

Comment Sought on Skills Competency for Bar Admission

Andrew Denney, New York Law Journal

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Applicants to the New York State Bar are sworn in during a ceremony at the Empire State Convention Center in Albany on Jan. 23, 2014.

Tim Roske

A Court of Appeals task force [is seeking public comment](#) on a proposal to amend New York's rules for admission to the bar to require applicants to complete a skills competency component.

Forming the Task Force on Experiential Learning and Admission to the Bar, chaired by Court of Appeals Judge Jenny Rivera, was one of the recommendations in a report by the Advisory Committee on the Uniform Bar Examination (UBE) released in the spring.

The hallmark of the advisory committee's report was the recommendation that New York state adopt the UBE, which will be introduced in July 2016, and that an experiential training component be explored as a separate admission requirement.

The task force proposed a system in which applicants can choose from five "pathways" to prove they have the professional skills to practice.

The first option allows an applicant to meet the requirement by showing certification from his or her law school indicating it has incorporated instruction of professional values into its curriculum and that

the applicant has shown competency in those areas.

This option also allows law schools to set their own standards for measuring students' skills and understanding of professional values for ethical and responsible practice, the task force said.

The second pathway requires that applicants provide proof from their law schools that they completed 15 credit hours of experiential coursework. Six of those hours could be replaced with work in non-credit-bearing summer programs, in which 50 hours of full-time work would count as one credit hour.

A third option is the successful completion of the Pro Bono Scholars Program, in which law students take their bar exams early and spend their final semesters doing pro bono work.

The fourth option allows applicants to meet competency requirements by completing a six-month post-graduation apprenticeship under the tutelage of a supervising attorney.

The fifth pathway allows the competency requirement to be satisfied by practicing law full time for one year or part time for two years.

Pathways four and five can take place in other jurisdictions in the United States or in foreign countries.

"These pathways reflect maximum flexibility in an attempt to encourage innovation," Rivera said. While the first three are aimed at law schools, she said, the fourth and fifth pathways would be designed for applicants who were not given plentiful opportunities for skills practice during law school.

The task force recommends that the requirements apply to students who enter law school after Aug. 1, 2016.

Patricia Salkin, dean of Touro College Jacob D. Fuchsberg Law Center and co-chair of the New York State Bar Association's Committee on Legal Education and Admission to the Bar, said the scheme would ensure applicants have some training in professional values. The requirement contained under the first pathway, that law schools post their standards online, would enable prospective students to be better-educated consumers.

"This is an opportunity for law schools to rethink or repackage some of the things that we are all doing now," Salkin said, noting that she was speaking in her own capacity because the state bar's committee has yet to discuss the proposal.

The state bar's committee on legal education, which Salkin co-chairs with Epstein Becker & Green counsel Eileen Millett, had recommended to the UBE advisory committee that New York allow applicants to substitute experiential learning for the Multi-State Practice Test portion of the bar examination.

Additionally, the New York City Bar Association recommended that the state consider allowing

applicants to take part in supervised learning as an alternative to taking some or all of the written bar exam.

The UBE advisory committee wrote in its report that, while it "strongly believes in the value" of experiential learning, replacing portions of the bar exam with a "subjective element" would raise questions of fairness. There was inconsistent support for the proposal among law school administrators and faculty.

But, the committee wrote, it is an "opportune time" to examine New York's licensing criteria.

"If, as certain commentators suggest, it is essential to ensure that new attorneys have had experiential training, then such training should be explored as a separate admission requirement rather than an optional substitute for a portion of the bar exam," the committee wrote while acknowledging that the issue is outside of the scope of its mandate.

Mary Lynch, co-president of the Clinical Legal Education Association and an Albany Law School professor, said the proposed implementation date for the second option—15 credit hours of experiential work—is too soon. She added that the first option does not ensure that law schools enhance their experiential training.

"In a financially driven world, we're going to go to the least-common denominator if they can get away with doing pathway one," Lynch said.

Comments on the task force's proposal can be submitted by email to toattorneyadmissions@nycourts.gov or by mail to Margaret Wood, Court Attorney for Professional Matters, Court of Appeals Hall, 20 Eagle Street, Albany, New York 12207. Submissions will be accepted until 5 p.m. on Nov. 9.

Comments will be available for public disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration.

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