

5) Alternative Assessments and Interventions

Because lawyer competence spans careers and is not a moment in time, the WBLTF recommends the investigation and adoption of assessments and data collection that can help ensure lawyers remain competent throughout their careers. While competence to practice law is decided once and only once at the moment of licensure, data shows that the majority of public harms brought about by lawyers occur after more than ten years in practice.²¹ More importantly, the data indicates that the majority of lawyer disciplinary issues stem from burnout and carelessness, not lack of legal knowledge.²² In our current system, the only program in place to protect the public proactively are CLE requirements which, though valuable, are judged based solely on attendance and have no way of ensuring comprehension and retention of information.

The WBLTF recommends that WSBA with the support of the Supreme Court begins the task of investigating and implementing alternative assessments to help identify the strengths and growth areas of new lawyers. LSAC previously studied what traits, qualities, and skills make an effective lawyer. It identified a number of assessments that were highly effective at predicting who would be a good lawyer, and which had no disparate impacts on historically marginalized groups.²³ WSBA could begin by working with the LSAC researchers to offer CLE credit for lawyers to take these assessments. The data from these assessments could be analyzed in conjunction with existing data on lawyer discipline to measure their effectiveness and identify targeted measures that could reduce the risk of lawyers causing harm during their career. This effort should be undertaken in conjunction with a study of recidivism in lawyer discipline in Washington to identify what current programs are most effective at ensuring lawyer competence throughout careers. The information from these two studies will guide the next steps toward strengthening the legal profession and broadening the path to licensure from a moment in time to an ongoing commitment.

6) Reciprocity

Based on the above alternative paths to admission, the WBLTF additionally recommends that the timeline for out-of-state licensed attorneys to be eligible for admission by motion be reduced to one year. For the same reason the WBLTF believes that a six-month post-law-school apprenticeship program is sufficient to qualify a lawyer to practice in WA, the WBLTF believes that actively practicing in another state for one year or more qualifies an attorney to waive out of taking a second bar exam to practice in Washington. Washington law and procedure is not identical to other states, but our current reciprocity requirements are not based on similarity to Washington practice. As the data discussed in detail above demonstrates, readiness to practice

²¹ See Washington Discipline System Annual Reports.

²² Only around 2% of bar complaints relate to RPC 1.1 Competence. 1.4 Communication, 1.3 Diligence, 1.16 Declining or Terminating Representation, and 3.2 Failure to Expedite Litigation account for almost 30%.

²³ Marjorie M. Shultz & Sheldon Zedeck, "Identification, Development, and Validation of Predictors for Successful Lawyering" <https://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>; Kyle Rozema "Does the Bar Exam Protect the Public" 2021.

the required 500 hours in externships, which can include paid summer work and work during the school year. While some law schools will likely choose to distinguish themselves by offering additional opportunities, this proposal does not impose any requirements on law schools and it is expected that different law schools will make different choices consistent with their individual academic considerations.

Q: Are law schools obligated to offer the experiential track to students?

A: No. This proposal does not in itself mandate any action from law schools. It is assumed that law schools, especially those in Washington, will want to offer an experiential pathway to licensure to their students. However, law schools may place caps on the number of students who can participate each year based on whatever needs and criteria the individual school chooses. Students who are unable to graduate and immediately waive out of the bar will still have the opportunity to participate in a graduate apprenticeship and obtain a license through that program. For students who are not able to participate in the experiential track, law schools that wish to help will still have an opportunity to aid those students in obtaining apprenticeships in much the same way the schools aid in obtaining first jobs out of school.

Q: What is the experience requirement for tutors in the graduate apprenticeship program?

A: APR 6 requires that a tutor have practiced for at least ten years of the last twelve years and have no disciplinary sanctions in the last five years. As part of this proposal the WBLTF recommends reducing the practice requirement to seven of the last ten years. This will increase involvement in the struggling marketplace of tutors and create more opportunities for law clerks and graduate apprentices without having a negative impact on the quality of tutors.

Q: How many applicants can a tutor oversee in the graduate apprenticeship and law school programs?

A: Under APR 6, tutoring is always one-to-one. To ensure quality of tutoring, this rule should be maintained for the graduate apprenticeship program. Under APR 9 the number of interns that can be supervised by a single attorney varies based on practice. Law School faculty are authorized to supervise ten students. Public sector attorneys are authorized to supervise four students, and private practice attorneys are authorized to supervise one law student. To increase involvement the WBLTF recommends increasing the number of students a private practice attorney is authorized to supervise from one to four.

Q: Do the graduate apprenticeship and law school programs apply only to ABA accredited law schools?

A: No. The history of the accreditation system is steeped in the same racism and lack of pedagogical justification that mires the bar exam. Accreditation was another way for the ABA and states to preclude people of color and the poor from having access to the legal profession. Many of the early non-accredited schools were looked down upon for their focus on practical skills and even at times their focus on training students to pass the bar exam. Under this

program, WSBA will have more control of entry to our profession and in that will have the right to look at the programs of other schools (accredited and not) to determine if the coursework qualifies a graduate for licensure.

Q: Who will determine whether a law school skills course curriculum is qualified?

A: Under our current system, to be eligible for the bar exam law students must graduate from “a law school approved by the Board of Governors.” Under this proposal the Board of Governors would continue in that same role determining which state’s legal intern programs are approved and which law schools have a sufficient skills course curriculum.

Q: Are LL.M. students included in the law school apprenticeship and graduate apprenticeship programs?

A: Yes. While accomplishing the requirements of the apprenticeship programs will be more difficult for LL.M. students due to time in school and visa requirements, there is no rational basis to exclude LL.M. students from this program. Rather, LL.M. students would greatly benefit from the practical experience requirements of the apprenticeship programs. See attachment for additional information.

Q: Who would decide if another state’s program is “equivalent” to APR 9?

A: Under this proposal, the current licensing review programs would be expanded in purpose to review apprenticeship applications and make determinations about whether out of state applicants had met the requirements. For example, an applicant from Indiana would have only been required to complete half of the law school curriculum instead of two-thirds as required by APR9. The Board would be charged with reviewing the program and determining whether that timing change had a meaningful impact on the practice-readiness of the applicant.