To: Gregory G. Murphy, Council Chair  
Maureen O’Rourke, Council Chair-Elect  
Barry A. Currier, Managing Director,  
ABA Section of Legal Education and Admissions to the Bar  

From: Jayne Reardon, Chair  
ABA Standing Committee on Professionalism  

cc: ABA Standing Committee on Professionalism  
Theresa Gronkiewicz, Professionalism Counsel  
Becky Stretch, Assistant Consultant, Legal Education  
JR Clark, Manager, Program Administration, Legal Education  

Date: July 7, 2017  
Re: Standards Review Committee 2017-2018 Agenda  

As Chair of the ABA Standing Committee on Professionalism (Professionalism Committee), I am writing in response to your invitation requesting suggestions for the Standards Review Committee’s consideration for its 2017-2018 agenda regarding the ABA Standards and Rules of Procedure for Approval of Law Schools (the Standards). We thank you for the opportunity to make these recommendations.  

The Professionalism Committee carefully reviewed the current Standards consistent with its charge to “promote principles of professionalism, including integrity, competence, fairness, independence, courage, respect for the legal system and a devotion to public service” within the entire legal community, including law schools. With that objective in mind, we respectfully request that the Council of the Section of Legal Education and Admissions to the Bar arrange consideration of, by the SRC, the two proposals set forth below regarding Standard 303.  

**Proposed Amendments to Standard 303. CURRICULUM**  

1. **Standard 303(a)(3)(i)**  

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following…  

(3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:
(i) integrate doctrine, theory, skills, and legal ethics, and professional identity formation [professionalism], and engage students in performance of one or more of the professional skills identified in Standard 302;

The Professionalism Committee suggests that the SRC consider amending Standard 303(a)(3)(i) to add the phrase “professional identity formation” to the series of experiential coursework topics mandated in that Standard as stated in the above redline. Although the SRC declined to consider a similar request submitted by the Professional Committee in its letter dated September 30, 2016, the Committee urges the SRC to reconsider this proposal. To address the SRC’s prior concern that the phrase “professional identity formation” may be ambiguous, we propose the term “professionalism” be added to Standard 303(a)(3)(i), as an alternative.

2. **Standard 303(b)**

(a) A law school shall provide substantial opportunities to students for:

(1) law clinics or field placement(s); and

(2) student participation in pro bono legal services, including law-related public service activities; and

(3) developing their professionalism, including integrating their personal values with their ethical responsibilities.

The Professionalism Committee recommends that a third component be added to Standard 303, as stated above. We strongly believe that the principles of professionalism should be integrated not only throughout the law school curricula, but also in students’ extra-curricular activities, to ensure practice-ready lawyers upon admission to the bar. The Committee believes that ethics courses centered on teaching and learning the rules of professional conduct do not sufficiently prepare law students to confront and resolve the many professional dilemmas they will encounter in the practice of law with clients, opposing counsel, the courts and the public. Experiential learning as set forth in Standard 303(a) and (b) is the perfect setting to allow law students to develop not only their practical legal skills but also their professionalism, including the exercise of good judgment.¹

Ethics and professionalism are distinct subjects for law students to learn in law school.² Indeed, Standard 302(c) recognizes this distinction by mandating law schools to establish learning outcomes that include competency in the “exercise of proper professional and ethical responsibilities to clients and the legal system” (emphasis added). We urge the SRC to consider

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¹ See Martin J. Katz, *Teaching Professional Identity in Law School*, 42 The Colorado Lawyer 45 (Oct. 2013) (“Students learn professionalism not just through curriculum, but through rules imposed and behaviors required, such as punctuality, courtesy, respect and decorum.”).

² See, e.g., A NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM (adopted January 21, 1999 by the Conference of Chief Justices) (“Professionalism is a much broader concept than legal ethics… professionalism includes not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds minimum ethical requirements.”).
that professionalism should be similarly identified and distinguished in Standard 303(a) and (b), to ensure the proper development of law students’ professional identity as lawyers.

Many scholarly writings and extensive empirical research demonstrate that the integration of personal and professional values into a well-formed and thoroughly internalized identity is critical to a lawyer’s exercise of professional judgment and professional responsibility. For example, in outlining the third apprenticeship, “professional identity” as a necessary and important component of a legal education, the Carnegie Report concluded that legal education “needs to combine the elements of legal professionalism—conceptual knowledge, skill and moral discernment—into the capacity for judgment guided by a sense of professional responsibility.” Similarly, the National Organization of Bar Counsel (NOBC) Law School Professionalism Initiative Report, in addressing the Carnegie’s third apprenticeship – the inculcation and refinement of professional values, determined that “all law schools should develop professionalism plans reflecting their specific criteria and measurements for instilling professional values in their students.”

If the Council believes that an interpretation would be helpful to explain what the addition of “professionalism” in Standard 303 is meant to accomplish, the Professionalism Committee suggests the following proposed interpretation:

**Proposed Interpretation 303-5**

Law students are guided in the development of their future professional identity as lawyers by assuming the role of a lawyer in actual and/or simulated performances. These performances should be designed to assist students to integrate their personal values and judgment with the professional rules of conduct and the practice of law, and conform their conduct not only to the ethical rules but also to the personal values they embrace. Through feedback, reflection, and self-evaluation, students should learn how a lawyer’s duties as a representative of clients, as an officer of the legal system, and as a citizen having special responsibility for the quality of justice, take priority over the lawyer’s self-interest.

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This complaint concerns an issue with the ABA’s 509(b)(3) Conditional Scholarships
Disclosures. I. Disclosures to ABA 509(b)(3) are insufficient pursuant to language in 509(a) and
the accompanying “Managing Director’s Guidance Memo of Standard 509”. The data provided
in the ABA’s 509 Information Report is insufficient because it is incomplete and misleading.
Section 509(a) includes a standard stating information provided by law schools “shall be
complete, accurate, and not misleading to a reasonable law student or applicant.” The Managing
Director’s Memo elaborates on the standard saying schools frequently “publish supplementary,
complementary, and/or explanatory information about their programs, including additional
information about the mandated disclosures.” The ABA requires schools to provide the bare
minimum statistics and data in it’s reports, allowing applicants access to only the number of
students entering with scholarships and the number of students who have scholarships reduced or
eliminated. The schools will be able to say their data is sufficient because it would conform to
the old standard that “in the case of renewable or multi-year scholarships… [schools will] inform
candidates, at the time the offer is made, of the criteria he or she must satisfy to maintain or
renew eligibility for the institutional aid.” However, without disclosing more information schools
cannot meet the new standard of, complete, accurate, and not misleading to a reasonable
applicant. With the data provided applicants are unable to accurately compare awards between
schools, understand their chances of keeping their award, and are continually misled by the “bait-
and-switch” conditional scholarship game. For reasonable applicants to make a sound decisions
they will need more information. The data should include: 1) Separate line items in the 509
Information Report for the number of scholarships eliminated and number of scholarships
reduced 2) The bottom 50% GPA for each year-- especially if it is above the 2.9 median for 1st
year classes 3) The number of students who lost their scholarship based on their scholarship
amount (ie: less than ½ tuition, ½ tuition, full tuition, more than full tuition, etc) 4) Average
number of scholarships and average scholarship award amount for students in each of the two
sections Schools are following the set procedures based on memos sent from ABA. However, I
do not believe the ABA's memos guidelines meet their own stated standard of, “complete,
accurate, and not misleading to a reasonable law student or applicant”. The procedures for what
meets the standard should be changed to include more data.
Dear Barry, Maureen, and JR:

Thank you for your memo regarding standards issues.

I do have an issue to raise, though this may not be a standards issue.

Here is my issue:

When law schools report to the ABA the diversity of their students, they are invited to report as diverse only students who are US citizens. I propose that law schools, when reporting on the diversity of their students, include both citizens and non-citizens.

The ABA appropriately cares about the diversity of every law school’s student population. But in assessing the robustness of a law school’s student diversity, why exclude certain students solely on the basis that they are not US citizens?

Perhaps there was, at one point in time, a good reason draw a line based on citizenship when assessing student diversity. But surely that day has passed.

May I suggest that the ABA, henceforth, drop the distinction between citizens and non-citizens when asking for information from law schools about student diversity. Doing so will provide a more accurate picture of a law school’s student diversity.

If you are not the proper body to whom I should submit this request, could you point me in the right direction?

Dave Douglas
Hi JR,

I would like to officially submit the following as an item for the agenda. We need to look at 601(a)(3). When it was written, the Standard about Strategic Planning (the old 203) still existed and the intent was to have written reports from the library to fold into that process. Without 203, it makes little sense to require a written report when no one else in the Law School is doing required to provide one. I understand that library directors have been confused about this section and we need to come up with a different statement about evaluation.

Thanks!
Scott

Scott B. Pagel  
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Proposed Change in Managing Director’s Guidance Memo
First-Time Bar Passage related to transfer of UBE scores

We request the Council consider a revision to its policy regarding the transfer of UBE scores.

The National Conference of Bar Examiners has set out the purpose of the Uniform Bar Examination:

The UBE is designed to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law. It results in a portable score that can be used to apply for admission in other UBE jurisdictions.1

Each jurisdiction sets its own cut-score and has its own requirements and character and fitness requirements to become licensed. Taking the UBE results in a score. That score is then accepted or not accepted by a jurisdiction. On its own, the score is neither a pass nor a fail.

The problem arises when an applicant takes the UBE in a jurisdiction that has a high cut-score, but the applicant also applies to another state with a lower cut-score. If the applicant had taken the exam in the lower cut-score state, they are labeled a “first-time pass.” If the applicant takes the exam in the higher cut-score state, they are labeled a “first-time fail.” The exact same applicant scoring exactly the same on an examination, and getting precisely the same questions right and wrong, is labeled differently as either a success or a failure depending on the geography. This differs remarkably from the scenario where an applicant takes a state-specific exam and fails it and then takes a different state-specific exam and passes. That applicant truly is a first time fail. The UBE taker is not. They are a first-time pass. They are licensed and need never take another bar examination.

Prior to the UBE, it made sense to count the first try as a fail and the second try a pass as the applicant actually took another bar examination. But it does not make sense when an applicant is taking only one bar examination—the exact same examination. They will take only one bar examination. How their performance is interpreted is the issue.

This proposal does not suggest that a UBE applicant “passes” based on the lowest acceptable score nation-wide. That applicant may never desire to practice in that state. But for an applicant who actually does become licensed in a jurisdiction as a result of her or his UBE score, counting that applicant as a first-time pass makes sense. It requires stepping out of the box that passage is tied to the locus of the exam rather than admission to practice as a result of the exam.

For example, an applicant lives in Kansas City, Missouri. They desire to practice in Kansas City and seek licensure in both Kansas and Missouri. The bar taker applies for licensure in both states at the same time. Kansas has a higher cut-score than Missouri. Assume a student takes Kansas first and attains a UBE score of 265. The Kansas cut-score is 266. The Missouri cut-score is 260. The score is a fail in Kansas and a pass in Missouri because the student happens to take the exam in Topeka instead of Jefferson City. They never take a second bar examination. Yet under the current guidance memo, they will always count as a first-time fail, despite passing the first time they sit for the exam. Where they are

1 http://www.ncbex.org/exams/ube/ (emphasis added).
physically taking the UBE exam should not be the sole reason they are labeled a “fail” or “pass” now that these states are giving the exact same exam.

We suggest that the label “first-time pass” should be based on taking the exam for the first time and not the jurisdiction where the applicant sat for the exam. The rationale behind labeling a taker as a fail in one jurisdiction and not the second jurisdiction is based on taking two state-specific exams. The UBE is one standardized exam. Whether they are a first-time pass or first-time fail should be based on when they take the exam, not where they sit for the exam.

Proposed revision

A graduate who takes the bar examination in a UBE jurisdiction is counted as a first-time passing student if he or she applies to transfer a UBE score to a state that accepts the graduate’s score within six months of receiving that graduate’s score, even if that graduate’s score does not reach the cut-score of the state in which the graduate sat for the exam.

Thank you for your consideration.

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