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What Legal Employers and Clients Want: The Competence-Model Approach to Legal Success

Neil W. Hamilton

University of St. Thomas School of Law, nwhamilton@stthomas.edu

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FOREWORD

WHAT LEGAL EMPLOYERS AND CLIENTS WANT: THE COMPETENCY-MODEL APPROACH TO LEGAL SUCCESS

NEIL HAMILTON

Legal employers see strategic advantages in competency-based development models that businesses and consulting firms have been using for decades,¹ and are moving toward competency models² to assess both the performance of the organization's lawyers and the potential of candidates for employment. Employers can use these models in a talent management system to foster cultures that are more responsive to what clients want.³

These competency models are also highly useful to help law schools comply with the new ABA accreditation standards. In August 2014, the ABA changed the accreditation standards for law schools to require the articulation of learning outcomes and the assessment of these learning outcomes. The ABA changed former Standard 302 from "Curriculum" to "Learning Outcomes" that require each law school to establish learning outcomes that shall, at a minimum, include *competency* in the following . . . :

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and

1. Susan G. Manch, *Competency-Based Performance Management: A Remedy For Eroding Firm Culture*, 11 U. ST. THOMAS L.J. 39, 42–45 (2013).

2. See Hamilton, *Law Firm Competency Models and Student Professional Success: Building On a Foundation of Professional Formation/Professionism*, 11 U. ST. THOMAS L.J. 6, 8 n.9 (2013), for a discussion of how a competency model starts with the identification of the characteristics of the organization's most effective and successful lawyers. See *id.* for a discussion of how an organization can use these characteristics, to develop a framework of core competencies for new lawyers to master.

3. *Id.*

- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.⁴

The ABA also added a new standard 314 on “Assessment of Student Learning” providing, “A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students;”⁵ and a new Standard 315 on “Evaluation of Program of Legal Education, Learning Outcomes and Assessment Methods” stating that

The dean and the faculty of a law school shall conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.⁶

The overarching theme of these changes is that the accreditation standards for legal education are going to follow the education assessment framework already adopted by accrediting authorities for graduate education in the health professions and undergraduate education.⁷ This education assessment framework asks faculty to:

1. Identify student educational needs;
2. Articulate student learning outcomes (educational objectives) that respond to student educational needs;
3. Plan and implement an educational program and curriculum that helps students achieve the learning outcomes;
4. Create formative and summative assessment measures; and
5. Evaluate the effectiveness of the educational program and curriculum.⁸

This education assessment framework requires a clear understanding of what is a “learning outcome”?

1. A student learning need represents a gap between a student’s current level and some desired level of knowledge, skills, competencies, attitudes, or habits of mind.

4. ABA STANDARDS RELATING TO PROGRAMS OF LEGAL EDUC. § 302 (2014) (emphasis added).

5. *Id.* at § 314.

6. *Id.* at § 315.

7. See NELSON MILLER & VICKIE EGGERS, TEACHING LAW: A FRAMEWORK FOR INSTRUCTIONAL MASTERY 13 (2010).

8. See *id.* at 15–25, 99–104. See also ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 7–9 (2007). Formative assessments are measurements at different points during a particular course or over the span of a student’s education that provide meaningful feedback to improve student learning. Summative assessment methods are measurements at the culmination of a particular course or the culmination of any part of a student’s legal education that measures the degree of student learning.

2. A student *learning outcome* clearly states the expected knowledge, skills, competencies, attitudes, or habits of mind each student is expected to acquire so that the student learning needs are met.⁹
 - a. A learning outcome will focus on the student as the performer.
 - b. It will use an active verb to describe what knowledge, skill, competency, attitude, or habit of mind the student is expected to acquire.
 - c. It will be measurable with performance indicators to know if the student has achieved the outcome.
 - d. The learning outcome must be stated so that there can be a sequence of activities or actions that enable the student to achieve the learning outcome.

Competency models help legal educators understand student educational needs in terms of the competencies that clients and employers want. These models clarify the meaning of the ABA Standard 302 learning outcome that each student develop “competency” in “the professional skills needed for competent and ethical participation as a member of the legal profession.”¹⁰

It is also highly in each law student’s and each law school’s enlightened self-interest to focus on student professional development in the competencies that legal employers and clients want. Unless a student has an independent means of support, each student needs meaningful employment in order to serve others using her legal education. The competency models discussed in this symposium give students important insights to undertake professional development of the needed competencies.

The University of St. Thomas Law Journal and the Holloran Center for Ethical Leadership in the Professions co-sponsored a symposium on legal employer competency models on October 28, 2013 including the four papers published here. The first paper by Neil Hamilton focuses on what legal educators and law students can learn from law-firm competency models, particularly regarding the professional formation/professionalism competencies. The essay analyzes all available empirical evidence on law-firm competency models and reports on a new empirical study of the competency models of the fourteen largest Minnesota law firms. The paper also looks at the available empirical evidence on the competencies that clients want their lawyers to have and the competencies that make the most difference in fast-track associate and partnership promotions. The essay argues that each law student should use all three years of experiences inside and outside of law school to develop and be able to demonstrate the competencies that legal employers and clients want and that law schools should de-

9. NATIONAL INSTITUTE FOR LEARNING OUTCOMES ASSESSMENT, TRANSPARENCY FRAMEWORK: STUDENT LEARNING OUTCOME STATEMENTS (2011), available at <http://www.learningoutcomesassessment.org/TFCComponentSLOS.htm>.

10. ABA STANDARDS RELATING TO PROGRAMS OF LEGAL EDUC § 302 (2014).

velop a curriculum and culture that helps each student move forward toward later stages of these needed competencies. Finally, the paper emphasizes that the professional formation/professionalism competencies like trustworthiness, initiative/drive/strong work ethic, commitment to the client, and commitment to professional development toward excellence are the foundation for excellence at all the other competencies of an effective lawyer.

The second paper by Terri Mottershead and Sandee Magliozzi bridges between the importance of the competency movement for legal employers and the importance of the competency movement for legal educators. The essay first provides a history of the competency movement, noting that common-law countries like Australia and the United Kingdom have been developing competency-based approaches to legal education and continuing legal education much earlier than we see in the United States. The essay then explores the benefits that can be drawn from the competency development process. Part III of the paper provides two outstanding frameworks for implementing competency models within a law firm and within a law school.

Susan Manch's essay brings her lengthy experience with law firm professional development to analyze why a competency-based development model offers firms an extremely useful tool to respond effectively to changing markets. She argues that firm leaders looking to change their firms' cultures to adapt to emerging market realities should focus on creating talent management systems using competency models as a major tool to aid in creating change. Employing a competency-based development model involves far more than just clarifying expectations and measuring performance. It also: (1) creates a shared language of success; (2) surfaces the values considered most critical to be held in common by firm members; and helps lawyers to understand the stages of development of each competency so they experience positive results and success at each stage.

Ann Rainhart's paper focuses on the challenge of merging two firms, and the powerful positive contribution to building a successful post-merger culture that has flowed from the development of a competency model for associates with defined developmental levels at each competency. She emphasizes that competencies provide the foundation for key success behaviors by lawyers in the newly combined firm. Competency identification in the newly combined firm helps define and reinforce the culture and strategy of the new firm. It is an ideal vehicle for the creation of unified messages about the new firm. The paper discusses the practical steps needed to make the competency development process successful.

All four papers make a strong case that law firms/departments and law schools will benefit from developing a competency model that identifies clearly all the capacities and skills that the organization wants each new

entrant to develop. Each law student also needs to understand these models and to internalize a commitment to professional development toward excellence at all the competencies needed to serve clients well.