

## MEMORANDUM

TO: The Hon. Rebecca White Berch, Chair  
Council of the Section of Legal Education and Admissions to the Bar

FROM: Scott B. Pagel, Chair  
Standards Review Committee

DATE: February 22, 2016

Re: Report on February 12-13, 2016, SRC Meeting

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I am writing to report on the meeting of the Standards Review Committee held on February 12-13, 2016. In addition to a review of the items sent out for Notice and Comment, the outcome of which is reported in a separate memorandum, the Committee voted to recommend to the Council proposals for changes to the Standards and Rules. In some instances, the Committee elected to provide the Council with alternative proposals to consider.

### **Recommendations for Change**

The Standards Review Committee recommends that the Council adopt the following changes to the Standards and Rules. Detailed explanations for each change are attached.

1. Interpretation 303-1 – It is recommended that the Interpretation be modified to make clear the instances in which writing courses may count either as meeting the upper-class writing requirement or as simulation courses.
2. Standard 311 – It is recommended that the Standard be modified to make clear when matriculation takes place.
3. Standard 316 – It is recommended that the Standard be modified to change the method for calculating the bar passage rate required for accreditation purposes.
4. Standard 501 – The Committee offers the Council two versions of the Standard to consider. One makes minor changes, while the other provides an additional means for enforcing the Standard.
5. Standard 503 – The Committee offers the Council two versions of the Standard to consider. One simply moves part of the Interpretation into the Standard, while the other recommends eliminating the Standard entirely

### **Recommendation that No Change be Made**

The Standards Review Committee recommends that no change be made to Standard 509. Two proposals were considered, but the Committee believes that the Council can achieve the desired results without altering the Standard. The proposals considered by the Committee are attached for the information of the Council.

### **Recommendation to Create Task Force**

At its December meeting, the Council agreed to place on the agenda of the Committee the issue of whether or not to adopt standards for degrees other than the J.D. The Committee discussed the matter at its February meeting and determined that the scope of the proposal was, indeed, very large and beyond the capability of the Committee without extensive discussion involving many constituencies. It is the recommendation of the Committee that the Council establish a task force to consider the many aspects of the question [which degrees should require approval, how extensive should the standards be (for example, should they govern distance education as with J.D. degrees), how to proceed (should standards be drafted before approaching the DOE), how to deal with existing programs, etc.].

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

**Interpretation 303-1**

The staff of the Section requested that this item be placed on the Committee's agenda in response to questions that had been received from law schools seeking advice as to whether upper division writing courses could be treated as simulation courses for the purpose of meeting the experiential education requirement in Standard 303(a)(3). The proposal makes clear that, so long as the requirements are met, an upper division writing course can be used to meet the requirement of Standard 303(a)(2) for a writing experience after the first year, or Standard 303(a)(3) as an experiential course. The proposal also makes it clear that such a course can be used to satisfy only one of the requirements of the Standard.

Redlined to Existing Standard:

***Interpretation 303-1***

*A law school may not permit a student to use a course to satisfy more than one requirement under this Standard. For example, a course that includes a writing experience used to satisfy the upper-class writing requirement [see 303(a)(2)] cannot be counted as one of the experiential courses required in Standard 303(a)(3). This does not preclude a law school from offering a course that may count either as an upper-class writing requirement [see 303(a)(2)] or as a simulation course [see 303(a)(3) and 304(a)] provided the course meets all of the requirements of both types of courses and the law school permits a student to use the course to satisfy only one requirement under this Standard.*

Clean copy:

***Interpretation 303-1***

*A law school may not permit a student to use a course to satisfy more than one requirement under this Standard. For example, a course that includes a writing experience used to satisfy the upper-class writing requirement [see 303(a)(2)] cannot be counted as one of the experiential courses required in Standard 303(a)(3). This does not preclude a law school from offering a course that may count either as an upper-class writing requirement [see 303(a)(2)] or as a simulation course [see 303(a)(3) and 304(a)] provided the course meets all of the requirements of both types of courses and the law school permits a student to use the course to satisfy only one requirement under this Standard.*

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**Standard 311(d)**

The staff of the Section requested that this item be placed on the Committee's agenda in response to questions received from law schools asking for clarification of the interaction between Standard 311(d), which states that credit can be given only for course work taken after a student has matriculated, and Standard 505, which states the circumstances under which credit can be granted to J.D. students for prior law studies. This was of particular concern for foreign LL.M. students seeking to become J.D. student. The proposal clarifies the matter by confirming that matriculation refers to a student's entry into the J.D. program and that exceptions to the granting of credit are permitted under Standard 505.

Redlined to Existing Standard:

**Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR**

- (d) Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school's J.D. program of study, except for credit that may be granted pursuant to Standard 505. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

Clean copy:

**Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR**

- (d) Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school's J.D. program of study, except for credit that may be granted pursuant to Standard 505. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

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**Standard 316**

Standard 316 was added to the Committee's agenda by the Council during its December 2015, meeting. The proposal moves to a simple statement of the bar passage rate required of a law school for the purposes of accreditation. It looks to an ultimate pass rate after a period of two years following the graduation of a class. While first-time pass rate is important for consumers and is (and should continue to be) disclosed under Standard 509, the Committee believes that, for the purposes of accreditation, an ultimate pass rate is the more appropriate measure of whether a school is operating a sound program of legal education, and it is not subject to the idiosyncrasies that can be found with a reliance on the pass rate of first-time takers.

It should be understood that the proposal makes no attempt to place a limit on the number of times that an individual may sit for a bar exam. That is a matter for each state to determine as part of its lawyer licensing process. The Standard speaks only to the ultimate bar passage rate expected of a law school for accreditation purposes.

The features of the proposal are:

1. The goal of an ultimate passage rate of 75% remains unchanged, at least for the present time. The Committee believes that further work needs to be done to gather and analyze data and to gather the views of various constituencies before it would be appropriate to recommend a change to what the current Standard requires in this regard.
2. The period of time within which a school must show that it has achieved a 75% passage rate is reduced from 5 calendar years to 2 years from the date of graduation, and the option of a school to show that the classes in 3 out of 5 of those years achieved a 75% passage rate is eliminated. Studies have shown that the number of graduates taking the MBE one or more times drops dramatically after the second attempt, with only about 5% taking it more than twice and almost negligible after four takings. An article documenting some of these findings is attached for the information of the Council. The Committee therefore believes that two years is an appropriate period of time within which to require that 75% of graduates of a law school taking a bar exam should have passed it for purposes of accreditation. The Committee also is sensitive to the situation of law schools that have as a goal the enabling of underrepresented groups to practice law. The studies noted above indicate that the number of re-takers drops dramatically for all groups after 2 administrations of the MBE and it is believed that a period of 2 years will have no adverse impact on law schools having such a goal who have adequately prepared their students for a bar exam.
3. The ability of a law school to report its ultimate pass rate based on only 70% of its graduates is eliminated. It should be understood that the proposal does not require a law school to account for 100% of its graduates. It does, however, require them to account for as many as

possible and, for accreditation purposes, to demonstrate that 75% of the members of the class who sat for a bar exam passed it within the two-year period. In situations where law schools are not able to obtain information on graduates, they will be asked to explain the circumstances to the Accreditation Committee. A goal of this effort, as explained later in the section on Standard 509, is that statistics for all schools, including those who are able to meet the Standard after just one year, will be maintained so that uniform information regarding ultimate passage rate is available for all schools.

4. The opportunity for a school to satisfy its obligations under Standard 316 on the basis of its bar pass rate for first-time takers is eliminated for a number of reasons. The reliance on the results in these instances for accreditation purposes, based as it is on a comparison with state-wide results, has many flaws. As a starting point, the question of accreditation should be based on the performance of the graduates of a law school without comparison to the graduates of any other law school. The Standards have moved away from comparisons between law schools in all other areas of evaluation (expenditures, volume count, etc.) and it should do so in this area as well. The value of using a state-wide average as a baseline also has been questioned since it includes the pass rate of the school being evaluated. The use of this information also is of questionable value when there is only one law school in a jurisdiction.
5. The recitation of reasons in 316(b) for which a law school may request an extension of the period within which it may come into compliance beyond the two years set out in Rule 14(b) is felt to be unnecessary. That Rule adequately describes the process for seeking an extension and, indeed, reasons that show good cause for an extension are not set out for any other Standard and the Committee believes that there is no need for them in this situation. If additional guidelines are believed to be warranted, it is recommended that they be provided through a Guidance Memo instead of the Standard.

The Committee acknowledges that some law schools will see the requirement that information be maintained and reported for a period of two years as an unnecessary burden if they regularly achieve a bar pass rate exceeding 75% for first-time takers. We believe, however, that this type of information has been kept regularly by the schools who have had to rely on ultimate bar pass rate to meet the Standard and that it is not overly burdensome.

The Committee also acknowledges that some law schools will report that it is impossible to achieve a goal of locating all graduates and determining their status. However, as noted above, the Standard does not require the reporting of 100% of graduates to demonstrate compliance. The proposal merely requires that a school provide enough information to demonstrate that 75% of its graduates who sat for a bar exam passed one within two years following graduation. A chart is attached to the end of this report illustrating one possible method through which information might be relayed to the Accreditation Committee. It is a separate question whether requiring schools to maintain ultimate bar pass information, even if they satisfy Standard 316 after one administration of the bar exam, is an appropriate requirement under Standard 509. We believe that the goal of having uniform information available for all schools justifies the effort.

Finally, the Committee understands that there are some who might believe that it would take seven years, the length of time between sabbatical visits, for the Accreditation Committee to become aware of the failure by a school to meet this Standard. However, the interim monitoring system currently being used by the Accreditation Committee has proven to be very successful in tracking schools that might be experiencing difficulty meeting the Standards and should be equally successful with this requirement.

Redlined to Existing Standard:

### **Standard 316. BAR PASSAGE**

At least 75 percent of a law school's graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.

~~(a) A law school's bar passage rate shall be sufficient, for purposes of Standard 301(a), if the school demonstrates that it meets any one of the following tests:~~

~~(1) That for students who graduated from the law school within the five most recently completed calendar years:~~

~~(i) 75 percent or more of these graduates who sat for the bar passed a bar examination; or~~

~~(ii) In at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination.~~

~~In demonstrating compliance under sections (1)(i) and (ii), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.~~

~~(2) That in three or more of the five most recently completed calendar years, the school's annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first time bar passage rates for graduates of ABA approved law schools taking the bar examination in these same jurisdictions.~~

~~In demonstrating compliance under section (2), the school must report first time bar passage data from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance.~~

~~(b) A school shall be out of compliance with this Standard if it is unable to demonstrate that it meets the requirements of paragraph (a)(1) or (2).~~

~~(c) A school found out of compliance under paragraph (b) and that has not been able to come into compliance within the two year period specified in Rule 13(b) of the Rules of Procedure~~

~~for Approval of Law Schools, may seek to demonstrate good cause for extending the period the law school has to demonstrate compliance by submitting evidence of:~~

- ~~(1) The law school's trend in bar passage rates for both first-time and subsequent takers: a clear trend of improvement will be considered in the school's favor, a declining or flat trend against it.~~
- ~~(2) The length of time the law school's bar passage rates have been below the first-time and ultimate rates established in paragraph A: a shorter time period will be considered in the school's favor, a longer period against it.~~
- ~~(3) Actions by the law school to address bar passage, particularly the law school's academic rigor and the demonstrated value and effectiveness of its academic support and bar preparation programs; value-added, effective, sustained and pervasive actions to address bar passage problems will be considered in the law school's favor; ineffective or only marginally effective programs or limited action by the law school against it.~~
- ~~(4) Efforts by the law school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the law school will be considered in the school's favor; ineffective or limited efforts by the law school against it.~~
- ~~(5) Efforts by the law school to provide broader access to legal education while maintaining academic rigor; sustained meaningful efforts will be viewed in the law school's favor; intermittent or limited efforts by the law school against it.~~
- ~~(6) The demonstrated likelihood that the law school's students who transfer to other ABA-approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school's favor, providing the law school has undertaken counseling and other appropriate efforts to retain its well-performing students.~~
- ~~(7) Temporary circumstances beyond the control of the law school, but which the law school is addressing: for example, a natural disaster that disrupts operations or a significant increase in the standard for passing the relevant bar examination(s).~~
- ~~(8) Other factors, consistent with a law school's demonstrated and sustained mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school's efforts to improve them.~~

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**Standard 316. BAR PASSAGE**

At least 75 percent of a law school's graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.

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

**Standard 501**

Standard 501 was added to the Committee's agenda by the Council during its December, 2015, meeting. The Committee offers the Council two proposals. Both proposals include the following changes:

1. Changing 501(a), from "maintain," to the language found in other Standards of "adopt, publish, and adhere to."
2. Making 501(b) a positive statement – from "a law school shall not admit..." to "a law school shall admit only..."
3. Adding the following sentence to Interpretation 501-1: Compliance with Standard 316 is not alone sufficient to comply with the Standard.

We believe that these changes clarify that a law school must make available, to a site team and to the Accreditation Committee, its admission policies and practices and that they be consistent with the Standards, including the Standard regarding the admission of qualified applicants. The changes also clarify that the assessment of compliance involves all of the factors listed in Interpretation 501-1 and that compliance with the Standard on bar passage is not alone sufficient to demonstrate compliance, and that the Council and Accreditation Committee need not wait for bar passage outcomes required by Standard 316 to inquire about a school's admissions practices and policies in appropriate cases.

Proposal 2 offers the Council a method of enforcing the Standard through an examination of the non-transfer attrition rate of a law school as a means of assessing whether the school has admitted only applicants who appear capable of satisfactorily completing its program of legal education. If this version is eventually adopted, a law school having non-transfer attrition above a certain percentage bears the burden of demonstrating that it is in compliance with this Standard. At its meeting, the Committee did not believe that it had sufficient information to set a number for this Standard. However, it has requested that the Office of the Managing Director prepare information on attrition rates for the use of the Council and it is included with this report.

## Proposal #1

Redlined to Existing Standard:

### Standard 501. ADMISSIONS

- (a) A law school shall ~~maintain~~ adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.
- (b) A law school shall ~~not~~ admit ~~an~~ only applicants who ~~does not~~ appear capable of satisfactorily completing its program of legal education and being admitted to the bar.
- (c) A law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee's file.

#### ***Interpretation 501-1***

*Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school's entering students, the academic attrition rate of the law school's students, the bar passage rate of its graduates, and the effectiveness of the law school's academic support program. Compliance with Standard 316 is not alone sufficient to comply with the Standard.*

#### ***Interpretation 501-2***

*Sound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome.*

Clean copy:

### Standard 501. ADMISSIONS

- (a) A law school shall adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.
- (b) A law school shall admit only applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar.
- (c) A law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not

indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee's file.

***Interpretation 501-1***

*Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school's entering students, the academic attrition rate of the law school's students, the bar passage rate of its graduates, and the effectiveness of the law school's academic support program. Compliance with Standard 316 is not alone sufficient to comply with the Standard.*

***Interpretation 501-2***

*Sound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome.*

**Proposal #2**

Redlined to Existing Standard:

**Standard 501. ADMISSIONS**

- (a) A law school shall ~~maintain~~ adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.
- (b) A law school shall ~~not admit~~ an only applicants who ~~does not~~ appear capable of satisfactorily completing its program of legal education and being admitted to the bar.
- (c) A law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee's file.

***Interpretation 501-1***

*Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school's entering students, the academic attrition rate of the law school's students, the bar passage rate of its graduates, and the effectiveness of the law school's academic support program. Compliance with Standard 316 is not alone sufficient to comply with the Standard.*

***Interpretation 501-2***

*Sound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work*

*experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome.*

***Interpretation 501-3***

*A law school having a non-transfer attrition rate above [REDACTED] percent bears the burden of demonstrating that it is in compliance with the Standard.*

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**Standard 501. ADMISSIONS**

- (a) A law school shall adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.
- (b) A law school shall admit only applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar.
- (c) A law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee's file.

***Interpretation 501-1***

*Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school's entering students, the academic attrition rate of the law school's students, the bar passage rate of its graduates, and the effectiveness of the law school's academic support program. Compliance with Standard 316 is not alone sufficient to comply with the Standard.*

***Interpretation 501-2***

*Sound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome.*

***Interpretation 501-3***

*A law school having a non-transfer attrition rate above [REDACTED] percent bears the burden of demonstrating that it is in compliance with the Standard.*

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

**Standard 503**

The Standards Review Committee previously recommended that the Council make one of two modifications to Standard 503, so as to treat schools equally in exempting them from requiring the LSAT for all applicants. The two modifications were:

- a. Eliminate Interpretation 503-3 and direct the Standards Review Committee to revise the Standards so as to eliminate the possibility of a variance from the requirement of an LSAT absent a demonstration by a group administering an alternative test that it is a valid and reliable test to assist a school in assessing an applicant's capability to satisfactorily complete the school's program of legal education.
- b. Make the option of admitting students based on other tests and undergraduate GPAs available to all law schools, not just those affiliated with a university that has an undergraduate program, and regardless of whether or not the J.D. degree is sought in combination with a degree from a different discipline.

At a meeting held on July 31, 2015, the Council voted to adopt the first alternative (eliminate Interpretation 503-3) and directed the Committee to revise the rest of the Standard accordingly. In response to this directive, the Committee recommended amending Interpretation 503-1 to require that a law school using an admission test other than the Law School Admission Test demonstrate that the company administering such other test has shown that it is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's program of legal education. At its December, 2015, meeting, the Council asked the Committee to develop other possible alternatives. The Committee offers the Council two proposals at this time. These proposals are made in a changing and unpredictable environment. The Committee is aware of one law school that has announced that it will accept a test other than the LSAT, and of another school that has announced its efforts to test the validity of the GRE. However, efforts by the Committee to develop a proposal that governs how tests other than the LSAT might be accepted have been unsuccessful. Such proposals might be easier to develop once the environment has settled.

The first proposal offers only a slight change to the current Standard. Interpretation 503-1, which states that a law school "shall" demonstrate, is moved into the Standard. This proposal would maintain the status quo, and require that law schools using a test other than the LSAT demonstrate that it is a "valid and reliable test" to assist the school in making its admission decisions.

The second proposal eliminates Standard 503. This would leave the only requirement for a test in the Standards to be that found in Interpretation 501-2: "Sound admissions policies and practices may include consideration of admission test scores...." This would require each law school to

demonstrate to a site team and the Accreditation Committee how test scores play a part in its sound admissions policies and practices. A school would be required to justify its decision to use or not use any particular test under this interpretation as part of the entire admissions policy. Schools with low non-transfer attrition and high bar passage rates can offer evidence of those facts to support its compliance with Standard 501. Schools with significant attrition or more modest bar passage rates will have a higher burden to prove that a particular admissions test score and how it is being used in a school's admissions process supports its compliance with this Standard.

## **Proposal #1**

Redlined to Existing Standard:

### **Standard 503. ADMISSION TEST**

A law school shall require each applicant for admission as a first-year J.D. degree student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's program of legal education. In making admissions decisions, a law school shall use the test results in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test. A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall demonstrate that such other test is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's program of legal education.

#### ***Interpretation 503-21***

*This Standard does not prescribe the particular weight that a law school should give to an applicant's admission test score in deciding whether to admit or deny admission to the applicant.*

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### **Standard 503. ADMISSION TEST**

A law school shall require each applicant for admission as a first-year J.D. degree student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's program of legal education. In making admissions decisions, a law school shall use the test results in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test. A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall demonstrate that such other test is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's program of legal education.

***Interpretation 503-1***

*This Standard does not prescribe the particular weight that a law school should give to an applicant's admission test score in deciding whether to admit or deny admission to the applicant.*

**Proposal #2**

Redlined to Existing Standard:

**Standard 503. ADMISSION TEST**

~~A law school shall require each applicant for admission as a first-year J.D. degree student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's program of legal education. In making admissions decisions, a law school shall use the test results in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test.~~

***Interpretation 503-1***

~~A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall demonstrate that such other test is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's program of legal education.~~

***Interpretation 503-2***

~~This Standard does not prescribe the particular weight that a law school should give to an applicant's admission test score in deciding whether to admit or deny admission to the applicant.~~

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

**Standard 509**

The Standards Review Committee recommends that no change be made to Standard 509. Two proposals were considered, but the Committee believes that the Council can make desired changes without altering the Standard. The Committee determined that the Standard works best by offering a list of broad categories for which information must be reported to consumers, with any details regarding the methods of reporting left to the Data Policy & Collection Committee and the Council.

At an earlier meeting of the Council, the Committee offered the recommendation that the Council instruct the Data Policy & Collection Committee to fashion a means of determining and reporting attrition rates based on entering credentials. At this time the Committee repeats that recommendation and also recommends that the Council instruct the Data Policy & Collection Committee to fashion a means of determining and reporting both bar pass rates for first-time takers and ultimate bar pass rates based on first year performance. This information would provide current students with information that they would find useful in making any decision regarding the continued pursuit of the degree.

The Committee considered two alternative during its discussion and redlined versions of those are set out below for the information of the Council.

**Proposal #1**

Redlined to the Existing Standard:

**Standard 509. REQUIRED DISCLOSURES**

- (a) All information that a law school reports, publicizes, or distributes shall be complete, accurate and not misleading to a reasonable law school student or applicant. A law school shall use due diligence in obtaining and verifying such information. Violations of these obligations may result in sanctions under Rule 16 of the Rules of Procedure for Approval of Law Schools.
  
- (b) A law school shall publicly disclose on its website, in the form and manner and for the time frame designated by the Council, the following information:
  - (1) admissions data;
  - (2) tuition and fees, living costs, and financial aid;
  - (3) conditional scholarships;

- (4) enrollment data, including academic, transfer, and other attrition, including information relating attrition for reasons other than transfer to undergraduate grades and admission test score;
- (5) numbers of full-time and part-time faculty, professional librarians, and administrators;
- (6) class sizes for first-year and upper-class courses; number of seminar, clinical and co-curricular offerings;
- (7) employment outcomes; and
- (8) bar passage data (rates for first-time takers and ultimate rate for classes graduating within the three most recent calendar years for which this information is available), including information relating those rates to first year law school performance.

(c) A law school shall....

## **Proposal #2**

Redlined to Existing Standard:

### **Standard 509. REQUIRED DISCLOSURES**

- (a) All information that a law school reports, publicizes, or distributes shall be complete, accurate and not misleading to a reasonable law school student or applicant. A law school shall use due diligence in obtaining and verifying such information. Violations of these obligations may result in sanctions under Rule 16 of the Rules of Procedure for Approval of Law Schools.
- (b) A law school shall publicly disclose on its website, in the form and manner and for the time frame designated by the Council, ~~the following~~ information sufficient to inform an applicant of the applicant's likelihood of satisfactorily completing its program of legal education and being admitted to the bar, including but not limited to the following:
  - (1) admissions data;
  - (2) tuition and fees, living costs, and financial aid;
  - (3) conditional scholarships;
  - (4) enrollment data, including academic, transfer, and other attrition;
  - (5) numbers of full-time and part-time faculty, professional librarians, and administrators;
  - (6) class sizes for first-year and upper-class courses; number of seminar, clinical and co-curricular offerings;
  - (7) employment outcomes; and
  - (8) bar passage data.

(c) A law school shall....

# THE TESTING COLUMN

## PERSISTENCE ON THE BAR EXAM

*by Susan M. Case, Ph.D.*

**H**ow many times do examinees sit for the bar exam? A Google search reveals articles about examinees who have taken the exam 6, 8, and even 48 times. We know of famous people from top-tier law schools who failed the bar exam. But how do these isolated stories fit into the overall narrative?



were first-time takers in July 2007. The resulting sample included 30,759 candidates representing 35 jurisdictions. We followed the MBE performance of these examinees beginning with July 2007 and ending 11 administrations later in July 2012.

### PERSISTENCE OF THE TOTAL GROUP

In the past decade, the data collection and data sharing practices of both NCBE and individual jurisdictions have progressed significantly to the point where substantial groups of bar examination candidates can be traced through the bar examination process. Although neither candidates nor jurisdictions provide NCBE with information about the individuals' bar admission status, which would help confirm which individuals have passed or not passed the bar exam, sufficient data are available to begin making some preliminary explorations about ultimate pass rates. We have used this improved data collection to compile a database of examinees who sat for the MBE. (By "we," I really mean Doug Ripkey, NCBE's Associate Director of Testing.)

A total of 26,247 examinees took the MBE only once. This represents 85.3% of the total group. It is possible that some of these examinees took the MBE and failed but for whatever reason decided not to try again; however, we can assume that the vast majority of this 85.3% passed the bar exam on the first attempt. A total of 2,795 examinees took the MBE a second time; this is 9.1% of the total group. Totaling these, we have 29,042 examinees, representing over 94% of our sample, taking the MBE only one or two times.

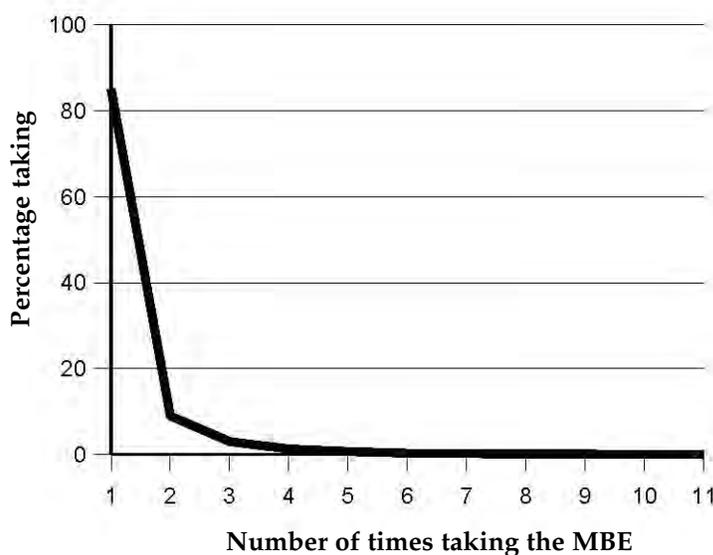
We used this data set to investigate the persistence of examinees in taking the MBE. In order to track examinees across test administration dates, our sample included only those examinees with appropriately coded Social Security numbers who

The numbers drop considerably after the second try: 886 (2.9%) took the MBE three times, 392 (1.3%) took it four times, and less than 2% took it more than four times.

Table 1 shows the number and percentage of examinees taking the MBE one or more times. (For those of you who believe a picture is worth a thousand words, Figure 1 shows the same data by percentage in graphic form.)

**Table 1: Number and Percentage of Examinees Taking the MBE One or More Times**

	Number of times taking the MBE											Total taking
	1	2	3	4	5	6	7	8	9	10	11	
Number taking	26,247	2,795	886	392	208	106	56	35	17	8	9	30,759
Percentage taking	85.3	9.1	2.9	1.3	0.7	0.3	0.2	0.1	0.1	0.0	0.0	100



**Figure 1: Percentage of examinees taking the MBE one or more times**

**Persistence by Ethnic Group**

Table 2 shows the number of examinees, and Table 3 shows the percentages, taking the MBE one or more times broken down by ethnic group. (Once again, for those of you who are visually oriented, Figure 2 shows the percentage data in graphic form.) Of the 30,759 examinees in the sample, 17,414 (56.6%) were white, 2,147 (7.0%) were Asian, 1,395 (4.5%) were Hispanic, and 1,301 (4.2%) were black. The remaining 8,502 identified themselves as some other ethnic

group or did not indicate their ethnicity. While the passing percentage varied by ethnic group, the vast majority of each group took the MBE only once, and less than 3% of any group took it more than four times.

The percentage of examinees who took the MBE only once varies considerably by ethnic group: 91.1% of whites, 81% of Asians, 79.4% of Hispanics, and 70.3% of blacks took the MBE only once. The gap narrows significantly over additional takes. The

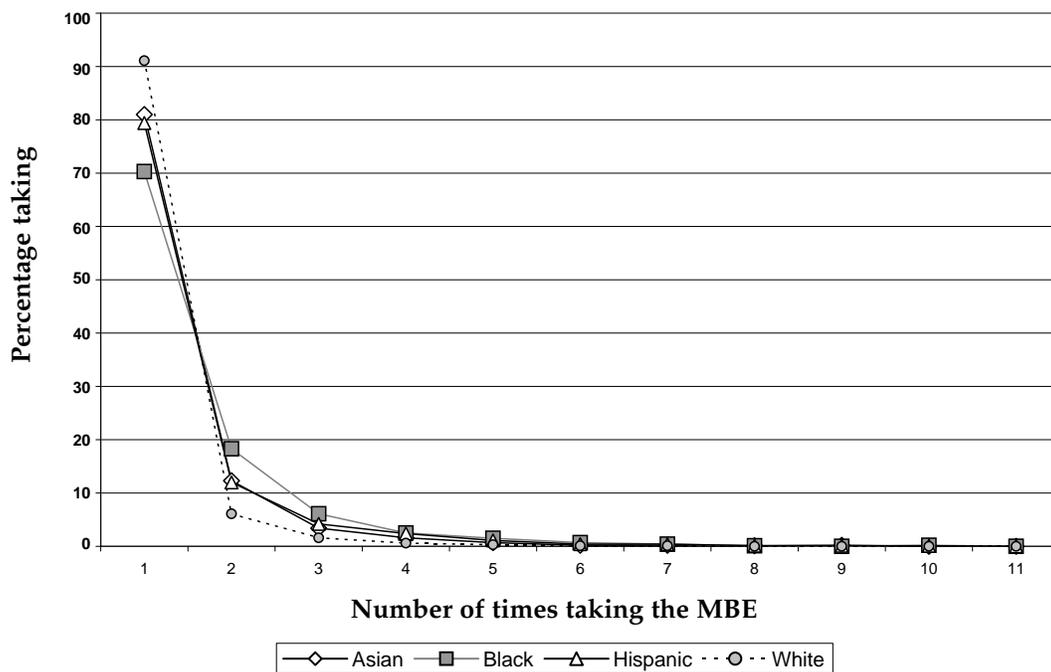
**Table 2:** Number of Examinees Taking the MBE One or More Times, by Ethnic Group

	Number of times taking the MBE											Total taking
	1	2	3	4	5	6	7	8	9	10	11	
White	15,860	1,066	286	103	54	24	10	4	2	3	2	17,414
Asian	1,739	265	74	35	15	5	5	3	5	0	1	2,147
Hispanic	1,107	167	58	34	15	5	5	2	1	1	0	1,395
Black	914	238	80	33	19	9	5	1	0	2	0	1,301
Total	26,247	2,795	886	392	208	106	56	35	17	8	9	30,759*

\* Of the 30,759 total examinees, 8,502 examinees identified themselves as some ethnic group other than those listed in this table or did not indicate their ethnicity. Data are not included for those 8,502 examinees.

**Table 3:** Percentage of Examinees Taking the MBE One or More Times, by Ethnic Group

	Number of times taking the MBE										
	1	2	3	4	5	6	7	8	9	10	11
White (%)	91.1	6.1	1.6	0.6	0.3	0.1	0.1	0.0	0.0	0.0	0.0
Asian (%)	81.0	12.3	3.4	1.6	0.7	0.2	0.2	0.1	0.2	0.0	0.0
Hispanic (%)	79.4	12.0	4.2	2.4	1.1	0.4	0.4	0.1	0.1	0.1	0.0
Black (%)	70.3	18.3	6.1	2.5	1.5	0.7	0.4	0.1	0.0	0.2	0.0
Total (%)	85.3	9.1	2.9	1.3	0.7	0.3	0.2	0.1	0.1	0.0	0.0



**Figure 2:** Percentage of examinees taking the MBE one or more times, by ethnic group

percentage of examinees taking the MBE no more than three times includes 98.8% of whites, 96.8% of Asians, 95.5% of Hispanics, and 94.7% of blacks.

## CONCLUSIONS

MBE repeater rates show that the vast majority of examinees take the MBE only once. Assuming that most of them pass, we may conclude that most examinees pass the bar exam on their first attempt. There is a large gap between the pass rates of white and minority examinees on first attempt, but this gap narrows from about 20 percentage points after the first attempt (91.1% for whites and 70.3% for blacks) to about 4 percentage points after the third attempt (98.8% for whites and 94.7% for blacks).

We do not have a complete data set that indicates who passed the bar exam. However, we do have MBE

records for a large sample of examinees. The correlation between MBE scores and written scores is high, and based on other research findings, we believe the trends noted above would not change with more complete data. (See, for example, a previous Testing Column entitled “Urban Legends about the Bar Exam,” which reports on minority performance on the written and multiple-choice components of the bar exam.<sup>1</sup>)

## NOTE

1. Susan M. Case, Ph.D., *Urban Legends about the Bar Exam*, 77(2) THE BAR EXAMINER 44–46 (May 2008), available at [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/2008/770208\\_testing.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2008/770208_testing.pdf).

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### Ultimate Bar Passage – School A

Calendar year of graduation	Number of graduates in calendar year	Number of graduates with no information	Number of graduates who did not take a bar examination within two years of their date of graduation	Graduates who sat for a bar examination within two years of their date of graduation		
				Total # of takers	Total # who passed	Percentage that passed
2016 (Jan & May)	100 (20 in Jan, 80 in May)	2	3	95	82	86% by end of 2018
2017 (Jan & May)	100 (15 in Jan, 85 in May)	3	1	96	85	88% by end of 2019

**NOTE:**

*Jan 2016 grads could take exam in winter 2016, summer 2016, winter 2017, and summer 2017.  
 May 2016 grads could take exam in summer 2016, winter 2017, summer 2017, and winter 2018.  
 Percent would be calculated following results of winter 2018 exam.*

### Ultimate Bar Passage – School B

Calendar year of graduation	Number of graduates in calendar year	Number of graduates with no information	Number of graduates who did not take a bar examination within two years of their date of graduation	Graduates who sat for a bar examination within two years of their date of graduation		
				Total # of takers	Total # who passed	Percentage that passed
2016 (May & Dec)	100 (80 in May, 20 in Dec)	2	3	95	82	86% by end of 2018
2017 (May & Dec)	100 (85 in May, 15 in Dec)	3	1	96	85	88% by end of 2019

**NOTE:**

*May 2016 grads could take exam in summer 2016, winter 2017, summer 2017, and winter 2018.  
 Dec 2016 grads could take exam in winter 2017, summer 2017, winter 2018, and summer 2018.  
 Percent would be calculated following results of summer 2018 exam.*

**Information on Attrition Rates**

See Excel Spreadsheet: “ABA Attrition Data 2013-2015 AQ”