been submitted for public comment.

The litigation between the ABA and the Massachusetts School of Law is proceeding because, in the ABA's opinion, 'the lawsuits attempt to force changes in the accreditation process that would negatively impact the quality of legal education and the profession'.

GENDER ISSUES

Women in legal education: a comparison of the law school performance and law school experiences of women and men
L F Wightman
Law School Admission Council, 1996
[See Research]

MANDATORY CLE

Framing the debate on mandatory continuing legal education (MCLE): the District of Columbia Bar's consideration of MCLE
R T Aliaga
Georgetown Journal of Legal Ethics, 1995, pp 1145-1169

A task force comprised of District of Columbia (D.C.) Bar members recently spent two years studying the question of the mandatory continuing legal education requirements for the D.C. Bar. In its final report[1], the Task Force recommended the introduction of an MCLE system. Although the Board of Governors voted against a comprehensive MCLE scheme, the D.C. Bar rules have been amended to require that newly admitted attorneys take a legal education course.

Continuing legal education is a post-World War II development which began as refresher courses for practising attorneys. Currently, 38 jurisdictions in the United States impose some form of mandatory continuing legal education on their bar members and more than half of those jurisdictions require legal ethics or professional responsibility as part of the MCLE curriculum. Bar organisations increasingly rely on MCLE systems, not only to educate attorneys on emerging legal trends, but also to combat attorney incompetence and criticism levelled at the profession.

Does MCLE improve lawyer competence? Defining competence is an issue in itself. The Model Rules of Professional Conduct require an attorney to provide competent representation, but no generally acknowledged definition of the term exists. The District of Columbia Rules of Professional Conduct do not define competence, but require an attorney to provide 'legal knowledge, skill, thoroughness and preparation' as elements of competent representation. Although the commentary to the Rules encourages continuing study, it recognises that, to maintain competence, practical experience may be sufficient.

No consensus exists as to whether MCLE is an effective tool to enable an attorney to meet his or her obligations as to competence. There is no hard evidence either way, without which the claim that increased competence results from participation in MCLE courses is nothing more than unsubstantiated assertion.

Commentators in other jurisdictions find value in a mandatory program by claiming that mere awareness of legal issues in the context of professional interaction and the sharing of expertise is sufficient to support claims of increased competence. However, critics of MCLE argue that the bar should first establish that there is a competency problem in the profession before its members are required to participate in some kind of mandatory education program. They further claim that any proposed MCLE system will have an onerous affect on and be financially detrimental to solo practitioners and small firm lawyers. They would prefer a flexible means of maintaining competence and awareness of current development and issues which would lessen the economic effect of MCLE requirements. However, given the tarnished image the profession has had for some time, the public may be willing to tolerate increased costs if it can feel confident about professional competence.

Despite all this, studies in MCLE jurisdictions show that the majority of attorneys favour their mandatory education requirement. Even the courts appear to believe that CLE has some educational value, including CLE courses in the arsenal of disciplinary tools required before an attorney is allowed to return to practice.

No discussion of competence is complete without addressing the requirement to teach legal ethics. There are many reservations about introducing ethics training within an MCLE scheme. Critics claim

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[1] This report to the Board of Governors of the D.C. Bar was reviewed in 3 *Legal Education Digest*, 4, April, 1995, pp 5-7. [Editor's note: It is of great interest to observe how the Bar received this very carefully compiled assessment of the perceived benefits and shortcomings of mandatory CLE. The report advocated the introduction of a general MCLE scheme for all levels of practitioners and even recommended a plan for its implementation, designed to maximise the prospects of its acceptance by the profession.]

that such courses present contrived situations which explain the application of a specific rule or code, that the lecture format is sterile and unproductive because the audience is apathetic and confused about the issues raised and that the allocation of hours given to ethics is merely a painless way of meeting the requirement without actually having to attend an ethics course. Despite all these reservations, the MCLE Task Force in the District of Columbia established ethics as a curriculum requirement in its model for an MCLE program.

One recently passed amendment to the D.C. Bar Rules represents a move in the direction of MCLE. This is a new rule requiring that all attorneys admitted to practice in the District of Columbia take a course in the District of Columbia courts and the D.C. Rules of Professional Conduct. This is the result of a dramatic increase in the number of bar admissions by motion in the last decade and consequent calls for the tightening of admission requirements. Recommendations made by the Task Force addressed the practice of 'shopping' for bar exams that law school graduates perceive as easier to pass than those of the District of Columbia but did not advocate a change in policy towards the issue of professional responsibility. In the event, the Board of Governors did not follow any of the recommendations, instead advancing a limited mandatory education program.

Currently, the Bar offers a one-day course on D.C. ethics and practice. It seems unlikely that such a short period of learning about the D.C. courts will still the concerns of those who believe that new attorneys should have some knowledge of the elementary rules of law and professional responsibility peculiar to the District of Columbia. At most, the amendment will make new admittees aware of D.C. law issues.

The growth of MCLE is seen by critics as ineffective and simply a way of appeasing the public and raising the esteem of the profession. However, no organisation that advocates MCLE has yet provided evidence that it serves its stated purpose of increasing attorney competence. Further, although no consensus exists as to whether attorneys can or should be taught legal ethics as part of a mandatory scheme of educating practising attorneys, most states with an MCLE requirement include legal ethics credit hours as part of the CLE curriculum. The evolving position in the District of Columbia will continue to provide a forum for the debate surrounding MCLE.

PRACTICAL TRAINING

Law, skills and transactions: the opportunity for an expanded curriculum
R J Scragg
New Zealand Law Journal, July 1995, pp 234 -240

The best form of professional legal education offers both skills-based and transaction-based training. In addition, such training should be coupled with an extended period of qualification which compulsorily requires experience in a law office. Such a program would require the creation of a new status within the profession, that of trainee barrister and solicitor.

Professional legal education takes different forms in different jurisdictions. Its purpose is to equip those who wish to practise for entry into a law office. In 1988, a new system of skills-based training based on the Gold Report was introduced into New Zealand. Skills-based training is a form of practical training which does not involve itself with the procedural requirements of the transactions conducted in law offices. From the outset, it was determined that transactions would play a part in providing the focus for teaching the skills. To make the skills relevant to students, they were to be taught and practised as they applied to legal transactions. The skills were to be taught and the transactions were to be the vehicles which were incidental to the instruction.

In 1990, a review of the course was conducted by Christopher Roper whose function was to determine the extent to which the New Zealand course complied with Professor Gold's prescription and to recommend any changes he felt were appropriate. Two fundamental changes resulted, one of which involved changes in the way transactions were utilised in the course. These required the number of transactions to be reduced but taught more fully. As a result, the course was revised and its teaching materials rewritten so that at times greater emphasis has been laid on the transactional focus and, at others, very little stress. Throughout, the course has remained skills-based.

Why are both skills and transactions not given equal standing in professional legal education courses? Both have a part to play. It is essential to be able to conduct an interview and also for the lawyer to understand and perform the transaction to which it relates. Such transactional knowledge forms the basis of the questions the lawyer will need to ask in the interview.

Professor Gold and Dr Julie McFarlane have more recently designed a course for the City Polytechnic in Hong Kong using a new formula in which substantive law, transactions and skills are each given their full weight. This could