

# SYLLABUS

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American Bar Association Section of Legal Education and Admissions to the Bar

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## Council Approves Law Schools

By Carl Brambrink

The Council of the American Bar Association's Section of Legal Education and Admissions to the Bar, at its meetings on December 1-2, 2006, acted upon the October 26-28, 2006, recommendations of its Accreditation Committee, and granted provisional ABA approval to the Charleston School of Law and full ABA approval to both Barry University, Dwayne O. Andreas School of Law, and to Florida International University College of Law.



### Charleston School of Law

The Charleston School of Law, located in Charleston, South Carolina, was incorporated as an LLC by five initial founders in the spring of 2003. Following the issuance of a license authorizing the School to award the J.D. degree in July 2004 by the South

Carolina Commission of Higher Education, the School began classes in August 2004 with 138 full-time students and 62 part-time students. The School applied for provisional ABA approval in the fall of 2005.

The School offers both a full-time day program and a part-time evening program. In order to receive the J.D. degree, 88 credit hours must be successfully completed. Students must also complete 30 hours of pro bono services. The School offers a robust skills curriculum and began an externship program in the spring of 2006 that offers 59 placements at 37 separate sites. For the fall of 2005, the School had 18 full-time faculty members, 16 adjuncts, and enrolled 278 full-time students and 115 part-time students.

The School has developed an experienced faculty and a faculty governance structure, has developed a sound administrative team and student support services, has invested heavily in technological resources, and is in the process of completing permanent physical housing for all of its programs and functions.

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## Input Sought on Goals and Principles of Law School Accreditation

By Hulett H. Askew, Consultant on Legal Education and Admissions to the Bar

The Accreditation Policy Task Force was charged by William R. Rakes, Chair of the ABA's Section of Legal Education and Admissions to the Bar, with taking "a fresh look at accreditation from a policy perspective" because accreditation Standards, Interpretations, and Procedures that have evolved over a period of time might look very different if they were "designed from scratch today." Accordingly, as Chair Rakes recognized, the Section would benefit from a fresh look at accreditation, taking into account the changes in

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# From the CHAIRPERSON

By William R. Rakes, Esq.

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## Distance Education

The growing importance of distance education was recognized with the enactment of ABA Standard 306 in 2002. The Section's Curriculum Study published in 2005 contains a section on Distance Education Instruction and reflects information collected from a survey of law schools for the 2002-03 and 2003-04 years. It covered both synchronous (simultaneous) and asynchronous (online or web-based) distance education courses. Approximately 20 percent of the responding schools offered synchronous distance education courses and ap-



proximately 10 percent offered asynchronous distance education courses. It is believed that the offerings are increasing but the limitations in Standard 306 are impediments

for some schools.

The Standard provides that no credits can be offered during the first year of law school and no more than four credit hours in any semester with a maximum of 12 total credits for distance education courses.

In an effort to keep informed on distance education issues, the Council scheduled a panel on distance education as part of a mini-Conclave on Legal Education held with members of the Florida bar, bench and legal academy in Naples during December. Dean Joseph Harbaugh of Nova South-

eastern University was moderator of the panel that presented a live classroom (synchronous) demonstration from California in cooperation with the Concord Law School, the nation's only totally distance education law school. Dean Barry Currier of Concord, a former Deputy Consultant on Legal Education to the American Bar Association, participated in the program in Naples as well.

The key points on which the panel focused were that distance learning is a fact of life in higher education today, that it is successful and well received by students and faculty in many contexts, and that Standards can be written to set quality thresholds that distance learning should have to meet to be part (or all) of an approved/accredited program.

There are many varieties of distance learning and they are more or less familiar in our technologically oriented world.

Closest to the traditional classroom is a two-way video classroom environment where a professor in front of a class in one location (or in an office or studio set up for the purpose) is teaching students in a classroom in another location. The students can see and hear the professor and the professor can see and hear the students. Body language, gestures and other aspects of the classroom are captured in this live educational exchange. This technique would seem to be the equivalent of face-to-face instruction. It has been suggested that the only thing that is missing is the "bumping into each other in the hallway." Even that

could take place if the professor visits the school occasionally. Given what the two-way video mode potentially adds to the student experience—extra courses, interesting professors, interactions with students from other schools (even schools in other countries)—any deficiencies that one might identify in teaching this kind of class just like a face-to-face class, seem well worth the trade-off. Yet under the current ABA Standards, a course taught in this way is "distance education" and subject to the constraints in Standard 306 (not in 1L, only 12 total credits, no more than four in a semester).

Other distance learning techniques that move away from the traditional face-to-face environment also work well. Whether in synchronous environments—not in a classroom but still at the same time—with two-way audio or audio out and text messaging back, or some asynchronous environments such as video lectures that might be followed by quizzes, bulletin board postings, these techniques can broaden and enrich the education experience.

These other approaches have extra benefits such as more access for students who cannot feasibly attend a face-to-face schedule of 13-15 hours per week in one place. For example, some students might be able to attend 13-15 hours of class in a week but not at the same place. If they can connect from their computers wherever they are, legal education is opened up to them. Or, some students may not be able to connect 13-15 hours per week for live classes but may be able to do some number of hours on a set schedule and fill in with other modalities such as video lectures, quizzes, bulletin board postings and discussions, group projects, papers, etc.

Dean Harbaugh stated that

more than half of his law faculty have taught all or a significant portion of a course using a distance education platform in both synchronous and asynchronous environments. He stated: "Our professors have concluded that they can achieve virtually all of the pedagogical goals of a face-to-face classroom using DE technology. However, DE is at least as challenging to the teacher as the traditional model in terms of preparation, interaction with students and evaluation of student achievement. Moreover, there are no significant cost savings. There are, however, a number of time and space advantages that make DE an exciting alternative to the typical law school classroom."

The "credit" that the Standards now use as the primary measuring stick for what is a sound program of legal education represents more than just the 700 minutes per credit that a student is supposed to be in a seat in a classroom. It also represents preparation, reading and writing papers outside the classroom. Dean Currier believes that so long as the Standards continue to analyze a sound program by a measuring stick that is driven more by minutes of class than other more qualitative measures of the educational experience, it will be difficult for distance education to grow as a worthwhile component of a sound program of legal education.

While distance education can be analogized to classroom time, it would seem that a better approach is to think about what we want the education to accomplish—knowledge of subjects needed to be a lawyer, inculcation of skills and values necessary to be a good lawyer, and some experiential component—then set out how any program proves that it does

so. The proof may be through bar results, employer surveys, student surveys, observations by site visitors, and review of curriculum.

Realizing that changes in the Standards typically evolve over considerable time, Dean Harbaugh believes it would be useful for schools to develop distance education proposals and seek variances under Standard 802. Such proposals could test the effectiveness, costs, and acceptance by students and professors of this form of education. He is concerned that the current rules contained in Standard 306 will entrench legal education in its current position far behind other graduate and professional disciplines on the use and value of distance education. Dean Harbaugh stated that "well-constructed and measured experiments will provide the Council with evidence on which to base reasoned Standards."

So what does the future hold for distance education, particularly as it relates to the law school accreditation process? As distance education becomes more accepted in higher education generally, and in legal education in particular, we can expect law school accreditation standards to be changed to permit more and different types of distance learning. We may see, over time, significant changes that would permit a law school to be accredited by the ABA that offers most of its courses by modes of distance education with only a portion of the offerings through traditional face-to-face instruction.

Is there any reason not to believe that distance education in law will grow and become more and more accepted as technology becomes better and more reasonable in cost? 🏠

# SYLLABUS

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# From the CONSULTANT

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By Hulett H. Askew, Consultant on Legal Education

## Volunteering

The accreditation process is volunteer-driven. I am more convinced today than I was before becoming Consultant that the use of volunteers is one of the strengths of our process as compared to other accrediting entities, which tend to have staff-driven processes. From the makeup of our site teams, to the composition of our decision-making committees (Accredita-



tion, Standards Review and the Council), to the composition of other Section Committees, the Section depends heavily on the good will and selflessness of hundreds of

volunteers who ensure that our work is competent and responsive to Department of Education mandates as well as the needs of the legal education community.

One of the things that has impressed me the most in my first six months as Consultant is the generosity of Deans, Associate Deans, clinicians, librarians, professors and practitioners in stepping forward to offer their service to the betterment of legal education. One of the best examples I observed was the planning of the New Deans' Workshop. A group of experienced Deans volunteer to train and acclimate the new Deans who are hired each year. For two and one-half days, the training team puts on an interactive workshop covering topics

such as students, faculty, university relations, budgeting and how to maintain a balance in life. What a gift this is to new Deans, all done in the spirit of collegiality and mutual support that is so common among and between law schools. It is also just one example of many such Section efforts (the Associate Deans' Workshop, the Deans' Workshop, the Curriculum Survey, the Sourcebook on Legal Writing, the Development Conference, and many others) that are volunteer-driven and aimed at providing support to colleagues and their institutions.

## Pro Bono Representation

I would like to express the appreciation of the Section leadership for the effort undertaken by Deans Harold Koh and Emily Speiler to collect the signatures of Deans on a statement expressing dismay at remarks made by the Deputy Assistant Secretary of Defense regarding pro bono representation of terrorist detainees. The Deans wrote: "In a free and democratic society, government officials should not encourage intimidation of or retaliation against lawyers who are fulfilling their pro bono obligations." It was a wonderful teaching example to see Deans step forward to defend the rule of law and speak out on an issue of great importance to the profession and to society. It was impressive to follow the Deans' listserv, over a holiday weekend, as more than 150 Deans signed on to the statement. I personally was proud to be a lawyer and proud to be part of the legal education community.

## Rerecognition by the Department of Education

The Section's rerecognition by the Department of Education has not been finalized. Much of our interaction with the Department over the last four months has been about the changes made to the diversity Standards (211 and 212) in 2006. The leadership of the Section believes that diversity in legal education is a core value, and thus has taken the position with the Department that the changes in the Standards were necessary and perfectly appropriate. We greatly appreciate the support for our stance that has been expressed by many segments of the legal education community. By the time you read this we are hopeful that the Secretary of Education will have acted upon our petition and that the recommendation of the National Advisory Committee that the Section be rerecognized for 18 months will have been accepted. 🏠

## VOLUNTEER OPPORTUNITIES

If you are interested in serving on a site evaluation team or a Section Committee, please contact the following persons for more information:

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# What Did Your Professor Say?

By Austin Groothuis

A legal education technology project is helping instructors record their lectures digitally and post them to the Internet. These podcasts help students catch up on missed classes, and study for exams.

I have a pretty diverse collection of musicians on my iPod. Some current artists like Wilco. Some older ones like The Beatles. Even some I am a little embarrassed to admit I have (REO Speedwagon). But the most interesting and conceptually new MP3s in my collection come from a group you may not expect: law professors.

If you want to do well in your classes, some law professors may be just the rock stars you're looking for. With support from a project of the Center for Computer-Assisted Legal Instruction (CALI), and on their own, professors at schools across the country are making their lectures and other commentary available as audio digital files, free of charge to anyone with Internet access. It's easy to download these files, called podcasts, to your computer or MP3 player and hear them at your convenience. CALI's collection of law school podcasts is at [www.classcaster.org](http://www.classcaster.org).

Imagine listening to your evidence professor's class lecture from last week during your commute to school. Or going to

the gym during the week before finals and having no feelings of guilt for taking time off from your studies. During the workout, through your headphones, your property professor would be explaining the rule against perpetuities just as she did in class.

Even if none of your professors are currently podcasting, you may find it helpful to listen to podcasts from other instructors who teach the same general material. Though you want to be sure to ultimately follow your professor's insights when answering exam questions, it never hurts to hear a complex topic explained by more than one expert.

Don't be turned off by the term podcast, derived from the popular iPod. You don't need an iPod to listen to podcasts. Any digital audio player will work. In fact, you don't need one of those, either. As

long as your computer has Internet access and speakers, you can listen to podcasts using free audio player software such as QuickTime or Windows Media Player.

## Benefits of podcasting

In my classes, I notice too many students typing or writing furiously to take down as much of the professor's lecture as possible. If you miss one concept while trying to type or write about another, you need to track down a classmate's notes. Listening to lectures the second time around can help students in this regard.

Arizona State University law professor Aaron Fellmeth podcasts lectures for his patent law students. He sees podcasting as a way for students to learn the material without worrying about writing everything down.

"It frees them from the neces-



## A Law Student Podcaster

**D**uring his first year at the University of Cincinnati College of Law, Neil Wehneman chronicled every class lecture he attended by producing podcasts of his summaries of the professors' lectures.

"This project gave me an added incentive to learn the material fully," he says. "Teaching the material to others is often a great way to learn what your own soft spots in the material are."

Wehneman attributes his academic success in part to podcasting. As he puts it, to "relecture" on the material, one has to prepare and know the material thoroughly.

Wehneman says his Life of a Law Student blog, which contains links to his podcasts, has developed a following among law students and those planning to enter law school. "The majority of listeners are current or future law students who want to know what they're in for and/or prepare," he says.

One could see the potential uses. Law students currently in the same professor's class that was podcasted by a former student could use that student's "relectured" podcasts much as students use outlines passed down from year to year. Students who are considering taking a course could use podcasts to hear what a professor's typical class consists of. And students who are taking a course with a different professor or even at a different law school could use the podcasts to gain a basic familiarity with the material.

Student podcasters like Wehneman buck the stereotype of the competitive law student who doesn't want to give other students an advantage. As he says, "I believe strongly in sharing knowledge for the sake of sharing knowledge." To download Wehneman's podcasts, visit [www.lifeofalawstudent.com](http://www.lifeofalawstudent.com).

—Austin Groothuis

sity of taking thorough notes in class to the detriment of their abilities to think critically about what I'm saying," Fellmeth says. "Students who absorb the points made in lectures are far more likely in my classes to learn the subject matter and to perform well on the final exam."

Portability is one of the most useful aspects of podcasts. It's difficult to sit in front of a book or computer and study every hour of every day. It's not safe to review notes while driving. It's not realistic to read a thousand-page casebook on a treadmill.

Yet so many students already do a number of activities while listening to music on their digital audio player. With podcasts of law school lectures, students can go virtually anywhere and learn. They can absorb knowledge while commuting, exercising, working, or eating.

Students are advised to use class podcasts in addition to existing material, not as a replacement. "Ideally, they should review the lectures relatively soon after hearing them to supplement their [in-class] notes," Fellmeth says. Using podcasts this way,

students can sit down soon after a lecture and fill in what they missed in class.

Podcasts also are a good way to review for exams. Many professors agree that some students rely too heavily on commercial study aids and outlines. They feel these materials lack the professor's individualized approach. When students, especially those who are less adept at taking notes, have the option to listen to a professor's lecture a second time, they may be able to rely less on commercial outlines.

### Addressing concerns

Students and professors alike have concerns about making recordings, especially of live classes, available to such a wide audience. These reservations are understandable because it's important to scrutinize all changes in a traditional environment such as law school. Here are some of the common concerns CALI hears from students and faculty about podcasting in connection with CALI's podcasting project and podcasting in general:

"I cannot listen to the podcasts because I am unfamiliar with CALI, or I do not have a CALI password." Some students may not be familiar with CALI, a non-profit organization that facilitates the use of technology in legal education with initiatives like its podcasting project. Most students who are familiar with CALI have become so not through the recent podcasts, but through its regularly updated library of 600 online interactive lessons in more than 30 areas of law.

All students at member schools have unlimited access to CALI's lessons, and nearly all law schools are members of CALI. If you haven't had a chance to check out the lessons, you should take a look. Most students consider the lessons a great, no-cost way to supplement

a class or review for an exam. You can contact a librarian at your school to get the authorization code for access to lessons at the CALI web site, [www.cali.org](http://www.cali.org).

In contrast, the CALI podcasts are available to everyone. Many professor podcasts are also accessible on the professor's own blogs and web sites. Most of these are linked through CALI's podcast web site at [www.classcaster.org](http://www.classcaster.org).

"Podcasting will reduce in-class participation." Some students and professors are concerned that students will hesitate to participate in a class that is being recorded and possibly archived. But think of it this way: Students who know a class will be recorded can spend less time worrying about writing or typing the professor's thought from a few minutes ago and focus more on what the professor is saying at the moment. By freeing up students in this way, podcasts can actually increase participation in class discussions.

If you're worried about jeopardizing your future Supreme Court nomination because of something you said in a podcasted constitutional law class, tell your professor about your concerns. Your professor can opt for a number of solutions, such as not using full names when calling on students or keeping the microphone out of students' range and repeating their questions and responses for the podcast audience.

"If the lecture is recorded, students don't have to attend class." A common concern of professors is that live podcasting may lead to

reduced class attendance. None of the professors working with CALI have reported increased absences. Good law students will use podcasts as a supplement to their classes, not a substitute for attending classes and participating in discussions. Relying solely on podcasts while other students are attending class in person every day would be a huge mistake. It's true that podcasting can save those students who have last-minute emergencies and are unable to attend a class session. But most law students are serious enough about school to realize that skipping class because a lecture is being recorded can only damage their grade.

"Podcasting will lead to a world without professors." Some professors may believe that podcasting live lectures ultimately will eliminate their jobs. This line of thinking says podcasting leads to video, leads to virtual classrooms, leads to no need for professors. But don't expect a world without law professors anytime soon. Nothing can replace the interaction that comes with attending a live class conducted by a professor in a classroom.

#### **The CALI project**

Podcasting is very new to most faculty and even some students, but CALI hopes that more people within the legal education community are willing to roll with the changes and embrace it. The technology is accessible, inexpensive, and easy to use.

Initial feedback from students on the CALI podcasting project

has been favorable. Pepperdine University law professor Gregory Ogden, who podcasts his Civil Procedure II and Remedies classes, says his students have reacted in a "very positive" way, and some of his colleagues are anxious to try podcasting after inquiring about the small recording device he wears around his neck. Based on the favorable feedback, CALI is expanding podcasting through at least the current academic year.

If you think podcasting would be helpful to you, consider asking your professors to set up podcasts for their classes. If your professor doesn't want to go through the process of podcast creation but sees the benefit, try asking for permission to record and post the lectures yourself to CALI's web site. For technical assistance on setting up a course podcast, or if you have any questions, please contact me at [agroothuis@cali.org](mailto:agroothuis@cali.org).

Though I admit that a criminal law lecture may not be as groovy as a Beyonce download, only one of these MP3s can help you get a good grade. If you want to hear something new, exciting, and academically valuable, visit [www.classcaster.org](http://www.classcaster.org) and download the latest hits from the country's most technologically innovative law professors. 🏠

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# Model Rule on Conditional Admission to Practice Law

By Jerome C. Haffer, Chair, Bar Admissions Committee,  
Section of Legal Education and Admissions to the Bar

**A**t the February 10, 2007, meeting of the Section's Council, the Bar Admissions Committee presented a proposed Model Rule on Conditional Admission to Practice Law. Following the presentation and discussion, Council approved the Model Rule and it now goes before the ABA House of Delegates for adoption at its August 2007 meeting.

## Summary of the Model Rule

The Model Rule permits conditional admission of an applicant who currently satisfies all of the requirements for admission, including moral character and fitness, but whose rehabilitation from dependency or from treatment for mental illness justifies monitoring the applicant's condition and behavior after admission. The Model Rule permits bar admissions authorities to condition admissions on compliance with requirements and conditions designed to detect behavior indicating a relapse and/or posing a risk to clients or the public.

Consistent with the present rules on Conditional Admission in most jurisdictions, a Conditional Admissions Order is confidential from the public, but must be disclosed to admissions authorities in other jurisdictions where the conditionally admitted attorney may apply.

## PREAMBLE

WHEREAS, while a bar applicant who is chemically dependent

or has suffered from mental or other illness does not, solely for that reason, lack the character or fitness necessary for admission to practice law, such dependency or illness may result in conduct or behavior that may render the applicant unfit for admission in the absence of evidence of rehabilitation or successful treatment; and

WHEREAS, the interests of the public and bar applicants are best served by admission rules that promote early detection of chemical abuse and dependency or a mental or other illness that may result in conduct or behavior rendering the applicant unfit to practice law absent effective treatment or rehabilitation; and

WHEREAS, the interests of the public and bar applicants are best served by encouraging rehabilitation from conduct or behavior or treatment of conditions that could otherwise render an applicant unfit to practice law; and

WHEREAS, a confidential conditional admission process can encourage potential bar applicants to seek early diagnosis, treatment and rehabilitation from chemical dependency or illnesses; and

WHEREAS, a confidential conditional admission process can reduce the apprehension of the result of a full disclosure of diagnosis, treatment and rehabilitation, and thereby increase an applicant's candor and provide for a more solid foundation on which to make an accurate assessment of character and fitness and create conditions that increase the likelihood of continuing fitness; and

WHEREAS, a confidential conditional admission process with an effective monitoring procedure will enable bar admissions or dis-

ciplinary authorities to act more quickly in the event of recurrence or relapse to minimize or prevent harm to the public.

NOW, THEREFORE, the ABA Commission on Lawyer Assistance Programs recommends that conditional admission rules that balance these important interests be implemented, and hereby approves the following Model Rule on Conditional Admission to Practice Law:

## MODEL RULE ON CONDITIONAL ADMISSION TO PRACTICE LAW

**1. Conditional Admission.** In the case of an applicant who currently satisfies all essential eligibility requirements for admission to practice law, including fitness requirements, and who possesses the requisite good moral character required for admission, but who has shown evidence of recent rehabilitation from dependency or successful treatment for mental or other illness that has resulted in conduct or behavior that could otherwise have rendered the applicant unfit to practice law, and the conduct or behavior, if it should recur, could impair the applicant's ability to practice law or pose a threat to the public, the [Admissions Authority] may permit the applicant to be admitted to the bar conditioned on the applicant's compliance with relevant conditions prescribed by the [Admissions Authority].

## Commentary

Conditional admission is not intended to apply to all applicants who have rehabilitated themselves from prior conduct or other matters of concern to bar examiners, but only to those



whose rehabilitation or treatment is sufficiently recent that the chance of the conduct or unfitness recurring is significant.

Conditional admission is also not intended to apply where an applicant has engaged in conduct that is not subject to rehabilitation.

The Rule focuses on *rehabilitation from* conduct or behavior or *effective treatment of* a condition that was associated with a previous lack of fitness. In this context, unfitness means that an applicant does not meet functional requirements necessary to practice law. As indicated in the Preamble, the existence of a condition of chemical dependency, mental or other illness does not indicate an applicant's lack of character or fitness solely for that reason. Such a rule is consistent with ABA Resolution 110 (1994), which directs that fitness determinations be made on the basis of specific, targeted questions about an applicant's behavior, conduct, or any current impairment of the applicant's ability to practice law and recommends admissions processes be tailored to protect privacy of bar applicants and avoid discouraging individuals from seeking mental health assistance. 18 MPDLR 5, 598 (Sept./Oct. 1994). In addition to discouraging treatment and full disclosure, bar admission determinations made on the basis of diagnosis or treatment of chemical dependency, mental illness, or other medical conditions that do not impair functional ability may also run afoul of the Americans with Disabilities Act, which has been interpreted to prevent licensing authorities from placing additional burdens on qualified persons with a disability. See *Bar Application Mental Health Inquiries: Unwise and Unlawful. The Position of the American Bar Association*, 24 HUMAN RIGHTS 1 (Winter 1997) [www.abanet.org/irr/hr/welobob2.html](http://www.abanet.org/irr/hr/welobob2.html); *Clark v.*

*Virginia Board of Bar Examiners*, 880 F. Supp. 431 (E.D. Va. 1995) (striking down question requiring disclosure of treatment or counseling for any mental, emotional, or nervous disorders within the past five years as impermissible under Title II); *Medical Society of New Jersey v. Jacobs*, 62 USLW 2238, 1993 WL 413016 (D.N.J. 1993) (prohibiting extra burdens on qualified individuals with disabilities seeking medical licensure when those burdens are unnecessary). *But see Applicants v. Texas State Board of Law Examiners*, 1994 WL 93404 (W.D. Tex. 1994) (permitting narrowly drawn questions about treatment for particular disorders). The focus on current conduct and fitness may also avoid disclosure of more health treatment information than is necessary to the admissions inquiry, serving both privacy concerns and avoiding potentially unlawful burdens on qualified disabled persons.

Conditional admission is intended to act as a "safety net" to increase the likelihood of the conditional lawyer's *continuing* fitness—not as a method of achieving fitness. The conditional admissions process is particularly useful when dealing with recent recovery or treatment for chemical abuse, dependency, or mental illness since it recognizes the importance of rehabilitation from dependency or treatment of a condition that resulted in previous conduct or behavior that rendered an applicant unfit, avoids denial of admission because rehabilitation or treatment is recent, encourages applicants not to delay getting help they need, and provides continuing assurances of fitness. A jurisdiction may also provide for conditional admission in cases involving rehabilitation from other misconduct or unfitness that concerns bar examiners that does not result from chemi-

cal abuse, addiction or mental or other illness, such as neglect of financial responsibilities.

The terms "Admissions Authority," "Monitoring Authority" and "Disciplinary Authority" are used to describe the nature of the functions being performed rather than the particular agency performing them. This permits each jurisdiction to determine which entity in its jurisdiction is best suited to perform these functions. In some jurisdictions, the Law Examiners may perform admissions, monitoring, and disciplinary functions; in others, the Law Examiners may perform the initial admissions process, while monitoring and discipline may be a function of the Lawyer Discipline authorities.

**2. Conditions.** The [Admissions Authority] may order that an applicant's admission be conditioned on the applicant's complying with conditions that are designed to detect behavior that could render the applicant unfit to practice law and to protect the clients and the public, such as submitting to alcohol, drug, or mental health treatment; medical, psychological, or psychiatric care; participation in group therapy or support; random chemical screening; office practice or debt management counseling; and monitoring, supervision, mentoring or other conditions deemed appropriate by the Admissions Authority. The conditions shall be tailored to detect recurrence of the conduct or behavior that could render an applicant unfit to practice law or pose a risk to clients or the public and to encourage continued abstinence, treatment, or other support. The conditions should be established on the basis of clinical or other appropriate evaluations, take into consideration the recommendations of qualified professionals, when appropriate, and protect the privacy interests of the admitted lawyer

to professional treatment records to the extent possible. The terms shall be set forth in a confidential order of the [Admissions Authority] (the “Conditional Admission Order”). The Conditional Admission Order shall be made a part of the conditionally admitted lawyer’s application file and shall remain confidential, subject to the provisions of the Rules of the [Admissions Authority] and the Rules of the [Disciplinary Authority].

#### **Commentary**

Consent agreements are used in some states as an alternative to an order. In such case, reference to a “Conditional Admission Agreement” may replace “Conditional Admission Order.”

**3. Notification to the [Disciplinary Authority].** Immediately upon issuing a Conditional Admission Order the [Admissions Authority] shall transmit a copy of the order to the [Disciplinary Authority]. If the [Disciplinary Authority] or any other jurisdiction’s disciplinary authority receives a complaint alleging unprofessional conduct by the conditionally admitted lawyer, or if the [Monitoring Authority] files a complaint against the lawyer based on violation of the Conditional Admission Order, the [Disciplinary Authority] shall request a copy of relevant portions of the lawyer’s bar application file, and the [Admissions Authority] shall promptly provide the requested materials to the [Disciplinary Authority].

#### **Commentary**

This ensures that the local disciplinary authority is aware of the conditional admission and can act promptly to revoke or extend the term of the conditional admission in addition to other disciplinary options it may have. It also provides authority for the local disciplinary authority to act should a complaint of professional misconduct be made by any other jurisdiction’s disciplinary authority.

**4. Length of Conditional Admission.** The conditional admission period shall not exceed twenty-four (24) months, unless the Conditional Admission Order is modified by the [Monitoring Authority] by subsequent order

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# Upcoming Conference

 May 27-29, 2007 • Broomfield, CO

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Chaired by Dean Alex Aleinikoff of Georgetown Law School, the New Deans’ Seminar planning committee has announced plans for the 2007 New Deans’ Workshop, which will be open to Deans who assumed their positions between June 2006 and the fall semester of 2007. The Workshop will be held May 27 to 29, 2007, at the Omni Interlocken Hotel in Broomfield, CO. It will immediately precede the Development Conference. The Workshop will begin at 3:00 p.m. on Sunday, May 27 and conclude at 3:00 p.m. on Tuesday, May 29. There will be group dinners on Sunday and Monday nights, and the lunches on Monday and Tuesday will partially be working sessions.

Eleven topics to be covered during the Workshop:

- Styles of Deaning
- Faculty (2 sessions)
- Students (2 sessions)
- Personal Life During Deanship (Dinner discussion)
- “A Day in the Life of a Dean”
- Strategic Planning
- The ABA Accreditation Process and Use of Take-offs (Lunch discussion)
- Public Role of the Dean
- Finances
- University, Board and Legislative Relations
- Staff Relations

There will be no development session since this precedes the Development Conference. However, two of last year’s New Dean attendees will be invited to give one-year perspectives, and opportunities for Women Deans and Deans of Color to gather will be set aside if they are interested in gathering.

as provided herein, a complaint for violation of the Conditional Admission Order has been filed by the [Monitoring Authority] with the [Disciplinary Authority] or a complaint of unprofessional conduct has been made against the conditionally admitted lawyer with any lawyer disciplinary authority.

#### **Commentary**

The Rule suggests a maximum conditional admission term of 24 months. The majority of jurisdictions have limited conditional admission to two years. This Rule provides limited discretion to extend or modify the terms if the Conditional Admission Order is violated (i.e., there is a relapse or recurrence of the conduct) and provides for the conditional admission to be continued until the [Disciplinary Authority] acts upon any complaint to modify, suspend or revoke the lawyer's admission.

**5. Compliance with Conditional Admission Order.** During the conditional admission period, the [Monitoring Authority] shall take such action as is necessary to monitor compliance with the terms of the Conditional Admission Order; including, but not limited to, referral for monitoring by a Lawyer Assistance Program or other monitoring authority, requiring the conditionally admitted lawyer to submit written verification of compliance with conditions, requiring an appearance before the [Monitoring Authority], and requiring responses to requests for information by the [Monitoring Authority].

#### **Commentary**

Although monitoring may be performed by a Lawyer Assistance Program or by an Admissions Authority, a Disciplinary Authority may be a proper monitor as an extension of its authority in probation, supervision, and reinstatement matters.

**6. Costs of Conditional Admission.** The applicant shall be responsible for any direct costs of investigation, testing and monitoring. Other costs shall be borne in accord with the Rules of the Admissions and Disciplinary Authorities.

#### **7. Failure to Fulfill the Terms of Conditional Admission.**

Failure of a conditionally admitted lawyer to fulfill the terms of a Conditional Admission Order may result in a modification of the order that may include extension of the period of conditional admission, suspension or revocation of the admission, or such other action as may be appropriate under the Rules of the [Disciplinary Authority]. The filing of a complaint with the [Disciplinary Authority] shall automatically extend the conditional admission until disposition of the complaint by the [Disciplinary Authority] and any resulting appeals. Once a complaint is filed with the [Disciplinary Authority], the [Admissions Authority] shall have no further authority over the conditionally admitted lawyer.

#### **Commentary**

The purpose of this provision is to allow the period of conditional admission to be extended to prevent the condition from expiring before the Disciplinary Authority can act on the alleged violation of the Conditional Admission Order. It is not intended to affect in any way a Disciplinary Authority's ability to discipline a conditionally admitted lawyer.

**8. Violation of Conditional Admission Order.** If the [Monitoring Authority] determines that the terms of the Conditional Admission Order have been violated, the [Monitoring Authority] shall determine whether to file a complaint with the [Disciplinary Authority], or alternatively,

to modify the terms or duration of the Order of Conditional Admission. The decision of the [Monitoring Authority] to file a complaint is not subject to judicial review. Consideration and disposition of any complaint by the [Monitoring Authority] shall be governed by the rules of the [Disciplinary Authority].

#### **Commentary**

Violation of a Conditional Admission Order will not necessarily result in revocation. Instead, the Admissions Authority is required to act on any violation and decide whether it merits a complaint to the Disciplinary Authority or whether it requires the imposition of additional conditions.

**9. Expiration of Conditional Admission Order.** Unless the conditional admission is revoked or extended as provided herein, upon completion of the period of conditional admission, the conditions imposed by the Conditional Admission Order shall expire. The [Monitoring Authority] shall notify the [Disciplinary Authority] of such expiration.

**10. Confidentiality.** Except as otherwise provided herein with respect to disclosure to the [Disciplinary Authority], the fact that an individual is conditionally admitted and the terms of the Conditional Admission Order shall be confidential provided that applicant shall disclose the entry of any Conditional Admission Order to the Admissions Authority in any jurisdiction where the applicant applies for admission to practice law. In addition to ensuring that the records of the [Admissions, Monitoring, and Disciplinary Authority] are confidential, the [Admissions Authority] shall structure the terms, conditions, and monitoring of conditional admission to ensure

that the conditional admission does not pose a significant risk to confidentiality. These provisions for confidentiality shall not prohibit or restrict the ability of the applicant to disclose to third parties that the applicant has been conditionally admitted under this Rule, nor prohibit requiring third-party verification of compliance with terms by admission authorities in jurisdictions to which the conditionally admitted lawyer may subsequently apply.

### Commentary

Confidentiality is the key to accomplishing the purposes of conditional admission. Public disclosure and the stigma that would accompany it in cases of chemical abuse or dependency, mental illness, or other medical condition would discourage the treatment, diagnosis, and disclosure this Rule promotes.

In recommending confidenti-

ality, the Commission was aware of and discussed the inherent tension between the benefits of confidentiality discussed above and the public's (including potential clients') interest in access to all material information about the applicant's fitness to practice. It is assumed that, in the absence of a conditional admission rule and under current admission practices, many applicants who would qualify for conditional admission under this Rule would be admitted in most jurisdictions unconditionally. Thus, observing confidentiality should result in no less information being provided to the public than is currently the case, but on the other hand confidentiality will promote early disclosure and treatment of impairments.

**11. Education.** The [Admissions Authority] shall make information about its condi-

tional admission process publicly available. The applicable Lawyer Assistance Program (LAP), or other bar or legal organization that provides support to lawyers, should have the primary responsibility for educating law students, law school administrators and applicants for bar admission regarding the nature and extent of chemical abuse, dependency, and mental health concerns that affect law students and lawyers; aiding them to recognize chemical abuse, dependency, and mental illness; identifying resources available to address such issues; and encouraging them to seek assistance. The Admissions Authority should reasonably cooperate with such organization in making accurate information about the conditional admission process available to interested persons.

### Commentary

As the Preamble indicates, informing bar applicants that chemical dependency and mental illness are not necessarily indicative of a lack of character and fitness that preclude admission to practice law, encouraging rehabilitation from misconduct or behavior or treatment for a condition that would otherwise render an applicant unfit, and utilizing a confidential conditional admission process in cases of recent rehabilitation or treatment, results in candor in the process and other benefits to the bar examiners and the public. The law schools and lawyer assistance programs can assist by addressing chemical abuse, dependency, and mental health concerns, but the message of how an Admissions Authority addresses these concerns and the availability of a conditional admission option may be most appropriately and effectively communicated by the Admissions Authority. 🏠

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# Upcoming Conference

■ ■ ■ May 29-June 1, 2007 • Broomfield, CO

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## Law School Development Conference: Jackson Hole Is Back!

The ninth annual conference for law school deans and senior development and alumni relations' officers will be held this year from May 29—June 1, 2007, at the Omni Interlocken Resort in Broomfield, Colorado.

As you undoubtedly know, this biannual conference is the premier development conference for law school deans and development officers in the country. The beautiful new location outside Denver offers upgraded information technology capabilities, the convenience of a major "hub" airport (Denver), and a reduced hotel room rate (\$139), while still providing a setting where we can easily enjoy the stunning scenery of the Rocky Mountains. If you've attended this event before, you know how important it is that you and your colleagues participate; the conference regularly draws almost all of the deans and development officers in the country.

The conference fee is \$575. If you have any questions about the conference, please do not hesitate to contact Michael Fitts, Dean, University of Pennsylvania Law School, [mfitts@law.upenn.edu](mailto:mfitts@law.upenn.edu), 215-898-7061; or Vicki Fleischer, Assistant Dean for Alumni and Development, Seton Hall University School of Law, [fleiscvi@shu.edu](mailto:fleiscvi@shu.edu), 973-642-8512.

Online registration is open at: [www.abanet.org/legaled/calendar/conferences/jacksonhole/07developmentpage.html](http://www.abanet.org/legaled/calendar/conferences/jacksonhole/07developmentpage.html).

# Section Members and Leadership in the News

## *Hoosiers Host and Lead National Court Event*

The Section of Legal Education and Admissions to the Bar was well represented when Indiana was the proud host of the 2006 annual meeting of the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA).

The two conferences are the leading national organizations working on behalf of the state court systems and are comprised of the chief justice and state court administrator, respectively, of every state, the District of Columbia, the Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam and the Virgin Islands. The meeting's theme was the assessment of judicial administration in light of a famous speech given by Harvard Law School Dean, Roscoe Pound, 100 years ago.

In addition to serving as host, Indiana's Chief Justice Randall T. Shepard, former Chairperson of the Section, completed his one-year term at the conclusion of the annual meeting as president of the Conference of Chief Justices and Chair of the Board of Directors of the National Center for State Courts. Others in attendance from the Section's Council were the Honorable Ruth V. McGregor, Chief Justice, Arizona Supreme Court, and the Honorable Christine M. Durham, Supreme Court of Utah.

Dean John Attanasio of the Dedman School of Law at Southern Methodist University and Hulett H. Askew, Consultant, American Bar Association, joined



(l. to r.) Randall T. Shepard, Rowdie, and Ruth V. McGregor rally at Victory Field, Indianapolis, Indiana.

Dean James White, Professor Emeritus, Indiana University School of Law at Indianapolis, and former Consultant on Legal Education, to discuss what may lie ahead for legal education in the 21st Century.

The 2007 CCJ and COSCA annual meeting will be in Michigan. 🏠

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**Find the latest news and response to the**  
**Goals and Principles of Law School Accreditation**  
**in the “Comments and Reports” area**  
**on the Section’s web site:**  
**[www.abanet.org/legaled/home.html](http://www.abanet.org/legaled/home.html).**

# Recommendations Concerning Changes to Rules, Interpretation 509-3, and Standard 801(a)

At its December 1–2, 2006, meetings, the Council of the Section on Legal Education and Admissions to the Bar approved for public notice and comment revisions to Rules 13, 18, 20 and 21, and new Interpretation 509-3. In addition, at its February 10-11, 2007, meeting the Council also approved for public notice and comment, revisions to Standard 801(a). These proposed revisions may also be found at the Section's website: [www.abanet.org/legaled](http://www.abanet.org/legaled).

We solicit comments on these revisions, by letter, e-mail or through appearances at the hearing that will be conducted by the Standards Review Committee. Please address your comments to Dan J. Freehling, Deputy Consultant, at our Chicago office (321 N. Clark Street, Chicago, IL 60610; 312/988-6743; or [freehlid@staff.abanet.org](mailto:freehlid@staff.abanet.org)). All comments will be posted on the Section's website (subject to reasonable constraints on length and number). Please note that the web posting is a new procedure created to facilitate robust public comment and review. All written comments must be received by **May 10, 2007**.

The Standards Review Committee held a hearing on these proposed revisions at the ABA Midyear Meeting on Thursday, February 8, 2007, from 5:00–6:00 p.m. at the Intercontinental Hotel, Miami, Florida. The next hearing will be at the American Law Institute Annual Meeting, Wednesday, May 16, 2007, Westin St. Francis Hotel, San Francisco, California.

The review and revision of the Standards and Rules are the essential responsibilities of the Section of Legal Education. Your input on all proposed changes is important. Before making final decisions on any revisions to the Standards or Rules, the Standards Review Committee and the Council want and need to hear the views of many constituents on the proposals. Final action on these matters is expected to occur at the June 8-10, 2007, meeting in Charlottesville, Virginia, of the Council.

## **Rules 13 and 18**

Rules 13(a) and (b) (formerly 11(a) and (b)) describe the process by which the Accreditation Committee investigates a law school's apparent noncompliance with the Standards. Under 13(a), the Committee may request further information from a school if it "has reason to believe that a law school does not comply with the Standards." If such a finding is made, the school is given a date certain by which to

provide information showing that the Committee's belief is wrong. *It is noteworthy that under 13(a) the Committee does not actually find a law school out of compliance with the Standards; rather, it finds that it has questions about whether the school is in compliance and it requests information to resolve those questions.* Not until the Accreditation Committee actually makes a finding under 13(b) is a law school considered out of compliance with the Standards.

The Committee makes findings under 13(b) if, "upon a review of the information furnished by the law school in response to the Committee's request [under 13(a)] and other relevant information the Committee determines that the school is not in compliance with the Standards." Until this finding of noncompliance is made, a school is still considered in compliance with the Standards. The Committee may have additional questions for the school in other areas, which could result in the school remaining on 13(a) report back for several years; however, until a 13(b) finding is made the school is considered in compliance with the Standards. Once a finding of noncompliance is made under 13(b), the school is required to appear at a show cause hearing and demonstrate that it complies with the Standards and that no remedial action is necessary. If the Committee finds that the school is, in fact, out of compliance then it gives the school no more than two years to come into compliance, absent a finding of good cause for extending the time period. (See also Rules 15, 18(a).) If the school fails to come into compliance during that two-year period, and no good cause is found for extending the time period, the Committee initiates action to remove the school from the list of approved law schools.

To summarize, Rules 13 and 18, as currently drafted, detail the appropriate process for monitoring that compliance. Rule 13(a) allows the Accreditation Committee to request further information if it "has reason to believe that a law school does not comply with the Standards." Then, if, "upon a review of the information furnished by the law school in response to the Committee's request and other relevant information the Committee determines that the school is not in compliance with the Standards" it makes a finding of noncompliance under 13(b). Such a finding triggers the two-year time period for coming into compliance under Rule 18(a). To make this process and the relationship between Rule 13 and Rule 18 abundantly clear, Rule 13(b) is being revised, con-

sistent with Rule 18(a), to make clear that a finding under Rule 13(b) is a finding of noncompliance, *and* that after such a finding a school has a maximum of two years to bring itself into compliance or the school will be removed from the list of approved law schools unless the time period is extended for good cause. In addition, Rule 13(a) is being clarified to emphasize that a 13(a) request is *not* a finding of noncompliance, but that significant enough questions exist to require the school to report back to provide additional information regarding ongoing compliance. The proposed Rule revisions were approved by the Standards Review Committee on November 10, 2006, and approved for Notice and Comment by Council the first weekend in December 2006.

Final consideration by the Council of the proposed Rule will occur in June 2007 and House of Delegates concurrence will occur in August 2007.

### **Rule 13. Action Concerning Possible Noncompliance with Standards**

- (a) If the Committee has reason to believe that a law school has not demonstrated compliance with the Standards, the Committee shall inform the school of that fact and request the school to furnish by a date certain further information in order to demonstrate the school's compliance with the Standards. The school shall furnish the requested information to the Committee.
- (b) If, upon a review of the information furnished by the law school in response to the Committee's request and other relevant information, the Committee determines that the school is not in compliance with the Standards, the school shall be required to appear at a hearing before the Committee to be held at a specified time and place to show cause why the school should not be required to take appropriate remedial action, have sanctions imposed upon it or be placed on probation, or be removed from the list of law schools approved by the Association. After a determination under Rule 13(b) that a law school is not in compliance with the Standards, the school shall have a period of time as set by the Committee to come into compliance. That period of time shall not exceed two years. If the law school does not demonstrate compliance by the end of that period, the Committee shall recommend to the Council that the law school be removed from the list of approved law schools unless the Committee, or the Council, extends the period for demonstrating compliance for good cause shown.

### **Rule 18. Compliance with Sanctions or with Remedial or Probationary Requirements**

- (a) Upon a determination under Rule 13(b) that a law school is not in compliance with the Standards or after a law school has been placed on probation pursuant to Rule 16, the school shall have a period as set by the Committee or the Council to come into compliance. That period of time may not exceed two years. If the law school does not demonstrate compliance by the end of that period, the Committee shall recommend to the Council that the law school be removed from the list of approved law schools unless the Committee, or the Council, extends the period for demonstrating compliance for good cause shown.
- (b) The Committee shall monitor the law school's compliance with any sanctions imposed upon the school under Rule 16 or 17, with any requirements that the law school take remedial action, or with the requirements of the law school's probation. If the Committee concludes that the school is not complying with the sanctions that have been imposed, or not making adequate progress toward bringing itself into compliance with the Standards, or not fulfilling the requirements of its probation, the Committee may impose or recommend additional sanctions, including probation or removal from the list of approved law schools.
- (c) If a law school has been placed on probation and the Committee concludes that the school has not established that it has fulfilled the requirements of its probation by the end of the established period of probation, the Committee shall recommend to the Council that the school be removed from the list of approved law schools. If the Committee concludes that the school has fulfilled the requirements of its probation, it shall recommend to the Council that the school be taken off probation. These recommendations shall be considered under the procedures set forth in Rule 17.

### **Rules 20 and 21**

The Standards Review Committee has proposed revisions to Rules 20 and 21 to make explicit that institutions wishing to open a Branch campus or engage in other substantive changes will receive a site evaluation visit six months after the change. The amendment to the Rule now requires that a school opening a branch campus must apply for provisional

approval of the branch by October 15 of the second year of operation of the branch. Revised Rules 20 and 21 were proposed by the Standards Review Committee on November 10, 2006, and were considered by the Council the first weekend in December 2006. The Council voted to send the new Rules out for Notice and Comment. Final consideration by the Council of the proposed Rules will occur in June 2007 and House of Delegates concurrence will occur in August 2007.

#### D. Major Changes in Program or Structure

##### **Rule 20. Major Change in the Organizational Structure of a Provisionally or Fully Approved Law School.**

- (a) This Rule governs consideration of applications for acquiescence in a major change in the organizational structure of an approved law school, including, without limitation:
- (1) Materially modifying the law school's legal status or institutional relationship with a parent institution;
  - (2) Merging or affiliating with one or more approved or unapproved law schools;
  - (3) Acquiring another law school or educational institution;
  - (4) Acquiring or merging with another university by the parent university where it appears that there may be substantial impact on the operation of the law school;
  - (5) Transferring all, or substantially all, of the academic program or assets of the approved law school to another law school or university;
  - (6) Opening of a Branch campus or a Satellite campus at which a student could take the equivalent of 16 or more semester credit hours toward the law school's J.D.
  - (7) Merging or affiliating with one or more universities;
  - (8) A change in the control of the school resulting from a change in the ownership of the school or a contractual arrangement; or
  - (9) A change in the location of the school that could result in substantial changes in the faculty, administration, student body or management of the school.
- (b) For the purposes of this Rule:
- (1) Any of the changes in organizational structure listed in Rule 20(a) may amount to the closure of an approved law school and the opening of a different law school. If the Accreditation Committee determines, after written notice and an opportunity for written response, that such

a change does amount to the closure of an approved law school and the opening of a different law school, it shall so notify the law school(s). If the Committee determines that any proposed structural change constitutes the creation of a different law school, it shall recommend to the Council that any acquiescence in the proposed structural change be accompanied by a requirement that the school apply for provisional approval under the provisions of Standard 102 and Rule 4.

- (2) Factors that shall be considered in making the determination of whether the events listed in subsection (1) above constitute the closure of an approved law school and the opening of a different law school include, without limitation, whether such events are likely to result in:
  - a. significant reduction in the financial resources available to the law school;
  - b. significant change, present or planned, in the governance of the law school;
  - c. significant change, present or planned, in the overall composition of the faculty and staff at the law school;
  - d. significant change, present or planned, in the educational program offered by the law school; or
  - e. significant change, present or planned, in the location or physical facilities of the law school.
- (3) Opening of a Branch campus by an approved law school is treated as the creation of a different law school. After the law school has obtained prior acquiescence of the Council in the major change caused by the opening of a Branch campus, the Branch campus also shall apply for provisional approval under the provisions of Standard 102 and Rule 4 no later than October 15 of the second academic year of operation of the Branch campus. A law school seeking to establish a Branch campus shall submit to the Consultant, as part of its application, a business plan that contains the following information concerning the proposed Branch campus: a description of the educational program to be offered; projected revenues, expenditures and cash flow; and the operational, management and physical resources of the proposed Branch campus.

- (4) After written notice and an opportunity for a written response, the Accreditation Committee shall determine whether any other proposed structural change constitutes the creation of a different law school. If the Accreditation Committee determines that any proposed structural change constitutes the creation of a different law school, it shall recommend to the Council that any acquiescence in the proposed structural change be accompanied by a requirement that the school apply for provisional approval under the provisions of Standard 102 and Rule 4.
- (c) If a different school will be created as a result of the major structural change, the different school shall apply for approval pursuant to provisions of Rule 4. If the different school demonstrates that it is in full compliance with the Standards as provided in Standard 103, the Committee shall recommend that it be fully approved. Such recommendation may be conditioned upon further site evaluation visits or other requirements. If the different school is not in full compliance with the Standards, but it substantially complies with each of the Standards as provided in Standard 102, the Committee shall recommend that it be provisionally approved. The Committee may also recommend that the school will be allowed to seek full approval in a period of time shorter than that provided in Standard 103.
- (d) Whether or not the Accreditation Committee determines that the proposed change will create a difference law school, the law school's request for acquiescence by the Council in the proposed major change in organizational structure shall be considered under the provisions of Rule 21.
- (3) Establishing a two-year undergraduate/ four-year law school or similar program;
- (4) Establishing a new or different program leading to a degree other than the J.D. degree;
- (5) A change in program length measurement from clock hours to credit hours; and
- (6) A substantial increase in the number of clock or credit hours that are required for graduation.
- (b) This Rule also governs consideration of applications for acquiescence in a change in organizational structure as provided in Rule 20(a).
- (c) An application governed by this Rule must contain:
  - (1) A letter from the president and the dean of the law school stating that they have read and carefully considered the Standards, have answered in detail the questions asked in the accompanying major change questionnaire, and do certify that, in their respective opinions, the school meets the requirements of the Standards for the granting of acquiescence in the proposed major change. If a law school seeking acquiescence is not part of a university, the letter may be from only the dean;
  - (2) A completed major change questionnaire;
  - (3) A copy of the law school's most recent self-study;
  - (4) A description of the proposed change and a detailed analysis of the effect of the proposed change on the law school's compliance with the Standards;
  - (5) A request that the Consultant schedule any required site evaluation at the school's expense; and
  - (6) Payment to the Association of the application fee.
- (d) A site evaluation of the school must be conducted before the Accreditation Committee or the Council considers the application, unless the application seeks acquiescence in a major change described in Rule 21(a)(4), Rule 21(a)(5), or Rule 21(a)(6).
- (e) The site evaluation shall be conducted in accordance with the provisions of Rules 2 and 14. The site evaluators shall prepare a written report based on the site evaluation. The site evaluators shall report facts and observations that will enable the Accreditation Committee and the Council to determine whether the law school

**Rule 21. Major Change in the Program of Legal Education of a Provisionally or Fully Approved Law School.**

- (a) This Rule governs consideration of applications for acquiescence in major changes in the program of legal education of a law school, including, without limitation:
  - (1) Instituting a new full-time or part-time division;
  - (2) Changing from a full-time to a part-time program or from a part-time to a full-time program;

satisfies the requirements of the Standards for granting acquiescence in the proposed major change. The site evaluators shall not make any determination as to the school's compliance with the Standards.

- (f) The Accreditation Committee's consideration of any application for acquiescence shall be governed by the provisions of Rules 3, 5 and 6. The Council's consideration of such applications shall be governed by the provisions of Rules 6 and 8.
- (g) After the Council meeting at which the application is considered, the Consultant shall inform the president and the dean of the law school in writing of the Council's decision. There is no appeal from the Council's decision on an application for acquiescence in a major change.
- (h) Following acquiescence in a major change, the Consultant shall arrange for a limited site evaluation of the school not later than six months after the date of the acquiescence to determine whether the law school has realized the anticipated benefits and remains in compliance with the Standards. No site visit shall be required following acquiescence in a major change described in Rule 21(a)(5) or Rule 21(a)(6).
- (6) The limited evaluation of a school granted acquiescence pursuant to Rules 21(a)(1)–(4), or after acquiescence in the establishment of a Branch or Satellite campus under Rule 20(a)(6), shall be conducted in the first academic term, subsequent to acquiescence in which students are enrolled in the new program or attending the Branch or Satellite campus. The Consultant may determine in each instance whether the evaluation pursuant to a major change under Rule 21(a)(4) requires an actual site visit or may be conducted through other means.

### **Interpretation 509-3**

Standard 304, Course of Study and Academic Calendars, addresses the requirements for developing an academic calendar for each law school. Standard 509 and Interpretation 509-2 require law schools to publish basic consumer information in a fair and accurate manner in either the law school's own publication or in a publication designated by the Council. The list of basic consumer information is provided in Interpretation 509-1. Because the list in Interpretation 509-1 does not include a specific requirement that a school publish an academic cal-

endar and we are required to do so in our Standards by the Department of Education, the Section has proposed a new Interpretation that also will require a law school to publish its academic calendar in its own catalog or similar publication and on its website. The Interpretation was proposed by the Standards Review Committee on November 10, 2006, and was reviewed by the Council the first weekend in December 2006. The Council voted to send the new Interpretation out for Notice and Comment. Final consideration by the Council of the proposed Interpretation will occur in June 2007 and House of Delegates concurrence will occur in August 2007.

### ***Interpretation 509-3 (and renumber current 509-3 through 509-6 as 509-4 through 509-7)***

*In addition to the publication of information required by Interpretations 509-1 and 509-2, a law school shall publish its academic calendar in its own catalog or similar publication and on its website.*

### **Standard 801(a)**

**Commentary:** The purpose of the proposed revision to Standard 801(a) is to make it consistent with Rule 10 of the *Rules of Procedure for Approval of Law Schools*. Standard 801(a) and Rule 10 both speak to when a decision of the Council becomes final with respect to granting or denying provisional or full approval; or withdrawing provisional or full approval.

### **PROPOSED Standard 801(a) language (to conform to Rule 10 of the Rules of Procedure for Approval of Law Schools):**

- (a) The Council shall have the authority to grant or deny a law school's application for provisional or full approval or to withdraw provisional or full approval from a law school. A decision of the Council to grant provisional or full approval is effective upon the action of the Council. A decision of the Council to deny or withdraw approval is effective as follows: (i) if no timely notice of appeal is filed, upon the expiration of the period provided for filing notice of appeal under Rules of Procedure of the House; (ii) if the school files a timely notice of appeal and the House concurs in the decision of the Council, upon such concurrence; (iii) or, if a timely notice of appeal is filed, and the House refers the decision back to the Council, upon the decision of the Council following the final referral from the House. Review of decisions appealed to the House shall be conducted pursuant to the procedures set forth in the Rules of Procedure of the House and the *Rules of Procedure for Approval of Law Schools*. 

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## COUNCIL APPROVES LAW SCHOOLS

*Continued from page 19*

its December 1-2, 2006, meetings that the Charleston School of Law had demonstrated that it was in substantial compliance with the ABA Standards for Approval of Law Schools and therefore the Council granted provisional ABA approval to the School.

### **Barry University, Dwayne O. Andreas School of Law**

Barry University, Dwayne O. Andreas School of Law, located in Orlando, Florida, was granted provisional ABA approval by the Council in February 2002. Provisional approval of the School became effective upon the concurrence by the House, in February 2002, in the Council's decision. At the time of its provisional approval, the School of Law had 22 full-time faculty members and a total student enrollment of 208, of which 31 were full-time



students and 177 were part-time. The student/faculty ratio was 8:1.

During the period of the School of Law's provisional approval, all aspects of its program have been improved and enhanced. The School of Law has enhanced its curriculum, invested in technology and electronic resources, improved its library collection to support its educational program, augmented its teaching resources, improved its physical facilities, strengthened student services, and achieved good bar passage rates.

The School of Law requires 90 semester hours of coursework to receive the J.D. degree. Students graduating in 2006 must also complete a minimum of 20 hours of pro bono service in the community. The School of Law offers a live-client, in-house clinic and six major externship placements, has established a foreign student exchange opportunity, and offers a joint degree program with the School of Education. For the fall of 2005, the School of Law had a total student enrollment of 537, of which 352 were full-time and 185 were part-time. In addition to several administrators with teaching responsibilities, the School of Law had 26 full-time faculty members and 15 adjuncts.

The Council determined, at its December 1-2, 2006, meetings, that Barry University, Dwayne O.

Andreas School of Law, has demonstrated that it is in full compliance with the ABA Standards for Approval of Law Schools and, therefore, the Council granted full ABA approval to the School.

### **Florida International University College of Law**

Florida International University College of Law, located in Miami, Florida, was granted provisional ABA approval in June 2004. Provisional approval of the School became effective upon the concurrence by the House, in August 2004, in the Council's decision. At the time of its provisional approval, the College of Law had 17 full-time faculty members and a total student enrollment of 115, of which 66 were full-time students and 49 were part-time. The student/faculty ratio was 13.9:1.



During the period of the College of Law's provisional approval, all aspects of its program have been improved and enhanced. The College of Law has enhanced its curriculum, invested in technology and electronic resources, improved its library collection to support its educational program, augmented its teaching resources, occupied a new facility, strengthened student services, and achieved good bar passage rates.

The College of Law requires 90 semester hours of coursework to receive the J.D. degree. Each student must complete at least 30 hours of pro bono service to the community. The College of Law offers four legal clinics, has established six joint degree programs, and offers two foreign study abroad opportunities. For the fall of 2005, the College of Law had a total student enrollment of 332, of which 176 were full-time students and 156 were part-time. The College of Law, in spring 2006, had 27 full-time faculty members and 14 adjuncts.

The Council determined, at its December 1-2, 2006, meetings, that Florida International University College of Law has demonstrated that it is in full compliance with the ABA Standards for Approval of Law Schools and the Council therefore granted full ABA approval to the School. 🏠

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## GOALS AND PRINCIPLES

*Continued from page 20*

legal education and in the nature of legal practice, the Section's experience with the accreditation process, the feedback the Section has received regarding that process, and other relevant considerations.

The Task Force began by seeking to identify the general goals and principles of a sound and appropriate system of accreditation. A number of well-accepted goals and principles appear in the ABA Section of Legal Education and Admissions to the Bar's *Standards and Rules of Procedure for Approval of Law Schools*. The Preamble to the Standards recognizes that the law school accreditation process should be designed and administered in a manner that "protect[s] the interests of the public, law students, and the profession." The Preamble states that accreditation standards should be "minimum requirements designed, developed, and implemented" to advance "the basic goal of providing a sound program of legal education."

Since "graduates of approved law schools can become members of the bar in all United States jurisdictions, representing all members of the public in important interests" (*id.*), a law school's educational program must prepare its graduates for "admission to the bar and effective and responsible participation in the legal profession." ABA Accreditation Standard 301(a). *See* Preamble (identifying areas of substantive knowledge, lawyering skills, and professional values that are essential to a sound program of legal education, and recognizing the importance of "a diverse educational environment").

By ensuring that law schools prepare their graduates, the law school accreditation process not only serves the functions that the U.S. Department of Education requires of all federally recognized accrediting bodies, but also fulfills its systemic responsibility to the state high courts that rely upon ABA approval of a law school to determine whether the jurisdiction's legal-education requirement for admission to the bar is satisfied.

Beginning with generally accepted principles as a starting point for analysis, the Task Force set out to identify other considerations that should inform and guide accreditation of law schools. It concluded that the process would benefit greatly from input from all sections of the legal education community. The Task Force is also soliciting written comments from a wide variety of groups and individuals. Your written comments should be sent to the following email address: [t.f.accreditation@staff.abanet.org](mailto:t.f.accreditation@staff.abanet.org).

To facilitate the gathering of information, the Task Force identified a number of areas for public input and invites your comments and suggestions on any

or all of the following subjects as well as on any other aspects of law school accreditation on which you would like to provide information or express a view:

1. Law schools may choose to serve one or more missions beyond the central mission of preparing students for "admission to the bar, and effective and responsible participation in the legal profession." ABA Accreditation Standard 301(a). Should the accreditation standards explicitly recognize any of these other missions and, if so, which ones? For example, should the accreditation standards expressly recognize a mission of promoting the advancement of new knowledge in law and its related fields, and/or a mission of public service? Are there other law school missions that should be recognized? Should law schools be required to demonstrate that they are achieving all articulated missions?
2. Some commentators maintain that the accreditation process should rely, to a greater extent than it currently does, on output measures. Should that view prevail and, if so, which outputs should be the focus of examination, and how should such outputs be assessed? If a system of output-oriented assessment were to rely, at least in part, on a law school's evaluation of its own performance, what processes might be used to verify the law school's self-assessment?
3. How should the accreditation process be structured and administered to ensure appropriate transparency? Are there aspects of the current process that you regard as particularly successful or unsuccessful at achieving the goal of transparency? What types of information and what aspects of the process should be confidential, and how can any needs for confidentiality be appropriately balanced with the goal of transparency?
4. Should the accreditation process go beyond ensuring compliance with minimum requirements by encouraging law schools to identify and pursue greater aspirations in their educational missions and programs? If so, how could or should the accreditation process assess and weigh a law school's pursuit of its aspirations?
5. It has been suggested that the law school accreditation process should take costs into account before imposing requirements on law schools, in

order to ensure that students of limited means have access to the legal profession. It is widely acknowledged that standards that seek to ensure or to increase the quality of legal education may substantially increase costs and thereby reduce access. Should costs be taken into account, and, if so, to what extent, and how?

6. In assessing a law school's program of legal education, should the accreditation process take into account the types of practice (e.g., solo or small-firm practice in rural areas) that the law school's graduates typically enter? If so, how should the accreditation process be structured to reflect this consideration?
7. Some commentators have suggested that fairness dictates that all law schools be evaluated with a uniform set of criteria applied in an evenhanded manner, while other commentators

have urged that schools with a long-standing record of compliance with accreditation standards be subject to less exacting standards or to a streamlined process of review. If less exacting standards or a streamlined process are to be used, what standards should be applied, and what should the streamlined procedure be? Do such changes give rise to possible concerns about unequal treatment of law schools?

8. Assuming that an excellent accreditation process should engender a high level of satisfaction on the part of accredited institutions, the profession, and the public, what, if any, steps should be taken to obtain feedback on the quality of the accreditation process?
9. What other areas and issues should the Task Force consider? Is the focus of the analysis of the Task Force a correct and useful focus? 🏢

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## CALENDAR

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### MARCH 2007

**24-25** Bar Admissions Committee Meeting  
San Antonio, Texas

### APRIL 2007

**19-21** Accreditation Committee Meeting  
Chicago, Illinois

**28-29** Section Conclave Conference  
Chicago, Illinois

**30** Questionnaire Committee Meeting  
Chicago, Illinois

### MAY 2007

**16** Standards Review Committee  
Hearing and Meeting  
San Francisco, California

**16** Mayflower I • San Francisco, California

**17** Mayflower II • San Francisco, California

**27-29** New Deans' Seminar  
Broomfield, Colorado

**29-31** Law School Development Conference  
Broomfield, Colorado

### JUNE 2007

**1** Law School Development Conference  
Broomfield, Colorado

**9-10** Council Meeting  
Charlottesville, Virginia

**21-23** Accreditation Committee Meeting  
Whitefish, Montana



### AUGUST 2007

**9-14** ABA Annual Meeting  
San Francisco, California

**9-10** Council Meeting

**9** Chairpersons' Dinner

**10** Kutak Reception

**11** Deans' Breakfast

**11** Section Programs

**11** Annual Business Meeting

# Suggestions for Council Nominations Solicited

The Section's Nominating Committee, chaired by Honorable Elizabeth B. Lacy, Supreme Court of Virginia, invites suggestions of individuals whom it should consider for nomination for positions on the Council of the Section of Legal Education and Admissions to the Bar. Other Nominating Committee members include: Pauline A. Schneider, Esq.; Professor Margaret Martin Barry; Honorable Martha Craig Daughtrey; President and Dean Thomas F. Guernsey; Dean Jeffrey E. Lewis; Gregory G. Murphy, Esq.; Nancy M. Neuman; Dean Steven R. Smith; and Dean Barry R. Vickrey.

The Nominating Committee will nominate Section officers and Council members for election at the Section's August meeting in San Francisco. Among the positions that are open for nominations are: vice-chairperson, secretary, and Council members-at-large. Council members-at-large serve three-year terms.

Nominees should have extensive experience in legal education, bar admissions, or law school ac-

creditation. Recommendations must be received by **April 9, 2007**, and should describe the activities that especially qualify the person for membership on the Council. Send nominee suggestions to:

**Honorable Elizabeth B. Lacy**  
Supreme Court of Virginia  
100 North 9th Street  
Richmond, VA 23219  
Email: elacy@courts.state.va.us

or

**Consultant Hulett H. Askew**  
American Bar Association  
Section of Legal Education  
and Admissions to the Bar  
321 N. Clark Street, 21st Floor  
Chicago, IL 60610  
E-mail: askewh@staff.abanet.org

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## Chair-Elect Seeks Nomination Suggestions

Ruth V. McGregor, Chief Justice, Arizona Supreme Court, and chair-elect of the Section of Legal Education and Admissions to the Bar, is seeking suggestions for membership to the following Section committees. Committee appointments are to begin in 2007–2008 and often will be for two or three years.

- Adjunct Faculty
- Bar Admissions
- Clinical and Skills Education
- Communications Skills
- Curriculum
- Diversity
- Governmental Relations and Student Financial Aid
- Graduate Legal Education
- Law Libraries
- Law School Administration
- Law School Development
- Law School Facilities

- Pre-Law
- Professionalism
- Questionnaire
- Technology and Education

The chair-elect seeks committee membership from three components of Section membership: legal educators, practicing lawyers and judges. The Section provides a wide range of services to legal education and the profession. Much of this service emanates from the work of the committees of the Section.

Expression of interests and suggestions should be sent and received by **April 9, 2007**, to the Consultant on Legal Education and Admissions to the Bar:

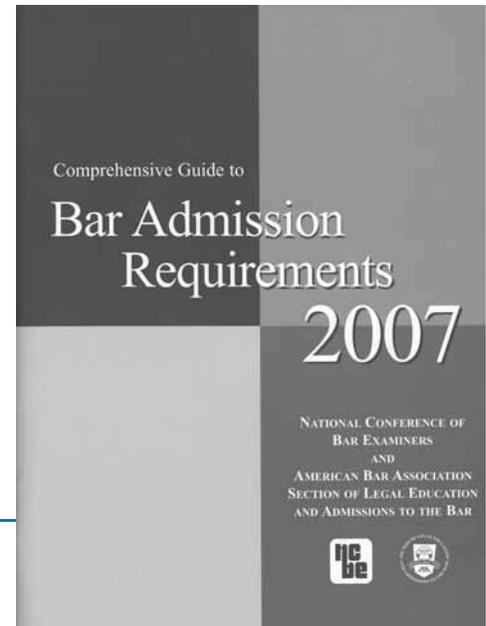
**Consultant Hulett H. Askew**  
American Bar Association  
Section of Legal Education  
and Admissions to the Bar  
321 N. Clark Street, 21st Floor  
Chicago, IL 60610  
E-mail: askewh@staff.abanet.org

# BOOKS AVAILABLE FROM THE Section of Legal Education and Admissions to the Bar

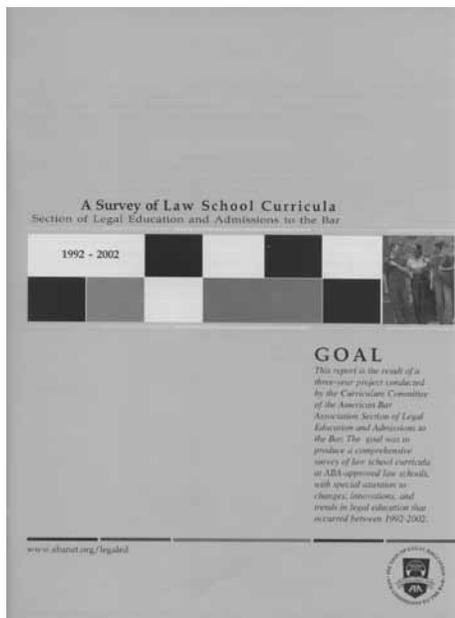
## 2007 Comprehensive Guide to Bar Admission Requirements

The National Conference of Bar Examiners and the ABA's Section of Legal Education and Admissions to the Bar publish the *Comprehensive Guide to Bar Admission Requirements* each year. The Guide sets forth the rules and practices of all U.S. jurisdictions for admission to the bar by examination and on motion: legal education, character and fitness, bar examinations, special licenses, etc. Supplemental information follows each chart.

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## A Survey of Law School Curricula



The Curriculum Committee's *A Survey of Law School Curricula* is a three-year project report on law school curricula at ABA-approved law schools, with attention to changes, innovations and trends in legal education between 1992-2002. The report uses data from the Annual Questionnaires from 1992-1993 and 2002-2003, and from a web-based survey that reflects the contributions of 152 of the 187 ABA-approved law schools as of 2003.

The curriculum report concludes that there has been a decade of dynamism in legal education. From the first year required curriculum through upper division electives, law schools have revised the configuration of courses, increased emphasis in skills and professionalism, and added opportunities in electives, specializations and other degree granting offerings. The 60-page report provides these details, along with table representations of the findings.

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# Kutak Nominating Committee Seeks Suggestions for 2007 Award

The Section's Kutak Nominating Committee invites suggestions of individuals whom it should consider for the 2007 Kutak Award.

The Section of Legal Education and Admissions to the Bar of the American Bar Association, and the national Kutak Rock law firm, established the Robert J. Kutak Award in 1984. The Award is in memory of a distinguished Omaha lawyer, champion of legal reform, and advocate for legal education. Mr. Kutak was a member of the Section's Council at the time of his death.

The Award is given annually by the Council to an individual who has contributed significantly toward increased cooperation between legal education, the practicing bar, and the judiciary. Most recipients have been members of the Section and active participants in its work. The 2007 Kutak Award will be presented in August at the ABA Annual Meeting in San Francisco.

Recent recipients have included Honorable Sandra Day O'Connor, United States Supreme Court Justice, Retired, 2006; Trustee Professor Geoffrey C. Hazard, Jr., University of Pennsylvania Law School, 2005; Honorable Harry T. Edwards, Circuit Judge on the United States Court of Appeals for the District of

Columbia Circuit, 2004; Professor and Dean Emerita Nina Appel, Loyola University-Chicago School of Law, 2003; and Professor Anthony G. Amsterdam, New York University School of Law, 2002.

The Committee expects to receive suggestions about a number of highly qualified individuals, but can recommend only one name for recognition by the Council. Recommendations received for the 2007 Award will be carried forward for consideration in future years.

The Kutak Nominating Committee includes: Jose R. Garcia-Pedrosa, Esq.; Robert MacCrate, Esq.; Harold L. Rock, Esq.; Honorable Randall T. Shepard; Dean Robert K. Walsh; Professor James P. White; and Professor Peter A. Winograd (chair).

Nominee suggestions must be received by **April 9, 2007**, and should be sent to:

## Kutak Nominating Committee

Carl Brambrink, Director of Operations  
American Bar Association, Section of  
Legal Education and Admissions to the Bar  
321 N. Clark Street  
Chicago, IL 60610  
Email: [cbrambrink@staff.abanet.org](mailto:cbrambrink@staff.abanet.org)

## SYLLABUS

Section of Legal Education and Admissions to the Bar  
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