

AMERICAN BAR ASSOCIATION**Council for Racial and Ethnic
Diversity in the Educational Pipeline**
321 North Clark Street
Chicago, IL 60654
(312) 988-5137
FAX: (312) 988-5647
[http://new.abanet.org/centers/
diversity/Pages/Pipeline.aspx](http://new.abanet.org/centers/diversity/Pages/Pipeline.aspx)**CHAIR**E. Christopher Johnson, Jr.
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Chicago, IL

June 26, 2011

Dean Donald Polden
Chair, ABA Standards Review Committee
American Bar Association
321 N. Clark Street, 21st Floor
Chicago, IL 60654

Re: Comments re Chapter 3. Interpretation 301-6

Dear Dean Polden:

The ABA Council on Racial and Ethnic Diversity in the Education Pipeline has reviewed the proposed revisions to the bar passage rates in Interpretation 301-6. In offering the following recommendations, we have considered the very thoughtful memorandum you authored at the commencement of our comprehensive review of the Standards entitled *Statement of Principles of Accreditation and Fundamental Goals of a Sound Program of Legal Education*, dated May 6, 2009. Among the constituent aspects of the Fundamental Goals of a Sound Program of Legal Education (Fundamental Goals) is the following:

Because legal education serves a profession that is committed to inclusiveness and diversity, it must create and advance opportunities for groups underrepresented in the legal profession.

With this as the basis for our review of the proposed changes to 301-6, we offer the following comments:

- (1) **That the Standards Review Committee retain the current bar pass rates without the proposed revisions:** Increasing bar pass rates in the Standards would have a negative impact on the admission of minority students by focusing even more attention on higher LSAT scores, since law schools admittedly rely on the LSAT as a benchmark for likely success on the bar. There does not appear to be a sound rationale for the proposed increase in bar pass rates and the potential negative impact of increasing the bar pass rates on law school diversity would be significant. The Pipeline Council is well aware that schools are already shutting out significant numbers of minority students. The law school admissions process over the past ten years has resulted in 60% of all African American applicants and 45% of all Hispanic applicants being totally shut-out from every ABA-approved law school they applied to, compared to just 31% of white applicants. Additionally, Asian American applicants, whose LSAT scores are statistically indistinguishable from their white counterparts, still had a noticeably higher shut-out rate of 37% during this same period. (See Johnson and Nussbaumer, *The Door to Law School*, forthcoming in the University of Massachusetts-Dartmouth Law Review.)

Without the SRC offering any documented rationale supporting these changes which I have requested since our last meeting, increasing bar passage requirements at this time would only serve to exacerbate an already critical situation. Consequently, these changes would be inconsistent with the constituent aspect of diversity recognized as part of the Fundamental Goals in that not only do they potentially have a detrimental impact on diversity, but more importantly, these changes do not appear, in the language of the Fundamental Goals to "...create and advance opportunities for groups underrepresented in the legal profession."

- (2) **That the SRC consider bar passage rates as one of a series of metrics used to measure a school's compliance with outcomes measures instead of a stand-alone measure for accreditation:** The current wording and format of Interpretation 301-6 sets bar passage separate and apart from the other skills, knowledge and values critical for the effective practice of law. The Council agrees with the position taken by the Society of American Law Teachers (SALT) that bar passage should not be considered as a separate measure, but as part of the ABA's overall assessment of a law school's success in achieving comprehensive learning outcomes, consistent with the Committee's proposed revisions to Standard 302 (Learning Outcomes). Including bar passage as one of the key factors to a well-rounded legal education is consistent with the language in Standard 301 (a), which states that "*a law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession*". An over-emphasis on bar passage negates the many other factors necessary to prepare students for the "*effective and responsible participation in the legal profession*".

The Pipeline Council welcomes the opportunity to provide input to the Standards Review Committee and its ongoing process for revisions to the Accreditation Standards. We look forward to ongoing dialogue on these critical issues to ensure that the pipeline to law school for minority students is opened wider thereby facilitating the attainment of diversity recognized as part of the Fundamental Goals.

Sincerely,



E. Christopher Johnson, Jr.

CC:

Catherine Carpenter, Chair, Standards Review Committee member

Fred Alvarez, Chair, ABA Commission on Racial and Ethnic Diversity in the Profession

Hulett Askew, ABA Consultant on Legal Education

I.S. Leevy Johnson, Chair, ABA Center on Racial and Ethnic Diversity

Charlotte Stretch, Asst. Consultant, ABA Section of Legal Education and Admissions to the Bar

Cie Armstead, Director, ABA Center for Racial and Ethnic Diversity

Robin Rone, Director, ABA Council on Racial and Ethnic Diversity in the Education Pipeline