

OREGON STATE BAR
Alternative Pathways to Becoming a Lawyer Committee
July 9, 2018, Meeting Minutes

On July 9, 2018, the Alternative Pathways to Becoming a Lawyer Committee of the Oregon State Bar met; the following people were present in person or on the phone:

Vanessa Nordyke, Oregon State Bar President
Mark Johnson Roberts, Oregon State Bar Liaison
Troy Wood, Oregon State Bar Liaison
Danny Lang, Co-Chair
Judy Parker, Co-Chair
Laurie Cantelon
Ron Cheng
Elizabeth Davis
Dallas DeLuca
John Gear
Diane Thompson
Nathaniel Aggrey
Angela Lucero
Patricia Nation
Nicole Commission

- I. Minutes from the June meeting were approved.

Follow up – CANTELON: Nepotism analysis– Reviewed statutes that don't apply and various reasons why.

- II. Charge two: Discussion of how third year law school waiver would be considered. A review of how New York and Maine deal with the charge:

1. Maine rule 10b5 says if you are a 2-year law student, attending ABA approved school, within 1 year of scholastic education, you can apply with Maine to work for a lawyer, and after the end of study you can sit for the bar without having graduated from that law school.
2. NY Rule: Pro Bono rule for 2.5 years at an ABA law school can sit for the Bar exam early, in February if you commit to do pro bono services for the last half year will be dedicated to pro bono service.

<http://ww2.nycourts.gov/attorneys/probonoscholars/index.shtml>

Discussion that students are still paying for tuition during that half-year and get tuition. This is a “legislated externship.” Removes the requirement of the 6th term.

3. NY section 520.4 – 2 years of Law School, plus 1 year working at a NY law firm, with prior approval of the program, you can sit for NY bar.

Discussion re a conflict with the Oregon PLF rules. Will be discussed with the claims attorney, but probably the mentor attorney’s coverage would cover the mentee. Should be fine, like a paralegal or a law clerk.

Discussion of whether this creates a problem for lawyers who will eventually want to practice in another state and need the third year, which by ABA rule must be completed within 84 months of matriculating.

GEAR: There is no free lunch – concerns about being trapped in Oregon, but can’t give everyone the optimal everything. Some may find it advantageous, and it will not appeal to others. We are not parenting these people, we just need to disclose the facts to the alternative.

Discussion of law school attrition rates: if multiple students do that and leave before completion of the third year, and attrition reaches 20%, that is a problem with the ABA. When students don’t graduate that is an attrition – schools are subject to the rules. Federal funds drop if loan default rates drop are not tied to attrition rates.

Discussion re changing the ABA analysis of what attrition means, and fact that we can’t change the ABA.

DeLUCA: would like to hear more about ABA rules on attrition rates and how higher attrition rate impacts law school finances.

Discussion that externship program is heavily regulated by the ABA, and how recently ABA changed the rule that externs can be paid. Focus of externships has to be learning. Discussion re recently ABA changes, not substantive (basically “re-arranging deck chairs on the Titanic.”).

DeLUCA: how does it affect law schools – a credit is a credit – revenue stays the same, but on the cost side – facility and infrastructure – clinics is the most expensive way.

Discussion of financial difficulty this will impose on law schools, especially without knowing how many students will continue with the third year. Makes planning impossible.

Discussion that the NY Pro Bono scholarship program is already active in the Oregon law schools.

DECISION: NY Pro Bono program is not part of our options, because it is really not eliminating the third year.

Discussion of NY Program section 520.4 – study in a law office. Concern that NY program is not structured enough, e.g. no set list of classes.

Discussion re structure and degree of supervision varies widely and the need for the school to provide the structure.

Discussion of student participation in clinics for criminal defense and environmental law. Most externships are conducted for non-profits.

CHENG: reason for this task force is because currently Law School doesn't work for all students. If we keep considering how the options will impact law schools, we are not following our purpose. Our charge is to develop this within the existing ABA law school structure. And the reality is our ideas must get buy-in and could be voted down anyway. ABA section on legal education is horribly cumbersome and Byzantine, and we can't expect anything soon.

DeLUCA: Feedback I have from people I talked to is that law school, particularly third year, is a waste of time in terms of preparing you for practice. Request that we know about other Task Forces that might be addressing the problem of not having practice-ready attorneys at an affordable rate to meet the needs of the residents of Oregon.

NORDYKE and others discussed the para-professionals and LLLT work groups and whether there were reports from the work group.

PARKER: We will vote at the August meeting if the committee recommends that we go forward with both charges, or one or none of the charges, and prepare a report answering the charges and the requirements, the details of essential elements of the program, anticipated cost of implementation and operation, and how success will be measured.

Discussion regarding the need for more data before we can vote on charge #2.

NORDYKE: Report needs to be submitted before the November deadline and report should include – how it impacts access to justice, consumer protection, professionalism, diversity, and other parts of the mission of the OSB. Review the OSB mission and value statement.

https://www.osbar.org/_docs/resources/OSBMissionStatement.pdf

PARKER: already started background part of the report, describing what other states are doing.

NORDYKE: Discussion of process for making recommendation to the Bar and how the Bar decides and hears information from the Task Force.

LANG: discussion of having third-year like internship for medical school. Also discussion of on-line learning during third-year.

WOOD: discussion re the problem with legal education because it is much more highly regulated than the practice of law, and any deviation from ABA rules will require an additional section of the OSB, which will be cumbersome. The only alternative to an ABA approved legal education is something that is sanctioned and regulated by the State and that will have large costs to it. And we would not want to do anything that economically damages the three state law schools, because the Oregon bar is heavily dependent on them. The cost-benefit analysis of charge 2 leads to “no” for him.

Discussion re the new lawyers who have the hardest time finding jobs, and how will alternative licensing change the marketplace for them.

NORDYKE: discussion of aging lawyer population and possible shortage of lawyers in the future.

Discussion re the downturn in number of law school applicants over past five years.

NORDYKE: fewer OSB members reduces budget and creates problems, e.g. for modest means program, LRAP, et cetera.

LANG: supports Charge 1, and saying “no” on Charge 2 because of too many loose threads.

CHENG: Charge 2 appears on its face to be “easier” because fewer administrative things to create, but the burden on law schools appears to be higher and more complicated.

Discussion re allowing a person to get two years of debt without getting a J.D. and having less transferable education. Would feel better for the student to be finishing the J.D. ABA mandates 6 hours of “experiential” credits. Would be great if more than 6 were required. Does committee have authority to change the requirements. Maybe Oregon should require minimum clinic hours.

WOOD: part of problem with mandating externships is finding people willing to mentor which is required to enable them to sit for the Bar.

NORDYKE: intrigued by idea of pro bono or practical work requirement or increased clinic/work requirement before taking Bar. But such recommendations in the report. Dream big.

COSTS: Most expensive by cost credit hour is for clinics. But for externships, in one example at Lewis & Clark, externships appear to be lower cost (90 students for two adjunct professors). But because of contract structure, costs likely would not go down at the schools.

LANG: 2nd topic first – 2 – years of law school, administered by law schools, tool – online – 3rd year, support materials, work at firm during day, follow up materials in evening or on the weekends – back to original task force appointment – would like to see that we have as few obstacles as possible. Give credit for military service, honorable discharge – define life experiences that provide some credit, like paralegals – wrapping it all in one burrito.

PARKER: consumer protection – would it be a concern?

LANG – Expand the possibilities – that is the alternatives – what can we do to serve the public, law school, low income people, if other than a HS diploma – pre-requisite, or JD, next level, 2-years to be the equivalent of an Associate Degree. Wants to see a break.

New lawyer entering the market – if we recommend one or both, be mindful of folks who are going to school. Entry for new lawyers is tight. NY legal market and legal education is totally different than Oregon. NY lawyers leave there, Oregon law students typically stay here.

LANG: Alternative pathways does not mess with the ABA and how it impacts the schools. Part II – Easier dealing with the population that is ready get to the bar earlier -- administrative burden may make it more difficult or impractical. If they don't get the degree – gain two years of debt with problem of paying off in the end, JD not transferable, create a pathway for one of them.

CANTELON – did we vote on base line for potential applicants?

GEAR: Re criteria for entry – we settled on criteria for mentors – need to define what a person needs to have to get into the program as a student.

THOMPSON volunteered to create a spreadsheet of the task, send to Roy and Mark for review and input.

III. Next meeting scheduled for 8/14/18 at 3 pm.

The meeting adjourned at 4:51 pm