Dear Judge Oliver and Mr. Currier,

In response to the memorandum of the Section on Legal Education and Admission to the Bar, dated September 6, 2013, titled “Comprehensive Review of the ABA Standards for Approval of Law School Matters for Notice and Comment,” we respectfully urge the Council to include in Chapter 3 of the final Accreditation Standards a provision requiring all law schools to establish a 50 hour pro bono service graduation requirement and to report on its implementation. We also request an opportunity to speak at the hearing that will be held by the Council at the American Bar Association in Chicago on February 5th and 6th, 2014.

Comments

I. Pro bono service in law school is an essential element of legal education

American law schools are sharply criticized for their failure to teach values and skills of the profession, to link students to mentors and employment opportunities.

In fact, law student pro bono service teaches values and skills, and is effective in linking students to mentors and employment opportunities:
• Pro bono involvement reinforces the profession’s culture of commitment to public service. It introduces students to the professional obligation and rewards of assisting those of limited means. With millions of people unrepresented by counsel in the American justice system, students learn about the professional responsibility to assure that the justice system delivers on its promise of equal justice. These experiences provide knowledge that is fundamental to a comprehensive legal education, but rarely available except through pro bono service.

• Pro bono service teaches the skills of the profession. Depending on the pro bono placement, students can learn the following: litigation skills (for example, how to interview a potential client, draft a complaint, file an answer, carry out discovery, prepare a witness, write and serve a motion, prepare a brief, present an argument, and conduct an appeal; transactional skills (for example, how to evaluate rights and interests, counsel a litigant, negotiate terms of a contract, and draft or interpret a contract; policy advocacy skills (for example, how to analyze legal policy, participate in rulemaking, carry out lobbying, and marshal empirical evidence to advance policy). Pro bono service offers the kind of skills-based experiential training that many law school graduates rank among their most valuable educational experiences.

• Pro bono service links students to mentors and to potential employment opportunities. Through pro bono service, students observe professional attorneys at close range. Students demonstrate their skills, obtain answers to their questions, and gain practical knowledge about the practice of law. Pro bono placements are among the best opportunities available to students to form professional relationships with practitioners in the field who may ultimately assist in finding future employment.

II. The current accreditation standards are deficient, as they fail adequately to support pro bono service by law students

In light of the importance of pro bono service in teaching values and skills, and in linking students to mentors and employment opportunities, it is troubling that the American Bar Association’s existing accreditation standards provide little direction to schools on the importance of supporting students in pro bono service.

The current version of Chapter 3 encourages law schools to support pro bono service through Standard 302(b)(2) and Interpretation 302-10. Standard 302(b)(2) states that law schools “shall offer substantial opportunities” for “student participation in pro bono activities.” Interpretation 302-10, states “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.”

But, these standards are deficient. Standard 302(b)(2) does not define the term “substantial” in the phrase “substantial opportunities.” Interpretation 302-10 does not define the term “meaningful” in the phrase “meaningful law-related service.” The standards fail to designate any particular number of hours of pro bono service as essential to a complete legal education. In fact, the ABA does not require schools to track the
performance of pro bono service in any way. The ABA does not require schools to report: i) the number of students involved, ii) the number of hours of service performed, iii) the quality of the students’ experience, and iv) the impact.

III. The state courts are attempting to fill the gap created by the deficiency in ABA accreditation standards on pro bono service by law students

In the absence of any measurable criteria for assuring that law schools will support pro bono service in a substantial and meaningful way, and in recognition of a crisis in the courts in which millions of people annually proceed without representation, the state courts are stepping in to condition admission to the bar on completion of law related pro bono service requirements.

On May 1, 2012, Chief Judge Jonathan Lippman of New York’s Unified Court System announced New York’s rule requiring applicants to the New York bar to complete 50 hours of law related pro bono service prior to bar admission. As described by the Court, the rule is intended to instill in new graduates an understanding of the values of the profession (including especially the value of performing pro bono for the millions of unrepresented people in our state courts), while also teaching students skills, and creating opportunities for students to work with practicing attorneys. Three other states have announced that they are taking steps to adopt rules inspired by New York’s requirement, but different in significant respects including their definitions of pro bono activities covered, processes for obtaining approval as to whether specific activities are covered, and operation of the reporting requirement.

On July 31, 2013, the Conference of Chief Justices of the state courts issued a formal Resolution in Support of Encouraging Pro Bono Service in Law Schools. In the resolution, which has been accepted into the Comments, the Conference recognizes that the ABA’s review of the law school accreditation standards offers an opportunity for incorporating a pro bono requirement into the standards. Moreover, in the absence of any such pro bono requirement, the resolution further encourages the chief justices of each state “to discuss with the Deans of their law schools a proposal that students perform pro bono service prior to law school graduation as a condition of admittance to the State bar.”

IV. The ABA should act to correct the deficiency in Chapter 3 concerning pro bono service by law students

Although New York has shown the way for each state to adopt a pro bono service bar admission standard, and although the Conference of Chief Justices is calling on the states to consider replicating the New York rule, we believe that Chapter 3 of the accreditation standards affords the ABA a better opportunity by establishing a national accreditation standard.

1 The resolution is available here, http://ncforaj.files.wordpress.com/2013/08/chief-justices-resolution.docx.
standard defining the level of pro bono service necessary to qualify students for admission to the bar.

A national ABA standard establishing a designated number of hours of pro bono service as a “graduation requirement” would have many benefits for legal education across the country, including the following:

- improving the quality of legal education on the values and skills of the profession;
- increasing the number of students performing pro bono service, and increasing the amount of service performed;
- increasing the opportunities for students to establish mentor relationships with professionals;
- increasing the opportunities for students to establish links with future employers;
- reducing the otherwise burdensome task of tracking and satisfying multiple differing definitions of pro bono service in the states; and,
- improving the quality of pro bono by making clear the importance of reporting on the number of students performing pro bono service, the number of hours performed, the quality of the experience, and the impact of the experience.

V. The proposal for modifying Chapter 3, as set forth in the Council’s notice of proposed rulemaking, should be strengthened.

The Council of the Section on Legal Education and Admissions to the Bar has issued a proposed revised version of the Chapter 3 standard and interpretations concerning the performance of pro bono service by law students, but has failed in that proposal to repair the plain deficiencies in the existing standard. Thus, the proposal does not state that any particular number of hours of pro bono service should be performed as a condition of graduation. Likewise, the proposal does not ask schools to report on the number of students involved in pro bono service, hours performed, quality of experience, or impact of experience.

For the reasons set forth above, we urge the Council to modify the proposed rule so that the standard establishes that each law school shall:

- require 50 hours of pro bono service to be performed as a condition for graduation;
- report on the number of students involved, hours performed, quality of experience, and impact of experience.

2 In our comments, we do not take a position in support of, or in opposition to, other changes embodied in the proposal released for notice and comment.
We respectfully request an opportunity to present our views in person to the Council at its upcoming meeting on February 5th and 6th at the American Bar Association in Chicago.

Thank you for considering these comments.

Very truly yours,

David S. Udell

David Udell
Executive Director

Deborah L. Rhode,
Ernest W. McFarland Professor of Law and Director of the Center on the Legal Profession,
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Appendix

Attachment A:

Proposal to establish 50 hour requirement and tracking requirement, indicated in bold/underlined text in new section 303(b)(4), hereby added to the text of the proposed Standard and Interpretations published for Notice and Comment by the Council of the Section on Legal Education and Admissions to the Bar on September 9, 2014, below:

Standard 303. CURRICULUM

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

   (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;

   (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and

   (3) one or more experiential course(s) totaling at least six credit hours. An experiential course or courses must be: (i) simulation course(s); or (ii) clinical course(s); or (iii) field placement(s). To satisfy this requirement, a course must be primarily experiential in nature and must:

      (i) integrate doctrine, theory, skills, and legal ethics and engage students in performance of one or more of the professional skills identified in Standard 302;

      (ii) develop the concepts underlying the professional skills being taught;

      (iii) provide multiple opportunities for performance; and

      (iv) provide opportunities for self-evaluation.

(4) **50 hours participation in pro bono legal services or law-related public service activities. To satisfy this requirement, a school must evaluate participation.**

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

   (1) faculty supervised clinical courses or field placement(s); and

   (2) student participation in pro bono legal services or law-related public service activities.
Interpretation 303-2:

Rule 6.1 of the ABA Model Rules of Professional Conduct encourages lawyers to provide pro bono legal services primarily to persons of limited means or to organizations that serve such persons. In addition, lawyers are encouraged to provide pro bono law-related public service. In meeting the requirement of Standard 303(b)(2)\(^3\), 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. Pro bono and public service opportunities need not be structured to accomplish any of the outcomes required by Standard 302. Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school’s overall program of law related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program. To evaluate student participation in pro bono as required by Standard 303(a)(4), law schools must track: i) the number of students involved, ii) the number of hours performed, iii) the quality of pro bono experience, and, iv) the impact of the pro bono experience.

Interpretation 303-3:

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; (iii) participating in activities providing information about justice, the law or the legal system to those who might not otherwise have such information; and (iv) engaging in activities to enhance the capacity of the law and legal institutions to do justice.

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\(^3\) We have corrected an apparent typographical error in the ABA proposal above, to refer to “303(b)(2)” instead of “302(b)(2)” since the proposal does not contain a section “302(b)(2)”. 