

Report of the Committee on Challenges Facing New Lawyers

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June 2014

In November 2013, the Board of Governors of the State Bar of Wisconsin received a report describing in detail the many issues facing newer members of our profession. The report painted a bleak but realistic picture. Our newer members are often encumbered with a heavy student debt burden, well-paying law firm jobs are scarce, and many are forced to start small or solo practices with little guidance and support.

To begin addressing these issues, Bar President Pat Fiedler formed the Challenges Facing New Lawyers Committee. The Committee members came from all over Wisconsin, included professors from the University of Wisconsin and Marquette University Law Schools, and were representative of the full range of practice types – government, small practice, and large law firm. President Fiedler tasked this Committee with providing recommendations by the time of the Bar’s annual meeting in June 2014.

The Committee focused on, and organized itself to study, six topic areas: Incubator Projects, Student Loan Debt, Bar Governance, Mentorship, CLE, and Clinical Education. The reports from each of those subgroups follow. Some of the recommendations include:

1. Encourage the law schools to develop incubator programs, modeled on the program run by Rutgers Law School, that assist newer lawyers in starting their practices;
2. Support legislative initiatives that would enable the University of Wisconsin Law School to provide greater opportunities for non-resident law students to obtain resident status for tuition purposes;
3. Expand opportunities for newer members to contribute to or serve in Bar governance, including serving on the Board of Governors and in Section leadership;
4. Canvas the local bar associations and Sections to determine the extent to which mentoring programs are offered and encourage development of such programs by providing know-how and support;
5. Encourage the Board of Bar Examiners to grant CLE for education concerning business areas such as developing and financing a law practice, accounting and billing, and office technology and resources.

As will be seen, the Bar has a variety of actions it can take now to help newer lawyers start their careers on a sound footing. But the challenges facing newer lawyers are bigger than can be addressed in by a single committee in a seven-month timeframe. Indeed, this is a nationwide phenomenon, and many states are pioneering innovative programs in response. Of particular note is the program in South Dakota that facilitates new lawyers in starting or taking over practices in rural areas, an issue that bedevils Wisconsin given the geographic imbalance among lawyers within the State, with a clear preponderance practicing in the Fox River Valley, Madison, and Milwaukee/Southeastern Wisconsin.

We as a Bar need to keep abreast of these programs and seek to implement those that have proven to be successful. Additionally, the Bar needs an on-going mechanism for monitoring the well-being of its newer members, as it will take sustained focus and effort to ensure that we do not lose a generation of lawyers to disillusionment with the practice of law. The Committee therefore recommends that the Young Lawyers Division be tasked with this monitoring and oversight responsibility and that the Bar provide staff assistance for this effort.

Let me close by extending warm gratitude to the members of the Committee: Professor Daniel D. Blinka from Marquette University Law School, Daniel J. Blinka, Kathleen Brost, Toni Caldwell, Steven Devougas, Brandon Evans, Amy Ferguson, Johanna Kirk, Erin McBride from the University of Wisconsin Law School, and Victoria Montano, Maryann Scheftel-Schacht, Emilu Starck, and Yer Vang. Special appreciation goes to the Co-chair, Amy Wochos, who took over coordination of the final reports, and our staff liaison, Kris Wenzel. These lawyers gave extensively of their time and efforts because they care deeply about this issue. We trust the Board of Governors and the rest of the Bar share this sentiment.

David E. Jones

Report of the Subcommittee on Incubator Projects

Daniel J. Blinka, Kathy Brost (Chair), Victoria Montano & Amy Wochos

## Report of the Subcommittee on Incubator Projects

The subcommittee researched several different types of legal incubators currently in operation across the country. After discussing each member's findings, the committee developed recommendations regarding possible implementation of one or more incubators in Wisconsin. This report briefly describes the different types of incubator programs and provides this committee's recommendations. Following the recommendations are more detailed reports about the current programs we researched.

### Types of Legal Incubators

Law School Based – The majority of legal incubators are run by law schools. Generally, the law school sets aside space for a set of graduates and provides other office hardware such as computers, phones, copy machines, etc. The programs also uniformly provide subject matter mentors to participants (faculty and/or alumni) to answer questions related to their cases and they also provide opportunities for participants to get training on issues related to running a business. The programs vary as to the degree they assist students in obtaining clients, whether there is a pro bono requirement, whether there is monthly fee (or conversely, a stipend provided), whether there is fee sharing, and whether other benefits (e.g., health insurance) are provided. Funding is generally provided by the law school.

Organization based – A few incubators are run by an organization, such as a bar association or non-profit legal services provider. These also provide space and equipment and access to subject matter mentors. These programs generally have a dual focus of providing opportunities to new lawyers and to provide legal services to low and/or moderate income individuals. Therefore, they require participants to take pro bono cases, provide discounted rate services to qualifying individuals, or both. They also generally provide more assistance in helping participants obtain clients, who are generally funneled through one or more partner non-profit organizations. Funding is generally provided through the organization's foundation, donations, and grants (although it appears obtaining funding through outside grants is aspirational, rather than a current funding source).

### Recommendations

- Based on sheer momentum, incubator programs warrant further study. New programs are popping up every month. With that said, most programs are small – 5 to 10 lawyers with one director. This isn't going to solve the employment crisis and it costs quite a bit of money to start one.
- The subcommittee recommends that any incubator program the State Bar supports have a "services to the indigent" component. The program need not have a pro bono component, but having at least a percentage of cases taken at a reduced rate meets the dual goals of reaching an underserved population and providing income to new lawyers.
- The cost and staff necessary to properly run an incubator, particularly one with a corollary focus of providing services to low income individuals, would prohibit the State

Bar from directly operating an incubator program. The subcommittee does not recommend that the Bar pursue this option further at this time.

- Law schools seem uniquely suited to running an incubator program, as evidenced by the large percentage of incubators currently operated by law schools. The Bar should encourage the University of Wisconsin Law School and Marquette Law School to look at the possibility of starting an incubator program, if they have not already done so. The subcommittee specifically recommends the program at Rutgers as a model (as discussed below). Should either law school decide to move forward with an incubator program, the Bar should support the program, including, but not limited to, encouraging Sections and other bar-related entities to provide mentors for participants, providing free or discounted CLEs to participants and/or having the Practice 411 program provide specific assistance to participants with regard to practice management issues.
- The subcommittee recommends that the Bar reach out to local bar associations (perhaps through the Local Bar Leaders Conference) and/or non-profits (perhaps through the Legal Assistance Committee) to determine whether any other entity would be interested in starting an incubator program. If so, the Bar should support these efforts, as with the law schools, and also, to the extent possible, through grants from WisTAF, the LAC grants, or other funding sources, if the program has direct service to the indigent requirements.
- Fred Rooney is recognized as the leader in setting up incubator programs. In one subcommittee member's conversation with him, he stated that he does not charge a fee for his services, but asks for his airfare and hotel to be reimbursed. The Bar should consider bringing Mr. Rooney to Wisconsin to speak to the Bar, local bar leaders, representatives of the law schools, and/or non-profits to discuss the viability of starting an incubator through one or more of those organizations.

### Individual Incubator Programs

#### Law schools

- **Rutgers** - Not really an incubator program – more of a post doctorate fellowship program – which gives this program some advantages. It is not a separate law firm but part of the law school itself. Rutgers has developed a post graduate curriculum for two semesters, with six credits given per semester. The program includes post graduate courses in civil procedure, professional responsibility, case studies and client development.

There is no cost or tuition for the program. It is handled identical to a post-doctoral fellowship. The participants receive a stipend. It is a certificate program, so all student loans are deferred while in the program. Participants would be eligible to take out student loans while in the program but no one has needed to do that because the stipend has been sufficient. The participants are not considered employees for employee benefit programs but are eligible for student health programs of the university.

There is a managing program attorney who also acts as program director and faculty for the coursework. This is a part time position. It is set as taking one-third of a faculty member's time in his job description – but it has taken more than that amount of time to set up the program so far. The program is still in its infancy having officially started with the past year. The program director feels that he is able to supervise six fellows at one time, so the program is set up to have six fellows in it concurrently. The fellows spend two hours per day going over the cases that they are working on in a group setting and spend approximately four to six hours per day of billable time, individually working on cases.

The program extends its legal services to low and moderate income individuals and bills its clients at \$50 per hour. All of the fellows in the program are required to the intake for their own clients, charge their clients, bill their clients and collect their own fees – so by the end of the program they will have practical experience in those aspects of running their own firm.

The program was started with a \$100,000 grant. The program spent \$40000-\$50000 creating a professional and pleasant office space, including purchasing office furniture and purchasing malpractice insurance. At this point, the income generated by the program is covering the ongoing costs of the program. So the program is no longer drawing funds out of its grant funds and does not expect to need to draw funds from the remaining grant funds in the future. So at this point, only a few months into the program, the program is self-sufficient. The program operates as a general practice law firm. It is competitive to get into and the program director felt that strong students applied and were accepted into the program. The fellows are required to keep track of their hours and learn to become efficient at determining which clients to take. The fellows are welcome to take their own clients with them. There has been no dearth in clients. Fellows are also able to take any CLE offered by the Law School for free – same as law students are.

This program allows the fellow to focus on both learning how to operate a law firm as they begin working as an attorney otherwise, the program director felt that those two objectives would compete with each other and the fellows would be forced to choose between taking in new clients and learning how to operate their own practice. In this program, they are allowed to do both.

- **ITT-Kent** – This program is a business-type incubator only. There is no pro bono requirement and no focus on providing services to low income individuals. The two key components are providing office space/equipment and providing subject matter/business mentoring.

The program selects its participants by committee. They seek entrepreneurial minded individuals who must submit some type of business plan as part of their application.

The program provides office space, equipment and free legal research. There is no fee to participate in the program, but there is also no stipend provided. The participants set their own fee structure and keep all of their own fees.

The program provides mentor matching – either with a clinical faculty member or with one of the school’s alumni. For the first 6 months of the program, the participants must shadow the mentor in his or her practice for 5 hours a week without compensation. After that, the mentor is expected to continue to meet regularly with the participant.

The program coordinator also provides subject matter mentor connections. If a participant has questions about one of her or her cases that the mentor cannot assist with, the coordinator will try to find a faculty member or alum who can answer questions/provide strategy on that particular case. The program coordinator also has a status meeting with each participant once every two months to monitor their progress.

The program sets up trainings and workshops on business related issues such as marketing, maintaining a trust account, business planning, etc. Alums and other local professionals come to speak to the participants in a “brown bag” type setting.

The coordinator did not know how much money was needed to start the program or continue to run it. She believes it is minimal, as the program uses office space that was previously unused and coordinates most other expenditures through general law school purchasing. She estimates that she spends 20-30 percent of her time on the program, spending the rest of her time on duties she had before becoming coordinator of the program.

- **Hofstra Access to Justice Incubator:** The subcommittee member spoke with Lisa Petrocelli, the executive director and managing attorney of the incubator program, which was started at the urging of Judge Jonathan Lippmann, chief judge of the New York Court of Appeals (New York’s highest court).

Hofstra started its program in February, 2014, after a fundraising campaign that raised more than \$400,000. It is not supported by the New York State Bar nor any local bar associations. In essence, it is affiliated in name only with Hofstra University. The law school, however, provides office space.

At current, there are only two fellows in the program. Hofstra hopes to support more fellows in the future. Presumably, the small number of fellows is a result of the fact the program started in February. Lisa would only offer that the program will include 10 or fewer lawyers. Regarding compensation, Lisa only offered that it is “modest.”

Also, the program currently only takes on *pro bono* cases. The main goal of the program is to help the indigent. Lisa said in the future Hofstra would like to take on paying clients, but that will be secondary. The practice is entirely civil (no criminal *pro bono* work), and principally guardianship and foreclosure cases.

While unaffiliated with bar associations and not supported by local bar association dollars, Lisa has worked with local bar associations to identify target areas of practice—to identify needs.



## Other organizations

- **Chicago Bar Association** – The CBA started this incubator to both focus on the legal needs of moderate income individuals and to provide opportunities for new lawyers to build legal and business skills. It created a steering committee and reached out specifically to solo practitioners (who might fear competition from the incubator) and to legal non-profits, whose assistance they wanted for referrals and mentoring.

The program had start-up costs of \$500,000, which was funded from the money earmarked by the Chicago Bar Foundation. The costs included obtaining office space, furnishings, malpractice insurance and other business related expenses. They also pay for the salary and benefits of an executive director, who is a lawyer. The program originally wanted to provide a stipend to each participant for the first few months of their participation, but could not afford to do so. They reached out to law schools and some were willing to provide a stipend for their graduates who participate in the program. The program charges no fee during the first six months of the program, which is an 18 month commitment. It does charge \$300 a month for the second six months and \$500 a month for the final six months.

During the first six months of the program, participants do pro bono work for a participating legal non-profit, though they can also take clients of their own. During the second and third phases, they transition to building their own practice and developing their own fee models. Many of their referrals come through the non-profits, who refer individuals who don't qualify for the non-profit's services, but whose income does not allow for the hiring of a private attorney at market rates.

The CBA also coordinates mentoring from local practitioners, for both subject matter and business issues. The program also provides practice tools, including access to law practice technology. In addition to mentoring, the program fosters peer mentoring, so that participants can learn from each other and, as the program evolves, so that newer participants can learn from the experiences of participants farther along in the process.

The steering committee member who provided this information emphasized that the cost to start and run the incubator was more than was expected. The seed money is being used up quickly and though the program is looking for outside grants and funding, none has been obtained yet. The member also indicated that they are working to establish a more formal one-to-one mentorship program, as they realize the importance of the mentors to their program.

## Other

- **Fred Rooney (Touro, CUNY, and other incubator programs):** A subcommittee member spoke with Mr. Rooney a couple of times, and researched his background, including the incubator programs he started or helped start (they are all similar, therefore, this report focuses on the most recent programs he created: Touro Law School and City University of New York Law School). He has been involved with more than half of the

incubators currently in operation. He is currently director of Touro Law School's Law Center, which houses the law school's incubator. He has developed a reputation as a go-to resource on starting and operating a legal incubator. The subcommittee member also spoke with Patti Desrochers, the director of communications at the Touro Law Center, and Lisa Reiner, director of the CUNY Incubator for Justice.

As a preliminary matter, Mr. Rooney's programs are similar to the Hofstra program in that they all have a pro bono requirement. This is because he seeks out grants and other dollars from communities with the promise of returning the investment through pro bono services.

CUNY is an 18 month program. As of Mr. Rooney's last involvement with the incubator (2013), it was charging rent for office space (approximately \$500 per month). It required that its participants work 10 to 15 hours per month representing indigent. There was no strict pro bono requirement, though some matters were pro bono. Otherwise, the lawyers charged \$75 per hour. Matters focused on immigration, employment and guardianship. Rooney explained that the program is funded in part by the law school and in part through private donations.

Specific to Touro, its incubator has 10 students. The term is 18 months. Students have to spend at least half of their time on pro bono matters. It does not charge rent, as the office space is within the law school building. The Touro program was started after a fund raising campaign by Rooney in New York. He raised money from both the county and the state with the promise that in turn that money would be used for pro bono work. Lawyers in the program are otherwise encouraged to seek paying clients to create income. It sounds like the money earned goes directly into the lawyer's pocket. Put differently, in exchange for office space, marketing, mentoring, etc. the lawyer must do pro bono work, and with her remaining time she may bill for her services and keep the proceeds.

Rooney indicated that there is a ton of interest in starting incubators. As of May 2014 he was meeting with Cal Western (where he will consult on starting an incubator) and with the State Bar of California, which is considering offering grants to get incubators up and running. His pitch, as stated above, will be that grant money goes to pro bono services.

Also, Rooney does not think the programs need full time attorneys to success. He cites Chicago as an example. While it has a full-time director, Taylor Hammond, it will be staffed by 30 different attorneys who will work as mentors. While a successful incubator program needs someone to coordinate and direct, it doesn't necessarily have to be a lawyer.

Report of the Subcommittee on Student Loan Debt

Prof. Dan Blinka, David Jones (Chair), Prof. Erin McBride & Amy Wochos

## Report of the Subcommittee on Student Loan Debt

The subcommittee interviewed the Dean Raymond and Dean Kearney of the University of Wisconsin Law School and Marquette University Law, respectively, as well as other administrators at those schools to get a sense of the magnitude of the problem and what the Law Schools are doing to address it. The Subcommittee also researched the ways in which Bars in other states are attempting to deal with a problem that is national in scope. This report provides recommendations for action now and for continued action in the future. Given the magnitude of this problem, there are no easy solutions – it will take sustained, constant attention from the leaders of the Bar to ensure our newer lawyers have a chance to start their careers without the burden of an unsustainable debt burden.

### Recommendations

#### 1. Support Legislation to Enable Second and Third Year Students Obtain In-State Tuition

For the 2013-14 academic school year, in-state tuition for a law student is \$21,364. Non-resident students pay nearly double that, \$40,062. Other law schools in the Big Ten, such as Iowa and Ohio State, allow second and third year law students to qualify for resident tuition by serving as research assistants or through other means. Nearly 40 percent of the students at the University of Wisconsin Law School are paying non-resident tuition, and that contributes greatly to the average debt-load of graduates, which is currently around \$90,000. Current legislation limits the flexibility of the UW Law School to provide programs that would allow second and third year students to qualify for resident tuition. The Subcommittee therefore recommends that the Board of Governors Policy Committee consider and put forward a statement in support of efforts to provide pathways for second and third year law students to qualify for resident tuition.

#### 2. Support and Encourage Funding of the Bar Foundation's Loan Forgiveness Program

The Wisconsin Law Foundation has begun work to convert the current Bell Case LaFollette Award into the Bell Case LaFollette Scholarship. At present, the plan is to make funds available to provide to new graduates to help defray their debt. The Wisconsin Law Foundation will be meeting over this Summer to take steps to implement this project. The Subcommittee urges the Board of Governors to issue a resolution encouraging the Bar Foundation to fund this new scholarship to the maximum extent possible.

#### 3. Support Appropriate National and State Legislation on Student Loan Repayment/Forgiveness

A number of legislative proposals have been advanced at the State and National level to address student loan issues. To date, the State Bar has not been an active participant in these legislative efforts. That needs to change, as debt refinancing, restructuring, and forgiveness

programs can provide much needed relief for newer lawyers starting solo or small practices. The Subcommittee recommends that Board of Governors encourage the Government Relations staff to stay abreast of and report on student debt refinancing, restructuring, and forgiveness legislative proposals, identifying candidates for support by the Board.

4. Provide a Student Loan Repayment Options CLE for Free

Assistant Dean for Admissions and Financial Aid Rebecca Scheller indicated there was a need for newer lawyers to get current information regarding debt alleviation programs after they leave law school. There is some help available, but newer lawyers don't have the time or resources to find that help. She recommended, and the Subcommittee agrees, the creation of a free CLE for lawyers in their first five years out of law school, to be put on by financial aid representatives from the two law schools and by representatives from the Young Lawyers Division. Support by the Board of Governors for providing CLE credit for such a seminar will be important, as traditionally, credits were not offered for this type of training.

5. Support the Member Benefits Committee's Affinity Program for Loan Consolidation

The Member Benefits Committee has taken steps to create an affinity program that will allow students to reconsolidate their student loans at lower interest rates. The Subcommittee commends the Member Benefits Committee for this work and recommends that the Board of Governors also support this effort and encourage awareness of this program at the law schools.

6. Task the YLD with Continued Review of Promising Programs Nation-wide

It was beyond the capabilities of this Subcommittee to investigate the various programs being initiated throughout the country to deal with issues affecting new lawyers. For example, we have in Wisconsin an imbalance between where the lawyers are (Madison, the Fox River Valley, and Milwaukee) and where a number of opportunities exist (the rest of the State). South Dakota has begun a promising program to assist newer lawyers in starting or taking over practices in rural areas. This program, and others like it, has great promise, with the added benefit that unexpected consequences can be identified before implementation here. The Subcommittee recommends that the Young Lawyers Division, working with Bar staff, form a committee to oversee programs nation-wide that seek to address issues faced by newer lawyers.

7. Support Lifting the Work Prohibition on First Year Law Students

ABA Law School Accreditation Standard 304(f) prohibits full-time law students from working more than twenty hours a week. Law schools have historically also discouraged students from working at all during their first year of school. The Subcommittee recommends that the law schools re-examine this prohibition on outside employment during the first year and be flexible to accommodate the financial needs of students making good progress in their course work.

Report of the Subcommittee on Bar Governance

Brandon Evans (Chair) & David Jones

## Report of the Subcommittee on Bar Governance

### **Areas of Concern**

The Committee tasked this subgroup with identifying and addressing governance type issues within the State Bar of Wisconsin (“SBW”) where opportunities can be created for new lawyers to be advocates for new lawyer issues. The subgroup identified and focused on four areas of concern:

1. Expanding the number of new lawyer seats on the Board of Governors (“BOG”) of the SBW;
2. Changing the structure of how a new lawyer is elected to the position that is the Young Lawyers Division (“YLD”) representative SBW delegate to the American Bar Association (“ABA”) House of Delegates (“HOD”);
3. Creating designated new lawyer seats on the board of each Section of the SBW; and
4. Examining whether standards of professionalism should be established by the SBW to create aspirational goals for attorneys employing new lawyers.

### **Information Gathered, Activity & Observations**

The Governance Subgroup met telephonically and through email several times to discuss our thoughts, observations, and the information we obtained. We also met with various staff members of the SBW, held one in-person meeting, and attended a meeting of the Section Leaders Council to discuss some of the ideas raised herein.

BOG Seats: There is currently only one designated “newer” lawyer on the BOG, which is filled by the past president of the YLD. Membership in the YLD is automatic for attorneys who are either under 36 years old or in their first five years of practice. As of June 4, 2014, the YLD has 5,755 members and the SBW has 25,050 members, which means approximately 23% of the members of the SBW are in the YLD. While most seats on the BOG could be filled with members of the YLD, the reality is that most seats on the BOG are filled with more established and seasoned attorneys. Additionally, while any member of the BOG is capable of looking out for the interests of members of the YLD, the Governance Subgroup believes that YLD members themselves would be most attuned to the challenges facing new lawyers. Thus, the Governance Subgroup believes that the number of YLD seats on the BOG should be expanded as the Challenges Face New Lawyers Task Force Report and Recommendations (“Task Force Report”) suggested.

There is precedent for expanding the number of seats held by a division. In 2007, the Nonresident Lawyers Division expanded the number of seats its division held on the BOG from

three seats to five seats. At that time, the expansion was needed because 23% of the active members of the SBW were nonresident lawyers, which if representation were proportional would have called for eight seats on the BOG designated for nonresident lawyers.

The Task Force Report suggested that one method of expanding the number of designated seats might be to reallocate seats specifically for newer lawyers in any district with multiple seats. The Governance Subgroup suggests that another method of increasing the number of YLD seats on the BOG might be to simply increase the total number of seats on the BOG. The Governance Subgroup believes that increasing the number of designated YLD seats on the BOG from one seat to three seats would seem to be a reasonable request, but feels that this issue should be further vetted through an appropriate subcommittee of the executive committee of the SBW that focuses on governance issues and bylaws amendments. The Governance Subgroup agrees with the Task Force Report that further steps in this regard should be made in consultation with the YLD Board.

SBW YLD delegate to ABA House of Delegates: The Task Force Report suggested that the procedure for electing the YLD representative SBW delegate to the ABA HOD be amended to create a more direct link between the YLD and their representative to the ABA HOD. The BOG currently elects the newer lawyer who holds this position in addition to electing the other SBW delegates to the ABA HOD. The Governance Subgroup agrees with this suggestion and agrees with the Task Force Report that further steps in this regard should be made in consultation with the YLD Board, which, the Governance Subgroup suggests, should work with the Executive Committee of the SBW or its designee.

YLD Seats on Section Boards: There are 24 Sections of the SBW, which are the lifeblood of the organization. Sections generally have newsletters, e-lists, and host seminars. Sections activities are where attorneys can learn from, network with, and mentor other attorneys within their particular areas of practice. For years the YLD and the Sections themselves have been working to better involve newer lawyers in the work of the Sections. The Governance Subgroup continued that work by giving a pitch to the Section Leaders Council (“Council”), at its May 16, 2014 meeting in Madison, regarding why each Section should consider adding a newer lawyer seat to the board of directors of each Section.

The idea pitched was as follows: give a newer lawyer a job with a prestigious title, for example, board member of the litigation Section, then make that newer lawyer earn the title by making the job description entail working to involve more newer lawyers in the Section. The proposal is not an attempt to grab power for the YLD. The proposal is that the position could be formal or informal, appointed or elected, voting or nonvoting, and the seat would *not* be tied in any way to the work of the YLD Board or the division generally. The Governance Subgroup just wanted a newer lawyer to have the position and to tie the position to involving other newer lawyers in the Section. All the other specifics would be left to the Council or the individual Sections themselves.

The Council was overwhelming in support of the idea of continuing to involve more newer lawyers in the work of the Sections. The Council agreed to have the boards of the



individual Sections discuss the idea proposed, to think of ways to further involve newer lawyers in the work of the Sections, and to report back to the Council.

Standards of Professionalism for Employing Attorneys: Professionalism is one of those concepts that most lawyers have a sense of but is nonetheless hard to define. In terms of a lawyer's skill, judgment, and behavior, striving to be professional is sort of like what coaches mean when they tell their players to play to win rather than playing not to lose. Standards of professionalism are aspirations rather than rules. The point is to set a goal, rather than a floor, for conduct. The Governance Subgroup believes the SBW should consider setting standards of professionalism for employing attorneys.

In today's difficult economy, employers seeking to hire attorneys have a large pool of applicants upon which to draw. With employers having so much power in an overcrowded legal market, there is concern that the norm for what is acceptable behavior in the employer/employee relationship will slide. Setting standards of professionalism for employers to aspire to might help counteract any such effect and assist in creating a "race to the top" as opposed to one to the bottom. If we take the best qualities from employers and mentors around the state and develop a set of standards for all employers to aspire to, then maybe we can make the challenging times our new colleagues face a little less challenging and a little more cordial.

Examples of ideals the SBW may want to promote include things like promoting open door policies that encourage newer lawyers to seek out the advice of their colleagues and providing flexible work schedules that allow newer attorneys to get involved in state and local bar associations and attend continuing legal education courses more freely. Perhaps some sort of award or recognition could be developed to encourage law firms to adopt such policies. The Governance Subgroup suggests that further steps in this regard should be made in consultation with the YLD Board, which should work with the Executive Committee of the SBW, its designee or a new committee of the SBW to be formed.

### **Recommendations**

Following our research and discussions, the Governance Subgroup makes the following recommendations:

1. The BOG should request that the YLD Board work with the Executive Committee or its designee to develop proposed changes to the Bylaws of the SBW to increase the number of YLD seats on the BOG and to create a more direct election link between the YLD and its elected representative to the ABA HOD.

2. The BOG should request that each Section of the SBW continue its work to increase newer lawyer involvement in the Sections including considering creating new positions for newer lawyers to hold that would specifically task that newer lawyer with the job of promoting greater participation by newer lawyers.

3. The BOG should request that the YLD Board work with the Executive Committee of the SBW, its designee, or a new committee of the SBW to be formed to consider whether the SBW should set Standards of Professionalism for Employing Attorneys.

Report of the Subcommittee on Mentorship

Prof. Dan Blinka (Chair), Toni Caldwell, Steven DeVougas,  
Maryann Schact, Yer Vang & Emilu Starck

## Report of the Subcommittee on Mentorship

### Background

“Mentorship” carries multiple connotations. The subcommittee discussed a number of considerations, including:

A fundamental question is whether a mentoring program should be voluntary or mandatory. No subcommittee member advocated a mandatory mentorship program. Compulsory programs tend to breed indifference among participants, regardless of how well intentioned. Moreover, a mandatory program, such as the one in South Carolina, necessitates a host of regulations and the creation of a bureaucracy to oversee the program. It is yet to be shown that benefits outweigh expenses. A compulsory program imposes extraordinary costs (time and money) on newly admitted lawyers generally, but especially so on solo and small firm practitioners. Depending on the model, government lawyers and large firms may be able to opt out by obtaining certification of their internal programs, which essentially transmutes the duty to supervise associates into mentorship. See South Carolina Rule 425 (h). The result may be a watered down mentorship model that singles out some lawyers (solos?) while exempting others.

The creation and support of voluntary mentorship programs are an excellent idea that the subcommittee strongly endorses. They have been well supported by the practicing bar in other states. The University of St. Thomas (Minnesota), for example, established a mentorship program involving over 500 judges and lawyers serving as mentors.

Should there be any limit placed on who may apply as a mentee? Many will be recently admitted lawyers, but there will undoubtedly be more experienced lawyers looking to move into new areas of practice. Since the prime goal is to provide assistance to any lawyer seeking to enhance his or her professional competence, such concerns are best left to the mentor and mentee to work through.

### Recommendations

1. Determine what is currently being offered. An undetermined number of Wisconsin courts and local bar associations have mentorship programs in place. Unknown is the extent of their use, their success in promoting professionalism and lawyer competence, and the scope of their work. The Subcommittee therefore recommends that the State Bar conduct a comprehensive survey to determine their number and scope. The survey would help publicize existing programs while also identifying areas of need.

2. Sponsor and encourage Sections and local bar associations to create mentor programs. The Subcommittee recommends that the State Bar sponsor additional voluntary mentorship programs through the practice Sections or in conjunction with courts and local bar associations. Flexibility and usefulness should be the key. Some mentorship programs may be local or regional while others may be more practice-oriented (e.g., family law practice). There is no need to impose a rigid template to which all such programs must conform.

3. Qualified mentors should receive CLE credit. The Subcommittee recommends that the Board of Governors encourage the BBE to provide CLE credit for qualified mentors and mentees who participate actively in the program. Not only will credits induce participation by lawyers in both roles, but they will also recognize the value of such programs in enhancing competence and professionalism. The grant of credits will have to occur under the auspices of the Wisconsin Board of Bar Examiners. Rules will have to be approved by the Wisconsin Supreme Court. In short, the price of CLE credits will be the loss of some flexibility because some regulation will be necessary. To be determined are such issues as (1) the proper ratio of mentorship hours to CLE credits (e.g., 3 to 1?), (2) whether there should be a cap on the total number of CLE credits that may be applied to the 30-hour requirement in a reporting period (e.g., 15 hours, as is the case with publications?), (3) the standards for granting credit, and (4) the appropriate documentation.

4. Develop and promulgate mentor eligibility criteria. The Subcommittee recommends that BBE, in conjunction with the Section Leaders Conference and Bar staff, develop standards or guidelines for eligibility to receive CLE credits as a mentor. Some states require that would-be mentors have five years or more of law practice, good standing, no prior record of legal discipline (or a ten-year period of good practice), no pending disciplinary actions, and legal malpractice insurance of a certain amount. Some states have a designated body (e.g., a “Commission on Professionalism”) to scrutinize mentorship applicants. The main point, however, is to provide mentorship services to newly-minted lawyers who are seeking help and guidance. We need not be doctrinaire or overly concerned with mentorship qualifications absent a compulsory mentorship program (which we do not favor) or outside the context of claims for CLE credits.

Report of the Subcommittee on CLE

Daniel J. Blinka, Brandon Evans, Amy Ferguson & Johanna Kirk (Chair)

## Report of the Subcommittee on CLE

### Areas of Concern

The subgroup identified and focused on six principle areas of concern:

1. Offering CLE topics that are of interest to new lawyers.
2. Minimizing the cost of CLE for new attorneys.
3. Incorporating a “New Lawyer Track” into the Solo & Small Firm Conference in 2015 (and other well-attended annual conferences).
4. Convincing PINNACLE to offer expired CLE presentations (materials and/or video) for new attorneys at little or no cost, for purely informational purposes.
5. Offering in-person CLE events in different areas of the state (outside Madison and Milwaukee) and at different times (weekends).
6. Convincing the BBE to grant CLE credit for education concerning practice management, business operations, technology development, marketing, etc.

### Information Gathered

Our subgroup met telephonically several times to discuss our thoughts and personal observations. We researched CLE offered to new attorneys in other states. We also met telephonically with representatives of PINNACLE (Tim Clark, Kristin Huotari, and Carolyn Crawford).

We learned about some of PINNACLE’s and the State Bar’s ongoing efforts to enhance the CLE experience for new attorneys. The State Bar’s current efforts include:

1. Offering a new “Business School for Lawyers” scheduled for August 2014 (tied into the Solo & Small Firms Conference).
2. Offering some need-based scholarships for CLE. It is usually a one-time scholarship. Applicants complete an online form requesting waiver of tuition. They indicate the amount they can afford to pay, and PINNACLE reviews the application and approves the funding. However, PINNACLE has purposefully avoided promotion of the scholarships because of uncertainties associated with funding (i.e. PINNACLE is uncertain about the number of scholarships it can provide in a given year, and, regardless, the number is limited.)

3. Working with Rebecca Burke at the UW Law & Entrepreneurship Clinic to begin a mentorship program and website, which allows mentors and mentees to connect online.
4. Considering the expansion of webcast replay options to include weekends and holidays. The problem is that there is no staff on hand during these times to address any technical problems.
5. Working with local bar associations to take some popular CLE sessions “on the road”, to present at local bar meetings. However, this relies entirely on the cooperation of local bar leadership and has not been successful thus far.
6. Providing discounted education materials to new attorneys. For example, the State Bar has a new program that gives new attorneys six months of free access to Books Unbound, and then 30% off for the next eighteen months.

### Recommendations

Following our research and conversations, we are making several recommendations for additional changes and improvements:

1. The Subcommittee recommends that the State Bar should mandate that new attorneys working in firms with less than five or ten lawyers obtain a set number of CLE credit for practice management topics (such as managing a trust account, proper marketing, etc.). At the very least, the State Bar should petition the BBE for approval of CLE credit for “practice management”-related topics. The PINNACLE representatives supported this suggestion. PINNACLE is excited to provide classes and materials that meet the demand for this need.

2. The Subcommittee recommends that the State Bar and PINNACLE offer expired CLE materials at little or no cost to new attorneys. The expired materials can serve as an excellent source of information for new attorneys. The Subcommittee is not suggesting CLE credit be awarded. Given that the materials are expired, a disclaimer explaining that the material may be outdated and that it is only provided for informational purposes can be attached. The goal is to provide an educational resource at little or no cost. There could be a special Section of the PINNACLE website for these materials, and access could be restricted to new attorneys only. The PINNACLE representatives were open to this idea.

3. The Subcommittee recommends that PINNACLE and the State Bar should offer more “Law 101” CLE for new attorneys. We want to see topics that teach new lawyers practical information. Sessions could include “Drafting Your First Will”, “Defending Your First Criminal Case”, “Taking/Defending Your First Deposition,” “Drafting a Complaint,” etc. Minnesota is an excellent resource for ideas, as it currently offers a two-day “New Lawyer Experience” for \$395. Minnesota’s conference allows new attorneys to choose from 25 sessions with topics such as estate planning basics, business entity selection, advice from judges on courtroom procedure, ethical tricks and traps, how to take and defend depositions, handling marital dissolutions, how to start a law firm, the basics of employment law, and more. It appears to be a great way to allow new attorneys to learn while getting to know their peers and networking with experienced



lawyers and judges. We should try to get the State Bar to offer a comparable program in Wisconsin.

4. The Subcommittee recommends that the State Bar should work with the Sections to encourage creation of “New Lawyer Tracks” at each Section’s annual conference (i.e. the Solo & Small Firm Conference, the Annual Family Law Workshop). This would be a great opportunity for new lawyers to meet more experienced attorneys in their same line of work, while also learning at a level that meets their needs. To further this initiative, the Subcommittee asks that the Board of Governors consider providing funds to the Sections that develop these new lawyer tracks. We also encourage the Sections to offer free or substantially reduced tuition to new attorneys attending these conferences.

Report of the Subcommittee on Business Education and Clinics

Kathy Brost, Prof. Dan Blinka, Amy Ferguson & Erin McBride (Chair)

## Report of the Subcommittee on Business Education and Clinics

### A. Clinical Education

#### Issue:

Both the University of Wisconsin Law School and Marquette Law School offer an array of experiential learning opportunities in the form of legal clinics and externship programs. These opportunities (including criminal appeals, federal appeals, immigration and deportation, family law, consumer issues, government and legislation, mediation, entrepreneurial, health care, sports law, and foreclosure to name a few) provide law students with the “practical” side of the law. If students choose to enroll in a clinic while in law school, they graduate with a different skill set and an understanding of the application of the cases, statutes, and lessons non-clinical students have. While nationwide there are few state bars and law schools that require clinical legal education credits as graduation requirements<sup>1</sup>, there is a movement to encourage experiential or “practical training” in the law school setting.<sup>2</sup>

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<sup>1</sup> See The California State Bar Competency Training Requirement, Available at: <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000011266.pdf> (Law Visited May 22, 2014) The following three Law Schools have requirements over the number of law school units to be taken in law clinics, field placements, or simulated practical skills courses to provide law students with the level of professional experience required in the education of other licensed professions. **CUNY**: All students must take a 12-to-16-credit faculty-supervised law clinic or field placement and a 4-credit lawyering skills seminar, for a total of at least 16-20 experiential credits. **University of District of Columbia**: Students must enroll in a 7-credit clinic in their second year and a second 7-credit clinic in their third year, as well as a required 2-credit moot court course, for a total of at least 16 experiential credits. **Washington & Lee**: The revamped third-year curriculum requires 20 academic credits in simulated or real-practice experiences that include one clinic or externship, three problems-based electives, and two skills immersion courses. More than a dozen other law schools (including U.C. Irvine) already mandate that all students take a law clinic or externship, with many others guaranteeing a clinical opportunity if the student wishes, demonstrating that a law clinic or externship requirement can be met by all schools. Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Clinic Requirements, Clinic Guarantees, and the Case for Experiential Pluralism: The New, Improved American Law School Curriculum*, 43 WASH. U. J.L. & POL’Y (Fall 2013).

<sup>2</sup> The Clinical Legal Education Association (CLEA) maintains fifteen hours of experience in a professional settings (representing about one-sixth of a law student’s total credit hours) are the minimum necessary to ensure that law school graduates are competent to practice law. CLEA notes every other profession requires that at least one-quarter, and up to one half, of a graduate’s pre-licensing education be in role in supervised professional practice. The professional education training and licensing of lawyers falls very far behind the other professions. CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA) SECOND COMMENT TO CALIFORNIA STATE BAR TASK FORCE ON ADMISSIONS REGULATION REFORM, May 30, 2013, Available at: <http://www.cleaweb.org/Resources/Documents/Second%20Comment%20CA%20Bar%20Taskforce%20on%20Admissions%20Reg%20Reform.pdf> (Last Visited May 22, 2014.) See also the ABA’s 2004 *After the JD* survey, which found that professional skills training was rated by new lawyers as the most helpful law school experiences in successfully transitioning to practice. Available at: <http://www.americanbarfoundation.org/publications/afterthejd.html> (Last Visited May 22, 2014.)

In “Clinical Education,” we have identified a need for State Bar involvement in supporting the clinic programs and experiential learning initiatives of both Wisconsin law schools for the benefit of all law students. We urge much greater attention to professional experiences in law school curricula.

#### Recommendations:

While requiring graduation credits for clinical education or externships may be a topic for discussion further in the future, a conversation now about the support the State Bar is willing to lend the two legal institutions in Wisconsin is imperative. The legal profession, its clients, and our State cannot simply hope that individual law students will be able to and will choose to take the courses necessary to develop the professional skills lawyers need for the competent and ethical practice of law. The State Bar can offer support for experiential learning initiatives and clinical programs offered by the Law Schools in Wisconsin.

Support can start by having a discussion with both schools about what qualifies as “practical skills” and how the Law Schools will ensure that such skills, once defined, are appropriately taught. The State Bar can facilitate a conversation about the ABA Accreditation Standard 302(a)(4) and the proposed requirement for experiential learning (increasing from 1 credit required to 3 credits required in “professional skills training”<sup>3</sup>) in making Wisconsin a leader among other states in supporting experiential education. Additionally, the State Bar should partner with the two Wisconsin Law Schools to offer networking opportunities and community service programs for law students.

While supervised real world practice is the best way for students to learn how to integrate the theory they learn in the classroom into effective practice and is a powerful way to internalize the values of our profession,<sup>4</sup> practical skills training is not just for law students. An analogy can be made for new lawyers entering the workforce and similar education opportunities post-law school should be made available, as recommended by the Subcommittee on CLE. Newer attorneys can benefit from a “clinical approach” to education post law school.

These quasi-clinic experiences may include:

- a. Coordinate with Pinnacle to create “Hands on” CLE trainings directed at newer lawyers where training includes topics as “your first will” or “your first divorce” or “identifying ethical dilemmas.”
- b. Coordination with the State Bar Pro Bono Coordinator to identify areas of need for new attorney participation in any of the various pro bono clinics or volunteer initiatives across Wisconsin.
- c. Create bonus programs, where CLEs are awarded or other forms of credit or recognition are given to newer lawyers participating in any of the various pro bono

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<sup>3</sup> ABA Consultant’s Memo # 3 (Mar. 2010) (“What is “substantial instruction” in other professional skills? . . . At least one solid credit (or the equivalent) of skills training is necessary.”)

<sup>4</sup> Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Clinic Requirements, Clinic Guarantees, and the Case for Experiential Pluralism: The New, Improved American Law School Curriculum*, 43 WASH. U. J.L. & POL’Y (Fall 2013).

clinics and volunteer initiatives across Wisconsin. CLE credit has not been traditionally awarded in Wisconsin, so the feasibility of this part of the recommendation will need to be addressed further.

## B. Business Education

### Issue:

In “Business Education” we have identified an area that could use the support of the State Bar when it comes to the education, training and support for newer attorneys starting a firm or solo practice. Current gaps exist when it comes to initiatives directed at familiarizing these newer attorneys with the practical side of practice management. While law schools address the commencement and management of a law office and the State Bar has a few CLEs on this topic area, the committee identified a much broader need for this type of education and the manner in which it is presented.

### Recommendations:

Clinical practice management and business educational opportunities should be offered for third-year law students, and, consistent with the recommendations of the Subcommittee on CLE, should be offered at reduced rates for newer lawyers. As third year lawyers contemplate opening a small practice, and as newer attorneys start a firm or solo practice (or become comfortable in their newly attained legal careers), they require training to treat their practice as a business. From the “vision” of practice management to the “ins and outs” of running a business, newer attorneys would benefit from ongoing information, education and support. The Subcommittee identified topics for training and support as a primary need. Immediately connected to that need is the concept of incentives to encourage newer attorneys to take advantage of current and future resources designed for their benefit.

The following recommendations address the identified business practice management training gaps:

### I. Structure of Support:

- a. Create third-year clinical courses and ongoing CLE programs to address specific start-up issues, similar to a “business school” for attorneys. PINNACLE advises that a business school piece is underway – ensuring that this program provides training needed by lawyers just starting a practice will be critical.
- b. Improve the Listserv from the State Bar by making the information more clear and concise
- c. Consider a “helpline” or support center by phone, in person or virtual portal that newer attorneys can visit for information, resources, trainings, and mentors.
- d. Take a “clinical” approach to post law school trainings where the information and learning is “hands on” and the focus is on practice, not theory.

- e. Task the Young Lawyers Division to work with Bar Staff to develop and advertise business-focused, low/no-cost CLEs for newer lawyers starting a small or solo practice.

II. Examples of Potential topics for business-focused clinical courses and CLEs

- a. Trust accounting (and ethics), budgeting, and business accounting for a law practice;
- b. Choice of legal entity – LLP, Partnership, or other;
- c. In-home v. owned v. rented v. shared office space;
- d. Choosing a practice area (niche v. general practice);
- e. Marketing, advertising, social media, and ethical considerations related thereto;
- f. Client development and retention;
- g. Financing a practice and developing a business plan;
- h. Trends in office technology and legal research resources and software;
- i. Staffing and human resources issues;
- j. Billing, billing software and resources, and getting paid;
- k. Fee arrangements, retainers, and alternative billing arrangements