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**TO:** Board of Governors

**FROM:** Hilarie Bass

**RE:** Request to Create Commission on the Future of Legal Education; Request to Separate Non-Accreditation Activities from the Section of Legal Education and Admissions to the Bar

**DATE:** January 12, 2017

I respectfully request that the Board of Governors approve a restructuring of the Association’s legal education work. The Board is requested to approve the creation of a Commission on the Future of Legal Education to serve as the Association’s forward-thinking body on legal education. The new Commission would assume all the non-accreditation activities of the Section of Legal Education and Admissions to the Bar. The non-accreditation related committees of the Section would fold into the new Commission and would have a refocused goal of addressing innovation in legal education. The Accreditation Project and related activities would remain with the Section under a new name -- “ABA Section on Accreditation.”

Background

There has been an increasing drum beat, amplified by the Great Recession, about the need for change in our system of legal education. Low bar passage rates, excessive law student debt, the depressed job market for new lawyers, and the lack of value that employers place on the capabilities of recent law graduates are just some of the challenges that need to be addressed. Fingers are often pointed at some other cause for these problems, whether it be the bar examiners, the law school deans, the Supreme Courts, law students themselves or their future employers. It is both unfortunate and a lost opportunity that the ABA is not seen as responsive to these complaints.

The time has come to move from blue ribbon commissions to concrete action. We must lead in evaluating how we can do a better job of educating and testing the competency of the future lawyers of our country. Our lack of response to the constant barrage of grievances about our system of legal education is undoubtedly impacting membership and also preventing top students from entering law school. The ABA has the unique ability to bring together the disparate interests under the same tent – the bar examiners, the law school deans, the law school accreditors and others – to talk meaningfully about the best ways to educate the lawyers of the future. The Association must consider

what alternatives should look like and what modifications should be made to ensure that future lawyers entering the profession will be up to the task of providing the service and expertise their clients deserve. To do so, however, we need to consider structural changes that will allow innovative ideas to flourish. The current configuration of the Section of Legal Education and Admissions to the Bar, which includes the law school accreditation function, limits a focus on the broader issues related to legal education, primarily because the work of accreditation takes up much of the bandwidth of the Section.

While the Section's mission calls for it to be ... "a creative national force in providing leadership and services to those responsible for and those who benefit from a sound program of legal education and bar admissions," housing accreditation under the same roof makes it difficult for the Section to be a creative force. Much as the Section has an interest in -- and would like to have adequate time to devote to -- larger issues facing our legal education system, the time consuming work of accreditation inhibits its ability to lead the national dialogue. Reinforcing this point, the 2014 report of the Task Force on the Future of Legal Education noted that the present system of accreditation "reinforces a far higher level of standardization in law schools and legal education than is necessary to turn out capable lawyers." The Task Force called for more innovation in law schools and programs of legal education.<sup>1</sup> Separating out the non-accreditation activities and creating a body dedicated to innovation in legal education would address this recommendation of the Task Force.

An earlier task force, the 2009 Law School Accreditation Task Force, was charged with examining the implications of the role of the Section of Legal Education and Admissions to the Bar as the federally recognized accreditor of law schools and its relationship to the ABA. The mandate of the Task Force included a review of the structure, functioning, staffing and budgeting of the Section, including the Law School Accreditation Project. This Task Force offered up a number of options for restructuring the Section but ultimately recommended the "enhanced section" model that exists today. This model called for enhanced resources for non-accreditation Section activities, while establishing more precise internal separation between accreditation and other Section activities.

Another option proposed by the Task Force was the bifurcation of the accreditation and education functions of the Section. The model contemplated would have left the Section responsible for all non-accreditation activities related to legal education and admissions to the bar. A new accreditation entity would have operated independently from the Section, structured like a Standing Committee, with the ABA President responsible for appointment of accreditors. This model would have raised serious concerns regarding the separate and independent status of the Accreditation Project.

In 2014, the blue ribbon Task Force on the Future of Legal Education recommended broad ranging changes related to the future of legal education. One of its key recommendations called for the ABA to "establish a Center or other framework to institutionalize the process of continuous assessment and improvement in the system of legal education." It is this recommendation that prompted a renewed thinking about the current structure of the Section of Legal Education and Admissions to the Bar.

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<sup>1</sup> See Task Force on the Future of Legal Education report, [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf), at pg. 2.

## Proposal

In considering separation of the accreditation and non-accreditation activities of the Section of Legal Education and Admissions to the Bar, the 2009 Law School Accreditation Task Force contemplated a bifurcation model that would have jeopardized the separate and independent status of the Accreditation Project. A way around this would be to flip that model by keeping the accreditation function within the Section, thereby maintaining the separate and independent Section structure certified by the Department of Education, and then spin off the non-accreditation activities into a new forward-thinking Commission on the Future of Legal Education and Admissions to the Bar. The Section would become the “Section on Accreditation.”

Full-time faculty members who are members of the Section by way of the faculty group program would remain, given their more pressing interest in accreditation issues. Other members of the Section, including law students, bar examiners and adjunct professors or other non-full time legal education professionals, would be invited to remain with the Section or pay a lesser fee to become “Friends of the Commission on the Future of Legal Education and Admissions to the Bar,” similar to the “Friends of the Center for Professional Responsibility” model. In exchange, “Friends of the Commission” would receive benefits, such as reduced conference registration, the opportunity to serve on Commission subcommittees, and recognition as supporters of innovation in legal education. Faculty group members of the Section and any other Section members who choose to remain with the Section would automatically become “Friends of the Commission.” The specifics of the new membership structure would be worked out in close consultation with the ABA Membership team and the Section Council.

This proposed separation plan would more clearly delineate the separation between accreditation and non-accreditation activities, and create a permanent, forward thinking body that would focus on the future of legal education. Commission members would be presidentially appointed. Non-accreditation activities including conferences, programs, publications and non-accreditation-focused Section committees would move to the new Commission. The Deans and Assistant Deans Workshops, which are attuned more toward accreditation issues, would remain with the Section.

The new Commission on the Future of Legal Education and Admissions to the Bar would have 10 members, including a chair, and would have three-year staggered terms. The Commission would have up to two honorary chairs and would be comprised of law school deans or former deans, other academics, bar examiners, employers, a representative from a state Supreme Court, a law student and other innovative legal education thinkers. The Commission chair would have appointing authority for the non-accreditation-related committees being carried over from the Section. Additional Commission subcommittees would be formed to address issues such as bar exams; length of law school; apprenticeships; technology; and alternative teaching methods. The Council and accreditation-related committees would remain with the Section on Accreditation.

This restructuring plan would reaffirm the ABA’s commitment to improving the accreditation function and meeting the requirements of the DOE while allowing the ABA to be more responsive in addressing necessary improvements to our system of legal education. Moving forward, we would work closely with the Section leadership, staff, General Counsel’s Office and, as necessary, the Department of Education, to ensure that the proposed restructuring does not jeopardize the Council’s current role in accreditation.

### Budgeting and Staffing

The new structure would institutionalize the process of continuous assessment and improvement in our system of legal education while likely requiring no additional funding since it would essentially involve a shifting of resources. The current Section Director would become the Staff Director for the Commission and we would work with the Section on the appropriate division of staff between the Commission and the renamed Section. The Chair of the new Commission would serve as the visionary and substantive expert and also undertake the reporting function. The Managing Director of the Council of the Section of Legal Education and Admissions to the Bar would become Managing Director of the renamed “Section on Accreditation.”

### Timeline

If approved by the Board of Governors, the separation of the accreditation and non-accreditation activities of the Section of Legal Education and Admissions to the Bar would begin immediately and appointments to the new Commission on the Future of Legal Education and Admissions to the Bar would take place following the 2017 Midyear Meeting. The Commission would have one stand-alone meeting in the spring and additional conference calls between February and August to develop a plan of action for the 2017-2018 bar year. Funding for the stand-alone spring meeting would come out of my initiative planning budget.

A request to change the name of the “Section of Legal Education and Admissions to the Bar” to the “Section on Accreditation” would come before the House of Delegates during the 2017 Annual Meeting. The shifting of non-accreditation activity funds from the Section to the new Commission would take place at the start of the new fiscal year on September 1, 2017.

Thank you for your consideration of this request.