July 29, 2016

The Hon. Rebecca White Berch
Chairperson
American Bar Association
Council for the Section of Legal Education and Admissions to the Bar
Attn: JR Clark at jr.clark@americanbar.org

Re: Comments Submitted in Response to the ABA’s June 14, 2016 Memorandum regarding “ABA Standards for Approval of Law Schools Matters for Notice and Comment”

These comments are submitted in opposition to proposed changes to Standard 204, Standard 303, and Standard 316 in the ABA Standards and Rules of Procedure for Approval of Law Schools at the ABA’s August 2016 meeting. I oppose the proposed changes because in balance they reflect a weakening of the accreditation process and of the standards that law schools are expected to meet to retain professional accreditation. In addition, the proposed changes make it easier for law schools and Universities to minimize or compromise the role that law faculty have traditionally played in governance, and to increase the likelihood that law school revenues will be diverted to fund general or other institutional entities. Further, the proposed changes eliminate consideration of the history of the profession and its role in the development of gender, race and ethnic norms in U.S. society and its legal institutions, in essence “erasing” from the professional consciousness the bias that permeated it for much of its history. Finally, the proposed changes will have adverse effects on the profession’s diversity as well as its integrity.

More specifically, the proposed changes to Standard 204 eliminating the requirement that a law school assess its own effectiveness in achieving its stated educational objectives, a description of its strengths and weaknesses as well as a statement of the availability of sufficient resources to achieve its mission and objectives, weaken greatly the self-assessment process and standards; facilitate diversion of law school revenues to external or other entities depriving law school students of the direct benefit of those revenues; eliminate or minimize institutional accountability for law school revenues and its own effectiveness at meeting educational objectives; and are internally inconsistent with other
recently adopted ABA standards. These changes frustrate the ABA’s responsibility as a professional accreditation body to ensure that law schools are effective in developing and training not only lawyers, but individuals who will function as leaders in a variety of institutional settings including educational institutions, businesses, nongovernmental entities and government. When added to changes that have already been made to the ABA Standards, like the elimination of consideration of student-teacher ratios in the accreditation process, they risk making the ABA accreditation process irrelevant to ensuring the strength, vitality and professional nature of legal education.

The proposed changes to Standard 204 greatly weaken the law school self-assessment process and standards and facilitate diversion of law school revenues to external or other entities depriving law school students of the direct benefit of those revenues.

Eliminating the requirement that law schools address effectiveness, strengths and weaknesses and resources as part of the accreditation process or, in Interpretation 204.1, which has been proposed for elimination, to “include a statement of the availability of sufficient resources to achieve the school’s mission and its educational objective,” will make it much easier for Universities and other entities (including for profit entities) to divert funding and resources away from the law school’s educational missions to other purposes. It will also lessen the role of faculty governance in institutional budgetary processes and actually accomplishing educational objectives. Many law schools face problems in navigating the financial relationship with their home institutions. While well-endowed and extremely affluent institutions may not face these kinds of challenges, many law schools housed within larger institutional frameworks face continual threats of siphoning of law school revenues to finance other institutional priorities. In addition, larger institutional demands often directly impact law school admissions, leading law schools to admit applicants primarily in response to institutional demands rather than established admissions standards. At a time when law schools face increasing financial pressures as a result of the decrease in law school applicants, substantial increases in the cost of education (not necessarily linked to faculty compensation but instead to the growth in administrative bureaucracies and technological demands) and increased efforts towards accountability, including bar driven efforts to further restrict admission to the profession, it is ill-advised for the professional accrediting body to in essence abandon its role in ensuring that law schools have an opportunity to assess and report, through the self-study, on the adequacy of resources available to its mission. The proposed changes would severely impair the ABA’s ability to ensure in any meaningful way that the accreditation process addresses the adequacy of resources, since it would reduce whatever conversation takes place as part of that process, to a conversation purely between administrators, without the consideration, factual development and evidence based reporting and conclusions by law faculty that the self-study process facilitates and produces.

The reasons advanced for the proposed changes are that for unclear reasons the current language is confusing and duplicative because the ABA already provides that sufficient resources be available to law schools in Standard 202. But the provisions in
Standard 204 are the primary enforcement mechanism to ensure that the provisions in Standard 202 are in fact respected and observed. The requirement that the law school address these issues in the self-study ensure that law faculty will be in a position to evaluate and assess whether there are in fact sufficient resources.

**The proposed changes to Standard 204 are internally inconsistent with recently adopted or proposed changes to Standards 314, 315 and 316 and make it easier for law schools and Universities to minimize or compromise the role that law faculty have traditionally played in governance**

Other recent changes to academic standards, including the proposed bar passage standard 316, and other standards, appear to be motivated by increasing law school accountability and transparency. The proposed changes, in contrast, make it more difficult for the law school to hold itself accountable, and to engage in formal study practices that make clear whether it is accomplishing its educational missions, what changes may be necessary to better accomplish that mission and what resources are needed to accomplish that mission. To the extent that other recent amendments to the standards demand more from law schools, these proposed changes do just the opposite and in fact make it more difficult for law schools to serve their mission to train and educate lawyers not just for admission to the profession but to serve those roles that have traditionally made law an inextricable part of most institutions.

By eliminating any requirement that faculties assess strengths and weaknesses of their respective law programs, and speak to the resources available to that program in the context of the site-accreditation visits, the proposed changes minimize the ability of law faculties to have a meaningful impact on the site accreditation context, and to participate fully in the decision whether the institution is adequately supporting its law school.

**The proposed changes to Standard 303 eliminate consideration of the history of the profession and its role in the development of gender, race and ethnic norms in U.S. society and its legal institutions, in essence “erasing” from the professional consciousness the bias that permeated it for much of its history.**

One of the defining aspects of a profession is that it evaluate and assess itself. Critical to that process of self-evaluation and self-assessment is self-knowledge. That self-knowledge and self-awareness is impossible in the absence of an understanding and awareness of one’s history. The proposed changes eliminate the requirement of imparting of any information as to the development of the profession as part of the necessary preparation for one to enter into the profession.

The legal profession has featured prominently in the development of legal institutions and legal norms, in particular, constitutional norms. It is no accident that legal education featured prominently in the early desegregation cases. Legal professional institutions played a role both in perpetuating racial and gender bias, as well as in eradicating those same biases, in particular in the profession. The legal profession also reflects class differences. For my own law school, the first private law school to
voluntarily desegregate in the state, the decision to desegregate was influenced greatly by the fact that the AALS was considering adopting a guideline that would eliminate from membership those law schools that continued to segregate on the basis of race. The current changes faced by the legal profession themselves reflect historical tensions in the profession; to obviate any consideration of that history is to fail to give law students the tools necessary to place present and future challenges in historical context, and thus to be in a strong position to respond to those challenges. Given the continuing importance of race, ethnicity, class and gender to American and global society today, it seems extremely ill advised to eliminate a requirement that the course in professional responsibility include the history of the profession.

The proposed changes to Standard 316 will adversely impact the diversity of law schools and the profession, and tie law school accreditation to an inherently political process that has little to do with merit or for the most part the practice of law.

In most, if not all, states bar admission is an inherently political process that is not uniform and reflects, sometimes, protectionist concerns. In Louisiana, it is a process that lacks transparency, quality controls, and any sense that what the bar tests in order to admit has any relevance to attorney practice. These proposed changes try to secure national uniformity in a context that is not uniform and reflects the bar’s concern over the number of attorneys available to be admitted to practice, rather than a real, consistent effort to improve or enhance professional competency.

The current system, while not perfect, reflects the political nature of the process by tying the accreditation performance level to the state average. In doing so, it protects law graduates and law schools from the vagaries of bar admission committees who determine the state passing score, or in Louisiana’s case control completely the bar testing process.

As other law school comments submitted to the Council have established, the proposed changes to Standard 316 are likely to have an adverse impact on law schools serving diverse communities. Law schools have little to no influence, role or control in setting bar admission rates or the bar admission process; while having external “checks” on determining competence to admission to the bar is defensible and appropriate, it should reflect the reality of process, something the current standard does, but that is lost under the proposed changes.

I strongly urge the Council reject the proposed changes.

Sincerely,

M. Isabel Medina
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