Greetings ABA Council:

I am writing as the Assistant Dean for the Center for Academic and Bar Readiness at The University of La Verne College of Law, to express my deep concerns regarding the proposed changes to Standard 316. I have worked in the area of academic and bar support for 12 years, at four law schools from Florida to Arizona, to California. Seven of those years have been devoted to building and refining academic and bar support programs at law schools that accept students with challenging entering credentials. In my administrative and teaching capacity, I have acquired a unique perspective about what drives student success on the bar exam and what factors impact repeat failures. As an administrator, I am keenly conscious of the ABA Standard as they relate to bar passage and the impact of low bar passage on the university, the law school, and the student examinees.

While there are several serious problems with the proposed 75% flat bar pass rate and the removal of the non-persisters from the bar pass calculation, I will address two major concerns for law schools.

1. **Law schools have no control over whether a student retakes the bar exam or when a student chooses to retake the bar exam after a failed first attempt. Therefore, requiring law schools to meet a fixed standard within two years of graduation is unfair.**

Many schools, La Verne included, spend significant financial and human resources preparing students to take the bar exam the first time. However, since students have already graduated, law schools have no power to require students to attend after-graduation bar preparation programs for the first exam, let alone subsequent exams. Even with a top-notch legal education, exam preparation is still a crucial factor in bar passage.

Bar preparation and examination is expensive for students. In California, students pay a total of $1,500 in bar exam related fees alone for the first attempt. This amount does not include a bar review course, which could run as high as $3,500. In addition to the expenses of the exam and exam preparation, students and their families sacrifice income while the new graduates devote their time solely to exam preparation. There are literally thousands of dollars that go into taking the bar exam for the first time. If a student fails the exam, even if they don’t have to pay for a new review course, they still have to pay approximately, $830 in exam fees to retake the exam.

After graduation and months of not working while they studied for the first exam, many students do not have the finances to, immediately retake the exam. Further, those with families are not in a position to ask their spouses and children to continue to sacrifice needed income for an additional 6 months while they begin the process of studying again.
These are some of the very reasons why La Verne takes bar preparation so seriously, the first time students take the exam.

Still, students fail the exam for various reasons and many simply cannot afford to retake the exam during the next few exam cycles. They may have to work for a year or two to save money to pay for the exam or an updated bar review course. From a diversity prospective, it is often students of color or first generation students who don’t have the fluid cash to continuously sit for the bar exam 4 times in a row who will suffer the most harm from your proposed changes. Students in this situation would end up disadvantaging their law school because they may not pass within the 2-year time frame, even if they pass the second time.

In short, many students simply do not have the option to retake the bar exam within two years after graduation. This fact, combined with the lack of control over students after graduation means that schools are powerless to make students retake the exam within the proposed two-year timeframe. To punish law schools for something they have no control over is patently unfair and overly burdensome.

2. **Requiring a fixed 75% pass rate for ALL jurisdictions completely disregards and undermines individual states’ authority to determine their bar own admission requirements.**

Generally, state legislatures and courts control requirements for admission to their state bars. As such, each state decides which subjects will be tested on the bar exam, the appropriate weighting of each component of the exam, and the score that must be achieved in order to avoid failing the exam. In other words, states decide what level of minimum competency will be required to practice law within its borders for the protection of its residents.

By creating one fixed standard for all jurisdictions, one state, California for example, might feel constrained in setting its pass score at what it feels is a reasonable level. For the February 2016 bar exam, California’s first time pass rate for ABA schools was 48% while Missouri’s first time pass rate was 76%. This difference, under the proposed changes puts California schools at a distinct disadvantage. With the proposed fixed score, the ABA risks overstepping its scope as an accrediting body by exerting undue pressure on states to succumb to a non-state-specific bar exam such as the UBE. It also forces states to consider changing their exam weighting or lowering their exam cut scores in order to protect law schools from losing ABA accreditation. This type of bar passage gerrymandering will simply lower the quality of new attorneys who can now easily trip over the lower pass scores.

While I fully understand and agree with the need to have high standards in the practicing bar, what constitutes “high standards” varies significantly from state to state. For example, some students with the same knowledge and skill levels may easily pass one state’s exam and fail another based on the difficulty of the state exam, the weighing and the cut score, and not because of the quality of education the students received in law
school. Therefore, punishing schools because their students reside in a state with a difficult exam is extremely unfair and does not further the goal of insuring minimal competence in new attorneys.

Based on the foregoing, I strongly recommend against the new proposed changes to Standard 316.

Success is not final, failure is not fatal; it is the courage to continue that counts.

-- Winston Churchill

Thanks.

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