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Grounded in Law-School Basics

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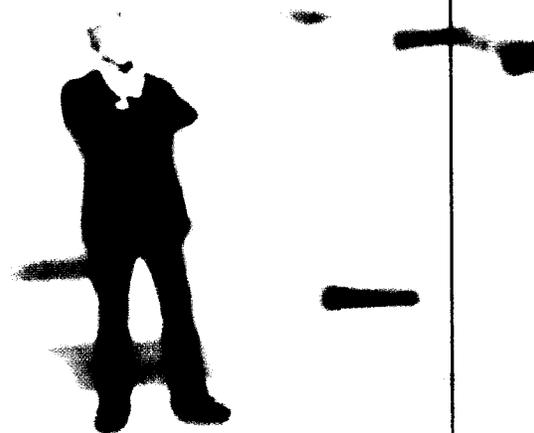
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POINT

Flying Blind

Or, the Need for a Practice Management Course in Law School

By Joseph Hohler III



Over one million attorneys work in the United States,¹ and while presumptively competent to practice law,² many lack the basic skills necessary to open or operate a law office. Though legal knowledge is important, business acumen is increasingly relevant as more attorneys hang out their own shingles. However, without law-student training in the art of law practice management (LPM), most new and established attorneys are utterly ill-equipped to do so.

ABA Accreditation Standards and Law School Curricula

Applicants for the Michigan bar must be graduates of an accredited law school. To that end, the American Bar Association (ABA), as the accrediting body for law schools, imposes a number of educational objectives. Schools must educate students in the law, prepare them to pass the bar exam,³ and train them to be effective legal professionals.⁴ Students must take a basic writing and research class, fulfill a rigorous upper-level writing requirement,⁵ and are encouraged to participate in externships and clinical programs. With no actual law management course requirements,⁶ however, law schools tend to become a purely academic endeavor and ignore courses attorneys need to represent clients and themselves in a specialized and competitive profession.⁷

Though the ABA bears the brunt of the failure, the American law school bears some responsibility. The schools fashion the actual curriculum and must provide a well-rounded education.⁸ Michigan law schools⁹ understand the need to offer an LPM course, as most already offer it as an elective. None, however, require it, and the available courses actually exacerbate the problem.

For instance, while Michigan State University (MSU) offers a course¹⁰ with an overview of management, organizational form, office requirements, finances, business development, ethics, and scheduling,¹¹ it is largely unavailable.¹² It is scheduled once an academic year¹³ with a 30-seat limit,¹⁴ or room for little more than 5 percent of eligible students. Notwithstanding, MSU is the cream of the crop compared to other schools.

The University of Detroit Mercy's course assists "law students in developing client relations and legal marketing skills,"¹⁵ while the University of Michigan grooms students for the prestige of the partner track or corporate law.¹⁶ Neither, however, includes organizational form, management, or financial skills. More troubling are Wayne State University and Ave Maria School of Law, which fail to offer an LPM course at all.¹⁷

Practical Suggestion

The need for available management courses is supported by the fact that over 7,500 attorneys in Michigan are solo practitioners. In 2003, more than one quarter of all law firms in Michigan operated as solo practitioners, a percentage that has held steady for more than 20 years.¹⁸

Because so many attorneys will form a law firm, it is imperative that the ABA—or the law schools themselves—adopt a requirement that every student complete an LPM course. Barring that, perhaps the State Bar should require all applicants for licensing to complete an LPM course or add practice management to the bar exam. At least bar exam review services would then cover the topic.

The course should be as comprehensive as possible, including the following topics:

- Necessity and types of liability insurance, coverage inside and outside policy limits, and costs for the various fields of practice
- Types of organizations, filing requirements, and tax and management implications
- Business development practices
- Proper management techniques, maintaining files, calendaring, conflict screening, and recordkeeping
- Economic, tax, and ethical considerations of employing staff
- Financial matters, payroll recordkeeping, billing, taxes, and trust accounts

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COUNTERPOINT

Grounded in Law-School Basics

By Frank S. Ravitch



Mr. Hohler makes a valuable point that it would be worthwhile to teach more sections of a law practice management course in most law schools, so that students have a real opportunity to take it. I disagree, however, that it should be mandatory, as law schools have students going into all sorts of jobs, from large firms to solo practitioners, judicial clerks, government lawyers, public-interest lawyers, and in-house lawyers for corporations. Mr. Hohler himself acknowledges approximately 25 percent enter solo practice. Such a course may not be as helpful to the other 75 percent, and the students should have a choice as to how they use their upper-level credit hours.

Certainly, there would be no problem if deans of students and faculty advisors suggest to students who plan to go into small-firm practice that they should take the course, and recommend it to other students as well. When all is said and done, however, a lawyer learns the nuts and bolts of practicing law by practicing law. The law school needs to (1) provide legal knowledge, (2) inculcate a way of thinking (being a natural risk manager and being able to see a problem from a variety of perspectives, etc.), and (3) teach legal research methods, writing, and analytical skills that will help for an entire legal career.

Every student benefits from the three initiatives, and while it is certainly frustrating to both lawyers and firms that new lawyers do not necessarily come out of law school knowing how to run a law firm, the reality is that law practice management can be picked up through a variety of practical experiences. On the other hand, if a new lawyer graduates law school without having the ability to see that there might be a constitutional, tort, procedural, etc. issue in a case, and is unable to see the potential risk to his or her client from a given course of action, the risk to clients and lawyer is significant. Law schools are far from perfect, but most do a good job with the above three skills. There are only so many courses and skills that can be taught in three years.

Fortunately for Michigan attorneys, the State Bar operates a Practice Management Resource Center (see sidebar on page 37), which offers numerous courses at no charge related to the operation of a law office. Topics from test-driving software to managing finances to staff issues are offered on a regular basis.

Every student benefits from the three initiatives, and while it is certainly frustrating to both lawyers and firms that new lawyers do not necessarily come out of law school knowing how to run a law firm, the reality is that law practice management can be picked up through a variety of practical experiences.

We must take care not to create a false dichotomy between practice and knowledge. I was a litigator myself, and still do amicus work to the U.S. Supreme Court. While I agree that practical skills are important in litigation, being better prepared and more knowledgeable than an opponent is the best weapon. With a busy judiciary, a practitioner usually gets only one bite at the apple to frame issues and argue key points.

Businesses called for a model of trade-school-type training in the '80s, and the result was a shift among large universities to a consumerism model. Now, 25 years later, businesses are looking for people with strong liberal arts backgrounds because they want well-rounded graduates who can engage in thoughtful response and risk management.

To turn law schools into trade schools would be a disaster. It is our duty at U.S. law schools to prepare our students to be lawyers, which includes thinking like a lawyer and having lawyering skills, but like any job, there will always be a lot of learning once you get there. Given the thousands of different practice settings available to lawyers, no amount of practical skills will be enough.

Even though the primary focus of law schools should not be to teach students how to run a law firm, we should nevertheless

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Creating such a course should not be too difficult, as many law schools already offer some form and there are dozens of guidebooks on the market, including the *Michigan Basic Practice Handbook*. One could not go wrong in building the course around the latest edition of *How to Start and Build a Law Practice* by Jay G. Foonberg, which is the preeminent text on the topic. Nevertheless, as comprehensive as the text is, a person cannot learn the ins and outs of law practice establishment and management from a book alone. Experienced instructors serve a valuable need. They can dialogue with the students, lecture from real-world experiences, bring a clear understanding to a topic, and, if an answer is elusive, seek the proper authority on the subject. While Mr. Foonberg's book is excellent, its effectiveness is inherently limited. Interaction with an instructor is essential to success.

Advantages

Some academics may reject the mandatory course proposal because they fear change itself, or the law school already has too many requirements, or for any variety of reasons. Perhaps cataloging the advantages will encourage them to reconsider.

Beyond the obvious advantages to attorneys who start or manage a firm are the applications to attorneys in any number of practice areas. Corporate attorneys will have a better frame of reference for representing clients when they have taken a nuts-and-bolts course in business creation and development. Estate planners will draft better wills and trust documents for business owners—and better understand the impacts of such documents. Prosecutors will better grasp corporate targets and cases when they have studied outside the traditional crimes of murder and burglary. Much the same can be said for many other attorneys—only the slimmest minority will never benefit.

The management and financial training will help immunize against malpractice and ethical complaints that would arise from honest mistakes in dealing with trust accounts and the like. Fewer malpractice actions may hold down the cost of malpractice insurance, which may reduce the cost to clients, not to mention the benefit to our collected reputations.

Another advantage is that the course may lead to additional options for graduates and practicing attorneys. There are a number of attorneys who might start a firm if given the chance, but have not done so because they have no frame of reference for law-firm startup.

At its heart, though, there are no practical reasons not to require this course. If the goal of law school is to produce licensed and successful attorneys, it is essential to provide students with the tools to succeed. Because licensing is so crucial, much emphasis is placed on academic subjects, but why fail to address practical needs? In this way, schools not only fail the students, they also fail themselves when they graduate students who have missed out on critical information.

POINT

Conclusion

Law schools must turn out well-rounded attorneys, not just zealous advocates. And because it is inevitable that many attorneys will go to work for themselves, failure to anticipate this arc of students' legal careers and require an LPM course is an egregious error that cannot be overlooked. ■



Joseph Hohler III is a 2006 graduate of the Michigan State University College of Law. He has recently opened his own practice in Kalamazoo, focusing on criminal defense and family law, and could have used an LPM course. He is accepting referrals and can be reached at JoeHohler3@aol.com.

FOOTNOTES

1. See U.S. Census Bureau, *Statistics of U.S. Businesses: 2001: Offices of lawyers—United States*, available at <<http://www.census.gov/epcd/susb/2001/us/US54111.HTM>> (accessed December 18, 2007). All websites cited in this article were accessed December 18, 2007.
2. Foonberg, *How to Start & Build a Law Practice* (Chicago, IL: ABA, 2004), p 16.
3. American Bar Association, *2006–2007 Standards for Approval of Law Schools*, Standard 301, available at <<http://www.abanet.org/legaled/standards/2006-2007StandardsBookMaster.PDF>>.
4. *Id.* at Standard 302(a)(4); see also Interpretation 302(2).
5. *Id.* at Standard 302(a)(3).
6. *Id.* at Standard 302(b).
7. See, e.g. Turow, *One L* (Warner Books, 1977), p 281 ("law school is about training legal scholars. [It] does not teach students to think like lawyers. It teaches them to think like law professors." (Emphasis in original)).
8. *Id.*; see also *id.* at 272. Since the essentials can be taught in two years, anything else simply well-rounds the education.
9. The author considers the University of Toledo Law School a Michigan law school.
10. See Michigan State University College of Law, *Course Descriptions*, Law 592—Law Practice Management, available at <<http://www.law.msu.edu/academics/courses.php?let1=K&let2=L>>.
11. Thomas M. Cooley and the University of Toledo offer comparable courses. See Thomas M. Cooley Law School, *Course Descriptions*, Law 955—Law Office Management, available at <<http://www.cooley.edu/academics/courses.pdf>> and University of Toledo College of Law, *Course Descriptions*, LAWV 9030—Law Practice, available at <<http://law.uioledo.edu/students/COURSE%20DESCRIPTIONS%20-%20LAW%2006-08.pdf>>.
12. The author makes no statements as to availability at the University of Toledo and Thomas M. Cooley.
13. See Michigan State University College of Law, *Class Scheduling*, available at <<http://www.law.msu.edu/academics/schedule.php?sem=Fall%202006>> (Fall 2006); <<http://www.law.msu.edu/academics/schedule.php?sem=Spring%202007>> (Spring 2007); and <<http://www.law.msu.edu/academics/schedule.php?sem=Fall%202007.pdf>> (Fall 2007).
14. *Id.*
15. See University of Detroit Mercy School of Law, *Courses*, Law 389—Law Practice Management, available at <<http://www.law.udmercy.edu/academics/courses/description.php?number=389>>.
16. See University of Michigan Law School, *Law School Course Description*, Law 629—Law Firms and legal Careers, available at <http://cgi2.www.law.umich.edu/_Classschedule/aboutCourse.asp?crse_id=038852>.
17. See Wayne State University Law School, *Course Listings & Descriptions*, available at <http://www.law.wayne.edu/current/course_listings.html> and Ave Maria School of Law, *Course Descriptions*, available at <<http://www.avemarialaw.edu/index.cfm?event=academics.coursedescriptions>>.
18. See State Bar of Michigan, *Desktop Reference of the Economics of Law Practice in Michigan*, Appendix C, available at <<http://www.michbar.org/pmr/articles/0000133.pdf>>.

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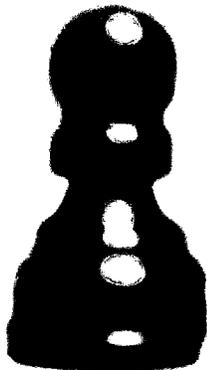
acknowledge that virtually all law schools have clinics to help students learn how to practice law. MSU has a small-business clinic, a tax clinic, a real-estate clinic, and other clinics. They are invaluable if a student can fit one or more into the three-year schedule. Most law schools also have intensive negotiation and moot court programs that go beyond mere competitions, and strong alternative dispute resolution components, which are quite relevant to today's practitioners. Some even have entrepreneur-related clinics.

If we want law graduates to have significant nuts-and-bolts training without sacrificing the skills that will aid them throughout their careers, another option is to implement the medical school model (which is similar to the model used by the Canadian bar), where students do a year-long internship in a practice setting after their third year. The internship, or apprenticeship, as it was once called when law school was not required, might even replace a formal bar exam, or begin after the bar examination is passed. I doubt it will happen in the U.S., but it would be a far more helpful way to get the nuts-and-bolts knowledge that Mr. Hohler suggests to all students in their relevant practice settings. Mr. Hohler is to be commended, however, for raising the concern and for his excellent arguments in favor of his proposal. Clearly, whatever the outcome of the debate, he seems on his way to being a fine lawyer and member of the legal community. ■



Frank S. Ravitch is a professor of law at the Michigan State University College of Law. He is the author of Masters of Illusion: The Supreme Court and the Religion Clauses (NYU Press 2007), Law and Religion, A Reader (Thomson/West 2004), and School Prayer and Discrimination: The Civil Rights of Religious Minorities and Dissenters (Northeastern Univ. Press, 1999).

He has published law review articles in journals such as the Georgia Law Review, Wake Forest Law Review, and Boston College Law Review.



State Bar of Michigan Practice Management Resource Center

Recognizing the importance of effective practice management in a law practice, the SBM launched the Practice Management Resource Center (PMRC) in February 2006 to help lawyers and their staff manage their law practices successfully. At the core of the PMRC are its Helpline, website, Educational Center, Lending Library, and training and seminar programs.

Helpline—The PMRC Helpline is a confidential and informal service designed to quickly assist State Bar members and their staff with practice management issues over the telephone or by e-mail.

Website—The PMRC home page links to information regarding PMRC services. The Resources section on the site links to over 125 various practice management forms, guidelines, how-to kits, links of interest, and educational articles.

Educational Center—The Educational Center is equipped with 12 state-of-the-art personal computers. The center is available to SBM members and their staff, by appointment, to test-drive legal software demos and for software training.

Lending Library—Almost 100 practice management publications populate the PMRC Lending Library. Publication content may be viewed on the dedicated web page or on-site at the SBM building in Lansing.

Seminars and Training Programs—The PMRC offers statewide practice management and technology seminars and training programs, and plans to offer seminars online for viewing in the future.

See what the PMRC can offer you by visiting us online at <http://www.michbar.org/pmrc/content.cfm>.