



# New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>

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## COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR

### HON. KRISTIN BOOTH GLEN

Co-Chair  
Surrogate's Court – New York County  
31 Chambers Street  
New York, NY 10007  
646/386-5100  
FAX 212/374-2567  
kbglen@courts.state.ny.us

### EILEEN R. KAUFMAN

Co-Chair  
Touro College School of Law  
225 Eastview Drive  
Central Islip, NY 11722  
631/761-7125  
FAX 631/421-0271  
eileenk@tourolaw.edu

March 28, 2011

Donald J. Polden, Dean  
Santa Clara Law School  
Santa Clara University  
500 El Camino Real  
Santa Clara, CA 95053

Re: Comprehensive Review of the *ABA Standards and Rules of Procedure for the Approval of Law School*

Dear Dean Polden:

We write on behalf of the New York State Bar Association Committee on Legal Education & Admission to the Bar. The New York State Bar Association has over 77,000 members and is vitally concerned with the future of our profession and our responsibility to promote a competent, diverse and responsible bar.

Our Committee has followed the work of the Standards Review Committee with great interest as we have long focused on improving legal education. The New York State Bar Association is strongly committed to encouraging the best and most forward thinking practices in law schools, as in all parts of our profession. We appreciate this opportunity to comment on your important effort.

At our February 17, 2011 Committee meeting, we discussed several aspects of the current proposals you are considering and adopted these positions:

1. We applaud the general move toward a curriculum more focused on intentional selection of learning goals by faculty, measurement of the achievement of those goals through focus on student learning outcomes and greater emphasis on experiential education and a multidimensional approach to teaching and learning. Effective and ethical representation of clients grows ever more challenging and new approaches are needed. While the Standards Review Committee is headed in the right direction in this area, these first steps are too tentative. We urge you to strengthen the commitments to outcomes and broadening the skills taught in law schools. Most importantly, as representatives of more than 77,000 practicing lawyers acutely aware of the demands upon law graduates, we urge that all law students need more than a single course in professional skills. The Standard Review Committee's work is moving in a promising direction in restructuring law school curriculum but it must be bolder if we are to meet the challenges our profession now confronts.

2. As a private organization charged with significant public responsibilities, we are also very sensitive to the important role independent professional organizations play in the interlocking web of public and private authority that is so characteristic of our great nation. From that perspective, we must express grave reservations with the current approach the Standards Review Committee has taken to ensuring academic freedom for law school faculty. Lawyers have long played a unique role in America and the New York Bar is particularly proud of our many members who have taken unpopular stands, including many law faculty. Too many experiences illustrate all too plainly that policies and kind words do not ensure freedom; nor do post hoc reviews in which unpopular individuals must prove invidious motives. We are all too aware of how procedures that sound promising on paper come to naught under the pressure to reach a desired result. We urge that academic freedom for all faculty, including Deans, librarians and others, remain securely tied to tenure and other reasonably similar systems of security of employment and other institutional rights. Only a system of ex ante guarantees can create the rich culture of free inquiry and robust debate that characterizes American legal education and the American bar. This is at the core of the responsibilities the American Bar Association owes the profession and whatever may be said of other professions and systems of professional school regulation, this is an essential element of the regulation of American legal education.
3. We have also considered the efforts of the Standards Review Committee to articulate faculty governance rights more fully. We applaud that effort and agree that faculty governance is a central structural feature deserving of careful consideration. Faculty independence and faculty control of academic decision making are vital. The membership of the New York State Bar Association is vitally concerned with protecting the independence of professional judgment. Our Committee understands that the Standards Review Committee is still actively working on this complex issue and urge that all faculty be guaranteed full participation in the decisions regarding a law school's mission, academic program and structure.

We appreciate this opportunity to comment upon this important and complex project and look forward to offering additional input as it moves forward.

Sincerely,



Hon. Kristin Booth Glen



Eileen R. Kaufman  
Committee Co-Chairs