



Critical Issues Summit

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

Final Recommendations

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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 practitioners, bar leaders, judges, law professors, 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 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.

Preamble

Law schools, the bar, and the bench 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.

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. To do so, law schools should:**
 - a. **Define the learning outcomes they wish to produce;**
 - b. **Design the curricula and engage faculty to produce those outcomes;**
 - c. **Use 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. **Evaluate their success at achieving those outcomes.**

Reporter's Comment: Summit participants noted that different law schools place differing priorities on the importance of scholarship and writing by faculty members as contrasted with teaching or preparing students for practice. Some even suggested that many law schools place a low priority on their faculty members' developing research-based teaching skills for effective adult learning. This recommendation acknowledges 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 considered research showing significant differences that could largely be bridged if educational organizations and instructors considered these findings and made the effort to model 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 educational programs.

2. **Building upon their defined learning outcomes (see Recommendation 1), law schools should partner with the bar and the bench in the career-long development of lawyer competencies. In particular, law schools should integrate 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, the participants in the Summit recognized that law schools should also move toward more

rigorous efforts to help their students obtain the core competencies needed for practice.¹ 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 the list 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 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:

- 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-

¹ 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/legaled/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. 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.

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 focus, as well as in bar admission procedures, 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 can 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 21st 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 21st 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 should (i) incorporate into their curricula the principle that improving access to justice for all is every lawyer’s responsibility and (ii) offer students early in their law school experience exposure to underserved communities and opportunities to provide legal assistance to them.**
- 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.**