

*An Empirical Look: How Well Are We Preparing Law
Students to Become Ethical Leaders Who Serve Others?*

**Does New York's New Bar Admission
Requirement**

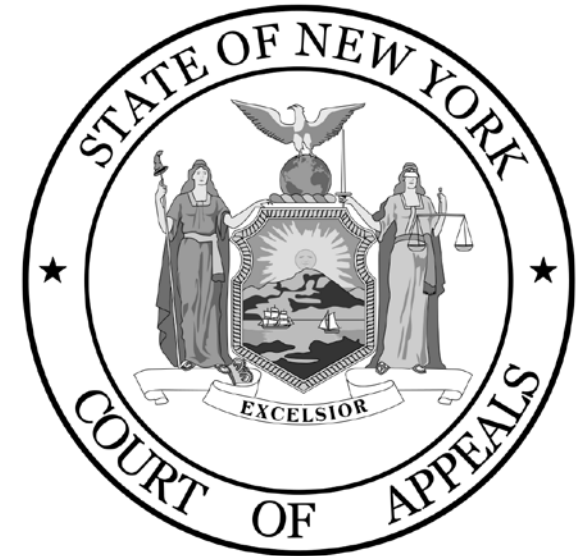
**Make a *Difference* in
Legal Education and/or Lawyer Performance?**

How Would We Know Whether It Does?

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Overview

- **New York Court of Appeals Professional Skills & Values Competency Requirement** for **Admission to the Bar**
- **PURPOSE**
- **Potential Impact**
- **Pathways** to meet **Requirement**
- **Questions**
 - Does **Requirement** Make a Difference in **Legal Education** ?
 - Does **Requirement** Make a Difference in **Lawyer Performance** ?
- **Data Solicitation**
- **Preliminary Results and Further Questions**



Purpose of Professional Skills and Values Requirement

Every applicant for admission to practice . . . shall demonstrate that the applicant possesses the skills and values necessary to provide effective, ethical, and responsible legal services in the State of New York.

-- 22 NYCRR 520.18(a)

December 16, 2015

Which professional **skills** and **values**?

- **Each law school determines** which **skills** and **values** its graduates ought to acquire before admission to the bar.
- **MacCrate Report:**
 - starting point for identifying and defining skills and values
- **Other skills and values:**
 - cross-cultural competency, collaboration in practice, use of technology to aid practice, knowledge about and direct experience with improving access to justice for underrepresented individuals and groups, public administrative skills, professional self-development, developing and sustaining professional relationships, learning from experience through self-reflection and evaluation, and law practice management

MacCrate **Skills** and **Values**

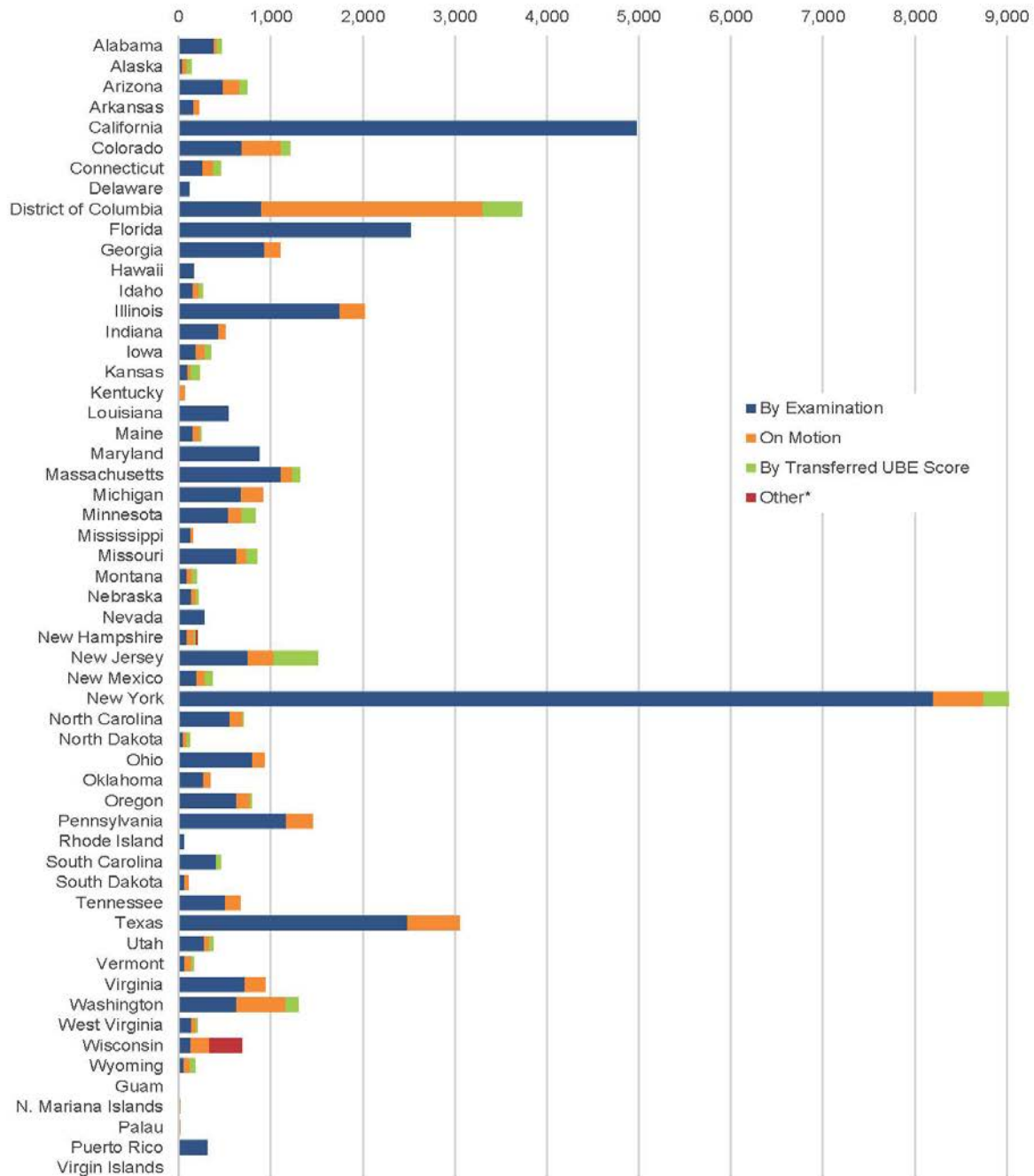
- **Values**

- **COMPETENT REPRESENTATION**
- ***PROMOTE JUSTICE, FAIRNESS, MORALITY***
- **IMPROVE THE PROFESSION**
- **PROFESSIONAL SELF-DEVELOPMENT**

- **Skills**

- PROBLEM SOLVING
- LEGAL ANALYSIS & REASONING
- FACT INVESTIGATION
- COMMUNICATION
- COUNSELING
- NEGOTIATION
- LITIGATION & ALTERNATIVE DISPUTE RESOLUTION
- ORGANIZATION & MANAGEMENT OF LEGAL WORK
- RECOGNIZING & RESOLVING ETHICAL DILEMMAS

2018 Admissions to the Bar by Examination, on Motion, by Transferred UBE Score, and Other



* New Hampshire Daniel Webster Scholar (DWS) Honors Program and Wisconsin diploma privilege. The DWS Honors Program, a two-year performance-based

Professional **Skills** and **Values Requirement**

Rule of the Court of Appeals (22 NYCRR 520.18)

<http://www.nycourts.gov/ctapps/520rules10.htm#B18>

- **All applicants** for admission to practice law in New York State must *submit proof* that they have satisfied the **Requirement** through one of:
- **Pathway 1:** Law school certification of competence in **skills** and familiarity with **values**, usually demonstrated by passing required courses
- **Pathway 2:** Law school certification of completion of 15 credits of practice-based experiential courses
- **Pathway 3:** Pro Bono Scholars Program
- **Pathway 4:** Apprenticeship for six months (paid or unpaid)
- **Pathway 5:** Practice in another jurisdiction for one year

Pathway 1

- **ABA-approved law school certification confirming that:**
 - (a) law school developed a plan identifying and incorporating into its curriculum the skills and professional values that, in the school's judgment, are required for its graduates' basic competence and ethical participation in the legal profession . . . and has made its plan publicly available on the school website.**
 - (b) applicant has acquired sufficient competency in those skills and sufficient familiarity with those values.**
- **Compliance with ABA Standard 303 (six experiential credits) not “sufficient” according to NYS Court of Appeals FAQ of December 2019 at <http://www.nycourts.gov/ctapps/news/skills.pdf>**

Data Solicitation from Advisory Board

1. Asked for simple confirmation of objective accuracy of plan description from law school website
2. Asked about a) institutional process for plan adoption; and b) impact of plan adoption on curriculum, learning objectives, resources, communications with students, reallocation of faculty and staff, etc.
3. Asked for both open-ended overall anecdotal impressions and specific answers to targeted questions
4. Offered option of written response or brief conversation
5. Offered assurance of confidentiality
6. Tried to raise questions rather than make assertions

Has the **Requirement** Made a *Difference* in **Legal Education** So Far?

- Law schools have engaged with the need to address many types of lawyering competence and the concept of defining success by outcomes rather than solely inputs. But see ABA Standards 301, 302, 314 (must establish and publish learning outcomes, use assessments).
- Law schools provide clearer communication about whether and how they teach and assess graduates' development of professional skills and values. But information still lacking, and again see ABA Standards 301, 314 (shall utilize both formative and summative assessment methods in curriculum to measure and improve student learning outcomes).
- Most schools choose to emphasize Pathway 1 for JDs.
 - Many offer slightly different versions of what the school already was doing.
 - Most do not go beyond what is already required by ABA Standards.
 - ONE NY school requires 15 experiential credits for all students (Pathway 2) and three require clinical/externship experience for all JD students.
- Most schools have relegated LL.M. students to Pathways 4 or 5 (apprenticeship or prior practice experience) with no significant instructional investment.

How Else Can We Know Whether the **Requirement** Makes a *Difference for Legal Education* ?

- Does the law school offer a clinical/externship option for all JD students?
- Does the law school need to do more to satisfy this requirement than to comply with ABA Standards?
- Does the law school take responsibility for an LL.M. curriculum that meaningfully assesses competence in skills and values?
- Does the law school clearly articulate which pathways are available to all its students?
- Does the law school clearly articulate which skills and values it deems necessary for graduates and how it assesses their competency levels?
- Other ideas?

How can we decide whether the **Requirement** Makes a ***Difference*** in **Lawyer Preparation and Performance**?

Survey a sample of attorney supervisors who regularly work with brand-new admits to see if they notice differences in a) skill levels; and b) values?

New attorney self-assessment? (LSSSE, After the JD, etc.) Student evaluations?

Assessment by repeat-player clients who regularly work with newer attorneys?

Survey adjudicators about quality of lawyering observed in recent admits?

Attorney rating services? See, e.g., NYSBA Committee Report on Attorney Rating Services (2015)
<https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=60562>

Independent assessment of competence using standardized clients, role-plays, rubrics, etc. ?

- Lack of baseline data on performance → Inability to control for confounding factors
- Subjectivity of criteria for evaluation of professional performance
- Competitive Incentives to justify cost and effort, defend efficacy of educational institutions

Materials Posted on AALS Site

1. Compilation of New York State Skills and Values Competency Requirement Plans and Proposals from New York Law Schools (updated)
2. Table of NY Law School Pathways -- NY State Bar Admission Competency Requirement
3. New York State Bar Admission Skills and Values Advisory Board -- Contact Information and Plan Websites
4. NY Court of Appeals Part 520 Bar Admission Rules -- relevant sections and FAQ (December 2019)
5. Application for Admission to Practice as an Attorney and Counselor-At-Law (sic) in the State of New York: Form Affidavit as to Applicant's Compliance with the Skills Competency and Professional Values Requirement
6. Clinical Legal Education Association (CLEA) Comment on Bar Admission Skills Competency Proposal of New York Court of Appeals Task Force on Experiential Learning and Admission to the Bar (November 9, 2015)
7. Request for Information about Your Law School's Engagement with the NY Court of Appeals Skills and Values Competency Requirement for Bar Admission
8. 2018 Admissions to NY Bar from Other States
9. MacCrate Report Table of Contents and List of Skills and Values
10. Kristin Booth Glen, *Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession*, 23 PACE L. REV. 343 (2003).