

January 5, 2018

Maureen A. O'Rourke  
Council Chair, ABA Council of the Section of Legal Education and Admissions to the Bar  
American Bar Association  
321 North Clark Street  
Chicago, IL 60654-7598

Dear Dean O'Rourke:

We understand that the Council of the American Bar Association's Section of Legal Education and Admissions to the Bar will be meeting in February to discuss the manner in which law schools are required to report employment statistics for their graduating classes. We are concerned about how full-time, long-term, bar passage required fellowships, funded by law schools, are to be classified. We write because we believe that they should be reported under the category of "Employed -- Bar Passage Required" in the ABA employment summary reports.

We have been told that, in June 2017, the Council decided to report these positions under that category -- thereby putting fellowships supported by law schools on equal footing with similar fellowships that have a variety of funding sources. However, after some procedural concerns about the decision-making process were raised, the Council has decided to continue deliberations. In the meantime, the law-school funded fellowships are excluded from the "Employed -- Bar Passage Required" category and listed separately. News and ranking organizations use the Council's listings to rate schools. By separating out fellowships for different categorization, these other entities may not give these kinds of fellowships appropriate credit.

As the ABA knows, funding for entry-level positions in public interest legal organizations is scarce nationwide. At the same time, legal services agencies and nonprofit legal organizations understandably reserve their few job openings for those with work experience. As a consequence, young lawyers face serious challenges in securing positions, even as these organizations face a desperate need for their time and talents.

The development of law school-based public interest fellowships has helped to address this gap. By creating year-long public interest fellowships for which bar passage is generally required, law schools are stepping up to the challenges posed by our profession's commitment to equal justice for all and to the realities of limited funds for public interest lawyering. Former clerks of some of us began their public interest careers through these fellowships, which have been critical to their ability to serve underrepresented communities.

The ABA's current classification decision, however, creates disincentives by treating law schools' innovative and important year-long fellowships differently from other year-long opportunities, such as judicial clerkships and fellowships funded by national organizations. Given the impact of employment classifications and outcomes on school rankings, we are concerned that, if the current policy stays in place, some law schools may decrease support for such fellowships. The ABA should not be the source of such incentives but should instead encourage the creation of new fellowships.

Serving the public interest is rightly considered one of the highest ideals of the Bar; indeed, we have dedicated our careers to it. A policy that puts at risk recognition of talented and passionate young lawyers seeking to enhance access to justice and of the efforts of law schools in helping them could undercut this admirable work. Those most hurt are individuals who could have been helped by lawyers. We also worry that distinguishing year-long public service jobs supported by law schools from other such jobs and clerkships could give the public a negative impression about the organizations that evaluate legal education.

Given our commitment to the administration of justice, our keen awareness that many individuals require assistance to access the justice system, and our firsthand knowledge of the high numbers of unrepresented litigants who appear in court, we urge you to implement your previous decision to report full-time, long-term, bar passage required, school-funded fellowships as “Employed -- Bar Passage Required.” Making this change will ensure that these important public interest fellowships receive the recognition that they deserve and continue to provide the opportunity for young lawyers to serve communities in need.

Thank you for considering our concerns.

Sincerely,

Hon. Marsha S. Berzon, U.S. Court of Appeals for the Ninth Circuit  
Hon. Victor A. Bolden, U.S. District Court for the District of Connecticut  
Hon. Guido Calabresi, U.S. Court of Appeals for the Second Circuit  
Hon. Robert N. Chatigny, U.S. District Court for the District of Connecticut  
Hon. Warren W. Eginton, U.S. District Court for the District of Connecticut  
Hon. Keith P. Ellison, U.S. District Court for the Southern District of Texas  
Hon. Mary E. Fairhurst, Chief Justice, Washington Supreme Court  
Hon. Holly B. Fitzsimmons, U.S. District Court for the District of Connecticut (retired)  
Hon. Janet C. Hall, Chief Judge, U.S. District Court for the District of Connecticut  
Hon. Monica M. Márquez, Associate Justice, Colorado Supreme Court  
Hon. Sheryl Gordon McCloud, Associate Justice, Washington Supreme Court  
Hon. Theodore A. McKee, U.S. Court of Appeals for the Third Circuit  
Hon. Jeffrey A. Meyer, U.S. District Court for the District of Connecticut  
Hon. Richard A. Paez, U.S. Court of Appeals for the Ninth Circuit  
Hon. Stephen Reinhardt, U.S. Court of Appeals for the Ninth Circuit  
Hon. Michael P. Shea, U.S. District Court for the District of Connecticut  
Hon. Alvin W. Thompson, U.S. District Court for the District of Connecticut  
Hon. Stefan R. Underhill, U.S. District Court for the District of Connecticut

CC: Pamela Lysaght  
Chair, Standards Review Committee