



## Critical Issues Summit

### *Equipping Our Lawyers: Law School Education, Continuing Legal Education, and Legal Practice in the 21st Century*

Professor Donald Polden  
c/o Hulett H. Askew, Consultant  
American Bar Association Standards Review Committee  
321 North Clark Street  
Chicago, IL 06054

RE: Recommendations for Lawyer Training and Development from the  
ALI-ABA/ACLEA “Equipping Our Lawyers” Critical Issues Summit

Dear Dean Polden:

As you may know, in October 2009 ALI-ABA and ACLEA held their “Equipping Our Lawyers” Critical Issues Summit, a consensus conference that resulted in a series of multi-pronged recommendations for improving the education and development of lawyers in the 21<sup>st</sup> century. Several of these recommendations address legal education and dovetail with the current work of the ABA Standards Review Committee to revise the *ABA Standards and Rules of Procedure for the Approval of Law Schools*. This letter summarizes the law school-related Recommendations from the Critical Issues Summit in the hope that they will prove useful to the Committee’s work.

### **Background**

In 2007 ALI-ABA Continuing Professional Education (“ALI-ABA”) and the Association for Continuing Legal Education (“ACLEA”) began planning a cross-disciplinary summit to examine the current state of lawyer education and professional development. The goal of the Summit was to make recommendations on how current practices across the “continuum” of a lawyer’s learning life (to borrow a concept from the highly influential 1992 MacCrate Report) could be improved for 21<sup>st</sup> century practice. The sponsoring organizations believed that for such an effort to be successful, technology in all its

forms—and in all its paradigm-changing manifestations—would have to be dealt with. In addition, all the key constituencies in lawyer professional development—law schools, CLE providers, MCLE regulators, law firm professional development, the bench and the organized bar—would have to be part of the discussion.

The resulting Critical Issues Summit, formally titled *Equipping Our Lawyers: Law School Education, Continuing Legal Education, and Legal Practice in the 21<sup>st</sup> Century*, was held on October 15-17, 2009. To result in meaningful recommendations, the Summit was highly participatory. Its opening plenary featured two expert panels, one on the future of the legal profession and the other on the use of technology in lawyer education and development.<sup>1</sup> These panels informed the subsequent Summit discussions. After the plenary, conferees met concurrently in six assigned working groups organized by subject area. These six working group discussions formed the heart of the Summit. In them, conferees representing a range of constituencies reviewed assigned discussion questions and made recommendations for best practices or actions in the areas under review. From these many recommendations, each working group selected three key recommendations, which were subsequently debated in plenary session, where they were distilled into the Summit's Final Recommendations.

Details about the Summit and its Recommendations can be found at [www.equippingourlawyers.org](http://www.equippingourlawyers.org). In addition, the Recommendations themselves are reproduced as an Appendix to this letter.

## **Recommendations**

The Summit's 16 Recommendations address every constituency involved in the training and development of lawyers. The first four, however, largely focus on law schools. These four Recommendations, described below and reproduced verbatim in the Appendix, resulted from consensus discussions that took place in the Summit's working group and plenary sessions. The law school working group included 26 law school faculty members from across the U.S. (and several from overseas), who worked with practitioners, CLE providers, and judges to debate the issues and craft the Recommendations. Many of the Summit's law faculty participants will be familiar to those on the ABA Standards Review Committee, such as Professor Myles V. Lynk of Sandra Day O'Connor College of Law at Arizona State University, Professor Linda Rusch of Gonzaga University School of Law, and Dean Richard Matasar of New York Law School.

The four law school-related Summit Recommendations suggest the following:

1. Law schools should examine teaching methods and curricula to ensure that their graduates are capable of serving as effective beginning professionals. Such an examination might include defining learning outcomes, designing curricula

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<sup>1</sup> Both panels were recorded and may be viewed at the official site of the Summit: [www.equippingourlawyers.org](http://www.equippingourlawyers.org).

- around those outcomes, and then evaluating the success of achieving those outcomes.
2. Building on Recommendation 1 above, law schools, the bar, and the bench should partner in the career-long development of lawyer competencies. To initiate the continuum, law schools should integrate into their curricula the core practice competencies spelled out in various documents (e.g.: MacCrate Report; Carnegie Report)
  3. Beyond adoption of core practice competencies, law schools should continue to refine their lists of identified competencies to account for the varying practice areas their students will enter.
  4. Law schools, the bar, and the bench should develop and encourage transition training programs (e.g.: experiential learning opportunities, post-admission apprenticeships, and universal mentorship programs) to begin in law school and continue through at least the first two years of practice.

ALI-ABA and ACLEA are committed to implementing as many of the Critical Issues Summit Recommendations as possible. Because we see a common purpose with aspects of the work of ABA Standards Review Committee, we intend to participate actively in the Committee's review process by commenting on the proposed Standards. We also welcome your suggestions for other concrete ways we might assist the Committee in its efforts.

You can find more information about Summit implementation efforts and achievements at [www.equippingourlawyers.org](http://www.equippingourlawyers.org). We also publish a monthly newsletter on related efforts in lawyer education and development, which can be subscribed to at that site.

We look forward to discussing with you how we may assist the ABA Standards Review Committee.

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## APPENDIX



### **Critical Issues Summit**

*Equipping Our Lawyers:  
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and Legal Practice in the 21st Century*

### **Final Recommendations**

Compiled and Edited by Charles C. Bingaman, Summit Reporter

#### **Reporter's Introduction**

The Critical Issues Summit (October 15-17, 2009) was sponsored by ALI-ABA Continuing Professional Education and the Association for Continuing Legal Education. It brought together CLE professionals, law school deans and faculty members, law practitioners, bar leaders, judges, mandatory CLE administrators, law firm educators, and other experts on lawyer professional education to study and respond to the challenges of equipping lawyers to practice in a rapidly changing world.

Working in groups, Summit participants generated a series of recommendations for improving the full continuum of lawyer professional development. The Reporter has edited these recommendations to reflect plenary session discussions at the Summit and post-Summit commentary by conferees and others.

In the course of developing these Final Recommendations, Summit conferees generated numerous other recommendations for improving lawyer professional development. These additional recommendations will be included in the Final Report of the Summit, to be issued shortly after these Final Recommendations.

More information about the Summit and its results is available at [www.equippingourlawyers.org](http://www.equippingourlawyers.org).

## Preamble

All members of the legal community share responsibilities to initiate and maintain the continuum of educational resources necessary to assure that lawyers provide competent legal services throughout their careers, maintain a legal system that provides access to justice for all, and remain sensitive to the diverse client base they must serve. These recommendations are offered as a blueprint for strengthening that continuum of educational resources and those values. The recommendations are presented in the chronological order of the legal education continuum—from initial law school education through legal careers.

1. Law schools should examine their teaching methods and the content of their curricula to ensure that their graduates are capable of serving as effective beginning professionals. Such examination might include:
  - a. Defining the learning outcomes they wish to produce;
  - b. Designing the curricula and engaging faculty to produce those outcomes;
  - c. Using proven teaching methods that will produce those outcomes, including the application of the latest research on adult learning styles and generational differences in learning; and
  - d. Evaluating their success at achieving those outcomes.

Reporter's Comment: Deans and other Summit participants noted that different law schools place differing priorities on scholarship and writing by faculty members as contrasted with teaching or preparing students for practice. Some participants suggested that a number of law schools place a low priority on their faculty members' developing research-based teaching skills for effective adult learning. This recommendation acknowledges the validity of law schools' different approaches to their missions while also placing a high value on preparing their students for legal careers.

Summit conferees who were asked to look at generational differences in learning style suggested that significant differences could largely be bridged if law schools, CLE organizations, and instructors considered relevant and new research and expanded their instructional approaches accordingly. As generational differences appear to be largely permanent and little change can be expected as people age, these differences in learning style should be taken into account when planning all educational programs.

2. Building upon the defined learning outcomes from Recommendation 1, law schools, the bar, and the bench should partner in the career-long development of lawyer competencies. In particular, law schools

**should initiate the continuum of legal education by integrating into their curricula the core practice competencies described in the ABA Model Rules of Professional Conduct, the MacCrate Report, the Carnegie Report, and the Canadian Centre for Professional Legal Education competency evaluation program in achieving their desired learning outcomes.**

Reporter's Comment: While respecting the valuable diversity of law schools, participants in the Summit concluded that law schools that have not already done so should consider more rigorous efforts to help their students obtain the core competencies needed for practice.<sup>2</sup> One route to that end would be having a CLE department or at least an administrative officer whose responsibility would be to develop and coordinate partnering relationships with the bar and bench to facilitate training in core competencies.

**3. Law schools should continue to refine their lists of identified core practice competencies, recognizing that essential competencies will vary by stage of education and by practice area.**

Reporter's Comment: This recommendation refers to the core practice competencies referenced in Recommendation 2 above. Recommendations 11 and 12 below expand further on the need across the educational continuum to identify essential practice competencies as the basis for planning career-long learning objectives for lawyers.

**4. Law schools, the bar, and the bench should develop and encourage transitional training programs (defined as ones that teach or improve practice skills) to begin in law school and to continue through at least the first two years of practice. Approaches to implement this recommendation might include:**

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<sup>2</sup> Recommendation 2 refers to several important documents. The MacCrate Report, formally titled *Legal Education and Professional Development – An Educational Continuum: The Report of The Task Force on Law Schools and the Profession: Narrowing the Gap*, can be found at <http://www.abanet.org/lealed/publications/onlinepubs/maccrate.html>. The Carnegie Report abstract, entitled “Educating Lawyers: Preparation for the Practice of Law” (2007), can be found at <http://www.carnegiefoundation.org/publications/educating-lawyers-preparation-profession-law>. The ABA Model Rules can be found at [http://www.abanet.org/cpr/mrpc/mrpc\\_toc.html](http://www.abanet.org/cpr/mrpc/mrpc_toc.html). The Canadian Centre for Professional Legal Education competency evaluation program can be found at <http://www.cpled.ca/competency.html>. Also relevant in this context is a report of the Clinical Legal Education Association, “Statement of Best Practices for Legal Education” (2007), at <http://cleaweb.org/documents/Best Practices For Legal Education 7 x 10 pg 10 pt.pdf>.

- a. **Experiential learning opportunities in law school curricula, for example: practical experiences, clinical experiences, skills courses, internships, and mentorships;**
- b. **Post-admission supervised apprenticeships (similar to paid articling in Commonwealth countries) or other practice experiences such as working in legal services programs consistent with law graduates' financial situations; and**
- c. **Universal mentoring requirements for new admittees.**

Reporter's Comment: The main thrust of Recommendation 4 is to encourage building practice competencies into the process for determining readiness for bar admission. While it repeats some concepts found elsewhere in these recommendations, this recommendation emphasizes the importance of making lawyer education a true career-long continuum, rather than a disconnected landscape of only distantly related fiefdoms with few connected pathways or purposes.

A variety of real-world models exist for the mentoring envisioned by this recommendation, including law school internships, the articling process in some Commonwealth jurisdictions, and the State Bar of Georgia Transition Into Law Practice program.

5. **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.

6. **CLE providers, MCLE regulators, the practicing bar, and the bench should create communication frameworks for mandatory CLE rules to ensure that all parties share an understanding of the content of the rules, their needed evolution, and their effects.**

Reporter's Comment: The goal of this recommendation is to ensure that all interested constituencies participate in a dialogue about how to make the MCLE

rules more effective in improving the profession and protecting the public it serves.

- 7. MCLE regulators, in collaboration with CLE providers and the practicing bar, should develop appropriate accreditation standards for all varieties of distance learning CLE programs while also updating and improving accreditation standards for in-person CLE programs.**

Reporter's Comment: Distance learning encompasses a myriad of media, including but not limited to live and archived telephone seminars, live and archived audio and video webcasts, audio and video replays, and private and public uses of CDs. Over the past decade, distance learning has become an integral part of CLE, and its broad use and unique characteristics demand consideration for appropriate accreditation standards. How much of a lawyer's mandatory CLE requirement should be met through distance learning? Some think that all lawyers should have to participate in at least some in-person CLE because of the inherent value of face-to-face interchanges. Others argue that well-planned and well-executed distance learning media can yield equally effective learning results and, therefore, should not have accreditation limits. Summit participants agreed that accreditation standards for more traditional, in-person CLE programs also need to evolve to reflect ongoing CLE experience and research findings on effective approaches to adult learning.

- 8. MCLE regulators should accredit training in the content or skills necessary to effectively practice law, even if such content or skills are not directly related to substantive law.**

Reporter's Comment: This recommendation speaks to the not-uncommon mandatory CLE provision that denies accreditation to CLE courses on practice management, computer usage, or other skills lawyers need but that do not relate directly to substantive law. The rationale in some states for such limitations has been that CLE should encourage legal skills and knowledge, not practice management skills. Participants at the Summit argued that effective client service requires lawyers to be good managers of their time and offices, skilled managers of the financial aspects of running a practice, and knowledgeable in areas that do not necessarily involve substantive law. Several conferees involved in lawyer disciplinary matters noted that the percentage of cases involving lawyers' shortcomings in personal and practice management far outweighs the percentage of cases involving lack of substantive law awareness. This fact argues in favor of mandatory CLE rules that encourage lawyers to develop skills in practice management, practice development, client communication, and the like.

- 9. MCLE regulators and CLE providers should work together to develop and implement means of measuring the effectiveness of CLE offerings.**

Reporter's Comment: Lawyers have traditionally been skeptical of testing in any form. And even the best-crafted evaluation forms are of limited value in substantiating the amount of learning taking place in CLE programs or in determining whether other approaches to learning might be more effective or efficient. Moreover, as was noted at the Summit, what really matters is whether the lawyer has the practice competencies needed for the work he or she is doing, not when or how the competencies were acquired. This argues for measuring competencies throughout careers, not by hours served in class.

- 10. Recognizing that law firms and other legal employers are significant and regular providers of CLE, MCLE regulators should provide them with the same opportunities to gain accreditation of their programs as those afforded to external CLE providers.**

Reporter's Comment: Some jurisdictions deny or limit mandatory CLE credit for in-house training programs. It was the consensus of the Summit participants that lawyer training should be encouraged in many settings as long as it meets the basic criteria of effective teaching and learning to produce better qualified and better performing lawyers.

- 11. A post-Summit project should be initiated with representatives from law schools, the practicing bar, legal employers, bar associations, bar admissions, MCLE regulators, CLE providers, and in-house professional development to determine next steps toward achieving some or all of the following goals:**
  - a. Designing a model approach to competencies;**
  - b. Designing a model approach to bridge-the-gap transitional training programs;**
  - c. Creating technology-enabled sharing of information and resources among providers and users of legal education;**
  - d. Building support and getting input from local and regional constituencies on the project's recommendations and actions to address the recommendations; and**
  - e. Developing mechanisms through which solo practitioners, small firms, and public interest organizations can access and benefit from developmental resources, training, and mentoring created by law schools, CLE providers, bar associations, and legal employers.**

Reporter's Comment: The early years of the 21<sup>st</sup> century have seen a rapid rise in the number of law firms, corporations, and government offices scaling up in-house professional development programs for their lawyers and in the number of full-time in-house education officers of such organizations. Key reasons for the

increase in such programs and personnel have included hoped-for cost and time savings as compared with sending lawyers to outside training and the expected benefits of tailoring lawyer training to the specific needs of the lawyers in the sponsoring organizations. This recommendation suggests that after this period of rapid growth, it is appropriate now to step back, assess what has been learned to date, and share and spread the lessons of effective in-house professional development.

- 12. The project described in Recommendation 11 should create a rigorous, sophisticated approach to developing model competencies, including:**
  - a. Assembling information about existing competency models;**
  - b. Creating a research process for identifying and testing which competencies actually correlate with successful practice;**
  - c. Designing a template for making competencies appropriate to different roles, career stages, practice areas, etc.; and**
  - d. Designing model curricula, aligned with the model competencies, to support lawyers' post-law school development.**

Reporter's Comment: This recommendation expands on Recommendation 11(a) above. It seeks to encourage those responsible for developing lawyers (e.g., law schools, in-house professional development programs, CLE providers) to participate actively in the design of practice competencies that will serve the legal profession and in the development of educational strategies and opportunities relevant to teaching those competencies. The use of competencies to guide educational approaches will increase the value of legal education for all concerned, including those delivering and receiving legal services.

- 13. Law firms and other legal employers should continue to improve the effectiveness of their in-house programs by:**
  - a. Using input from clients to identify important practice skills that will help lawyers serve their clients more effectively;**
  - b. Applying adult learning theory and approach when designing programs; and**
  - c. Partnering with law schools, clients, and CLE providers to share resources and to identify and apply the best content and teaching approaches.**
- 14. Law firms and other legal employers should recognize a range of possible professional "paths" and provide or support training that assists lawyers in setting and achieving their individual professional goals.**

Reporter's Comment: The old model of all young lawyers eagerly seeking to work as associates in order to become partners in law firms is no longer the sole existing professional model, if it ever was. Rather, lawyers today choose among a wide range of career models. This recommendation simply urges that 21<sup>st</sup> century reality be taken into account so that lawyer training is based on realistic assumptions about lawyer career paths and is more likely to fill the felt needs and wants of lawyers and the organizations for which they work.

15. **Law schools, law firms, and CLE providers should train their instructors in: teaching skills, effective uses of technology to enhance learning, inter-generational communication issues, the communication of professional values and identity, and the design of effective clinical experiences.**
16. **Acknowledging our professional responsibility, the legal community should continue to develop programs that will prepare and encourage law students and all lawyers to serve the underserved.**
  - a. **As part of the legal community, law schools, if they have not already done so, should incorporate into their curricula the principle that improving access to justice for all is every lawyer's responsibility, and should offer students early in their law school experience exposure to underserved communities and opportunities to provide legal assistance to those communities.**
  - b. **The legal community in each jurisdiction should collaborate to help newly admitted lawyers develop the skills that will enable them to provide effective legal services to underserved communities and to create opportunities for those lawyers to provide such services. Examples of such opportunities include work with community-based legal services including solo practitioners' resource networks and non-profit "incubators." Other opportunities for newly admitted lawyers to provide legal services to underserved communities include working with law school/court partnerships to provide resource materials for self-represented litigants, representing clients through traditional bar association pro bono programs, and serving as mentors to students in law school legal clinics.**
  - c. **An entity of the ABA should serve as a clearinghouse for these programs to provide examples of best practices and innovative ideas.**