

AMERICAN BAR ASSOCIATION

**Section of Legal Education
and Admissions to the Bar**

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American Bar Association**

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MEMORANDUM

DATE: August 16, 2009

TO: Deans of ABA-Approved Law Schools
University Presidents
Chief Justices of State Supreme Courts
Bar Admissions Authorities
Deans of Unapproved Law Schools
Leaders of Other Organizations Interested in ABA Standards
Student Bar Association Presidents

FROM: Hulett H. Askew, Consultant on Legal Education

SUBJECT: Deletion of Standard 104 and Interpretation 104-1 of the *Standards for Approval of Law Schools*.

The deletion of Standard 104 and Interpretation 104-1 was approved by the Council of the Section of Legal Education and Admissions to the Bar in June 2009 and concurred in by the ABA House of Delegates on August 3, 2009, effective immediately.

Standards for the Approval of Law Schools

~~Standard 104. SEEK TO EXCEED REQUIREMENTS~~

~~An approved law school should seek to exceed the minimum requirements of the Standards.~~

~~Interpretation 104-1~~

~~As stated in the Preamble, the Standards "are minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education." Consistent with the aspirations, mission and resources of a law school, it should continuously seek to exceed these minimum requirements in order to improve the quality of legal education and to promote high standards of professional competence, responsibility and conduct.~~

Commentary

The essential quality of a Standard is that it articulates clearly defined requirements that are binding on all accredited law schools, the violation of which can trigger disciplinary action. Under Standard 103, a law school must be in compliance with each Standard. A school that is in compliance with each Standard is entitled to obtain or retain full approval by the ABA.

In its report to the Council, the Standards Review Committee of the Section indicated its belief that Standard 104, which provides that schools "should continuously seek to exceed" minimum accreditation requirements, is an aspirational statement rather than a clearly articulated and enforceable Standard. In this regard, the Committee also indicated that there are concerns about potential difficulties in applying Standard 104, for example, whether or not schools have to seek to exceed every Standard, and if not, which ones must be exceeded. Further, the Standard is not clear regarding what should happen if a school seeks, but fails, to exceed any of the Standards. Moreover, if Standard 104 was fully enforced, a school that is in compliance with every other Standard could be cited for not trying hard enough to exceed the minimum requirements of the Standards and be faced with penalties including removal from the list of accredited schools, notwithstanding its compliance with all other Standards.

The Standards Review Committee also concluded that Standard 104 articulates an aspiration that is widely shared and demonstrated by approved law schools and expressed the hope that all law schools would seek to strengthen and improve their programs and their opportunities for their students. Indeed, schools should be encouraged to continuously strive to improve their ability to educate their students and contribute to legal education.

As stated in the Preamble, the Standards "... are minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education." No doubt schools seek to exceed the Standards in a variety of ways; but the aspirational goals set forth in the Preamble are not the same as required minimum standards for approval. Therefore, the sentiment expressed in Standard 104 and Interpretation 104-1 is better placed in the Preamble to the Standards and will be incorporated in that section.

At its June 7, 2008 meeting the Council considered the report of the Standards Review Committee with respect to Standard 104. After discussion, the Council agreed to publish for notice and comment the proposed elimination of the Standard. The proposed changes were published on the Section's website, www.abanet.org/legaled and were circulated broadly for Notice and Comment in August 2008 and again in November 2008. The Standards Review Committee held a public hearing on January 9, 2009. No comments were received either in writing or in the Public Hearing in opposition to the Committee's recommendation.

The Council approved the recommendation of the Standards Review Committee at its June 6 - 7, 2009 meeting in Indianapolis, Indiana. The ABA House of Delegates concurred at its meeting on August 3, 2009 in Chicago, Illinois.