^{28}\) Id. at 39.


\(^{30}\) Missouri Board of Law Examiners, https://www.mble.org/displaypage.action?id=200. A student could save approximately $225 by applying to the character and fitness portion of the bar exam during his or her 1L and 2L years.

\(^{31}\) This was derived by taking the average of three major bar prep courses: Kaplan costs $2,845; Barbri costs $2,995; and Themis costs $1,695. Missouri numbers???

\(^{32}\) The Missouri Bar, http://www.mobar.org/annualenrollmentfees/. Lawyers who have been practicing for less than 3 years owe $130 less than other practicing attorneys. This is a 32% reduction in membership fees for new graduates. The standard rate for Missouri lawyers is $410.
Possible Solutions:

- Limit bar exam expenses and/or eliminate the bar exam.
- Reduce bar fees for lawyers within their first few years of practice.
- Offer a free CLE series focusing on the practice of law for new graduates.

C. Outdated Hiring Processes

While attorneys are still hired through traditional processes (On campus interviews (OCIs), Summer Associateships, Job Postings etc.), trends suggest more attorneys are hired through alternative/informal job search avenues. For example, only 14.7% of students were hired through OCIs in 2013, which was the lowest figure recorded by NALP in the past 20 years.\(^{33}\) "Instead, most 2013 graduates obtained jobs through referrals, 19.5%, or self-initiated contact, 18.8%."\(^{34}\) New graduates must continue to pursue employment through alternative processes (e.g., networking or internships).

Law schools have tried to help students find legal employment through alternative job search avenues. For example, SLU currently helps law students identify potential local and regional employers by maintaining a list of hiring attorneys at various firms and companies.\(^{35}\) The Missouri Bar, on the other hand, relies on “Jobs for Missouri Lawyers,” a legal job bulletin, to connect new lawyers to potential employers.\(^{36}\)

While these resources are extremely valuable, there are still areas to improve local and statewide networking and internship opportunities for attorneys entering the profession. Connecting potential employers and prospective lawyers may facilitate employment of new lawyers and close the underemployment/unemployment gap.

Possible Solutions:

- Create programs to introduce potential employers to new lawyers and law students in major cities across Missouri (Kansas City, St. Louis, and Jefferson City) early in the hiring process.
- Work with law schools to strengthen networks outside of alumni-only networks so new graduates may have a better chance at meaningful employment upon graduation.

III. A CRISIS IN LEGAL EDUCATION AND TRAINING

“Although historically slow to change, law schools are now facing enormous pressure from educators, students, lawyers, judges, clients, and the public to rethink legal education and the lawyer’s role in society.”\(^{37}\) Traditionally, employers shouldered the responsibility and cost for training/mentoring new graduates to make them productive practice-ready attorneys. However, with slimming profit margins and cost cutting pressures, clients and employers are no longer willing to shoulder the burden of training lawyers for the practice of law.

\(^{33}\) Laira Martin, More Law Grads Find Jobs Through Networking and Self-initiated Contact, The National Jurist (April 14, 2015) (“In fact, fall on-campus interviewing accounted for only 14.7 percent of all jobs obtained, one of the lowest figures since NALP started tracking the figure 20 years ago.”) http://www.nationaljurist.com/content/more-law-grads-find-jobs-through-networking-and-self-initiated-contact.

\(^{34}\) Id.

\(^{35}\) SLU provided the sub-taskforce with a list of employers they provide their students with potential leads and hiring contacts for various employers.

\(^{36}\) The Missouri Bar, http://www.mobar.org/jobsforlawyers/.

The expectation, for better or worse, is that law school is now the appropriate place for practical legal training, in addition to academic learning. Employers are looking for law schools to create a core curriculum that better simulates the tasks and responsibilities new attorneys experience when they enter the profession.

The response by law schools to this call has varied dramatically. Some law schools have significantly altered their core curriculum while other law schools have relied on traditional externships, internships, and/or clinics to provide students with needed experiences.

Washington & Lee ("W&L") has emerged as an example of a law school that has taken the most dramatic step towards change. W&L has transformed the third year of law school to an experiential-based program aimed towards preparing students for the legal profession. Coursework is described as “two, two week immersions, clinics, externships, practicum courses, law-related service, and exposure to the profession's culture, economics, and cutting-edge issues.”

While students have had positive reviews of the program, it is unclear whether the program’s attempts to produce practice-ready students have satisfied employers. Based purely on the numbers reported to the ABA, W&L’s practice-based training has not translated into significantly more employed law students. Only 64% of W&L’s 2014 graduates secured fulltime/long-term employment requiring bar passage, which is only slightly higher than the national average.

Questions must be asked as to whether law schools are the appropriate place for practical skills to be developed: Are law schools in the best position to bear the cost associated with teaching lawyers the practice of law when they already face criticism over rising costs and tuition? Are law school faculty members equipped to teach practical legal skills? Will producing “practice-ready” attorneys increase employment percentages of new graduates? Are non-practicing academic professors in the best position to teach practical legal skills to law students? Instead of placing the burden on law schools to educate and make practice-ready those entering the profession, are bar associations best equipped to shoulder the responsibility of mentoring new graduates?

Regardless of the endorsed solution to this crisis, the demand for law schools to produce practice-ready lawyers and incorporate experiential based curriculum should be tempered by the economic reality of rising education costs and shrinking enrollment facing law schools.

**Possible Solutions:**

- Change the third year of law school to an experiential-based curriculum.
- Recommend that law schools stick to their traditional roles of educating students, as opposed to training practice-ready lawyers.
- Recommend that bar associations take a more active role in mentoring and training lawyers entering the profession.

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38 Moliterno, 44 Seton Hall. L. Rev. at 1119-21.
39 Id.
40 Id. at 1119.
42 William D. Henderson, A Blueprint for Change, 40 PePP. L. Rev. 461, 501-02 (2013) (noting the only way to realistically close the employment gap may require an overhaul of the legal education system to comply with market pressure).
IV. DEMAND FOR LEGAL SERVICES IN UNDERSERVED COMMUNITIES

One of the biggest issues facing the Missouri legal community is that communities of people are in need of legal assistance but cannot afford it.

A. Profile of Underserved Communities

In Missouri, many communities simply have limited access to justice because of their socio-economic status. Based on the experience and observations of sub-taskforce members, poor and/or uneducated urban and rural communities are most likely to suffer from a lack of representation. As a result, these groups tend to not only represent themselves, but these groups also distrust and lack of confidence in lawyers. Underserved populations are found in all age groups, but the elderly who are on social security and single minority mothers on public aid tend to be amongst those suffering the most.

In addition to the underserved poor, those in rural communities often find themselves without easy-access to representation. Even if solo attorneys are serving certain rural communities, there are often no succession plans for new attorneys to succeed these solo attorneys once they retire. Further, the largest impediment to a small-town legal career is the debt that many students carry from law school. “Salaries at firms in big cities can start around $160,000. But in Midwest small towns, salaries tend to start in the low- to mid-five figures...” Consequently, many rural communities end up with no local attorneys in their areas.

The president of the South Dakota State Bar Association recently described the “main street attorney in rural America” as “an endangered species,” and warned that the lack of rural attorneys is “potentially devastating” to the “economic vitality” and “delivery of justice” in these communities. This growing problem prompted the American Bar Association in 2012 to urge “federal, state, territorial, tribal and local governments to support efforts to address the decline in the number of lawyers practicing in rural areas and to address access to justice issues for residents in rural America.” The same resolution also called on “state and territorial bar associations to develop programs to increase the number of lawyers practicing in rural areas and which address access to justice issues....”

B. Programs Currently Addressing Underserved Communities

There are currently a number of agencies and organizations addressing underserved communities in Missouri (e.g., Public Defenders and Legal Service of Eastern Missouri). However, these organizations cannot meet the needs of the entire underserved population. As result, states have come up with unique solutions to increase representation of communities in need:

- **Incubator Programs**: UMKC has been recognized as a leader in popularizing “incubator” programs. More recently, state bar associations and law schools in Vermont and Georgia have developed 18 month incubator

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48 Gary Toohey, at 12.

49 Id. at 7 (quoting American Bar Association/State Bar of South Dakota Report to the House of Delegates (August 2012), available at http://sdruallawyer.com/aba-resolution-report/).

programs to help serve communities in need. “An incubator is a post-graduate training and support program for recent law school graduates who are interested in solo or small firm practice and are committed to serving communities in need, on both a pro bono basis and for an affordable fee.” Law schools, state bars, and the judiciary have come together to fund, coordinate, and oversee the creation of these programs.

- **Missouri’s Rule 13 Certification Program**: Missouri currently allows law students, who meet certain criteria, to serve indigent communities under lawyer supervision. This program allows students to develop practical skills as well as affords representation to communities in need.

- **Paraprofessionals and Licensing Non-Attorneys**: Paraprofessionals and/or limited license technicians have not been effectively utilized in the Missouri legal community to the same degree as other professional communities (e.g., medical profession, engineering profession). The current legal system relies heavily on practicing lawyers throughout the state.

- **Minnesota**: The Minnesota State Bar Association Task Force on the Future of Legal Education recently addressed this issue. It suggested that limited license technicians should be utilized in Minnesota to help aide otherwise self-represented litigants. Utilizing licensed para-professionals to assist underserved communities may help bridge the supply and demand gap for certain legal services in a cost-effective way.

- **South Dakota**: In an attempt to address the shortage of rural lawyers, the South Dakota legislature passed a law that offers attorneys an annual subsidy to live and work in rural areas. Called the Rural Lawyer Recruitment Bill, the law “requires a five year commitment from the applicant and sets up a pilot program of up to 16 participants. They will receive an annual subsidy of $12,000, [or] 90 percent of the cost of a year at the University of South Dakota Law School.” This compares with a 40-year-old federal program, the National Health Service Corps, which offers [medical personnel] up to $60,000 in tax-free loan repayment for two years of service in underserved area and up to $140,000 for five years of service. The program consists of nearly 10,000 medical, dental and mental health professionals serving 10.4 million people, almost half in rural communities.

- **North Dakota**: Using funding provided by the North Dakota Legislature, the North Dakota Bar Association in partnership with the state courts and University of North Dakota Law School, created three summer clerkships designed to allow law students to work for judges in counties with less than 15,000 people. While this is still just a pilot program, the program hopes to expand and provide not only clerkships, but externships with State’s Attorneys and private practitioners.

- **Nebraska**: The Nebraska state bar created an initiative to encourage law students to consider a rural law career - “pointing out things like the accelerated career advancement (average time to partner in a rural firm: 4-5 years), and the availability of a challenging workload. The program includes tours of small towns and, in its inaugural year, connected at least 2-3 graduates with jobs ....” Additionally, the University of Nebraska’s law school has created a special program of study for its students focused on practicing solo or in small firms after they graduate.

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53 Id. at 9.


55 Id.

56 Id.

57 Id. at 10.

58 Id. at 11 (citing Rural Lawyer (December 31, 2013), available at http://rurallawyer.com/tag/rural-lawyershortage/).

59 Id.
Possible Solutions:

- Create a state-wide long-term (18 months) incubator program, like the ones created in Vermont and Georgia, which allows new graduates to develop a practice while serving marginalized communities with the guidance and support of Law Schools and The Missouri Bar.
- Support “limited licensing” of professionals to assist self-represented litigants.
- Create incentives for new lawyers to take on clients from underserved communities.
- Lower the debt burden of students within the state so students are free to take lowering paying jobs.
- Expand law students’ ability to serve these communities under Rule 13 certification. Encourage student participation in programs using Rule 13 certification.
- Explore the possibility of creating an annual subsidy program for attorneys who commit to live and work in rural areas for a specified period of time.
- Consider supporting legislation that provides federal loan repayment for attorneys that commit to work in an underserved area for a specified period of time.
- Encourage law schools to create programs or clinics focused on solo or small firm practice in rural communities and/or place law students in summer externships and jobs in rural communities.
- Expand the use of technology to remotely connect attorneys with rural clients.

V. SURVEY OF THE MISSOURI BAR-YOUNG LAWYERS SECTION

A. Summary of Our Observations
As part of our analysis, we surveyed the young lawyers section of the Missouri Bar. We looked for subjective first-hand observations from young lawyers entering the profession (89% of respondents began practicing law in 2007-present.). Our survey focused on two primary issues: (1) job satisfaction and (2) legal training. Respondents were asked a series of questions regarding their law school experience and their impressions of their first few years in the profession. In total, we received 185 responses to our questions, and came away with the following takeaway points:

- 47% of respondents chose to enter their area of practice/work after law school; compare: 18% before law school; 33% during law school; 2% no response
- Most respondents indicated that law schools need to place greater emphasis practical skills—specifically, pretrial practice and the business of law.
- Many respondents indicated they did not feel prepared for their first year of practicing law.
- Many respondents indicated they would have benefited from more hands-on, practicum courses in lieu of lecture style courses.
- Most respondents that completed an internship/externship in law school felt their internship/externship experience helped prepare them for their first year of practice (at least marginally, if not significantly).

B. Key Data from the Survey
In addition to our observations (above), we included survey data (below), which was compiled from the responses we received.
Respondent Demographics:

- Total number of respondents: 185
- Approximately 89% of respondents began practicing law (or otherwise began post-JD program work) in 2007 or after.
  - 1999 or before: 9 respondents (approx. 5% of respondents)
  - 2000-03: 0 respondents
  - 2004-06: 9 respondents (approx. 5% of respondents)
  - 2007-08: 39 respondents (approx. 21% of respondents)
  - 2009-10: 25 respondents (approx. 14% of respondents)
  - 2011-12: 32 respondents (approx. 17% of respondents)
  - 2013-14: 64 respondents (approx. 35% of respondents)
  - 2015: 5 respondents (approx. 3% of respondents)
- Practice Setting (# of respondents)
  - Solo practice: 14
  - Firm size 2-10: 45
  - Firm size 11-25: 20
  - Firm size 25+: 21
  - Corporate: 16
  - Government: 45
  - Non-legal career: 6
  - Nonprofit: 10
  - Other: 8
- When respondent chose to enter his/her area of practice/work:
  - Before law school: 33
  - 1L year: 16
  - 2L year: 22
  - 3L year: 23
  - After law school: 87
  - No response: 4
- “Did you complete an internship/externship during law school?”
  - Yes: 145
  - No: 37
  - No response: 3
- Popular Responses to Survey Questions:
  - “In your first year of practice, what did you spend most of your time doing?”
    - Research, writing, and document drafting
    - Document review
    - Struggling to find steady employment; looking for a job
    - Learning
    - Criminal and civil pre-trial and trial practice, including preparing and responding to discovery, settlement/plea negotiations, communicating with clients, drafting and appearing for motions
    - Judicial/administrative law clerkship
  - “Looking back, what law school course(s) would have better prepared you for your first year of practice?”
    - The business of law (including negotiation, client development, advising and communicating with clients, fee agreement, accounting, marketing, networking and finding a job, etc.)

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Three respondents answered “No” but explained that although they did not complete an internship/externship through their law school, they did, in fact, complete an internship or clerkship—just not through their law school. As a result, three “No” responses have been changed to “Yes” responses. These qualified “No” responses highlight...
• More focus on the rules of civil procedure, pre-trial practice, and trial advocacy
• Clinic or hands-on practical courses, with a focus on pre-trial practice, preparing and filing a petition, conducting or responding to discovery and depositions, (including e-discovery) etc.
• “Legal residency”
• Contract/document drafting, advanced research and writing courses
• Administrative law

• “What knowledge do you believe you have gained by taking these courses which would have helped you in your first year of practice?”
  ◦ How to file a pleading, prepare a retainer agreement, or go to court
  ◦ A practical understanding of how cases progress, how pre-trial practice plays a role in trial strategy, how to prepare for trial, and how to manage a caseload
  ◦ Firm management skills (including billing, collections, client development, etc.)
  ◦ Firm priorities and expectations
  ◦ Practical skills (including client communication, negotiation)
  ◦ Moot court and “fake” client interviews provide knowledge and confidence to practice and “hit the ground running”
  ◦ Civil and criminal procedure the possibility that other respondents answering “No” interpreted “internship/externship” to include only internships set up through their law school, skewing the numbers.

• “If you answered yes, [completed an internship/externship during law school], did the Internship/externship help prepare you for your first year of practice? Why or why not?”
  ◦ It helped hone research and writing skills, but did not help develop day-to-day skills: advise clients, handle discovery, appear in court for motion hearings and scheduling conferences
  ◦ Yes, because: helped respondent understand motion practice, overcome any courtroom fear, build confidence needed to be an associate or practice on own, understand big picture and trial strategy (even in cases where respondent ended up practicing a different area of law)
  ◦ Yes, more helpful than class because of the real-world experience gained
  ◦ No, because: lack of feedback, ended up practicing a different area of law, only did “grunt” or non-legal work, too short (6 or 8 week internship not enough time),

• “If you answered no [did not complete an internship/externship during law school], why did you decide not to complete an internship/externship?”
  ◦ No response (majority response)
  ◦ Studied abroad, Focused on school, summer school, and grades
  ◦ Participated in legal clinics instead

VI. CONCLUSION
This sub-taskforce presents this report as a starting point for further discussion. Because other state taskforces have already investigated many of these areas and provided solutions to some of these issues, we are hopeful that the subcommittee on Entering the Legal Profession can advance existing solutions and propose new initiatives to help address issues facing legal employment in Missouri.
A brief description of the bar examination as it currently exists in the majority of U.S. jurisdictions is provided as a precursor to the discussion of the issues facing legal education and the process for admission to the bar.

The bar examination is comprised of a written component, consisting of the Multistate Essay Examination (MEE) and the Multistate Performance Test (MPT), and a multiple-choice component, consisting of the Multistate Bar Examination (MBE). The MEE, MPT, and MBE are developed by the National Conference of Bar Examiners (NCBE) and administered by the bar admission authorities in the jurisdictions. Fifty-four of the 56 jurisdictions administer the MBE; 32 jurisdictions administer the MEE; and 42 jurisdictions administer the MPT. Some jurisdictions draft their own state-specific essay questions that are given in lieu of or in addition to the MEE, and a few jurisdictions draft their own performance tests that are given in lieu of the MPT. (See generally www.ncbex.org).

The MEE tests the examinee’s ability to identify legal issues raised in a hypothetical situation and analyze the relevant issues in a clear, concise, and well-organized composition. It requires an understanding of the fundamental legal principles relevant to the issues raised. The twelve subjects that may be covered in the MEE are Business Associations (Agency and Partnership; Corporations and Limited Liability Companies), Civil Procedure, Conflict of Laws, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Real Property, Torts, Trusts and Estates (Decedents’ Estates; Trusts and Future Interests), and the Uniform Commercial Code (Secured Transactions). See http://www.ncbex.org/exams/mee/. The MPT tests fundamental lawyering skills in a realistic situation and requires examinees to complete a task that a beginning lawyer should be able to accomplish. The MPT does not test knowledge of substantive law, as the law that is necessary to complete the task is provided in the test materials. The MPT provides a File that consists of source documents containing all the facts of the hypothetical case and a Library that contains cases, statutes, regulations, or rules, some of which may not be relevant to the task. See http://www.ncbex.org/exams/mpt/

The MBE assesses the ability to apply fundamental legal principles and legal reasoning to analyze given fact patterns. The seven subjects that are tested in the MBE are Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts. Note, all of the MBE subjects are also tested in the MEE, resulting in a total of twelve core subjects covered in the bar examination. See http://www.ncbex.org/exams/mbe/. The MBE is an equated or standardized test, meaning that scores provide a consistent measure of performance across exam administrations even though the questions are different. See http://www.ncbex.org/pdfviewer/?file=%2Fassets%2FUploads%2FBE-Sept2015-TheTestingColumn.pdf

See also http://excessofdemocracy.com/blog/2015/9/no-the-mbe-was-not-harder-than-usual

It is helpful to also keep in mind that the bar examination is not intended or designed to serve as the sole measure of readiness to enter practice. Rather, applicants must complete an appropriate program of legal education, pass the bar examination, and demonstrate the requisite character and fitness in order to qualify for admission.

A. RELATIONSHIP BETWEEN THE BAR EXAM AND LEGAL EDUCATION

The bar exam should reflect the competencies that the profession believes are basic to practicing law. In addition to identifying applicants who hold those competencies, the exam sends a strong signal to law schools about what the profession values.

Much of the current bar exam tests memorized doctrinal principles. The multiple-choice MBE and MPRE questions require students to spot doctrinal or ethical issues and to recall from memory the applicable principles.
Critics of the bar exam argue that the MBE and MPRE require relatively little problem solving, critical thinking, or professional judgment. The 90-minute MPT exercises come closest to testing the full range of skills that we associate with legal competence: defining problems, synthesizing legal principles, applying those principles to the facts, and addressing a client problem.

Some argue that the requirement of a bar examination causes professors to emphasize teaching of doctrinal law over professional skills, making it difficult to persuade professors to teach less doctrine and more professional skills. Even for professors who claim to ignore the bar exam, or who teach in fields outside its reach, the exam’s doctrinal focus sends a strong signal that the profession values doctrinal learning.

Report of the Task Force on Legal Education Reform – Ohio State Bar Association

Bar exam topics are broad
First-year courses cover all of the topics tested in these areas. The doctrinal principles tested in each area seem to range beyond foundation principles and into practice specialties. To learn the material tested in each MBE subject, students often have to take at least two law school courses, the required first-year course and an upper level course. This intensifies the pressures to memorize doctrine rather than develop more fully as a professional during law school. Bar exam focuses on mostly courtroom litigation Lawyers that plan to practice in the transactional field are distracted from acquiring competencies most relevant to serving their clients.

Skill-Based Testing
If bar examiners could add the substantial resources students currently spend on bar review courses to the money that examiners currently devote to exam preparation and grading, examiners could provide much better assessments of lawyer competency. The assessments, moreover, would provide more meaningful educational experiences for the new lawyers themselves.

During the months after law school graduation, bar applicants could enroll in several simulations that require them to perform real lawyering tasks.

The simulations, like real law practice, would rest on basic doctrinal principles taught in law school. But these simulations would allow students to consult resources, as real lawyers do; they would not demand detailed memorization of hundreds of doctrinal rules. Students would not succeed in these simulations unless they possessed a basic understanding of Torts, Contracts, Evidence, and other basic subjects from their law school courses, but they would not need to recall detailed UCC provisions or evidentiary rules from memory. Most important, the simulations would require students to engage in tasks like client counseling; interviewing; negotiating; explaining conclusions to a colleague; advocating arguments to a decision maker; drafting documents; and writing memos, briefs, and other work product.

In addition to completing one or two basic simulations, students could choose one or two experiences focused in a particular practice area. These simulations would be more expensive to administer than current exams, but applicants would be willing to pay much more for them. The aim is to shift dollars spent on bar review courses and other parts of the ever-growing bar preparation industry (including dollars that law schools increasingly allocate for this purpose) to more meaningful evaluation. The test could contribute some learning value to the applicant rather than serve solely as a licensing hurdle.

These simulations are a condensed version of the New Hampshire honors program described below. Note that they could rely entirely on evaluation controlled directly by bar examiners. Professors might contribute substance to the simulations, as they currently consult on bar exam questions, but bar examiners and practitioners would evaluate applicants (as they currently grade exam answers).
Increased Percentage of MPT or Similar Exercises
The MPT, which asks applicants to address issues raised in a hypothetical client file and to produce a document appropriate to the problem, most closely parallels the work that lawyers do. If we want students to acquire problem-solving skills, we should test them on those skills. Converting the essay questions to MPT-like problems would better test applicants’ ability to work effectively as lawyers. This change would also encourage development of additional problem-solving, client-focused courses in law schools—a trend that has already started, but that could increase. The MPT-like questions would not be easier than those currently posed on the essay questions. On the contrary, they would require students to engage in more analytic thinking, synthesizing, and problem solving. The difference is that these questions would test a more complete range of lawyering skills, rather than focusing on memorization of detailed rules from a large number of distinct practice areas.

Among the reasons for limiting the subjects tested on the bar exam is the recognition that while the bar exam tests for generalized knowledge, lawyers specialize in particular practice areas. New lawyers may not be well-versed in any subjects while practicing lawyers are expected to conscientiously avoid subjects in which they do not specialize. Therefore, an exam of limited length must be content-limited as well as time-limited.

Dennis R. Honabach, To Ube or Not to Ube: Reconsidering the Uniform Bar Exam, Prof. Law., 2014, at 43, 47-48.
The purpose of the bar examination should be to ensure that new lawyers possess the basic competencies required to practice law effectively. In addition to basic knowledge of core legal subjects and professional ethics, these skills include problem solving, legal reasoning and analysis, legal research, factual investigation, written and oral communication, client counseling, negotiation, litigation and alternative dispute resolution, organization and project management skills, and recognition and resolution of ethical dilemma skills. The current system of bar examination fails to achieve that result. Instead, it focuses on content knowledge, rule memorization, and relatively low-level problem-solving skills.

Law schools should demonstrate a commitment to preparing their students for bar examinations and for law practice. They should engage in a continuing dialogue with academics, practitioners, judges, licensing authorities, and the general public about how best to accomplish this goal.

Law schools should shift from content-focused programs of instruction to outcomes-focused programs of instruction that are concerned with what students will be able to do and how they will do it, as well as what they will know on their first day in law practice.

Law schools should help students acquire the attributes of effective, responsible lawyers including self-reflection and lifelong learning skills, intellectual and analytical skills, core knowledge and understanding of law, professional skills, and professionalism.

Educating Lawyers: Preparation for the Profession of Law by Carnegie Foundation for the Advancement of Teaching
The dramatic results of the first year of law school’s emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding. In pursuing such a goal, law schools could also benefit from the approaches used in education of physicians, teachers, nurses, engineers, and clergy, as well as from research on learning. Unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training and professional practice. The result is
to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner, conveying
the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of
client. The relatively subordinate place of the practical legal skills, such as dealing with clients and ethical-social
development in many law schools, is symptomatic of legal education's approach to addressing problems and
framing remedies. To a significant degree, both supporters and opponents of increased attention to “lawyering”
and professionalism have treated the major components of legal education in an additive way, not an integrative
way. Students need a dynamic curriculum that moves them back and forth between understanding and enactment,
experience, and analysis. Law schools face an increasingly urgent need to bridge the gap between analytical and
practical knowledge, and a demand for more robust professional integrity.

In particular, legal education should use more effectively the second two years of law school and more fully
complement the teaching and learning of legal doctrine with the teaching and learning of practice. Legal education
should also give more focused attention to the actual and potential effects of the law school experience on the
formation of future legal professionals.

Law schools could give new emphasis to the third year by designing it as a kind of “capstone” opportunity for
students to develop specialized knowledge, engage in advanced clinical training, in work with faculty and peers
in serious, comprehensive reflection on their educational experience and their strategies for career and future
professional growth.

Other Thoughts
The bar exam and legal education seem to align well in terms of subjects tested in the exam and taught during
law school. However, the disconnect is between both and the practice of law. There is a strong push for more
practical-skills based courses during law school to better prepare students for the actual practice of law. Although
some of the theoretical topics taught and tested can be applied during a lawyer's career, most novice lawyers
complain about the lack of skills when they enter the practice.

Lorenzo A. Trujillo, The Relationship Between Law School and the Bar Exam: A Look at Assessment and
Student Success, 78 U. Colo. L. Rev. 69, 77-80 (2007).
The bar exam does not verify minimum competence necessary for the practice of law because it does not
evaluate proper skills, it relies to a large extent on memorization, it does not test the law itself, and it does not
implicate current problems of incompetence.

The bar exam has a negative effect on law schools because it drives curriculum and admission decisions in such
a way that actual student education and the educational environment suffer. The bar exam in its current form
does not emphasize, or even test, such crucial topics as legal research, fact investigation, oral communication,
counseling of clients, or negotiation. In 1992, a blue-ribbon commission of judges, professors, and attorneys
authored the “MacCrate Report,” detailing the ten skills lawyers use most often in their practices. These
essential skills include problem solving, legal analysis and reasoning, research, fact investigation, written and
oral communication, counseling, negotiation, litigation and ADR procedures, organization, and recognizing and
resolving ethical dilemmas.

The bar exam does not make an effort to encourage or measure an applicant's empathy for clients, desire to do
pro bono or public interest work, or the probability that the applicant will aid poor communities in her career as
an attorney.

The bar exam over-emphasizes memorization of legal doctrine in a profession that does not require—and in
fact frowns upon—memorization. While the examinee may “know” the law in its black letter form, she may not
“understand” the nuances required for practical legal reasoning. Based on this reasoning, the proper test of a
A good lawyer does not rely solely on memory. Rather, she relies on legal research and may, in fact, be subject to sanctions or malpractice claims if she attempts to rely solely on faulty memory.

The bar exam is flawed because it uses artificial testing techniques that have little to do with the practice of law. In practice, no competent lawyer relies on her first determination of a legal question written in the first draft of a brief. On the contrary, a good lawyer researches, analyzes, writes, and then rewrites the answer following a determination made in any given situation.

B. TIMING OF BAR EXAM (STAGGERED) AND OTHER ALTERNATIVES

Staggered Testing is a viable alternative to the current bar exam. However, future attorneys might object to the multiple tiered-testing systems versus a one-time bar exam.

Schools could also offer a variety of degree options based on one-, two-, and three-year degree programs. States could license graduates of one-year programs to offer routine legal services. The ABA Task Force took a step in that direction by recommending that state authorities develop licensing systems for limited law-related services, and that accrediting authorities develop standards for programs preparing limited-service providers. States could also license lawyers after two years to practice in a particular specialty, such as tax, family, or criminal law. In effect, the bar could move closer to other professions, such as medicine, which certify practitioners based on their extent of training.


Regulatory authorities should consider restructuring one-time bar examinations into phased examinations over time, linked in part to attainment of legal practice skills, with some parts of the examination occurring as early as in the law school years.

Reporter’s Comment: While this recommendation proposes a significant change in the bar admission process in the United States, it was strongly supported by Summit conferees. Participants noted that initial testing in skills development during law school would result in an increased skills focus in law schools, protect the public, and provide valuable feedback for law schools and law students alike. It was also noted that phased examinations are already used for licensing in other professions, such as medicine. Summit conferees recognized that implementing this recommendation would require some fundamental changes in traditional law school and bar admission approaches, but believed that the process of consideration and experimentation would be a positive challenge.


Staggered testing uses the medical board examinations as a model in terms of both form and timing of the bar exam, suggesting a system where applicants are required to pass multiple tests at different points in a student’s law school education.

One example of a staggered testing model was proposed by Jayne W. Barnard, Professor of Law at the College of William and Mary and Mark Greenspan, Associate Professor of Surgery at the Eastern Virginia Medical School and practicing attorney. Their proposal is modeled after the scheme used for licensure in the medical profession. In medical school, students take a series of four tests that become progressively more difficult during the course of their schooling residency. The first test reviews basic foundational material, the second evaluates clinical and communication skills, the third assesses ability to make diagnoses and simple treatments, and the fourth
gauges ability in complicated and specialized areas of treatment. Failure to pass any of these tests makes a student ineligible to continue. If a student passes all four tests and proceeds to pass all of the comprehensive examinations in her specialty, the student will become board certified and will be able to practice anywhere in the United States. Staggered testing provides six benefits that the current bar exam does not:

- the process identifies early those students who will probably not obtain final licensure;
- it assesses student work over a longitudinal period of time, instead of during a one-shot exam;
- it tests clinical skills, not just skills tested by traditional exams;
- it tests the improvement of technique and judgment with increasingly difficult tests;
- it identifies students who may be “book smart” but are not well-suited to be doctors because of a lack of interpersonal skills; and
- its results are accepted throughout the United States.

The staggered testing proposal for law schools consists of five steps:

1. An early test of legal fundamentals—would require law students to take the MPRE and MBE portions of the current bar exam at the end of the second year of law school. Passing the MPRE and MBE would be a prerequisite for continuing into the third year of law school, thus purging students who are not likely to obtain final licensure.

2. A test of professional and interpersonal skills—administered during the fifth semester of law school and would test “interpersonal skills, organization skills, and basic writing skills.” These skills could be tested by interviewing clients, researching a legal topic, organizing a file, negotiating a contract, drafting a complaint, or making a short oral argument. Computer-based testing could be used to test many of the student's professional and interpersonal skills.

3. A new comprehensive bar exam—taken after graduation and would be structured like the essay and performance portions of the current bar exam. However, the questions would “focus on integrating various bodies of law rather than zeroing in on the minutiae of specific areas of law.” The test would require issue spotting and analysis rather than “requiring a regurgitation of specific bodies of law” that require huge amounts of memorization.

4. Post graduate education—an applicant’s new provisional license would be renewed every year for up to three years by attending regular Continuing Legal Education (CLE) courses and special CLE courses for new attorneys and “receiving meaningful supervision of, and regular feedback on, her work as a lawyer.” This regular supervision would ensure that each new lawyer received good feedback and, thus, obtained the necessary skills it takes to practice law unsupervised.

5. A final bar exam—second and final bar exam to obtain permanent licensure as a lawyer. This test would look much like the comprehensive exam, with essay and performance portions. However, the candidate would take a test that concentrates on one to three specialties in which the attorney has gained knowledge and is specific to the state where the lawyer has provisionally practiced. This meaningful assessment of a lawyer's skills will rely on the attorney's real world experience in a specific area of law.

NOTE: one of the cons of this staggered proposal is that it would take a long time to test applicants by having multiple exams even after graduation.

Sequential Licensing – Similar to Medical Model – “Baby Bar Exam”
To avoid the length of the proposed staggered testing model above, a different solution is administration of the MBE portion of the exam either after the first year or during the second year of law school—the “baby bar exam.”
This would allow students to continue to move on to candidacy and sit for the remainder of the bar exam at the end of law school. This model would also purge students who are not likely to obtain final licensure at an earlier stage without them incurring more debt if they continue on with course work. Testing the MBE black letter law portion at an earlier stage would also allow students to focus their second- and/or third-years on practical/clinical/internship courses that will better prepare them for the practice of law. At the end of law school, the candidates would sit for the MEE and MPT portions of the exam, or a fully practical-skills based exam.

Students with marketable real-world experience are more likely to be of greater value in the competitive job market.

Daniel Webster Scholar Honors Professional Practice Program alternative to the Bar Exam – New Hampshire Law School (https://law.unh.edu/academics/jd-degree/danielwebster-scholars) (Created in 2005)

University of New Hampshire School of Law allows second- and third-year students to participate in a kind of apprenticeship where they learn basics like taking depositions. Students take six courses specifically created with a lot of experiential education. They also work in residencies in the field and clinics. Students create portfolios of their written work and record their oral performances, which are reviewed by state bar examiners after each semester. Those who pass the review can skip the bar exam and go directly into practice.

Students who participate in a rigorous honors curriculum focused on professional practice, and who document their abilities through a series of exercises documented in a portfolio, ably demonstrate proficiency to practice law. Exercises completed in programs like this are more comprehensive than those completed in a 90-minute MPT exercise or other portion of the bar exam. In addition to providing an appropriate means of testing professional competence, these programs have a spillover effect for other students: they maintain commitment to high-level simulations, clinics, and other professional practice courses at law schools, creating opportunities even for students outside the honors curriculum. Other states are considering adoption of programs like the one in New Hampshire. Missouri schools could consider creating these programs as they could attract highly qualified students to the state’s law schools and encourage highly qualified law graduates to remain in Missouri.

Note that bar examiners, judges, and practitioners could participate in assessments conducted during an honors program of this type. This would assure that schools maintain rigor in these programs. This type of program could also serve as a pilot way to explore more expansive changes in the bar admission system. In other words, if this type of program succeeds for a small group of students at participating law schools, it could pave the way for the full simulation exams.


Apprenticeship option for graduates who have not been able to secure a job. Mandatory apprenticeship would be economically unworkable or unfair. Alternative path to bar admission. Apprenticeship would likely lead to mentorship with senior lawyers and a possible path for job placement opportunities after the apprenticeship.

Public Service Alternative to the Bar Exam (PSABE) - Lorenzo A. Trujillo, The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success, 78 U. Col. l. Rev. 69, 90-92 (2007). The PSABE, proposed by Professor Kristin Booth Glen, Dean of the City University School of Law in New York, would involve a ten to twelve week placement in a local court system where a candidate's real world ability to practice law unsupervised could be accurately evaluated. The idea is premised on the assumption “that there is no more valid test of skills than direct observation of . . . actual, real-time performance of those skills.” The bar applicants would work as lawyers in a local court system and be assigned an assortment of job-related tasks.
If a candidate successfully completed the ten- to twelve-week work process, she would be granted admission to the bar. The only additional requirement of participants in the PSABE would be the completion of 150 hours of pro bono work in the court system of their placement within three years following admission to the state bar.

**Advantages:** The principal advantage of the PSABE over the bar exam is that it would ensure competence in the profession by evaluating the essential MacCrate skills that have been identified as necessary components for the competent and successful practice of law. In a real world environment, evaluators would be able to observe such skills as research ability, oral communication, negotiation, counseling, and recognizing ethical dilemmas—abilities which are generally ignored by the bar exam. The PSABE would eliminate the extra expense of an expensive bar review course and loss of possible gainful working hours by eliminating the need for an expensive bar review course.

**Cons:** The practicum is not guaranteed to provide the intensive evaluation of the students' legal abilities in the basic areas that are currently tested by the bar exam. Furthermore, a PSABE student may not have an opportunity to engage in detailed reading comprehension, legal issue organization, or legal analysis and writing. Finally, courtroom exposure presents experiences that are not standardized or guaranteed to be academically rigorous. The PSABE presents a solid real-world test of fundamental skills used in legal practice; however, like other programs urging real-world testing for would-be lawyers, the variety of experiences a student may encounter hinders the ability to measure a standard set of competencies as the bar exam currently provides.

**Community Legal Access Bar Alternative (CLABA) - Lorenzo A. Trujillo, The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success, 78 U. Colo. L. Rev. 69, 92 (2007).**

Initiated by a group of students at the University of Arizona College of Law, the program looks to provide benefits to both the legal profession and the community in general. As proposed, CLABA would be a one-year, post-J.D. apprenticeship program that “will provide both reduced-fee legal counsel and representation to lower middle-income populations and serve as an alternative method of first-time attorney licensure and bar admission.” The one-year apprenticeship program would be implemented by a newly created, freestanding 501(c)(3) nonprofit organization.

Each apprentice would serve eight weeks in each of six core practice areas: “family law and domestic relations; personal finance and planning; personal and economic injury; business finance and planning; government regulation; and misdemeanor criminal defense.” A full-time attorney-mentor would manage each of the core practice areas and “oversee case management, serve as attorney of record, and act as a coach and advisor for apprentices to ensure that all clients receive diligent, competent counsel and representation.” Throughout the process, the mentors would carry out both subjective and objective competency-based evaluations of each apprentice.

After completing work and receiving positive evaluations in each of the six core areas, the apprentice would be granted admission to the bar, subject to passing the standardized MPRE and satisfying any local character screening process. If the apprentice does not complete the program or leaves the program for any reason, she may apply to take the bar exam. The goal of CLABA would be to provide an evaluation of all essential attorney skills over a long period of time in order to ensure competency.

**Cons:** No standardization. Potential flaws of CLABA will occur if supervising attorney-mentors are not fully engaged in the mentorship of apprentices. Also, different levels of cases worked on by apprentices will result in differing levels of knowledge tested by mentors.
EXHIBIT C


CBT would change the form in which the bar exam is given, moving away from the paper and pencil model to incorporate new technologies that test a wider range of skills in a more effective manner. Proponents believe that CBT would allow the bar examiners to abandon the paper and pencil approach associated with the typical bar exam and replace it with a more modern testing regime. CBT has the ability to test a broader range of skills in a manner that is more closely aligned with how those skills are actually used in practice.

The CBT method is already successfully employed to test future architects on the Architect Registration Examination as well as future doctors on all three parts of the United States Medical Licensing Examination. Advocates of CBT believe it can be used in countless ways to improve the bar exam also.

CBT has the benefit of being able to test skills that the bar exam ignores, such as research, negotiation, mediation, and counseling. CBT can create virtual clients or trials in order to force an examinee to analyze real world situations and determine an appropriate course of action. An examinee could also be presented with the task of interviewing a virtual client by requiring her to watch a client interview and then to write down questions that should be asked in a follow-up interview as well as to address necessary factual inquiries. The CBT interview could also be used to test mediation, counseling, and negotiation skills.

Additionally, some of the memorization aspects of the bar exam could be eliminated by testing actual legal research skills through the Internet or a research-based CD-ROM. Using these tools, an applicant could be given access to the research database and use the information contained therein to respond to a series of questions based on the laws of a particular state.


Proposal for a professional skills LLM program in areas such as: civil trial practice, transactional practice, business/law problem solving, administrative practice, or other professional practice orientations that would offer new options to students and practitioners. For law graduates who want a year of supervised professional training and employers who would like to hire lawyers with that additional training it could be feasible to create an LLM program focused on professional practice. It would give enrollees advance training and, upon successful completion of these programs, would demonstrate legal competency at a level supporting bar admission. Participants would complete a series of professional experiences and exercises documented through portfolios and, if completed with a required level of excellence, it should satisfy admission to the bar.

Massachusetts Report on the Task Force – The Medical School Model Comparison

The number of students admitted to medical school is tightly controlled; only 43.6 percent are admitted. By contrast, according the LSAC, in the 2010-2011 academic year, the admission rate was 68.7 percent.

Two years of the standard four-year medical school program is devoted to rotations through a variety of specialties. By the time medical students make decisions about their preferred residencies and the specialties they will pursue, they have already had significant experience in, and exposure to, a broad range of medical fields and are thereby able to make more fully informed career decisions. By contrast, few law students receive exposure to more than one area of legal practice before accepting their first job, and that practice area may or may not be one to which the law school graduate was previously exposed, or had an interest in pursuing.

The medical residency component of medical education provides true hands-on training and is funded by the federal government. Unlike the law school model, medical practitioners do not bear the cost of training doctors. Also unlike the law school model, every medical school graduate is virtually guaranteed to receive the basic training required to practice medicine within their self-selected area of specialization.
C. SPECIALIZATION
Several states, including Arizona, California, Florida, Louisiana, Minnesota, New Jersey, New Mexico, North Carolina, South Carolina, Tennessee, and Texas offer certification of specialists directly in various fields of law to lawyers licensed in their state. Other states accredit certification programs of other, private, organizations certifying lawyer specialist in their state (e.g., Alabama, Idaho, Indiana, Maine, Minnesota, Ohio, Pennsylvania, Tennessee). The ABA also provides an Accredited Certification Program for various fields of law to lawyers nationally. See American Bar Association, “Sources of Certification” http://www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization/resources/resources_for_lawyers/sources_of_certification.html

Example of Specialization Program – Texas Board of Legal Specialization (http://www.tbls.org/Default.aspx)
The Texas Board of Legal Specialization (TBLS) was established in 1974 by the State Bar of Texas to “promote the availability, accessibility and quality of the services of attorneys to the public in particular areas of the law... and advance the standards of the legal profession.” It operates under the continuing jurisdiction of the Supreme Court of Texas. Board Certified lawyers earn the right to publicly represent themselves as a specialist in a select area of the law. In fact, they are the only attorneys allowed by the State Bar of Texas to do so. This designation sets them apart as being an attorney with the highest, public commitment to excellence in their area of law.

The process is voluntary and can only take place after an attorney has been in practice for five years, with a minimum of three years’ experience in the specialty area. Moreover, Board Certification is not a one-time event. It requires an ongoing involvement in the specialty area, which is periodically substantiated with references from peers in that field. It also requires annual professional refreshment through TBLS approved, continuing legal education course work to stay abreast of current trends in law. The Board Certification process is rigorous and thorough with stringent, ongoing requirements after initial certification. In brief, an applicant must:

• have been in practice a minimum of five years with three years of substantial involvement in an area of law;
• complete TBLS-approved Continuing Legal Education course requirements;
• furnish at least 10 qualified, vetted references;
• provide extensive, relevant experience documentation; and
• pass a comprehensive, daylong, specialty area examination.

The Board Certification program is administered by a twelve-member board appointed by the President of the State Bar of Texas. The TBLS is subject to oversight by the Supreme Court of Texas and exercises jurisdiction over all matters pertaining to specialization in the practice of law within Texas.

Third-Year Concurrent Specialization LLM - “Professional Pathways” – NYU Law (http://www.law.nyu.edu/academics/professionalpathways)
One school has revised its third year to allow for a form of specialization. New York University School of Law has a series of “Faculty-designed Professional Pathways [that] guide students in a focused area of study and skill development in particular areas of law, the bulk of which they will pursue during their 3L year. Pathways are designed to help students who have developed interest in a particular career area and make them highly competitive in the job market for that field.”

The LLM could also have a legal residency through partnerships with law firms, judges, nonprofits and government agencies.
D. COST OF BAR PREPARATION

Currently, applicants devote a substantial amount of time and money to bar review courses. The bar exam consists of two days of testing, plus a separate two-hour ethics test (the MPRE). Most applicants spend two and half months of intensive preparation. Those burdens can be heavy on students. Some students depend on additional student loans to cover the costs of a bar review course and living expenses.

Law schools providing bar review course at a lower cost during the last year of law school could help curtail additional costs to the student. Some law schools provide an alternative bar review course at a significantly reduced rate, providing students with an alternative to expensive commercial bar review courses.

Missouri could also follow the State of Arizona and allow students to take the bar exam in their final year of law school so students do not need to spend as much time and money on test preparation. The students would need to have a minimum amount of credit hours completed before they are allowed to sit for the bar exam. For example, many students would be eligible to sit for the February bar exam and could be licensed to practice law by the time graduation arrives in May. This would avoid the 3 to 5 month gap between graduation, the bar exam, and ability to start working. Many employers will not hire graduates until bar exam result are released. This can be an additional 2-6 months for graduates depending on the state.

Northwestern University School of Law has its Accelerated JD program in which students complete the same number of credit hours as traditional three-year JD students in five semesters over the course of two calendar years. An accelerated program would allow students to sit for the bar exam during their third year of law school. In most law schools, students have to arrange their schedules to accomplish early completion.


Applicants spend thousands of dollars to take bar prep courses to help them memorize principles tested on the exam. Applicants have studied most of these principles during law school; they purchase expensive bar review courses because they need to memorize all of these principles to display on the exam. “Studying for the bar exam heaps more debt on graduates already mired in law school loans, . . ., and deters them from practicing in lower-paying rural areas.” – Guy Cook, former president of the Iowa State Bar Association.


“The bar exam requires even financially-strapped students to invest thousands of dollars into a commercial preparation and review course and to devote many hours to the uninterrupted study and memorization of discrete subjects.”


The General Counsel for Microsoft Corporation, as chair of the Leadership Council for Legal Diversity (LCLD), noticed that most law schools show limited interest in helping their students get through the licensing process. He noted that other professions, like medicine, do a better job with minority students on licensing tests, averaging pass rates in the high nineties. Instead of waiting for a postgraduate exam, the medical licensing tests are administered in several parts, mostly during medical school. Failures can be identified and resolved quickly. The medical schools prepare their students for the tests. And the exams mix heavy doses of multiple-choice questions with simulated clinical exams.

Law schools should serve as real gateways to practice and then expect bar examiners to test skills and knowledge accumulated over three years rather than in eight-week cram courses. Law schools should devote part of the final year to preparing at least their most challenged students for the exam. Schools should team up to build a
digital bar prep course that would cover every subject and every state. Microsoft's General Counsel stated that a company like Microsoft could help make that possible.

E. HOW SHOULD MINIMUM COMPETENCE BE TESTED

This subject is closely related to a separate subject identified within our workgroup - the subject of what should be tested to determine minimum competence. Thus, discussion of how minimum competence should be tested is naturally (and inextricably) tied to what should be tested.


The article discusses Canadian Bar Admission Requirements. Unlike the United States, there is no equivalent in Canada to the National Conference of Bar Examiners, or to State Bar Associations. And, unlike the United States, Canadian courts play a very limited role in regulating lawyers. Instead, Canada is made up of “Law Societies,” each with authority by territorial or provincial statutes, and each charged with the responsibility for regulating lawyers. That regulation includes admission. Though there are 14 Law Societies in Canada, each imposes the same four essential requirements for admission to the Bar: (i) an accredited Canadian law degree or a certificate of qualification if foreign educated; (ii) completion of the provincial or territorial Law Society bar admission training program and competency testing, including bar examinations (iii) demonstration of character and fitness; and (iv) completion of “articling” (a law firm clerkship).

Requirement (ii) is relevant to this topic. Each Law Society creates its own “competency assessment” by way of examination. There is no normative bar examination. However, it is evident that a critical component of determining minimum competence is tied to training - that is practical skills training independent of an examination. Again, the training component of determining minimum competence is determined by each Law Society, but often involves a mandatory multiple week course focusing on lawyering skills, professional responsibility, practice management, transactional knowledge and other such topics. Included within the combined training/examination format for assessing “minimum competence” are skills assessments for things such as client interviewing, legal writing, legal drafting, and courtroom advocacy.

Funding for the training component of competency assessment is by a combination of student tuition and annual dues of other Law Society members.

Though not a part of minimum competency determination, it is noteworthy that one of the four requirements for admission to the bar is “articling”--a period of time spent clerking with a practicing lawyer. This is considered essential to provide practical experience. The “articling” terms are set by each Law Society but range from between 6 and 12 months.

Canada is in the midst of a project designed to nationalize admission standards. In connection with that project, a National Entry to Practice Competency Profile has been created and adopted by the Law Societies. Each Law Society must now develop a plan for implementation. As a part of the project, a competency profile has been developed (the “what” to test category). Determining “how” to test those competencies is now being evaluated. Because the competency profile heavily valued “skills,” the general sense is that the method of testing competencies should focus more on skills than on knowledge and tasks. Generally, outside consultants have recommended use of “carefully constructed written tests” to assess most skills and knowledge competencies, and where necessary, performance-based assessment could be used. The overall report seems to adopt “Miller’s pyramid of competence.” The Pyramid builds through four levels: knows, knows how, shows how, and does. The competency report concludes that “for each category of competency in the “Competency Profile (knowledge, skills, and task abilities), one or more levels of assessment in Miller’s Pyramid might be appropriate.” In short,
effort must be made to determine an assessment tool that will properly assess each identified competency at the proper level on the Pyramid.

2. ABA Task Force on the Future of Legal Education (Final Report presented to the ABA House of Delegates on February 10, 2014)
The Task Force recommends encouraging diversity in law school mission such that the law school experience may vary depending on the emphasis of a particular school, but recognizes that this recommendation encourages greater tension between what is tested on the bar exam and what is/should be taught in law school. (Section VII B) The Task Force notes that this underscores that the mission of legal education is substantive and skill learning, not merely to “teach to the exam.” The Task Force Report states (Section VII E) that law school educational programs should be designed so that graduates will have “some competencies in delivering some legal skills.” On the other hand, the Exam’s purpose should not be to vet the quality of legal education but to independently determine minimum competence to practice. The definition of that phrase is not a function of what law schools choose to teach, but is a function of what a newly licensed lawyer should be expected to know. In this respect, the Task Force Report provides (Section VII E) that “[s]hifting bar examination design toward greater emphasis on assessment of skills and less on adding new substantive subjects would tend to encourage greater reliance on experiential learning in law skills.” The Report goes on to provide that for J.D. programs, “it is a responsibility of members of the legal profession as individuals, and through bar associations, firms and other organizations in which legal services are delivered, to support this redirection of legal education by: helping indentify competencies to be delivered and continuing to assess their importance; providing teaching resources; providing settings in which students can practice and develop skills and talents; and helping instill in students the culture and professional values that surround and shape the competences [sic] of lawyers.” Consistent with these thoughts, Section VIII C5 recommends reducing “the number of doctrinal subjects tested on bar examinations” and increasing “testing of competencies and skills.”

In this article, Dr. Case discusses the purpose of the bar examination to assess minimum competencies, and describes the NCBE Job Analysis Survey conducted in 2011 and 2012 as the first step in assessing content validity of the bar exam. Although the results of the job analysis fall more appropriately into the “what” should be tested to determine minimum competencies, mention is made of the Job Analysis here as it is ultimately expected that the NCBE may take the next step in assessing the extent to which the “competencies” identified in the Job Analysis are being properly tested by the existing bar exam.

F. COLLABORATION OF BAR ADMISSIONS AND LEGAL EDUCATION (MEDICAL MODEL)
This subject also ties into the topics of “what”/”how” minimum competencies should be assessed. Discussion of the “medical model” refers to the extent to which “residencies” should be required to practice law, and if so, whether as a condition of licensure (which would NOT be the medical model), or as a transitional step between legal education and the practice of law (which would be the medical model).

1. ABA Task Force on the Future of Legal Education (Final Report presented to the ABA House of Delegates on February 10, 2014)
The Task Force discounts continued reliance on a single degree-generating J.D. program, arguing that many in the general public do not need/cannot afford a “professional generalist.” (Section VII C) The Task Force Report recommends limited services professionals - similar to developments in the medical field where particular tasks have been carved out of services theretofore always provided by a fully licensed medical doctor. The Task Force recommends that law schools embrace the opportunity to develop these educational programs, and that state admitting authorities correspondingly develop licensure or other regulatory systems designed to protect the
public. Section VII H of the Task Force Report expresses the belief that “associated improvements are needed in the system of regulation and licensing of legal and related services.” Along this line, and more consistent with the medical model, the Report of the Task Force suggests “accepting applicants with two-years of law school credits plus a year of carefully-structured skill-based experience, inside a law school or elsewhere.” Consistent with these thoughts, Section VIII C3 and D1 recommend authorizing and developing education programs to train persons other than prospective lawyers to provide limited legal services.

2. State Bar of California Task Force on Admissions Regulation Reform
This State task force report addresses the need to generate greater participation by practitioners and judges in the training of new lawyers. It emphasizes the need for pre-admission externships, clerkships and apprenticeships.

3. A Special Committee of the Illinois Bar Association stated in its recently issued Report on the Impact of Law School Debt on the Delivery of Legal Services: “The practicing bar can and must play a prominent role in reform by engaging with law schools and legal education. In previous generations, most lawyers were trained through the apprenticeship model, in which new lawyers developed the skills, practical wisdom, and judgment necessary to legal practice by working in close proximity with experienced lawyers. On both an individual and institutional level, the practicing bar can again create and support opportunities for experiential learning. The bar need not do this exclusively outside of law schools. To the contrary, the developing infrastructure [within law schools] of live-client clinics, simulations, and supervised externships at many schools creates opportunities for the bar to partner with law schools to provide apprentice-like programs.”

4. The Massachusetts Bar Association Report of the Task Force on Law argues extensively for creation of a legal residency program, with significant discussion of the medical school model.

G. UNIFORM BAR EXAM
The Uniform Bar Examination (“UBE”) is prepared by the NCBE. It consists of six essay questions (MEE), two performance questions (MPT) and 200 multiple choice questions (MBE). The UBE tests an applicant’s knowledge of generally accepted legal principles, and the applicant’s ability to perform tasks as directed with an afforded legal library. The UBE produces a score that can be readily transferred to other UBE jurisdictions within a timeframe set by that jurisdiction. UBE jurisdictions retain autonomy over other requirements for admission to the bar, including the minimum passing score.

To date, eighteen jurisdictions have adopted the UBE. Missouri was the first to do so. It was been followed by: North Dakota, Alabama, Washington, Idaho, Colorado, Arizona, Nebraska, Utah, Montana, Wyoming, New Hampshire, Minnesota, Alaska, Kansas, New York, Iowa, and Vermont. Other states are presently considering adoption of the UBE.

1. ABA Task Force on the Future of Legal Education (Final Report presented to the ABA House of Delegates on February 10, 2014)
Section VII H of the Task Force Report states that “associated improvements are needed in the system of regulation and licensing of legal and related services.” Toward that end, in Section VIII C4 recommends that the ABA Section on Legal Education and Admission to the Bar “establish uniform national standards for admission to practice as a lawyer including adoption of the Uniform Bar Examination.”

2. The ABA Young Lawyers Division Truth in Legal Education Task Force presented Resolution 106 to the Assembly of YLD in February 2015 recommending adoption of the UBE. The Resolution was approved.
3. The Conference of Chief Justices adopted a resolution in 2010 urging bar admitting authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination.

4. The ABA Council of the Section of Legal Education and Admissions to the Bar adopted a resolution in 2010 urging bar admitting authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination.

H. WHAT SHOULD BE TESTED TO DETERMINE MINIMUM COMPETENCE


The author of this article summarizes some of the empirical data produced by various surveys and studies.

Individual Clients: The Shultz-Zedeck Study is an empirical study of “what competencies lawyers as clients would want if hiring a lawyer.” Professors Shultz and Sedeck interviewed 133 people from groups associated with Berkeley Law to generate a survey. Then more than 2000 Berkeley Law school alumni responded to the survey, resulting in a list of 26 factors important to lawyer effectiveness that included, among other factors, analysis and reasoning; creativity; problem solving; practical judgment; researching law; fact finding; diligence; and selfdevelopment.

Corporate Client Studies: The Association of Corporate Counsel (ACC) developed a Value Index in 2009 as a tool to assess the value of outside counsel services from the in-house client perspective. ACC determined six key criteria that define high-value service: understanding client objectives and expectations; legal expertise; efficiency/process management; responsiveness/communication; predictable cost/budgeting skills; and results delivered.

The Altman Weil Chief Legal Officer Survey and the BTI Consulting Group Survey, both conducted in 2013, were also discussed in this article. The author concluded that these surveys show that lawyer effectiveness moves beyond excellent technical competence toward excellent relationship skills demonstrating (1) a strong understanding of the client’s business and needs, (2) good judgment and problem solving in light of that understanding of the client, (3) strong responsiveness to client, and (4) a focus on cost-effective solutions that provide value to the client.

New Lawyers Studies: The NCBE Job Analysis survey asked newly licensed lawyers what skills, abilities, and knowledge domains are significant to their work. The new lawyers rated 25 of the skills and abilities as having an average significance that was greater than the three highest-rated knowledge domains, which were Rules of Civil Procedure, Other Statutory and Court Rules of Procedure, and Rules of Evidence. The top 5 most highly rated skills and abilities were written communication, paying attention to details, listening, oral communication, and professionalism.

Legal Employers Studies: The author provided a summary of his own surveys of legal employers in Minnesota (large, mid-size, and small firms, county attorneys, and legal aid offices), as well as a summary of performance evaluations of associates used by law firms. That data showed that legal employers agreed the following are very important to critically important: integrity/trustworthiness; good judgment/problem solving; analytical skills; initiative/strong work ethic; effective communication skills; dedication/responsiveness to clients; commitment to firm/office and its goals and values; and strong work/team relationships.
The author found substantial convergence of these data sets (individual client studies, corporate client studies, new lawyer studies, and legal employer studies) on particular core competencies, which he terms “professional formation competencies.” He concludes that professional formation competencies encompass “an internalized moral core characterized by a deep responsibility or devotion to others, particularly the client, and some restraint on self-interest in carrying out this responsibility.” He further found that professionalism commonly includes these elements: (1) integrity and honesty, (2) an internalized standard of excellence at lawyering skills, (3) ongoing solicitation of feedback and self-reflection, (4) adherence to the ethical codes (5) public service, and (6) independent professional judgment and honest counsel.

He concluded that legal education should place more emphasis on the foundation that underlies the professional formation competencies and lean toward greater attention in curriculum and culture to develop competencies beyond the traditional technical competencies of knowledge of doctrinal law, legal analyses, and written and oral communication.

2. Summary of National Conference of Bar Examiners Job Analysis Survey Results
NCBE retained Applied Measurement Professionals (AMP) to conduct a study of the job activities of newly licensed lawyers in sufficient detail to provide a job-related and valid basis for developing licensure exams. The survey was divided into four sections: (1) knowledge domains, (2) skills and abilities, (3) general tasks, and (4) specific practice areas. The summary of the survey results shows the average significance rating (“Considering importance and frequency, how significant is this entry to your performance as a newly licensed lawyer?”) and the percentage of respondents performing the task, etc. The results of the survey are published at http://www.ncbex.org/publications/ncbe-job-analysis/.

An online survey of 124 lawyers at major law firms was conducted on behalf of Harvard Law School. The two main objectives were to assist students in selecting courses and to provide faculty with information about how to improve curriculum. The survey results showed that the subject areas of accounting and financial statement analysis, as well as corporate finance, were viewed as particularly valuable, both for corporate/transactional lawyers and for litigators. Another finding was that non-traditional courses and skills, such as business strategy and teamwork, were considered to be as important as many traditional courses and skills.

4. Educating Tomorrow’s Lawyers (ETL) http://educatingtomorrowslawyers.du.edu/
This is one of the four initiatives undertaken by the Institute for the Advancement of the America Legal System (IAALS) www.iaals.du.edu IAALS “is a national, independent research center dedicated to facilitating continuous improvement and advancing excellence in the American legal system.”

One of the ETL projects is “Foundations for Practice,” which is studying what foundational competencies new lawyers need. It will involve conducting a national survey of lawyers and holding a series of focus groups. Working with state bar organizations, the survey was distributed in 37 states, giving more than 700,000 lawyers the opportunity to participate. The survey asked for input on the skills, competencies, and characteristics necessary for a new lawyer’s success in the short term, but also explored what lawyers must acquire for continued success over time, as well as what provides a competitive advantage. The results of the survey are expected to be published in 2015.
IAALS undertook an evaluation of the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law. The findings and recommendations are published in “Ahead of the Curve.” Notably, findings were that members of the profession in the focus group believed the graduates of the program are a step ahead of other new graduates; students in the program outperform recently licensed lawyers on standardized client interviews; and the only significant predictor of performance on the standardized client interviews was participation in the program. IAALS concluded that while aspects of the program may be difficult to replicate in larger jurisdictions, there is much for law schools to learn and adopt from the program. The program can be unbundled into the key elements, including the use of formative and reflective assessment in a practice-based context and the focus on collaboration between the academy and the profession.

I. LIMITED LICENSE AND PARAPROFESSIONAL LICENSURE

1. California:
http://www.calbar.ca.gov/AboutUs/BoardofTrustees/LimitedLicenseWorkingGroup.aspx
A Limited License Working Group subcommittee was created in March 2013 to explore, research, and report to the Committee on Regulations, Admissions and Discipline Oversight (RAD) on the feasibility of creating a limited license practice by nonlawyers. The working group recommended further study of the concept and the RAD committee and Board of Trustees passed resolutions in July 2013 proposing a further, expanded study of access to justice challenges in California, including but not limited to the concept of limited license.

Washington authorized the Limited License Legal Technician (LLLT) program in September 2012. The program opened the door for licensed individuals who are not lawyers and who meet certain educational requirements, to advise and assist clients in approved practice areas of law. The first approved practice area is domestic relations.

The Supreme Court appointed a 13-member LLLT Board to develop and administer the license program, with administrative support from the Washington State Bar Association (WSBA). The LLLT Board began accepting applications for the LLLT examination in 2014 and administered the first exam on May 11, 2015 to nine candidates. Seven passed both the Domestic Relations Practice area exam and the Professional Responsibility Exam. In addition to passing the exam, candidates must complete specific educational requirements, be of good character and fitness, and complete 3,000 hours of supervised experience. The required education includes understanding what they can’t do without crossing the boundary into practicing law.

Currently, LLLTs can only practice in the domestic relations area. They can complete and file court forms and paperwork and help clients through the legal system but cannot appear in court or negotiate on the client’s behalf with an adverse party. The goal is to help reduce the unmet need to legal services in relatively uncomplicated family law matters for low and moderate income people. LLLTs can set up their own offices or work as part of a firm or legal aid organization.

The Washington Supreme Court recently adopted LLLT amendments to the lawyer rules of professional conduct. According to the WSBA website at http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Limited-License-Legal-Technician-Board:

A significant new provision is RPC 5.9, which covers permissible business structures for legal technicians and lawyers, including joint ownership of firms. The proposed rules include specific restrictions against a legal technician: (1) directing a lawyer’s professional judgment, (2) having direct supervisory authority over a lawyer, and (3) possessing a majority interest or exercising controlling managerial authority. The
legal technician rules have further implications on the rules for lawyers with respect to imputation of conflicts and fee sharing. Additionally, given that a legal technician’s client is considered pro se, newly proposed comments to Title 4 provide guidance for interacting with legal technicians and parties they represent.

The Minnesota State Bar Association launched two task forces in 2013 to study the future of law practice and legal education. The legal education task force recommended establishing a LLLT certification similar to Washington’s, among other recommendations.

In 2013, the New York City Bar Association recommended allowing nonlawyers to practice, with limitations, as “courtroom aids” in judicial and administrative proceedings and as “legal technicians” outside judicial and administrative proceedings. The report cites the growing access to justice crisis and reviews “team-based practice” developments in medicine and other professions. The committee suggested that the following concerns receive additional consideration. Will nonlawyers be competent to perform the additional services? What kinds of regulatory regimes will be effective and practical? Will there be a market demand for the proposed services? And will expanding the role of nonlawyers promote a ‘two-tier’ justice system? The committee “submits that we already confront a stark ‘two-tier’ system, in which represented parties often face pro se litigants, with typically lopsided results. Expanding the scope of nonlawyer assistance will reduce rather than promote the extreme inequalities of the present system.”

5. ABA Task Force on the Future of Legal Education (Final Report presented to the ABA House of Delegates on February 10, 2014)
http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_abatask_force.authcheckdam.pdf
One of the key conclusions of the Task Force was that there should be broader delivery of legal and related services because services by J.D. trained professionals may not be cost effective for many people. To expand access, new or improved frameworks for licensing should include bar admission for people whose preparation is something other than college plus a law school degree, and there should be licensing of limited legal service providers.

The origin of the legal technician program can be traced to Washington’s Civil Legal Needs Study conducted in 2003, which described “how the state’s low-income residents were navigating divorce proceedings, dealing with negligent landlords, fighting off bill collectors, or lodging discrimination complaints without lawyers.” Low income people were dealing with legal problems without an attorney 85 percent of the time. Shortly after the study’s release, a “legal technician” rule was proposed. Those opposed to the program voice concern that it will not solve the access to justice problem (because the cost to become licensed and practice as a LLLT will not be low enough) but will “create a second class of justice for the poor.”

7. Blog dated 4/15/13 on Paralegal Alliance website at http://www.paralegalalliance.com/state-certification-registration-programs-for-paralegals/ states that four state bar associations offer paralegal certification or registration: Ohio, North Carolina, Texas, and Florida. All four are voluntary programs and all but Florida require passing an examination, in addition to specific educational requirements.
The LLLT rule has its roots in the issues of access to justice and consumer protection. The consumer protection issue was related to addressing unauthorized practice of law (UPL). In 1998, a committee was created to define what constitutes the practice of law as a first step to regulating UPL. General Rule 24 was adopted in 2001 defining the practice of law in Washington. Next, a Practice of Law Board (POLB) was created to handle complaints about UPL and issue advisory opinions. The POLB was also charged with recommending to the Washington Supreme Court a rule authorizing nonlawyers to engage in certain legal activities. The POLB’s efforts to propose a rule faced objections by lawyers (that nonlawyers are not qualified and that they would take work away from lawyers), and a proposed rule was twice rejected by the WSBA. The Court suggested that specific practice areas be designated according to the Civil Legal Needs Study commissioned in 2003. The proposed areas were Family Law, Immigration, Landlord Tenant, and Elder Law. Family Law was the first area selected for implementation. A LLLT Board was created to (1) define the scope of practice, (2) develop an education program (3) create examinations to test competency of LLLT candidates in both the core curriculum and in the specific practice areas, and (4) create rules of professional conduct for LLLTs.

Repeats what is summarized above but explains that three exams are required: (1) an exam on the core education, the Paralegal Core Competency Exam (PCCE), which is a national exam for paralegal certification; (2) an exam in each practice area in which the LLLT wants to practice, which mirrors the UBE and consists of a multiple choice test, essay portion, and performance test; and (3) an exam on ethics.

It also adds that while Rule 28 provides that LLLTs “shall not represent a client in court, negotiate a client’s rights, or communicate with another regarding a client’s position,” the LLLT Board has come to believe that those restrictions may hinder the ability of LLLTs to adequately serve and protect the public. In the Board’s view, the right to represent the client in court or negotiate on the client’s behalf would not expand the scope of the LLLT’s role but would give LLLTs the needed tools to help clients through the scope of representation authorized.

There are three changes external to most individual lawyers that have impacted practice: (1) the number of lawyers grew 400% between 1970 and 2014 (about 4% per year) while GDP growth slowed in 2008 to about 2% per year (our economy tends to absorb new lawyers at about rate of growth of GDP); (2) changes in what clients require and demand; (3) technology, especially in the prospect that it has to transform lawyer work that used to be seen as complex and unique into a series of commodities.

The author predicts a transition to the “institutional practice of law” due to growth in multiperson provision of legal services through organizations ranging from law firms, to corporate legal departments, to government agencies, to entities that develop technology. Most legal services will be delivered by organizations and the task of individual lawyers will be to find organizations in which they can flourish. Organizations will be preferable to individuals for four reasons: (1) specialization (2) risk sharing (3) staffing and (4) assisting self-representation.

The author recommends regulatory changes needed to facilitate and govern institutional practice: (a) implementing registration and discipline of practice organizations in addition to the professional regulations that apply to individuals (like Great Britain and Australia); (b) lowering UPL barriers to acknowledge the appropriate role nonlawyers play in delivery of many kinds of legal services and allowing multi-disciplinary firms; (c) amending Model Rule 5.6(a) to permit restrictive covenants imposing reasonable restrictions on a lawyer changing firms because the viability of an organization depends on reasonably stable partners; and (D) permitting nonlawyer investment in law firms.
J. STATE-BY-STATE ADMISSION AND LACK OF NATIONAL NORMS

“The Relevant Lawyer: Reimagining the Future of the Legal Profession” Paul Haskins, Editor, (ABA Standing Committee on Professionalism, Center for Professional Responsibility 2015).

Chapter 2: Stephen Gillers, “The Legal Industry of Tomorrow Arrived Yesterday: How Lawyers Must Respond” pp. 13-23. Makes the case that the geocentric model of lawyer regulation no longer fits the way law is practiced and no longer serves clients or lawyers. The geocentric model posits that a lawyer’s competence and authority are defined by geography. Technology allows lawyers to practice anywhere and clients can seek specialists nationwide because geography no longer controls delivery of services. Complete law libraries and voluminous office documents can be accessed from anywhere. There is no longer the need for a physical library and hard-copy file room. Differences in state law have become less pronounced over time. As lawyers concentrate in particular practice areas, their specialization rather than a local license is the defining credential. “An Ohio lawyer expert in franchise law is better able to advise a Virginian on franchise law in Virginia than is a Virginia criminal defense lawyer, who in turn is better able to defend a criminal case in Ohio than is the Ohio franchise lawyer.” (pp. 16-17)

We need to regulate (not prohibit) legal process outsourcing and legal document preparation companies like Axiom, LegalZoom, Rocket Lawyer, Pangea3, and Integreon. Failure to recognize and address the regulatory issues confronting the new legal marketplace may result in lawyers being victims of our antiquated rules. Gillers urges that states adopt multi-jurisdictional practice rules to sensibly reflect what lawyers actually do and what clients sensibly expect.


The Law Societies (“LS”) of Canada embarked on a collective project to develop and implement national bar admission standards for the fourteen provincial and territorial regulatory bodies. Each LS is authorized by statute to regulate lawyers in the public interest. The LS do not have any lawyer advocacy role. The fourteen Law Societies have voluntarily formed the Federation of Law Societies of Canada (“Federation”), a nonstatutory organization that operates through its national council. Each LS has one representative on the council.

The Federation has become the focal point for collective action on a range of issues, such as lawyer mobility, national bar admission standards, national discipline standards, law school accreditation standards, a national model code of conduct, and a national virtual law library.

The Canadian Bar Association is a separate, voluntary organization, much like the ABA. It has no regulatory role, including no role in law school accreditation. The fundamental requirements for admission are similar in all fourteen LS, but there is no national bar exam as of yet. The also is no national character and fitness process.

In 2002, most of the LS negotiated the National Mobility Agreement permitting lawyers to practice in other provinces under certain conditions. By 2013, all of the LS had entered into the National Mobility Agreement, which permits both temporary mobility and transfer (permanent) mobility, with the latter being similar to our Admission on Motion process. The LS together maintain the Interjurisdictional Database to enable them to identify conveniently whether a particular lawyer is eligible to practice law in another province.

In 2009, the LS approved through the Federation, a plan for a project to develop and implement national standards for admission in Canada. Consistency in standards and candidate assessment were identified as key goals of the project. Another benefit could be reduction of duplication of effort and expense that exists with each LS managing its own process. The increasing mobility of lawyers was a key motivation for the project-by agreeing to common
standards, each jurisdiction would be assured that all lawyers practicing in that jurisdiction have met the same standards of competence regardless of where they were first admitted.

Identification of core competencies to practice was a key element of the first phase. Developing common standards for determining good character is another key component of the first phase. In September 2012, the National Entry to Practice Competency Profile was adopted by the Federation and is now recognized by all LS. The next step is implementation and focuses on how to assess or examine the competencies identified in the profile. The article summarizes the ranges of options and issues being studied as the project considers implementation.

ABA Task Force on the Future of Legal Education (Final Report presented to the ABA House of Delegates on February 10, 2014)
http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf
One of the recommendations is that regulators of lawyers and law practice should establish uniform national standards for admission, including adoption of the UBE. It is also recommended that they avoid imposing more stringent educational or academic requirements for admission than those required under the ABA Standards for Approval of Law Schools (e.g., CA’s proposed requirement of 15 credit hours of skills training).

K. DIFFICULTY OF MAKING MEANINGFUL CHANGE DUE TO DIFFERING STATE ADMISSION CRITERIA

The fact that so many states are convening task forces to study what are likely the same issues may provide the best evidence of the efficiencies to be gained by a national discussion to arrive at uniform admission and regulatory standards.

The suggested changes to the bar examination discussed earlier in this working group’s report, including but not limited to staggered exams and computer-based testing, would require adoption by all U.S. jurisdictions in order to be financially and practically possible.

The article discusses California’s proposal to require bar applicants to have completed 15 credit hours of practical training. The CA Bar Board of Trustees approved three new requirements for admission that were proposed by the Task Force on Admissions Regulation Reform. The proposal must be approved by the CA Supreme Court and the state legislature before it would be enacted. (1) Completion of 15 credit hours of “practice-based experiential training” that can include clinics, externships, clerkships, and legal work in a law office. Doctrinal courses would count (partially) if they involve real-world skills. Requirement would not apply to attorney applicants with at least one year of practice in another state or attorneys with law degrees from other countries. (2) 50 hours of pro bono or reduced-fee legal services while in law school or within one year of admission to the bar. The requirement would not apply to attorneys with at least 4 years of practice or attorneys with foreign law degrees. (3) Completion of 10 hours of CLE focused on basic skills and legal ethics or participation in bar-certified mentoring program. This requirement must be fulfilled within 1 year of admission to the bar.

The Association of America Law Deans Steering Committee “warned that the proposal would stifle curricular experimentation, limit the flexibility students now enjoy in choosing courses, and create a confusing patchwork of differing state requirements.” (emphasis added)
L. PORTABILITY OF ADMISSION
Missouri has the distinction of being the first jurisdiction to adopt the Uniform Bar Examination (UBE), which results in a score that can be transferred to other UBE jurisdictions to seek admission without taking the bar examination again. The UBE has now been adopted in 18 jurisdictions and is under consideration in several others. Missouri will accept a UBE score earned in the 24 months preceding application for admission by transferred UBE score. (Rule 8.09) The time limit for accepting transferred UBE scores (i.e., the maximum age of the UBE score) ranges among UBE jurisdictions from 24 months (Missouri, North Dakota, Iowa) to as long as 5 years (Alaska, Arizona, Colorado, Nebraska, New Hampshire, and Utah).

Missouri has admission on motion (Rule 8.10) and limited admission for in-house counsel (Rule 8.105) and allows temporary practice pending admission (Rule 8.06). It also provides for applicants with nonABA approved or foreign law degrees to apply for the bar exam if certain conditions are met (Rule 8.07). Thus, it already allows for a great degree of portability in its admission rules in ways that are consistent with recommendations of the ABA Commission on Ethics 20/20.

In 2012, the ABA revised the model rule on admission by motion to reduce the required period of practice from five of seven years to three of five years. To increase portability of admission, Missouri could consider lengthening the time limit for accepting transferred UBE scores to 3 years and shortening the period of practice required for admission by motion to 3 years. Such a change would also serve to eliminate the "gap" period when admission based on a transferred UBE score is no longer available but the necessary period of practice has not yet been completed to qualify for admission on motion.

M. MENTORSHIP PROGRAMS
As noted in the report of this subcommittee's Work Group on Legal Employment, legal employers traditionally were responsible for training and mentoring new lawyers on how to actually practice law, with the cost often being born by clients. With the 2009 recession, clients began demanding greater value and results for their dollar and firms became no longer willing to bear the cost for newly licensed attorneys to learn on the job. As a result, law schools have faced increased pressure to produce "practice-ready" graduates.

Three jurisdictions, Georgia, Oregon, and Utah, require new lawyers to complete a formal mentorship program within a certain period of time after being admitted to the bar. Links to information about these programs, as well as to the rules governing the programs is provided below. (Delaware and Vermont require completion of a clerkship program prior to admission and are included in this report.) The Oregon program is summarized in this report to provide an idea of how such a program might be structured.

Links to information about the programs:
Oregon http://www.osbar.org/nlmp
Georgia http://www.gabar.org/membership/tilpp/
Utah http://www.utahbar.org/members/nltpprogram-information/
Rules governing the programs:
Georgia http://www.gabar.org/barrules/handbookdetail.cfm?what=rule&id=227

The Oregon State Bar (OSB) and the Oregon Supreme Court launched the New Lawyer Mentorship Program in 2011 to formalize a process for introducing new lawyers to the legal community and guiding them through the transition to practice. The OSB website explains the impetus for the program as follows:
The mandatory program formalizes a process that for many decades took place organically, through
costations forged at law firms and other close-knit bar communities. As our state bar has grown, the
process of introducing new lawyers to the legal community, and guiding them through the transition to law
practice, has grown more amorphous.

Oregon’s mentorship program is patterned after the Georgia and Utah programs and consists of six broad curriculum
areas: (1) introduction to the legal community; (2) rules of professional responsibility and professionalism; (3)
law office management; (4) clients; (5) career satisfaction and work/life balance; and (6) practice area activities.

The mentor and new lawyer determine how to approach the curriculum areas to best suits the needs of the
individual new lawyer, but suggestions are provided from the program developers and past participants. For
the sixth curriculum area, new lawyers must complete ten practical skills activities in one or more areas of law.
Suggested activities are listed for 21 areas of law but neither the activities nor the areas of law are exclusive, and
participants are free to identify new activities or areas of law that fit the interests of the new lawyer.

The mentor and new lawyer must develop a plan for how they will complete the curriculum requirements and then
track how they address each area on a tracking sheet that must be submitted with other completion materials at
the end of the program year. Mentors need not participate directly in each activity, and can instead connect their
new lawyers with others in the community. Further, a mentor may work with more than one new lawyer if they
wish.

Mentors must have been in practice for five or more years and are selected by the OSB and approved by the
Oregon Supreme Court. A mentor training video and manual are provided. New lawyers must enroll within 28
days of admission. They are exempt from participation in the program if they have engaged in practice in another
U.S. jurisdiction for 2 or more years prior to admission in Oregon. They may defer completion of the program if
they will not be practicing or are judicial clerks. If they are practicing outside Oregon, the OSB will determine if
participation can be conveniently arranged; a new lawyer who deferred for this reason must enroll in the program
immediately if he or she establishes a principal office in Oregon within the first two years of admission.

New lawyers employed in firms, government offices, corporate law departments, or other group practices may
request an “in-house” or “outside” mentor (i.e., in the same firm or office as the new lawyer or not in the same firm
or office). OSB matches new lawyers with mentors based principally on geography, and when possible practice-
area interests. OSB also considers, to the extent possible, preferences related to gender, age, ethnicity and other
factors identified by a new lawyer or a mentor. A legal employer’s established training program may serve as an
alternate mentoring plan, provided the program covers the required areas.

The program is designed so it can be completed within one year. This timeframe can be extended for good
cause. New lawyers are expected to meet with their mentors about once each month for around 90 minutes. New
lawyers who are mentored within their employer’s firm or office may complete some of the required activities in
small group settings. When all mentoring plan activities have been completed, the new lawyer and the mentor
sign a Certificate of Completion, which the new lawyer is responsible for filing with the bar, accompanied by a fee
of $100. Upon completion, the new lawyer is awarded six hours of MCLE credit for the next reporting period (not
the first reporting period on admission). The mentor is awarded eight MCLE credits.

A new lawyer who fails to complete the program (after a 60-day opportunity to cure upon notice of noncompliance)
is suspended, and can apply for reinstatement upon completing the program. In addition to the $100 program fee,
such new lawyers are required to pay an additional $100 reinstatement fee.

The program manual includes a formal ethics opinion on the issue of lawyer-to-lawyer consulting and related
confidentiality and conflicts issues. In addition, the program manual cites the American Bar Association’s Standing Committee on Ethics and Professional Responsibility Formal Opinion 98-411, “Ethical Issues in Lawyer-to-Lawyer Consultation.”

N. DIPLOMA PRIVILEGE
Wisconsin remains the only state that allows diploma privilege, the practice of admitting the graduates of certain law schools to a state bar without requiring the graduates to take a bar exam. Approximately 30 states have recognized a version of diploma privilege at some point, but the American Bar Association denounced this practice in the 1910s and 1920s. As late as 1980, however, five states recognized diploma privilege—Mississippi, Montana, South Dakota, Wisconsin, and West Virginia. During this time, except for Wisconsin, each of these states, small in size and predominately rural, had a single, state-operated ABA-accredited law school.

The statutes allowing for diploma privilege in these states varied. For example, the statutes in Mississippi and West Virginia required only the production of a diploma from certain schools in order to be admitted to the bar. The statute allowing for diploma privilege in Montana granted the privilege only to graduates of the University of Montana, but specifically reserved for the chief justice of the Montana Supreme Court the right to order an examination of those graduates. Wisconsin presently has a restrictive diploma privilege statute. For admission, each applicant must be a graduate of a Wisconsin state law school and have completed a certain number of semester hours, of which a minimum number must be in certain substantive and procedural law courses. Most recently, in 2014, the Iowa Supreme Court considered allowing diploma privilege, but ultimately decided against it.

Pros:
• Cost savings for students as the bar exam, bar prep classes, and living expenses during the post-graduation, pre-swearing-in period can be significant
• Students can also begin practicing upon graduation
• Students are more likely to stay in-state, which benefits the state bar

Cons:
• The diploma privilege is based on the assumption that any person who graduates from law school is and should be presumed to be competent for admission to the bar. This has potential to compromise the integrity of the legal profession as the presumption does not always prove true.
• Diploma privilege was prevalent in small states, usually with a state-run law school. This might be impossible to implement in Missouri with two private law schools.

O. FOREIGN-EDUCATED LAWYERS
The existing approaches toward the admission of foreign-educated law graduates to state bars range from complete rejection to permitting admission on motion. In 2009, the American Bar Association issued a report regarding mechanisms that could be advanced to ensure that foreign-educated attorneys seeking to practice law in the United States have a legal educational experience comparable to the experience required of those educated in the United States. As the report discussed, there are a number of reasons why U.S. clients might want a foreign-educated law graduate available in the U.S. For example, in 2008 the U.S. had exported $1.836 trillion of goods and services and imported $2.517 trillion in goods and services. In 2007, there were $20 trillion in foreign-owned assets in the U.S. and $17.6 trillion in U.S.-owned assets abroad. Nearly every state in the country exported more than $1 billion of goods and services in 2008, and many of them had eight-figure exports.
Because many of the transactions underlying these statistics involved both foreign and domestic lawyers, there is a significant amount of international trade in legal services.

In light of these statistics, the ABA Commission on Multijurisdictional Practice (CMJP) issued two foreign-educated lawyer recommendations. CMJP urged all states to adopt rules permitting foreign lawyers to practice as foreign legal consultants without taking a U.S. qualification examination. Missouri has already adopted this approach.

CMJP also recommended the adoption of a Model Rule for Temporary Practice that would allow foreign-educated lawyers to engage in temporary practice on terms similar to the CMJP rules for domestic lawyers.

For those U.S. jurisdictions, like Missouri, that recognize foreign legal education as relevant for bar eligibility, the challenge is what sort of reliance to place upon foreign legal education. Below are recommendations from the ABA regarding how to assess whether an applicant’s foreign legal education was similar to the education offered in an ABA-accredited law school.

• This assessment might be based on similarity of the foreign legal system, which typically means a preference for common law systems based on the law of England.
• The assessment might be based on whether the foreign legal education took approximately the same amount of time as does a J.D. degree earned in an ABA-accredited law school.
• An assessment of similarity should consider the topics covered in the foreign legal studies and the topics covered in ABA-accredited law schools and on the typical U.S. bar examination.
• Jurisdictions might impose more than one of these “similarity” tests as a condition to bar eligibility.

P. TRADE v. PROFESSION DEBATE
Important to the debate regarding whether law is a profession or trade is the growing number of schools offering two-year law degrees in an effort to make law school more condensed and customizable. Some argue that this offering necessarily treats the legal profession as a trade, not a profession. Others have proposed an alternative whereby the third year of law school is reserved for clinics and experiential learning. Currently, approximately 32 law schools require pro bono services or participation in an experiential course before graduation.

Pros of 2 year law schools
• Students incur less debt
• Students are able to get into the job market sooner

Cons of 2 year law schools
• Fewer opportunities to participate in legal clinics
• Treatment of legal profession as a trade
II.
REPORT OF THE SUBCOMMITTEE ON LEAVING OR LIMITING THE PRACTICE OF LAW
EXHIBITS A-C
New Rule 6.035 – Retirement

(a) Upon request, retirement status may be granted to lawyers who are age 65 or
older who are in good standing, or enrolled on inactive status pursuant to rule
6.03. Upon such enrollment, the lawyer shall be placed in retirement status
and shall no longer be eligible to practice law or hold himself or herself out as
being authorized to practice law in this state, except as is provided in (b) of this
rule. The retired lawyer is not required to comply with the annual obligations
of enrollment, paying the enrollment fee, and complying with annual
continuing legal education requirements unless otherwise provided in (b).

(b)(1) Authorization to Provide Pro Bono Services. A lawyer enrolled as
retired pursuant to this rule shall be authorized to provide pro bono legal services
under the following circumstances:

(A) without charge or an expectation of a fee by the lawyer;
(B) to persons of limited means or to organizations, as defined in
paragraph (b)(4) of this rule; and
(C) is certified under Section (b)(2) of this rule.

Any lawyer who provides legal services pursuant to this rule shall not
be considered to be engaged in the unlawful or unauthorized practice of law
in this jurisdiction. Any lawyer who provides legal services pursuant to
this rule shall use the designation “Retired,” or “Ret.” on all documents
filed with the court and correspondence related to the representation and
shall not represent themselves to be active members of the Bar licensed to
practice law in this state.

(2) Procedure for Lawyers Seeking Authorization to Provide Pro
Bono Services. A lawyer admitted in Missouri who is enrolled as retired
pursuant to Rule 6.035, or a lawyer who is admitted as a limited admission
in-house counsel under Rule 8.105, who seeks to provide pro bono services
under this rule shall submit a statement to the Clerk so indicating, along
with a certification from an approved legal assistance organization stating
that the lawyer is currently associated with that legal assistance
organization. The lawyer’s statement shall include:

(A) the lawyer’s agreement that he or she will participate in any
training required by the sponsoring entity and that he or she will
notify the Clerk within 30 days of ending his or her participation in
a pro bono program.

(B) a certification from the highest court or agency in each state,
territory or district in which the lawyer previously has been licensed
to practice law, certifying that the lawyer has fulfilled the
requirements for active bar membership and is in good standing.

(C) a sworn statement by the lawyer that he or she:

1. has read and is familiar with the Missouri Rules of
   Professional Conduct, Supreme Court Rule 4, as
   adopted by the Supreme Court of Missouri, and
   will abide by the provisions thereof; and

2. submits to the jurisdiction of the Supreme Court
   of Missouri for disciplinary purposes; and

3. will neither ask for nor receive compensation of
   any kind for the legal services authorized
   hereunder; and

4. at the time of filing, has completed two hours or
   accredited programs and activities devoted
exclusively to professional, legal or judicial ethics, or malpractice prevention and will otherwise remain in compliance with Rule 15.05(f).

Upon receiving the lawyer’s statement and the entity’s certification, the Clerk shall cause the master roll to reflect that the lawyer is authorized to provide pro bono services. That authorization shall continue until the end of the calendar year in which the statement and verification are submitted, unless the lawyer or the sponsoring entity sends notice to the Clerk that the program or the lawyer’s participation in the program has ended.

(3) Renewal of Authorization. An lawyer who has been authorized to provide pro bono services under this rule may renew the authorization on an annual basis by submitting a statement that he or she continues to participate in a qualifying program of an approved legal assistance organization, along with verification from the sponsoring organization that the lawyer continues to participate in such a program under the entity’s auspices and that the lawyer has taken part in any training required by the program.

(4) Approval of Legal Assistance Organizations. For the purposes of this rule, an “approved legal assistance organization” is an entity that offers legal assistance to low-income Missourians, either through paid or volunteer attorneys, which has in place a reasonable method for screening clients to ensure that the clients meet reasonable need-based criteria, and is approved by the Supreme Court of Missouri as set forth herein. A legal assistance organization seeking approval from the Supreme Court of Missouri under this rule shall annually file a petition with the clerk of the Supreme Court certifying:
(A) that it is a not-for-profit organization;

(B) the structure of the organization and whether it accepts funds from its clients;

(C) the major sources of funds used by the organization;

(D) the criteria used to determine potential clients' eligibility for legal services performed by the organization;

(E) the types of legal services performed by the organization;

(F) the name and bar number of the attorney or attorneys who will coordinate the activities of the lawyer performing pro bono legal services for the organization under this rule; and

(G) the existence and extent of professional liability malpractice insurance which will cover the lawyer performing pro bono legal services for the organization under this rule, including coverage available through Missouri's Legal Expense fund, section 105.711, R.S.Mo.

(5) Annual Registration for Lawyers on Retired Status. Notwithstanding the provisions of this rule (a), a retired status lawyer who seeks to provide pro bono services under this rule must register on an annual basis, but is not required to pay a registration fee.

(6) MCLE Requirements. The provisions of Rule 15 exempting lawyers from MCLE requirements by reason of being registered as inactive or retired shall apply to inactive or retired status lawyers authorized to provide pro bono services under this rule, except that such lawyers shall participate in
training to the extent required by the sponsoring entity and shall otherwise remain in compliance with the requirements of Rule 15.05(f).

Other Rule Amendments & Cross-References:

5.26 Designation and Appointment of Trustee

(a) For purposes of this Rule 5.26, the following terms mean:

“Trustee” means a member of the bar of this state, in good standing, who has been appointed by an authorized court to protect the interests of the clients of a lawyer and other affected parties.

“Disabled” means that a Lawyer has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems or age that more than minimally impairs judgment, cognitive ability, or volitional or emotional functioning in relation to the Lawyer’s performance of professional duties and commitments.

“Fiduciary Entity” means a partnership, limited liability company, professional corporation, or a limited liability partnership, in which entity a Lawyer is practicing with one or more other members of the bar of this State who are partners, shareholders or owners.

“Lawyer” for purposes of being subject to the appointment of a Trustee under this rule means a member of the bar of this state who is engaged in the private practice of law in this state. “Lawyer” does not include a member of the bar whose practice is solely as an employee of another Lawyer, a Fiduciary Entity or an organization that is not engaged in the private practice of law.
(b) Designation of Trustee

(1) At the time of completing the annual enrollment statement required by Rule 6.01(b), a Lawyer may designate a trustee by specifying name and the bar number of the trustee and certifying that the trustee has agreed to the designation in a writing in possession of both the lawyer and the trustee. The designation of a trustee shall remain in effect until revoked by either the designated trustee or the Lawyer designating the trustee. The Lawyer who designates the trustee shall notify the Clerk of the Supreme Court of any change of designated trustee within thirty (30) days of such change. The Clerk shall keep a list of designated trustees and their addresses.

(2) A Lawyer, practicing in a Fiduciary Entity, shall state the name and address of the Fiduciary Entity where indicated in the trustee designation section of the annual enrollment statement. Because of the ongoing responsibility of the Fiduciary Entity to the clients of the Lawyer, no trustee shall be appointed for a Lawyer practicing in a Fiduciary Entity.

(3) A lawyer not practicing in a Fiduciary Entity who does not designate a trustee pursuant to subsection (1) above will be deemed to designate a suitable member of the bar of this state in good standing appointed by an authorized court to perform the duties of a trustee under this rule.

(c) Appointment of Trustee. A circuit court in the circuit where the Lawyer maintained an office, through the presiding judge or a judge of the circuit designated by the presiding judge, may appoint the trustee designated by the Lawyer or, if no trustee has been
designated by the Lawyer in the Lawyer's annual enrollment statement, may appoint one
or more members of the bar to serve as a trustee for a Lawyer upon a showing that:
(1) The Lawyer is unable to properly discharge the Lawyer's responsibilities to clients
due to disability, disappearance or death, or
(2) The Lawyer failed to comply with Rule 5.27 after disbarment or suspension.

Notice of the trustee's appointment shall be given by the clerk of the court and to
the chief disciplinary counsel who shall monitor and assist the work of the trustee as
necessary and appropriate.

(b) Duties of Trustee. The trustee shall take whatever action seems indicated to protect
the interests of the clients and other affected parties, including:

(1) Inventory active files and make reasonable efforts to distribute them to
clients.
(2) Deliver any undistributed active client files and any inactive client files
to the chief disciplinary counsel for action as required by this Rule 5;
(3) Take possession of and review the lawyer trust and business accounts;
(4) Make reasonable efforts to distribute identified trust funds to clients or
other parties (other than the lawyer);
(5) After obtaining an order of the court, dispose of any remaining funds
and assets as directed by the court; and
(6) Initiate any legal action necessary to recover or secure any client funds
or other property.
The Lawyer, to the extent possible, shall cooperate and promptly respond to reasonable requests for information from the trustee.

(c) Protection of Client Information. The trustee shall be bound by the Rules of Professional Conduct pertaining to client confidentiality with regard to the records of individual clients.

The trustee shall not disclose any information contained in any file under this Rule 5.26 without the informed, written consent of the client to whom the file relates except as necessary to:

(1) Carry out the order of appointment, or
(2) Comply with any request from an appropriate disciplinary authority.

The trustee shall report professional misconduct on the part of the Lawyer as required by Rule 4-8.3.

(d) Reports to the Court. The trustee shall file written reports with the clerk of the appointing court:

(1) Within 120 days of appointment;
(2) Prior to being discharged if later than 120 days of appointment; and
(3) At such other times as directed by the appointing court.

The reports shall describe the nature and scope of the work accomplished and to be accomplished under this Rule 5.26 and the significant activities of the trustee in meeting the obligations under this Rule 5.26.
The final report must include accountings for any trust and business accounts, the
disposition of active case files, and any requests for disposition of remaining files and
property.

The trustee may apply to the appointing court for instructions whenever necessary
to carry out or conclude the duties and obligations imposed by this Rule 5.26.

(e) Immunity. All trustees appointed pursuant to this Rule 5.26 shall be immune from
liability for conduct in the performance of their official duties in accordance with Rule
5.315. This immunity shall not extend to employment under Rule 5.26(f).

(f) Acceptance of Clients. With the consent of any client, the trustee may, but need not,
accept employment to complete any legal matter.

(g) Legal Responsibility of Lawyer. The Lawyer for whom a trustee has been appointed
or the estate of a deceased Lawyer for whom a trustee has been appointed is liable to the
trustee for all reasonable fees, costs, and expenses incurred by the trustee as approved by
the appointing court. To the extent that the approved trustee’s fees, costs, and expenses
are paid by the disciplinary authority or other third party, the Lawyer or the estate shall
be liable to make reimbursement to the disciplinary authority or other third party for such
payment.

(h) Fees, Costs, and Expenses. Application for allowance of fees, costs, and expenses
shall be made by affidavit to the appointing court, which may enter a judgment in favor
of the trustee and against the Lawyer or the estate of a deceased Lawyer for whom a
trustee has been appointed. The application shall be made on notice to the chief
disciplinary counsel, the Lawyer or, if deceased, to the Lawyer’s personal representative,
or heirs. For good cause shown, an interim application for fees, costs, and expenses may be made.

As approved by the appointing court, the trustee shall be entitled to reimbursement from the Lawyer or the deceased Lawyer’s estate for:

(1) Reasonable expenses incurred by the trustee for costs, including, but not limited to, clerical, paralegal, legal, accounting, telephone, postage, moving, and storage expenses, and

(2) Reasonable attorneys’ fees.

In the absence of other funding sources, the chief disciplinary counsel may pay the approved fees, costs, and expenses.

In re:

Repeal of subdivision 6.06, entitled "Return to Active Status," of Rule 6, entitled "Fees to Practice Law," and in lieu thereof adoption of a new subdivision 6.06, entitled "Return to Active Status."

ORDER

1. It is ordered that effective January 1, 2016, subdivision 6.01 be and the same is hereby repealed and a new subdivision 6.01 adopted in lieu thereof to read as follows:

6.06 RETURN TO ACTIVE STATUS

(a) A lawyer recorded as inactive may apply to the chief disciplinary counsel to return to active status. The application shall be made on a form approved by this Court and obtained from the chief disciplinary counsel. The application shall be accompanied by the following:

(1) Proof of payment of all annual fees required by Rule 6.03;

(2) A certificate of good standing from every jurisdiction other than Missouri in which the applicant is licensed to practice law; and
(3) Certification from The Missouri Bar of completion of at least 15 hours of continuing legal education within 12 months prior to the date the application is submitted. At least two of the 15 hours shall be for accredited programs and activities devoted to professionalism, legal or judicial ethics, or malpractice prevention.

(b) Within 45 days of receiving the application, the chief disciplinary counsel shall determine if the return to active status requires inquiry beyond 45 days in order to be approved. If no such inquiry is necessary and the chief disciplinary counsel approves the application, the chief disciplinary counsel shall so notify the clerk of this Court and the applicant, and the Court shall return the applicant to active status.

(c) If the chief disciplinary counsel does not approve the application or determines that the return to active status requires inquiry beyond 45 days, the chief disciplinary counsel shall notify the applicant that the applicant must file a petition to return to active status with this Court within 30 days of the date of the receipt of the notice that the application is not approved or that further inquiry is required. The petition shall be accompanied by:

(1) The docket fee prescribed by Rule 81.04; and

(2) An investigation fee of $200, which shall be deposited to the credit of the advisory committee fund.
No report or hearing shall be had on any petition until the required fees are paid.

If the petition is not filed within 30 days as required, a new application may be filed at any time.

(d) If a petition to return to active status is filed in this Court, the petition shall be referred to the chief disciplinary counsel for report and recommendation. The report shall be served on the petitioner by the chief disciplinary counsel as provided in Rule 5.18. The petitioner may file a written response to the report with the chief disciplinary counsel within 15 days of the date of the mailing of the report.

(e) The report, recommendation, and response, if any, to a petition to return to active status shall be filed with this Court by the chief disciplinary counsel upon receipt of the response or the expiration of the time for making a response. A copy of the application submitted to the chief disciplinary counsel shall be attached to the report. The Court shall make a determination whether to return the petitioner to active status on the basis of the petition, report, application, recommendation, and response.

(f) Upon its review of a petition to return to active status, the Court may direct the advisory committee to appoint a disciplinary hearing panel.

(1) The disciplinary hearing panel shall conduct a hearing into any allegations of misconduct contained in the report to which the
petitioner objects. The hearing shall be conducted as provided in Rule 5.14.

(2) The disciplinary hearing panel shall file a report with the clerk of this Court. The panel's report shall discuss all matters in dispute and make a recommendation as to whether the petitioner's license should be returned to active status.

3. It is ordered that notice of this order be published in the Journal of The Missouri Bar.

4. It is ordered that this order be published in the South Western Reporter.

Day -- to -- Day

PATRICIA BRECKENRIDGE
Chief Justice
MEMORANDUM

TO: Long Term Planning Subgroup
Task Force on the Future of the Profession

From: Alan Pratzel, Chief Disciplinary Counsel

Date: October 1, 2015

Re: Amended Return to Active Status Rule (Rule 6.06)

On September 10, 2015, the Supreme Court adopted an amended Rule 6.06 (Return to Active Status). The amended Rule 6.06 essentially streamlines the process for lawyers to return to active status after they have taken inactive status under existing Rule 6.03. The amended rule becomes effective as of January 1, 2016. This memo summarizes the amendments to the rule.

- Prior to the Court’s amendment of Rule 6.06, a lawyer in inactive status was required to petition the Court for an order returning that lawyer to active status. All such petitions were referred to the Office of Chief Disciplinary Counsel (OCDC) for investigation and a report and recommendation to the Court. The lawyer was required to pay certain fees and expenses associated with the filing and with the OCDC’s investigation.

- Under amended Rule 6.06(a), a lawyer may apply to the Chief Disciplinary Counsel (CDC) to return to active status. The application must be accompanied by proof of payment of all annual fees required by Rule 6.03; a certificate of good standing from all jurisdictions where the lawyer is licensed; and a certification from The Missouri Bar that the applicant has completed required CLE hours. No additional fees are required under the amended rule. The CDC shall determine if the application should not be approved or if inquiry beyond 45 days regarding the application is necessary. If CDC determines that the application should be approved with no additional inquiry, the CDC shall notify the Clerk of the Court and the applicant shall be returned to active status. It is believed that the majority of Rule 6.06 applications will be approved and will not require additional inquiry and that the applicants will be returned to active status through this administrative process.

- If the CDC determines that the application should not be approved or that inquiry beyond the 45 days is required, the CDC shall notify the applicant that he/she must file a petition with the Supreme Court to return to active status. The petition must
be accompanied by a docket fee and a $200 investigation fee to cover the expenses to be incurred by the OCDC in investigating the petition.

- The petition to return to active status shall be referred to the OCDC for investigation. The OCDC shall make a report and recommendation to the Court regarding the petition. The Court may approve or deny the petition or may direct that a disciplinary hearing panel be appointed by the Advisory Committee in order to conduct a hearing into any allegations of misconduct contained in the OCDC’s report. Following the hearing, the disciplinary hearing panel is required to file with the Clerk of the Court a report and recommendation as to whether the petitioner’s license should be returned to active status.

Under the amended Rule 6.06, the return to active status process will, in most cases, be administrative in nature and will not involve formal action by the Court. Only in those cases where the OCDC has existing information within its investigative files indicating that the application should be denied or that the lawyer should be required to go through the more formal petition process will the lawyer be required to formally petition the Court for an order to return to active status.
EXHIBITS

III.
REPORT OF THE SUBCOMMITTEE ON TECHNOLOGY
EXHIBITS A-B
**DEMOGRAPHICS**

1) How many years have you practiced law?
2) How would you characterize your practice setting?
   a) Solo
   b) Small
   c) Mid-size
   d) Large
3) Do you primarily practice in state court?
4) How would you describe your primary practice location?
   a) Urban
   b) Suburban
   c) Rural
5) What percentage of your work is done at home? In office? Other location?
6) Who makes the decisions about technology where you practice law?
   a) You
   b) Employee
   c) 3rd party/Contractor
7) Who is primarily responsible for maintaining technology where you practice law?
   a) You
   b) Employee
   c) 3rd party/Contractor
8) Do you have personal social media accounts?
   Yes/No

Which? (multiple choice)
Facebook
Twitter
MySpace
Instagram
LinkedIn
Pinterest
Tumblr
Yelp
Other: (text box)

Please rate your own technology skills according to the scale below. Please select one for each question.

<table>
<thead>
<tr>
<th>Learner:</th>
<th>Basic:</th>
<th>Proficient:</th>
<th>Advanced:</th>
</tr>
</thead>
<tbody>
<tr>
<td>I am not sure how to do this task</td>
<td>I have done this before, but might need some help</td>
<td>I can perform this task without any assistance.</td>
<td>I could train others to do this.</td>
</tr>
</tbody>
</table>

1. E-file a document.
2. How to convert a document in PDF.
3. How to scan a document.
4. How to attach a file to an email.
5. How to open an attachment.
6. How to identify secured e-storage.
7. How to encrypt a document.
8. How to encrypt data.
Please evaluate each of the following statements. Please select one for each question.

<table>
<thead>
<tr>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>N/A</th>
</tr>
</thead>
</table>

I can easily access technology in my practice when I need it.

I am confident in my ability to use multiple technologies in my practice.

The amount of time needed to use technology deters me from using it.

I have the technology skills needed to further my practice.

I am familiar with the technology available in the practice of law.

I believe competence in technology is optional.

I am concerned about the security of data in the practice of law.

I am concerned about shorter, faster business cycles brought about by technology.

I am familiar with litigation hold requirements.

I am familiar with meet and confer process as it relates to e-discovery.

I am familiar with the issues surrounding Computer Assisted Review.

I am familiar with the ethical obligations during discover under FRCP Rule 26(g).

I know how to get electronic information into evidence.

I know how to keep electronic information out of evidence.

I know what meta data is.

I understand the rules regarding e-discovery.

I have enough professional development opportunities to learn about technology as it relates to law practice.

I believe technology has lead to the erosion of civility in legal practice. If so, how?
COURT RECORDS

*Task force on court automation will address this issue. However, the following are the issues from this task force:

1) Keeping court records off of case.net (i.e. SIS/SES cases; allowing parties to agree to keep case confidential; person is accused, arrested, but not prosecuted).

2) Use of court records to do background/employment checks.

3) Rules that may need to be revisited as a result of e-filing (i.e. rules that require a raised seal for a paralegal, for authentication, or registration of foreign judgments).

4) How to correct the electronic record.

DATA SECURITY

Do you use technology for data recovery?
If so, what do you use?
Do you use a back-up service provider?
If so, which one?
Do you use fire wall router technology?
If so, which one?
Do you use encryption technology?
If so, what do you use?
What other security measures do you use?
Does your firm have a documented disaster recovery plan?
What rules of evidence, if any, would you suggest updating to accommodate the increased use of technology as it relates to data security?
What rules of professional conduct would you suggest updating to accommodate the increased use of technology as it relates to data security? What should that update(s) be?
PRACTICE MANAGEMENT
Do your firm use a primary desktop operating system?
If so, which one?
How often do you replace your computer?
Do you use a primary word processing software?
If so, which one?
Does your firm use social networking tools for internal or client communications?
If so, which?
Does your firm use software for metadata checking/removal?
If so, which?
Does your firm use scanner work flow software to automate or facilitate document scanning processes?
If so, which?
Does your firm use software to manage ethical walls?
If so, which?
Does your firm use software for client management?
If so, which?
Does your firm have a primary internet browser?
If so, which one?
Does your firm use software to edit and redact Adobe Acrobat files?
If so, which?
Does your firm use software for records management of physical files?
If so, which?
Does your firm make use of any technology to automate the tracking of physical files?
Does your firm have electronic records policies or procedures in place?
If so, which?
Do your firm have a primary email platform?
If so, which one?
Does your firm have a written email destruction policy for mail left in the inbox?
Does your firm use products that do an initial virus scan of inbound email messages?
If so, which?
Do your firm use an antivirus software for desktops?
If so, which?
What is your biggest email support challenge?
What methods are being used by your firm for email management?
What rules of evidence, if any, would you suggest updating to accommodate the increased use of technology as it relates to practice management?
What rules of professional conduct would you suggest updating to accommodate the increased use of technology for practice management? What should that update(s) be?
ATTORNEY RECORDS MANAGEMENT

Does your firm use a cloud-based archival solution?
- If so, which?
- If you use an application for email or electronic records management, which do you use?

Do you maintain client files in hard copy or electronic format?
- Hard copy only
- Hard copy mostly, some electronic.
- Equal parts hard copy and electronic
- Some hard copy, mostly electronic
- Electronic only
- N/A

If you maintain some/all client files electronically, how is it stored? (select all that apply)
- in a document management system
- as PDFs or native documents on a hard drive or server (ie loose files)
- in emails
- in a vendor developed case management system like Clio, MyCase, or AbacusLaw
- N/A
- other (text box)

Do you require an engagement letter/agreement defining the contents of the lawyer’s file, rights of retention, or client requests for copies?
- Never
- Rarely
- Sometimes
- Often
- Always
- N/A

If you do require an engagement letter/agreement, do you define the scope of any client electronic file?
- Never
- Rarely
- Sometimes
- Often
- Always
- N/A

If so, how? (comment box)

If you do define the scope of any client electronic file, do you differentiate the scope of the file (1) during the course of representation; (2) during transfer of representation between counsel; or (3) following representation?
- Never
- Rarely
- Sometimes
- Often
- Always
- N/A

If so, how? (comment box)

After a case ends, do you provide the former client with the electronic part of their file?
- Never
- Rarely
- Sometimes
- Often
- Always
- N/A

If so, how? (comment box)

If you provide the electronic file, is there a cost to the client?
- Never
- Rarely
- Sometimes
- Often
- Always
- N/A

If a cost, is it defined in an engagement letter/agreement and does it vary depending on the stage of representation?
- Never
- Rarely
- Sometimes
- Often
- Always
- N/A

What rules of evidence, if any, would you suggest updating to accommodate the increased use of technology as it relates to records management?

What rules of professional conduct would you suggest updating to accommodate the increased use of technology as it relates to records management? What should that update be?
ACCESS

*This area is now the purview of another bar committee.

From this committee, the concerns are:
1) Balancing the rights of the public with the correct use of the information in the system.
2) Pro se litigants and their right to access the information that is electronically stored.
WORK-LIFE BALANCE

Extensive resources available online include:

- Life in the Balance, Achieving Equilibrium in Professional and Personal Life, ABA Young Lawyers Division, 2003:
- americanbar.org/content/dam/aba/migrated/yld/lifeinthebalance.authcheckdam.pdf
- ABA-YLD articles collected at americanbar.org/publications/tyl/topics/worklife.html
- Disruptive Innovation: New Models of Legal Practice, WorkLife Law, UC Hastings College of Law (118 pages, download at worklifelaw.org/new-modelsreport/)

Brainstormed principles and ideas by our group included the following:

- Work-life balance is key to a successful, fulfilling legal career, but new technologies can negatively impact work-life balance.
- Firms and the organized bar should encourage and assist attorneys and staff to maintain a healthy work-life balance. Benefits to firms may include cost savings from reduced turnover; a reputation that attracts the best legal talent; and more satisfied and better motivated employees having better relationships with clients.
- The organized bar, in particular, should
  - encourage (and offer training and education to assist) firms to (1) consider guidelines and formalize flexible work programs; (2) define reduced hours and establish eligibility criteria; (3) allow for customized arrangements.
  - encourage (and offer training and education to assist) quality-of-life initiatives such as: (1) assistance with day-to-day personal or family issues that affect many lawyers; (2) social morale-building initiatives; (3) professional development and morale-boosting initiatives; (4) work-life integration to achieve professional success; and (5) policies designed to allow attorneys to leave the office behind them while on personal time.
  - encourage mentoring by attorneys who are successfully working a flexible schedule.
  - publicize success stories of firms and employers who have successfully implemented work-life balance policies or practices.
  - encourage the profession to strive to preserve vacation time by defining expectations within firms and with clients; support larger firms considering sabbatical policies for productive attorneys; and offer training, education, and sample policies in these regards.
IV.
REPORT OF THE SUBCOMMITTEE ON ACCESS AND SUSTAINABILITY
EXHIBIT A


5 New York City Bar, supra. at pg. 89.

6 Yale Law School Legal Scholarship Repository, supra. at pg. 746.


9 The Florida Association of Legal Document Preparers; http://www.faldp.org/

10 Louisiana Revised Statutes, Title 35; https://legis.la.gov/Legis/Laws_Toc.aspx?folder=75&level=Parent


17 California requires one hour in “competence,” which includes mental health. http://mcle.calbar.ca.gov/Attorneys/Requirements.aspx


19 Iowa’s ethics requirement was increased in 2012 and now includes mental health component. https://www.americanbar.org/cle/mandatory_cle/mcle_states/states_a-k/iowa.html

