

To: Council of the Section of Legal Education and Admissions to the Bar
From: Mary K. Ryan, Chair, ABA Standing Committee for Pro Bono and Public Service
Date: January 31, 2014
Re: Comments on proposed changes to the Standards and Rules of Procedure for Approval of Law Schools (“Accreditation Standards”)

**COMMENTS REGARDING PROPOSED REVISIONS TO CURRENT ACCREDITATION STANDARD 302(b)
AND ITS ACCOMPANYING INTERPRETATION, 302-10**

On behalf of the Standing Committee for Pro Bono and Public Service (“Standing Committee”), I am grateful for the opportunity to submit comments to assist the Council in its revision of the Standards and Rules of Procedure for Approval of Law Schools (“Accreditation Standards”). The Standing Committee’s membership includes law school faculty, members of the judiciary, and pro bono practitioners with decades of combined experience in supporting pro bono and public service as core professional values for both lawyers and law students. The Standing Committee has offered guidance in past revision processes, with a focus on Accreditation Standards that impact law school pro bono and public service programs. I write now to offer comments on proposed revisions to current Accreditation Standard 302(b) and its accompanying Interpretation, 302-10. Please accept these comments in the spirit of collegiality and cooperation with which they are offered.

The Standing Committee views current Standard 302(b) as a vital pillar in ensuring that law students are introduced to pro bono practice as both an experiential learning opportunity and an integral facet of a lawyer’s professional identity. We believe that engagement in pro bono service *during law school* is critically important. This integration of pro bono into the larger law school academic program rightly educates tomorrow’s lawyers that pro bono service is a professional responsibility and an opportunity for immense professional and personal growth. The inclusion in the Accreditation Standards of a clear and strong directive to law schools regarding their responsibility to make pro bono opportunities available to their students (and faculty) is not just appropriate but necessary.

The Standing Committee respectfully submits four recommendations. We include our analysis as well so that the Council may understand our thinking.

- I. Current Standard 302(b) reads, in part, “A law school shall offer substantial opportunities for...student participation in pro bono activities.” The proposed new language would move this to Standard 303(b), and would read, in relevant part, “A law school shall provide substantial opportunities to students for...student participation in pro bono legal services **or law-related public service activities.**” [Emphasis by the Standing Committee.]

Recommendation:

- We recommend eliminating the phrase *law-related public service activities* in the proposed Accreditation Standard 303(b), and therefore leave this part of the standard as is. First, the proposed term has no clear and independent definition within rules of professional conduct. Secondly, all of the types of law related public service captured within proposed Interpretation 303 – 3 would fall within

Model Rule of Professional Conduct (“MRPC”) 6.1 (b) (3), although we agree with the inclusion of an interpretation that gives examples of (b)(3) activities.

- Alternatively, we recommend changing “or” in the proposed Standard to “and.” The use of the disjunctive “or” could lead law schools to conclude that they could offer only “law-related public service activities” in lieu of offering opportunities for pro bono legal services. Indeed, the natural reading of the disjunctive is that schools could satisfy the Standard’s charge by providing one or the other of “pro bono legal services” or “law-related public service activities.” Using the conjunctive “and” is the only way to ensure that law schools provide opportunities for student participation in “pro bono legal services,” and not just “law-related public service activities.” Further, use of the conjunctive will emphasize the importance of schools providing a broad array of service activities to accommodate varied student interests.

- II. If the Council does not adopt the Standing Committee’s recommendation to eliminate the phrase “law-related public service activities” in its entirety, the Standing Committee here offers recommendations to strengthen the phrase’s definition. Proposed Interpretation 303-3 defines a scope of the “law-related public service activities” referenced in proposed Standard 303(b). The proposed Interpretation reads, in part: “Law-related public service activities include: (i) **helping** groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; (ii) **helping** charitable, religious, civic, community, governmental and educational organizations not able to afford legal representation...” [Emphasis by the Standing Committee.]

Recommendation: change the language in sub-clauses “i” and “ii” to read: “Pro bono law-related public service activities include: (i) “substantive activities that directly further the legal services provided by groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; (ii) substantive law-related activities that directly further the mission of charitable, religious, civic, [etc.]...organizations.” The verb “helping” could be construed as activity connected to the work of lawyers, but it could also be construed to include, for example, painting the walls at the office of one of the enumerated organizations. A fair reading of the proposed language could suggest that any “helpful” activity would satisfy the Standard. Using the suggested alternative language in both clauses will ensure that these activities provide law students with meaningful, law-related learning opportunities.

- III. Current Interpretation 302-10 reads, in part: “Each law school is encouraged to be creative in developing substantial opportunities for student participation in pro bono activities. Pro bono opportunities should **at a minimum** involve the rendering of meaningful law-related service to persons of limited means or to organizations that serve such persons; however volunteer programs that involve meaningful services that are not law-related also may be included within the law school’s overall program.” [Emphasis by the Standing Committee.] Proposed Interpretation 303-2 reads: “In meeting the requirement of Standard 302(b)(2)[sic], law schools are encouraged to promote opportunities for law student pro bono service that incorporate the priorities established by the ABA in Model Rule 6.1.”

- a. **Analysis:** During the last round of Accreditation Standards revisions the Standing Committee suggested including the phrase “at a minimum” in the relevant Interpretation. As used currently, the phrase is essential because it emphasizes that while both pro bono and other forms of public service are significant, pro bono holds a vital position for lawyers and law students alike.
 - b. **Recommendation:** change the language of proposed Interpretation 303-2 as follows: “In meeting the requirement of Standard 303(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporate the priorities established by the ABA in Model Rule 6.1, which should, at a minimum, involve the rendering of meaningful pro bono law-related public service to persons of limited means or to organizations that serve such persons.”
- IV. The Standing Committee has reviewed comments submitted by others regarding current Accreditation Standard 302(b) and its interpretation, 302-10. The Committee supports the recommendation of Equal Justice Works that the Accreditation Standards be modified to incorporate a 50 hour aspirational guideline, consistent with ABA MRPC 6.1.

The Standing Committee applauds the Council’s continued work in formulating Accreditation Standards that emphasize the best practices for educating and empowering law students to succeed in ever-evolving market conditions. Our recommendations reflect the Standing Committee’s best thinking on how to help the Council to achieve its goals. Further, our recommendations are designed to ensure that pro bono service, with all the benefits it delivers to law students and client communities, remains an essential component in our system of legal education. We thank the Council for considering our recommendations and welcome any opportunities to meet in person.