MEMORANDUM

TO: Interested Persons and Entities

FROM: Diane Bosse, Council Chair
       William Adams, Managing Director of Accreditation and Legal Education

DATE: May 19, 2020

SUBJECT: ABA Standards and Rules of Procedure – Matters for Notice and Comment - Rule 2

At its meeting held on May 14-15, 2020, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Rule 2 of the ABA Standards and Rules of Procedure for Approval of Law Schools that appear below. This proposed change will authorize the Council to act quickly to address an emergency impacting multiple law schools—either regionally or nationally.

All proposed revisions and accompanying explanations are published on the Section’s website: http://www.americanbar.org/groups/legal_education/resources/notice_and_comment/.

We solicit and encourage written comments on all the proposals listed above. Due to COVID-19, there will not be an open hearing, only a written comment period. Please address all written comments on the proposals to Diane Bosse, Council Chair. Please send comments to Mary Kearin (mary.kearin@americanbar.org) by Friday, June 19, 2020.

Written comments received after Friday, June 19, 2020, may not be included in the materials considered by the Council at its July 2020 meeting.
PROPOSED CHANGES TO RULE 2

Explanation of Changes:

This proposed change will authorize the Council to act quickly to address an emergency impacting multiple law schools—either regionally or nationally. Examples of emergencies include, but are not limited to, weather disasters and pandemics. In such emergency situations, law schools may need to respond in ways that could violate a standard. An example was when many law schools needed to abruptly shift from routine in-class scheduling of courses to distance learning due to the COVID-19 pandemic of 2020. This proposed change would permit the Council to provide temporary relief from a rule or the requirements of a standard to allow law schools to respond to the emergency. Such changes would be effective only for the duration of the extraordinary circumstance and only to the extent specifically provided.

This proposed amendment to Rule 2 is not intended for an individual law school facing an extraordinary circumstance. Those requests would be made through the variance process [Standard 107]. Put another way, the proposed emergency actions are not intended to displace the normal process outlined in the Standards where an individual law school seeks to respond to extraordinary events.

Additionally, this proposed rule change is not a substantive change in the standards for distance education. In coming months, the Standards Review Subcommittee will seek input from law schools and others on the potential need to revise the definition and requirements of distance education, especially in light of the experiences of law schools in responding to the COVID-19 pandemic. Thus, comments submitted on the proposed changes in this Notice and Comment Memorandum should only address the proposal to authorize the Council to take emergency action to address extraordinary circumstances regionally or nationally.

A. Redline of Recommended Changes to Rule 2:

Rule 2: Council Responsibility and Authority with Regard to Accreditation Status

(a) The Council has authority to determine compliance with the Standards. The Council has authority to:

(1) (a) grant or deny an application of a law school for provisional approval or full approval;

(2) (b) withdraw provisional or full approval;
(3) (c) grant or deny applications for acquiescence in a substantive change, as provided in the Standards;

(4) (d) grant or deny applications for variances;

(5) (e) grant or deny an application for approval of a foreign program, and the continuance of a foreign program as set forth in the Criteria for Foreign Summer and Intersession Programs offered by ABA Approved Law Schools in a Location Outside the United States; the Criteria for Approval of Foreign Semester and Year-Long Programs; and the Criteria for Accepting Credit for Student Study at a Foreign Institution;

(6) (f) approve or deny approval of a teach-out plan;

(7) (g) impose sanctions and/or direct specific remedial action; and

(8) (h) set fees for services and activities related to accreditation.

(b) The Council is authorized to adopt emergency policies and procedures in response to extraordinary circumstances in which compliance with the Standards would create or constitute extreme hardship for multiple law schools. These policies and procedures will be effective upon adoption by the Council for a term certain and limited to the duration of the extraordinary circumstance.