

TO: Law Faculty  
FROM: Coordinator of Skills and Experiential Learning  
DATE: February 14, 2013  
Re: Proposal for future Skills Curriculum

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### **Executive Summary**

Loyola has a reputation in the community as a pioneer in experiential education. In 1985, the College of Law adopted a skills program, the purpose of which was to give students the chance to develop the tools and techniques that they would need to be successful in the practice of law. Over the last several years, the program drifted away from this original concept. Rather than providing students with the opportunity to practice their legal skills under the guidance of an experienced attorney, the courses increasingly began to resemble regular large lecture courses. Nonetheless, the fundamental model adopted by the faculty remains sound. The program does not need complete reform – rather, the courses in the program must be redesigned to fulfill their original purpose of providing students with a safe and nurturing environment in which to learn the fundamental and foundational skills of law practice.

To achieve this goal, the Coordinator of Skills, Director of Clinic, and the Skills & CLE Committee recommends that the faculty:

- (1) maintain the requirement that every student complete 8 skills courses;
- (2) remove the existing categorical requirements;
- (3) require that each student complete four required skills courses, in addition to four electives. The four required skills courses are: (1) Client Interviewing & Counseling; (2) Negotiation; (3) Cultural Competence & Inter-personal Skills; and (4) Law Office Management & Professionalism.

Students would be encouraged to pursue electives in one of the new two-year Training Pathways. The Training Pathways would provide sequenced and focused skill development in common areas of the practice. The Skills Program would also include a robust set of additional electives (outside the Training Pathways) for students with other career interests or those looking to explore specific areas of law. The Skills Coordinator will continue to explore developing new skills pathways based on student interest and instructor availability. In addition, the Skills Coordinator will explore the possibility of creating intensive intersession courses based on the need of practical training.

## I. What is experiential education?

Ultimately, the primary concern of experiential education is to provide courses where “experience is a significant or primary method of instruction.”<sup>1</sup> The optimal method is engagement through a sequence of experience, reflection, theory and application.<sup>2</sup> Providing such courses allows “students to be actively involved in their own education, and it has positive effects on their motivation, attitudes toward the course, willingness to participate in class, ability to ask insightful questions and acquisition of knowledge and skills.”<sup>3</sup> The iterative process is noted as the best cognitive method to improve student performance and prepare future lawyers.<sup>4</sup> “Feedback from more accomplished performers directs the learner’s attention toward improved attempts to reach a goal.”<sup>5</sup> “By giving learners opportunities to practice approximations to expert performance and giving these students feedback to help them improve performance, educators are providing an apprentice-like experience of the mind.”<sup>6</sup> The skills program is one component of providing experiential education in our curriculum allowing students the opportunity to practice a skill in an academically safe environment.

## II. The Loyola Skills Program: Current Requirements and Challenges

The current skills program requires students to earn eight skills credits for graduation. Students are required to complete two skills courses in each of the first four categories. Students are encouraged to take more than eight courses.

Category I – Factual Investigation and Counseling

Category II – Trial Practice Skills

Category III – Effective Communication and Negotiation

Category IV – Administrative Boards and Law Office Management

Category V - Skills Electives

In practice, students are confused by the categories because many of the course could potentially apply to more than one category. The requirement causes frustration in student scheduling because the curriculum does not include enough regularly scheduled classes to permit students to fulfill the requirement. Notably, the only audit conducted for graduation is whether students met the eight class requirement – a category audit has not officially been conducted over the past years.

The skills curriculum is taught almost entirely by volunteers from the community, many of whom are deeply committed alumni. Beginning in the Fall semester, the office created a skill instructor database maintaining notes on areas of specialty and interest in teaching. The office receives regular phone calls and emails from alums interested in

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<sup>1</sup> *Best Practices for Legal Education*, Roy Stuckey and others, p. 165 (CLEA 2007).

<sup>2</sup> *Id.* at 166.

<sup>3</sup> *Id.* at 167.

<sup>4</sup> *Educating Lawyers*, p. 98.

<sup>5</sup> *Id.* at 98.

<sup>6</sup> *Id.* at 100.

teaching in the curriculum. We implemented a screening process for instructors to ensure quality in instruction.

This academic year, the program runs over six classes per month and approximately (50) attorneys participate throughout the year. There is not a regular schedule every year for skills courses. Rather, each year the skills coordinator fields phone calls from interested alums willing to teach or contacts regular participants and thereby generates a new schedule.

Over the last year, the Skills Coordinator has (in addition to building and executing a regular calendar of course offerings) begun to institutionalize the skills curriculum and to conduct an audit of the existing professors and courses. The program now has an updated website, consistent policies and an easier web registration interface through Blackboard, so students have a centralized location for learning about and registering for new skills offerings. A skills calendar is also posted throughout campus and flyers are distributed highlighting the experience of skills instructors. A manual of “local rules” for the skills curriculum has been developed to give students a clear sense of what is expected from them during their participation in the program. The Coordinator has personally visited many of the courses taught by the instructors and collects data on how to strengthen the presentation or narrow the area of skill coverage. The Coordinator has also taught six courses and spoken to approximately twenty-two law faculty, skills faculty and alums about goals and expectations for the program. The following recommendations are informed by this process.

### **III. What skills should our graduates demonstrate?**

Over the last two decades, a variety of reports pertaining to legal education have been published addressing fundamental lawyering skills. Below is a summary as related to such skills:

#### *A. The MacCrate report*

The 1992 MacCrate report provided broad categories of lawyering skills with some guidance on effective strategies on how to teach those skills.<sup>7</sup> The report listed the following Skills:

- Problem solving
- Legal Analysis and Reasoning
- Legal Research
- Factual Investigation
- Communication
- Counseling
- Negotiation
- Litigation and Alternative Dispute Resolution Procedures
- Organization and Management of Legal Work
- Recognizing and Resolving Ethical Dilemmas

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<sup>7</sup> *Legal Education and Professional Development – An Educational Continuum*, Robert MacCrate (West 1992).

Loyola adopted a skills program in 1985, well before the MacCrate report; however, the current category requirements in the skills program are largely based on discussions leading up to the 1992 MacCrate report.

### B. *Louisiana Bar Foundation – Conclave on Legal Education*

The Louisiana conclave included several members of our own faculty. Part of the report included two recommendations regarding skills: “Law schools, with the cooperation of the bench and bar, are encouraged to enhance their skills programs” and “The faculties of the law schools should consider integrating more “skills instruction” into their substantive courses.”<sup>8</sup> In addition, one committee recommended that “attention should be given to practice-oriented courses, akin to the NITA format, to enable attorneys not only to watch an experienced attorney perform but also to engage in the exercise themselves.”<sup>9</sup>

Loyola skills courses are currently being modernized to provide NITA-style training thereby allowing students to exercise such skills before experienced practitioners. The pathways discussed below will allow for NITA style training to return to the skills curriculum.

### C. *Best Practices – Roy Stuckey*

In *Best Practices for Legal Education*, the following Professional skills were endorsed:

- The application of techniques to communicate effectively with clients, colleagues and members of other professions;
- The ability to recognize clients’ financial, commercial, and personal constraints and priorities;
- The ability to advocate a case on behalf of others, and to participate in trials to the extent allowed upon admission to practice;
- Effective use of current technologies and strategies to store, retrieve, and analyze information and to undertake factual and legal research;
- An appreciation of the commercial environment of legal practice, including the market for legal services;
- The ability to recognize and resolve ethical dilemmas;
- Effective skills for client relationship management and knowledge of how to act if a client is dissatisfied with the advice or service provided;
- Employment of risk management skills;
- The capacity to recognize personal and professional strengths and weaknesses, to identify the limits of personal knowledge and skill, and to develop strategies that will enhance professional performance;
- The ability to manage personal workload and to manage efficiently, effectively, and concurrently a number of client matters; and
- The ability to work effectively as a member of a team.

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<sup>8</sup> *Louisiana Bar Foundation – Conclave on Legal Education and Professional Development*, Paul R. Baier, chair, p. 45 (LBF 1995).

<sup>9</sup> *Id.* at 52.

This report provided the most robust detail of how to implement program goals and also provided the type of instruction most conducive for experiential education. Note many of the professional skills listed in the report are developed throughout the curriculum and cannot be isolated to only the skills program.

#### *D. ABA Standards*

The ABA Standard 302(a)(4) requires that each student shall receive substantial instruction in . . . “other professional skills generally regarded as necessary for effective and responsible participation in the legal profession” and under Standard 302(b)(1) substantial opportunities for “live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence..” Notably, Interpretation 302-4 states “[a]law school need not accommodate every student requesting enrollment in a particular professional skills course.” Interpretation 302-2 states “Each law school is encouraged to be creative in developing programs of instruction in professional skills related to various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills....”

Many schools interpret the requirements and opportunity standards differently in curricular design. The current proposal envisions Loyola’s skills program within the context of the requirements under 302(a) and opportunities under 302(b).

### **III. Proposal**

The original vision that motivated the adoption of the skills program remains relevant today with some exceptions noting our more globalized legal practice. The goal of this proposal is to update the framework to reflect the changes in the practice of law that have occurred over the last two decades and to make it easier to regularize and institutionalize a true “skills curriculum.” To this end, the Skills Coordinator, the Skills & CLE Committee propose the following:

#### **1. The required skills curriculum should be updated to reflect changes in the legal marketplace**

The practice of law has diversified tremendously in the past twenty years and, as a result graduates need increasingly specialized skills to be prepared for their particular area of practice. Additionally, many graduates will be employed in “JD plus” positions – or jobs in which having a law degree is helpful, but not a prerequisite. As a result, designing a basic required skills curriculum is extremely challenging. A further complication is the weak job market. Many students will not immediately find jobs in their preferred area of practice, and will need flexible (not specialized) skills. Responding to this climate, most of the reports on experiential education recognize that all students will need a basic understanding of the following four areas:

- 1) Client Interviewing & Counseling,

- 2) Negotiation
- 3) Cultural Competence and Inter-personal Skills
- 4) Law Office Management and Professionalism<sup>10</sup>

The Committee's recommendation is that the faculty eliminate the existing skills categories and institute the requirement that every student enroll in one course in each of the above four areas. The Committee recommends the faculty maintain the requirement of eight skills courses for graduation.

Below is a brief description of each course and the tentative objectives:

*Client Interviewing and Counseling:* The course will provide simulation-based exercises building interviewing and factual investigation skills. The objective is to bolster the importance of a client-centered or relationship-centered practice. With the onset of technology, many of our students are not trained to read body language, anticipate and address trust building opportunities. Equally important, the class will develop the skill of how and when to present the legal counseling on client issues.

Objectives:<sup>11</sup>

- to expose students to the demands, constraints and methods of a client interview, specifically fact gathering approaches and questioning techniques.
- to give students the basis for examining the interaction of an attorney in a rigorous set of client –centered relationship building exercises.
- to provide the basis for insights into the chronology and practical tactics of a two phase structured client interview and then counseling session.

*Negotiation:* The course is dedicated to a brief introduction of the chronology of a negotiation, and will include simulation-based exercises to develop practical skills in negotiation. Students enrolled in Mediation & Arbitration may satisfy the skills requirement.

Objectives:

- to expose students to the demands, constraints and methods of negotiation.
- to give students the basis for examining the interaction of attorneys in negotiation.
- to provide the basis for insights into the chronology and practical tactics of negotiation.
- In general, to provide students with the opportunity to develop and to guide them in developing – a breadth of perspective, insight and a rigorous set of analytical and behavioral techniques which train students on negotiation techniques.

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<sup>10</sup> While professionalism will be identified as part of this particular course, all new skills courses will address one or two ethical or professional dilemmas, so that the message of “professionalism” is consistently reinforced throughout the skills curriculum and students have more opportunities to engage with these issues in context.

<sup>11</sup> The foundation of articulated objectives are roughly based on Best Practices for Experiential Courses. See Stuckey, p. 169.

*Cultural Competence and Inter-personal skills:* Many current articles and studies suggest law students need training in issues regarding cultural competence, especially in this global market. Business schools have adopted measures to address issues related to client development in a global market. The course objectives include development of cross-cultural understandings including issues related to vulnerable populations, race relations and global markets. The course will also offer opportunities to develop “soft skill” training to present a polished professional image and build confidence. The course design will include both lecture and simulation based exercises.

Objectives:

- to expose students to various perspectives from diverse cultures; and present simulations for students to consider the best practices when interacting with cultures different from their own.
- to give students the basis for examining the interaction of attorneys in cross cultural interactions, such as negotiation, business management and entrepreneurial enterprises.
- In general, to provide students with the opportunity to develop and to guide them in developing interpersonal skills based on simulation-based exercises wherein student are presented with awkward conversations, interview tactics or email interactions. Then, to provide students with the best practices through modeling techniques.

*Law Office Management and Professionalism:* Recent studies reflect a growing change in placement opportunities after graduation. Many of our students are joining or creating their own practice. The Louisiana bar is specifically interested in creating more mentoring opportunities to assist recent graduates in the best practices for law office management. This course would address practical techniques for time management, correspondence drafting, filing, management of client accounts, legal marketing, and ethical dilemmas. Students will be introduced to the Louisiana practice guide and the checklist provided in this resources. Issues of professional and ethical development will be addressed using simulation based learning in context exercises.

Objectives:

- to expose students to the demands, constraints and methods of setting up a solo practice including forming your own company, securing insurance and business management.
- to provide the basis for insights into the common pitfalls inexperienced attorneys may encounter including client trust accounts and financial management.
- In general, to provide students with the opportunity to develop and to guide them in developing a set of checklist for practice management including effective written communication.
- to give students the basis for examining the interaction of attorneys in ethical or professional dilemmas, with a specific focus on work-life balance and time management issues in practice.

**2. The skills program should include “Training Pathways” for particularly common areas of practice**

Following a model suggested by the Carnegie Report, the Skills Coordinator will develop a two-year sequence of regularly scheduled courses that help prepare students for particular types of practice. Students may fulfill their skills requirements within one of the training pathways and voluntarily pursue other courses in the pathway. Some courses will be open to all students, while others will require participants to fulfill a pre-requisite (i.e. Motion drafting is required for enrollment in Motion argument).

Below is the sequence of courses in the proposed four pathways. These pathways have been developed in partnership with the law faculty and with the skills faculty, based on their assessment of what skills they would like to see in potential job candidates. Courses starred indicate that students may satisfy a skills requirement. Every pathway would allow students to satisfy three of the four required skills courses. We anticipate a select few students would enroll and attend every course in a single pathway.

**A. Civil Skills Pathway**

<b>Second Year (2L)</b>	
September	Client Interview & Counseling *
October	Complaint & Answer
November	Interrogatories and Request for Production
January	Depositions
February	Motion drafting
March	Motion argument
April	Pre-Trial Order
<b>Third Year (3L)</b>	
September	Pre-Trial Conference and settlement negotiations *
October	Voir Dire
November	Opening
January	Direct/Cross
February	Closing
March	Judicial Opinion Writing
April	Law Office management & Professionalism*

**B. Criminal Skills Pathway**

<b>Second Year (2L)</b>	
September	Client Interview & Counseling*
October	Factual Investigation
November	Preliminary Hearing
January	Motion drafting
February	Motion argument
March	Pre-Trial Order
April	Pre-Trial Conference and settlement negotiations *

<b>Third Year (3L)</b>	
September	Voir Dire
October	Opening
November	Direct
January	Cross
February	Closing
March	Judicial Opinion Writing
April	Law Office management & Professionalism *

### C. Transactional Skills Pathway

<b>Second Year (2L)</b>	
September	Client Interview & Counseling *
October	Drafting LLC & Art. Of Incorporation
November	Researching Licensure Issues and Administrative or Regulatory Law
January	Tax, Accounting and Financial Terms
February	Small Business Development Center & Disaster Awareness
March	Drafting Letter of Intent
April	Drafting Due Diligence Request
<b>Third Year (3L)</b>	
September	Client Counseling and structuring the business deal
October	Drafting the Asset Purchase Agreement
November	Drafting Defined terms and schedules
January	Drafting Confidentiality and Operating Agreements
February	Negotiating the Deal *
March	Closing the Deal
April	Law Office Management & Professionalism*

### D. Social Justice Skills Pathway

<b>Second Year (2L)</b>	
September	Client Interviewing and Counseling *
October	Representing Vulnerable Populations
November	Using Law to Enhance Communities
January	The Role of Lawyers: Civil & Criminal
February	Drafting: Public Records Request
March	Drafting: Preliminary and Permanent Injunctions
April	
<b>Third Year (3L)</b>	
September	Counseling Clients & Client Communications
October	Fact Gathering: Civil – Investigation, Criminal
November	Legal Argument & Storytelling
January	Drafting: The Complaint

February	Drafting; Retainer
March	Negotiation*
April	Law Office Management & Professionalism*

We anticipate the development of future opportunities and would recommend flexibility to add pathways addressing expanding markets.

### **3. The Skills Program Should Maintain a Robust Set of Skills Electives**

Recognizing that the skills curriculum cannot, with its extremely limited resources, offer specialized training pathways for all potential career paths, the Skills Coordinator will also work with faculty and alumni to develop a robust set of experiential skills electives to support students with other career interests. Depending on student and skills faculty interest, some of these electives may eventually evolve in additional formalized Training Pathways.

### **4. The Skills Program should develop an Intersession format**

Currently, other schools offer skill-based learning in a condensed format more realistic to practice (i.e. Tulane’s intersession). Loyola historically offered intensive trial based skills courses simulating an actual trial. The proposal seeks to resurrect this opportunity by placing students in an actual courtroom with judges and practitioners providing formative assessment. Beyond trial skills, an intersession format would also offer week-long transactional drafting and negotiation simulations. Additionally, the intersession format would provide opportunities to implement certificate based training programs allowing resume building opportunities, such as training in general mediation, human resources, real estate, BP claims, auditing and compliance, and discovery software, as well as solo-practitioner basics. Such training potentially will assist our students with job placement. The intersession format would run before or after the academic schedule.