

June 29, 2016

Mr. Barry Currier  
Managing Director  
Section of Legal Education and Admissions to the Bar  
**VIA EMAIL**

Mr. Currier:

We write to you in our role as Deans of law schools associated with Historically Black Universities. We write to express our concern regarding the ABA Council of Legal Education Standards Review Committee's ("Council" and "Committee") Proposed Standard 316. The proposed standard would have the unintended consequence of undermining current efforts to increase access to the legal profession for students of color. We write out of concern and alarm that the proposed standard, if adopted, will be detrimental to meaningful access to justice for both potential lawyers of color and the communities greatly in need of their advocacy. A similar proposal was made in 2013. We opposed that proposal on many of the same grounds. Our letter from 2013 is enclosed.

The proposed standard will be detrimental for law schools associated with the Historically Black Colleges and Universities (HBCUs). The proposal requires that a law school show that it has achieved a 75% bar passage rate for graduates within two years of their graduation. The ABA has offered no studies that support the two-year window. The Council and Committee state that the two-year time frame "provides a period during which almost all of a school's bar outcomes for a graduating class will be determined." The Council and Committee have offered no data to support this conclusion, and the two-year time frame places immense pressure on law schools to encourage their graduates to take consecutive administrations of the bar exam. Sitting for consecutive administrations of the bar exam is a significant financial strain for many recent law school graduates, especially those who have few financial resources, like many HBCU law graduates.

The proposed standard also eliminates the current "gap standard" that exists under Law School Standard 316(b) that allows for law schools to demonstrate that their bar passage rate is no more than 15 points below the average first-time bar passage rate for a jurisdiction. The elimination of the "gap standard" is deeply concerning considering that this standard allows for a comparative measure of a law school's bar passage rate. A comparative measure is increasingly important considering that bar passage rates have been declining in jurisdictions in recent years. For example, the first-time bar passage rate for New York in July 2012 was 83%, and the same rate was 79% in July 2015. In Texas, July 2102 first-time bar passage was 83.8% and in July 2015 it was 76.6%. With these declining first-time bar passage rates overall, the comparative standard allows for bar passage rates to be viewed in the overall context of each administration of the bar exam.

As demonstrated above, the proposed standard seeks to change the bar passage standard at a time of significant challenge for many law schools. Bar passage rates, as well as law school applications across the country, are at historic lows. Since 2013, national and individual jurisdictions' bar passage rates have plummeted. Reviewing jurisdiction by jurisdiction the 2015 bar pass rates, suggest that it is very likely that a significant number of law schools accredited for decades by the ABA could be automatically deemed to be out of compliance and at risk of losing their accreditation. The very nature of this process and the inherent uncertainty of the outcome would prove devastating for attracting and retaining students, faculty, and staff, as well as potentially eroding alumni and donor support. In sum, minimal fairness demands that the ABA request every accredited law school provide an assessment of the likely impact of adoption of this proposal.

The entire profession should be deeply concerned at the potential adverse impact this standard change would have on law schools associated with HBCUS. The statistical data is very clear that law schools associated with the Historically Black Colleges and Universities (HBCUs) are responsible for an increasingly significant and disproportionate percent of the African American and other new lawyers of color added to the profession annually. Even more significantly in those jurisdictions where an ABA approved HBCU law school is present, that HBCU law school produces more African American graduates who successfully are admitted to the bar, than any other law school in that jurisdiction. In several instances the HBCU law school produces more new lawyers of color than all the other law schools in the jurisdiction combined.

Any proposal that might have an adverse impact on the mission of HBCU law schools in continuing their leadership role in diversifying the profession, should first conduct a detailed analysis of how such a new proposal will impact such institutions. There has been no study conducted by the ABA to assess how the proposed standard will impact law schools with large percentages of minority law school. No new standard should be considered without making this assessment.

The HBCU law schools offer opportunity to many, particularly students of color, who would not ordinarily have an opportunity to attend law school. National data suggests that there often is a scoring gap between Law Students of Color and White law graduates regarding bar examination passage. This gap exists for graduates of predominately White law schools and graduates of HBCUs. Without resolving why this gap occurs it is nonetheless true for those law schools with a high concentration of students of color, such as HBCU law schools, that the impact on bar passage rate will often be disproportionately felt. Yet a focus on that disparity, intensified by proposals such as the one under consideration, ignores the significant impact of the many new lawyers of color who would not be practicing today but for the opportunity given them by HBCU law schools.

The undersigned requests that the Council forego adoption or implementation of the proposed standard pending a more inclusive dialogue on diversity impact and a more comprehensive study regarding the consequences of adoption.

Sincerely,

Shelley Broderick

University of District Columbia

Phylliss Craig-Taylor

North Carolina Central University

Felecia Epps

Florida A&M University

Dannye Holley

Thurgood Marshall School of Law

Danielle Holley-Walker

Howard University School of Law

John Pierre

Southern University Law Center