August 8, 2017

By email c/o Barry Currier (barry.currier@americanbar.org)

Council of the Section of Legal Education
and Admissions to the Bar
American Bar Association

Dear Chairman Murphy and Members of the Council:

I am writing with respect to the Council’s vote at its June 2, 2017 meeting to approve a revised version of the annual Employment Summary Report (ESR). I urge the Council to suspend or rescind this approval; to restore the status quo and implement for the Class of 2017 the version of the ESR in effect for the Class of 2016; and to refer the question of substantive changes to the ESR or the annual Employment Questionnaire to the Standards Review Committee for its comment after a process that includes substantial opportunity for debate and input among ABA-accredited law schools and other affected constituencies.

I believe the measures outlined above are necessary for at least three reasons. **First**, the abbreviated process by which the revised ESR was approved raises serious concerns regarding notice, transparency, equity among ABA-accredited law schools, and the deliberation due a substantial change in policy. When the current version of the ESR was adopted in 2015, the decision was made only after an extensive process including public notice, opportunity to comment, and multiple hearings. This was appropriate given the importance and complexity of the underlying issues. In contrast, the recent changes appear to have been made without substantial notice or opportunity to comment, after discussion at a single Council meeting, based upon a memorandum dated three days prior to that meeting. As the volume and intensity of discussion among law school deans, career services professionals, and others since the June 2nd vote demonstrates, the issues have not become less important or less complex since the prior changes were approved two years ago.

**Second**, the wholesale changes effected by the June 2nd vote are substantively problematic. The change that has received the most attention has been the elimination of a separate reporting category for law school-funded positions and the inclusion of those positions (provided they meet certain criteria) within one of the regular employment categories. I am sympathetic to the argument that classifying legitimate public-interest fellowships, “bridge to practice” programs, and similar initiatives simply as “school-funded positions” undervalues their worth and creates a disincentive to establish these often worthy programs. The primary culprit here, however, is not the prior version of the ESR form, which simply collected data on different types of employment, but rather *U.S. News* and similar outlets, which choose how to aggregate and weight these data in calculating “employment rates.” If the Council wants to emphasize the
value of public-interest fellowships and similar initiatives, it could carve them out into a separate reporting category that is distinct from other school-funded employment and make the case to *U.S. News* and other outlets that these positions should be included in the overall employment rates they report. To subsume school-funded positions into a single category along with market-driven employment, however, is at best to trade one form of imprecision for another.

I also want to note several other troubling changes resulting from the June 2nd vote that have received less attention in the ensuing discussion:

- Perhaps most troublingly, the revised ESR eliminates the column reporting part-time employment, and thus apparently eliminates part-time employment as a category that “counts” for ABA reporting purposes. This change seems entirely at odds with the emerging realities of the legal services market, in which increasing numbers of law graduates are practicing law or taking JD-advantage jobs on a part-time basis, sometimes by necessity and sometimes by choice. (The preliminary figures for my law school, The University of Akron School of Law, show 13 graduates from the class of 2016 in the ‘part time, short term’ category. This is more than 10% of our total graduating class that year. Some of these students have voluntarily chosen to work part-time, often for family reasons. I suspect we are not an outlier in this respect.) Whatever one thinks about the relative value of part-time positions (and the answer surely depends on the circumstances of each individual and each job), we should not presume that they are always worth so little that it is a waste of time to report them.

- The multiple categories of non-bar-passage-required, non-JD-advantage positions listed on the previous version of the ESR have been consolidated into a single “employed-other” category. In an era in which law schools are striving to illustrate that legal education can have value beyond traditional law practice jobs, it seems counterproductive to group careers for which legal training might be beneficial (even though they do not meet the technical definition of “JD-advantage”) as if they are no different from, say, a job as a barista at Starbucks. If anything, we ought to be recognizing additional categories of employment for which law school is relevant, not eliminating existing categories.

- The revised ESR consolidates all categories of “unemployed” status into a single “unemployed or status unknown” category. This change eliminates relevant information and unnecessarily abets the questionable practice of *U.S. News* and others of counting all “status unknown” graduates as “unemployed.” It also obscures the meaningful differences between graduates who are not seeking employment and graduates who are, and between graduates who are truly unemployed and those who are temporarily unemployed only because they will start their employment after the reporting deadline. These distinctions are potentially material to prospective law students in evaluating a law school’s placement record.

*Third*, the revisions to the ESR make for very poor public relations at a time when legal education should be focused on restoring its tarnished image. The ESR changes adopted in 2015
were a welcome step forward in the effort to rebuild public trust, and I fear the media and the public will, with some justification, interpret these changes as a step in the opposite direction.

There is a theme running through each of the points outlined above: Most of the changes effected on June 2nd will tend to benefit, or at least not to burden, law schools in the “elite” category – roughly the first tier of *U.S. News*. Generally speaking, these are the law schools best able to afford post-graduate public-interest fellowships and similar programs, and thus the schools that will benefit from including those positions as regular “employment” in ABA reporting. And generally speaking, graduates of elite law schools are more likely than graduates of second-, third-, and fourth-tier schools to take traditional full-time, long-term bar-passage-required or JD-advantage jobs, meaning that elite schools will be largely unaffected (and may be comparatively benefited) if only those jobs are reported. I have nothing against elite law schools looking after their own interests, and I certainly don’t begrudge them their commitments to supporting public-interest practice. But I do not think ABA policy should be driven, or be perceived as driven, primarily by the interests of elite schools – certainly not without due opportunity for consideration and debate in which representatives of all law schools, and of the many other constituencies interested in legal education, are able to play a meaningful role.

Respectfully,

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cc: Barry Currier, Executive Director, ABA Section on Legal Education and Admission to the Bar