



SYLLABUS

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

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A Focus on Bar Admissions

The Honorable Rebecca White Berch
Justice, Arizona Supreme Court
2015-2016 Council Chair

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A Focus on Bar Admissions



The Honorable Rebecca White Berch
Arizona Supreme Court
Council Chair

The Council of the Section of Legal Education and Admissions to the Bar primarily deals with issues related to legal education and the accreditation of law schools. This article focuses on the other part of the Section’s mission: bar admissions. There is a lot happening in this space:

- The Uniform Bar Exam (UBE). Twenty-one jurisdictions have adopted the UBE as their bar exam, and several more have adoption of the test under consideration. The UBE consists of three products many states already use in their state exams: the Multistate Essay Examination (MEE), two Multistate Performance Test (MPT) problems, and the Multistate Bar Examination (MBE). According to a UBE fact sheet, the exam is “uniformly administered, graded, and scored by user jurisdictions and results in a portable score” that examinees may take to other jurisdictions that have agreed to accept them. States retain the right to test or educate on state-specific material, set their own passing score, grade tests, set character and fitness requirements and make C&F determinations, decide how long UBE scores will remain valid, and, ultimately, determine who should be admitted to practice.

The UBE allows takers to take their exam score to apply for admission in another jurisdiction for the period of time specified by the admitting jurisdiction. It gives new lawyers the flexibility to perhaps take only one bar exam if they must move to another jurisdiction to find work. In these tough economic times, this portability may help new lawyers find and begin work more quickly.

Momentum for this concept is growing, and it has been endorsed by the Council and by other influential groups, such as the Conference of Chief Justices. At the February 2016 Midyear Meeting, the ABA House of Delegates approved a resolution put forth by the Law Student Division calling upon states to “expeditiously” adopt the UBE. The idea is also popular with law deans and faculty, who wish to see their students employed, as well as with students, who may not have to take several tests. For further information on the UBE, visit NCBEX.org and click on the link to the UBE.

- Admission on Motion. Recognizing that much law practice transcends state boundaries, many states now allow admission on motion – without having to pass a state’s bar exam – for those

who have practiced a required length of time (usually five of seven years or, more and more commonly, three of five years) without having disciplinary problems. A coming challenge for the future is recognition that law practice is now, in many instances, multi-national or global.

- Apprenticeship programs and “diploma privileges.” Some states allow admission to the bar by presentation of a portfolio of work performed through an apprenticeship-type program. The Daniel Webster Scholars program in New Hampshire is one such program. In addition, at least one jurisdiction, Wisconsin, permits students from that state’s two ABA-accredited schools to be admitted without taking the state’s bar exam – though it does require an exam from graduates of other ABA-accredited law schools. At least one other state recently studied whether to institute such a rule for graduates of its in-state schools, but rejected the idea. The ABA Council discourages such a procedure, instead providing that every candidate for admission should be “examined by public authority to determine fitness for admission.” (Preface to *ABA Standards for Approval of Law Schools* ¶ 1.)
- The 3L February Bar Program. A few jurisdictions – following an experiment launched in Arizona – allow third-year law students who are within a few credits of graduation to sit for the bar exam in February of their third year of law school. The students must complete law school within a specified time, and before admission will be permitted. But if they do so and pass the bar, they may begin working several months earlier than if they had to wait till July to take the exam. Given the law school debt many law students now carry, the extra several months of income – and the chance to get a jump on competition in the job market – provide a great advantage. Thus far, the Arizona experience shows that the applicants pass the bar at a high rate – higher than would be predicted by the takers’ law school grades.

States have the right to impose additional requirements for admission, and, through their supreme or high courts, have always done so. Consider, for example, character and fitness requirements. The requirement of good moral character exists in every jurisdiction. In addition, some states require a test on state law, and even some UBE states administer a separate state-law test or require a state-law course. Still other jurisdictions require new lawyers to complete a professionalism course or do a specified number of hours of pro bono work within a stated time period after admission to the bar. Such regulations are the prerogative of the states.

One new development, however, is concerning: states imposing requirements that students must fulfill while in law school that exceed requirements imposed by the ABA or the law schools themselves. For example, New York has recently passed a rule asking law school deans to certify, for applicants to the New York bar, that they have received sufficient training in legal skills and, if the dean is unable to do that, asking the students to certify that they have taken at least 15 hours of experiential learning. Such a great amount of experiential learning is not necessarily a bad thing. But the Section’s Council debated adding a similar requirement within the past two years – and rejected it. The Council sent out for public comment a rule that would require students to take either a minimum of 6 or a minimum of 15 hours of clinical or experiential coursework. The resulting comments focused on the cost of such courses and the effect that such a requirement might have on the cost of law school. The second group of comments focused on the students’ needs. They noted that not all will practice law; yet they still

might want to be admitted to the bar, and requiring such students to take a higher minimum of experiential learning credits might not be a productive use of time for those students. As a result of these comments, the Council maintained the 6-credit minimum requirement; students desiring more experiential education may always take more such courses.

Until now, it has been the case that graduation from an ABA-approved law school sufficed to *academically* qualify applicants to sit for the bar exam in any U.S. jurisdiction. If state-by-state proposals to require courses students must take in law school in order to academically qualify for admission in certain jurisdictions continue to multiply, then those jurisdictions – and not the ABA, which has national representation and seeks input from law schools, students, practitioners, judges, and public members – can effectively exert control over the courses that law schools must offer. Creating this patchwork puts the onus on students to figure out well ahead of time where they may wish to practice upon graduation in order to ensure that they take the courses in law school that will qualify them for practice. Until now, taking the few required courses at an ABA-approved law school, supplemented with courses (up to the required minimum) of interest to the student, sufficed to qualify the student to sit for the bar in any U.S. jurisdiction. With the advent of state-by-state determinations of appropriate law school curricula, that state of affairs may be coming to an end.

I encourage our readers to consider whether state imposition of law school requirements should be encouraged, or whether the Council, with its national participation and broad range of input, should continue to set the standards.

As always, there is much happening in legal education and bar admissions. I look forward to your comments on this issue and your ideas for the next *Syllabus* column.

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Risk and the ABA Standards



Barry Currier
Managing Director

The Council and the Standards Review Committee are engaged in an important discussion about the level of risk that the ABA Standards for Approval of Law Schools should permit schools to take in their admissions processes. Risk is an unavoidable consequence of providing access and opportunity for law study. But the more risk taken, the greater the likelihood that schools will admit a student or too many students who are not likely to graduate and pass a bar examination, whether out of a commitment to an access mission or to increase revenues. It is safe to say that everyone supports access and opportunity and opposes exploitation. How to find the delicate balance in these matters in the Standards is the question.

A careful review and discussion of the Standards in the area of law school admissions is appropriate as the environment in which legal education operates is changing. In the much more robust pre-recession admissions/jobs environment, there was little talk about exploitation of students. The applicant pool was sufficient to give schools lots of choices. Not surprisingly, all schools, including those with access and opportunity missions, tended to prefer students with higher predictors of success (LSAT, UGPA), who were considered less risky by traditional standards. Academic attrition was low; graduation and bar pass rates were high. The [double-humped salary curve](#) was with us even then. But there were jobs, and the absorption of graduates into the profession happened relatively quickly. No doubt many applicants who were looking for an opportunity and who would have been great lawyers did not get a chance to prove themselves. There may have been little exploitation, but there was also less “opportunity,” at least as that concept is often used today to describe students with more modest predictors of success.

In an even earlier period, let’s call it the “look to your left, look to your right” era, the emphasis for a number of schools was access; students who were given an opportunity were grateful, and few expressed concern about exploitation. If law school was not a particular student’s cup of tea, he (usually it was “he” then) would leave at the end of one year without educational debt and having learned something that would be useful in future endeavors. Attrition was high, but that access and opportunity provided a pathway to a professional career for many to whom it was otherwise foreclosed. The

profession was diversified and democratized in important ways. Legal education was more affordable; there were many evening/part-time programs that enabled those who could not afford to study full-time to have a job and still get a good legal education.

Today, the need for diversity in our law schools and the profession continues. Few would disagree that the rule of law and the health of our society depend on having a legal profession that reflects who we are as a nation. But a workable business model for a law school that is characterized by more risk in admissions, modest cost, and high attrition is in our rearview mirror. Law school simply costs too much for us to be comfortable with a “look left and look right” approach.

Substantial disclosure mitigates our discomfort, but does not completely alleviate it. Now, many assert, students cannot be counted on to study the risks, make informed decisions, and act accordingly. Perhaps the easy availability of student loans in our credit-card society is partially to blame. Perhaps, too, the “everyone gets a trophy” generation of students means that every applicant sees himself or herself as the exception to the rule, the person who will defy the odds. Added to the calculus is that most schools are challenged to bring in enough revenue to meet their expenses.

Taking into account the need for access and opportunity, the cost of law school, the ease of borrowing money for law school, a difficult job market, the fact that students may not be educated and careful consumers, tuition discounting practices, the influence of law school rankings, and the financial challenges for schools that can be addressed in part by taking (more) students with lower-than-ever predictors, how should the balance between access (and the benefits it offers to schools, the profession, and society) and the inculcation of false hopes (and the costs imposed on the individuals who try, but fail) be struck?

At its recent meeting in March, the Council agreed to put out for comment two proposals that begin to address this issue: a proposal to amend Standard 316, concerning bar passage outcomes, and a proposal to amend Standard 501 that includes a provision using first-year attrition. You can read the particulars elsewhere in this issue of *Syllabus*. The theory of these proposals, as I view them, is to make clear that a law school will not be in compliance with the Standards relating to admission if it has academic attrition that is too high, bar pass outcomes that are too low, or (certainly) both.

The Council and the staff in the Managing Director’s Office hope that these proposals will generate good discussion and comment about how the Standards should walk the tightrope balance between allowing access and opportunity and the potential for inculcating false hopes in students who, at the end of the day, are not good candidates for law study. I am grateful for the hard work of both the Council and the Standards Review Committee on these fundamental issues.

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Section Spotlight: What Does the Section Provide for Law Students?



Erin Ruehrwein
Section Director

The ABA Section of Legal Education and Admissions to the Bar offers a number of valuable resources for law students. Whether you are involved in law school administration and looking for resources to enhance your students' law school experience, or as a law student yourself, seeking information and opportunities to network and expand your educational and professional experience, we are here to help.

Visit our newly created [Law Student Resources webpage](#). Here you will find useful links to information on ABA approved law schools, bar admissions, employment statistics, foreign study, post-J.D. and non-J.D. programs, student loan repayment and forgiveness, and FAQ's. Further, the Section publishes books of interest such as *Think Like a Lawyer* and *International Bar Admissions*, periodicals including the *Comprehensive Guide to Bar Admission Requirements* and *ABA Standards and Rules of Procedure for Approval of Law Schools*, and programs including our upcoming Annual Meeting program on student debt.

As you may already be aware, membership in the ABA and up to five entities is now **FREE** for law students. We encourage schools to enroll their students if they haven't done so already, and urge law students to encourage their classmates to participate in this tremendous membership program. All you have to do is contact the membership department at lawschoolinfo@americanbar.org to get started.

A law student [membership](#) in the ABA provides access to an impressive community, as well as valuable services that enhance the law school experience. Students will experience a variety of benefits including:

- Resume-building opportunities through the participation in legal skills contests and applying for fellowships
- The exploration of practice areas by joining up to five legal specialty groups for FREE
- Opportunities to search jobs through the ABA job board and gain advice from experts at the career center
- [ABA Member Advantage discounts](#)

Please take advantage of these useful and important resources that both the ABA and the Section of Legal Education and Admissions to the Bar provide for students.

If you have any questions or suggestions, please contact me directly at Erin.Ruehrwein@americanbar.org.

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Accreditation Q&A

We are introducing a new Syllabus column in which frequently asked questions about the ABA Standards and Rules for Approval of Law Schools are answered. If you have a question that you would like to submit for consideration, please send it to Mary McNulty, *Syllabus* editor, at mary.mcnulty@americanbar.org.

This month's question addresses recent changes in the transfer of credits from an LL.M. program.

Q: How many credits earned in an LL.M. program can be counted toward graduation from a J.D. program at an ABA-approved law school?

A: Standard 505: Granting of J.D. Degree Credit for Prior Law Study, which was adopted following the 2008-2014 Comprehensive Review of the Standards, consolidates in one Standard all the circumstances that lead to the granting of J.D. degree credit for prior law study. It incorporated and revised material appearing in former Standards 506 (Applicants from Law Schools not Approved by the ABA) and 507 (Applicants from Foreign Law Schools), and Interpretation 304-7 regarding transfer of credits earned in an LL.M. program into to a J.D. program.

Under previous practice, some law schools allowed a student who transfers into a J.D. program from an LL.M. program to receive up to one-third of the credits required for graduation from the law school outside the United States and to receive additional credits from the LL.M. program under former Interpretation 304-7. New Standard 505 limits the total number of credits in such a situation to one-third of the credits required for graduation. The new Standard also limits the awarding of credit for LL.M. programs offered by the law school where the J.D. degree will be earned.

New Standard 505 also includes a provision that was implied but not explicitly stated in the previous Standards that a law school may accept credit for courses completed at another law school approved by the Council if the courses were undertaken as a J.D. degree student. There is no limit in the Standard on the number of credits that may be accepted.

The new Standard further clarifies that in all instances where a law school accepts credit for prior law study, the law school must assure that the student successfully satisfies all of the requirements of Standard 311 and meets all of the law school's requirements for the awarding of the J.D. degree.

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Summary of March 2016 Council Actions

The Council of the Section of Legal Education and Admissions to the Bar met March 11-12 in Phoenix, Arizona. Key actions included matters regarding the approval of law schools and the ABA Standards and Rules of Procedure for Approval of Law Schools.

Approval of Law Schools

[Albany Law School](#) in Albany, New York, received acquiescence to affiliate with the University at Albany, the State University of New York. Albany Law School received ABA-approval in 1930.

[Indiana Tech Law School](#) in Fort Wayne, Indiana, was granted provisional ABA-approval. Indiana Tech Law School was founded in 2012. The first class was enrolled in 2013, members of which will graduate in May 2016.

[University of La Verne College of Law](#) in Ontario, California, was granted full ABA-approval. The school received provisional approval in 2012.

ABA Standards and Rules of Procedure for Approval of Law Schools

- **Externships:** The Council accepted the recommendation of its Standards Review Committee (SRC) and approved changes to [Standard 304](#), which address experiential learning, and 305, which deals with study outside the law school classroom setting. Both relate to the requirements for the operation and management of externship programs. The approved changes remove the prohibition on students receiving compensation for work done in a credit-bearing externship program. Law schools would be able to have a school policy to prohibit compensation for credit-bearing externships. The changes impose additional requirements to assure that externship programs are quality educational experiences for participating students. Over the next few weeks, the language on these changes will be finalized and a resolution to the ABA [House of Delegates](#) could be filed for its next meeting in August 2016 in San Francisco.
- **Bar passage:** The Council put out for notice and comment significant changes to bar passage rates as they relate to accreditation. The Council accepted the SRC recommendation to simplify and amend [Standard 316](#) to require that the graduates of a law school in a particular calendar year who sit for a bar exam pass at a rate of 75 percent or higher within two years of their graduation. First-time bar passage rates would continue to be collected and reported as a matter of consumer information under Standard 509. But for purposes of accreditation, the focus will be exclusively on a school's "ultimate" bar pass rate that would have a shorter, two-year window. The Council will hold at least one hearing on the matter. Council review of a final proposal could be at its October 2016 meeting, with a request for House of Delegates approval at the February 2017 Midyear Meeting.
- **Admission policies and procedures:** The Council agreed to seek notice and comment on changes to [Standard 501](#), which relates to a law school's admissions policies and practices. The proposed changes include an interpretation creating a rebuttable presumption that a school is operating out of compliance with Standard 501's requirement that it admit students who are capable of completing its J.D. program if the non-transfer attrition rate of its first-year class is 20 percent or higher. Written comments on this and other changes will be invited and at least one hearing will be set to allow interested persons to provide oral testimony on these proposals. The Council will expect to hear a report on these matters at a meeting in October. At that time, the

Council may approve these changes or elect to continue its deliberations on them.

- **Other items:** The Council will continue consideration of proposed changes to [Standards 205 and 206](#) related to equal opportunity, non-discrimination, and diversity and inclusion, as well as proposals for [Standard 503](#), related to a “valid and reliable admission test.”

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ABA Spirit of Excellence Awards: JoAnne Epps and Sarah Deer Recognized for Diversity Efforts

Two members of the law school community, JoAnne Epps and Sarah Deer, received the ABA Spirit of Excellence Award at the Midyear Meeting in San Diego in February. The awards are given annually by the ABA's Commission on Racial and Ethnic Diversity in the Profession to honor lawyers who excel professionally; who personify excellence on the national, state, or local level; and who demonstrate a commitment to racial and ethnic diversity in the profession.



Jo Anne Epps

Jo Anne Epps became the dean of Temple University James E. Beasley School of Law in 2008 and has taught at Temple for more than 30 years. She is a long-time advocate for women and minorities in the profession, evidenced by her membership in the Consortium for Women's Leadership at the Center for Women in the Law at the University of Texas School of Law and on the board of the National Association of Women Lawyers Foundation. A valued and highly respected community leader in Philadelphia, Dean Epps was recently appointed chair of the newly-created Police Oversight Board to ensure that a recent Justice Department recommendations for reform are carried out. In 2001, she chaired a mayor's task force on police discipline. She has been a member of the Pennsylvania Judicial Independence Commission and a member of the Philadelphia Bar Association's Committee to Promote Fairness in the Judiciary.

Dean Epps' diversity efforts have been recognized by the Philadelphia Bar Association, which named her its 2014 Justice Sonia Sotomayor Diversity Award recipient, by *Lawyers of Color* magazine, which named her to its list of the nation's 100 most influential African-American lawyers three times, and in 2012, by Pennsylvania Governor Tom Corbett as a Distinguished Daughter of Pennsylvania.



Sarah Deer

Sarah Deer is a professor and co-director of the Indian Law Program at Mitchell Hamline School of Law. A citizen of the Muscogee (Creek) Nation, Professor Deer's work is focused on tribal law and violent crime, particularly against women, on Indian reservations. She serves as a justice for the Prairie Island Indian Community Court of Appeals and as an appellate judge for the White Earth Nation, both in Minnesota. Professor Deer has worked steadfastly to reform federal policies around the tribal prosecution of violent offenders and to coordinate efforts by Native American leaders, health care professionals and women's advocates to address sexual violence on Indian land. In 2014, her advocacy work was recognized by the MacArthur Fellows Program.

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In Memoriam

Gary Palm



Gary Palm, professor emeritus at the University of Chicago Law School and a tireless advocate for clinical legal education, died on February 14, 2016, in Chicago. Professor Palm served on both the Section's Council and its Accreditation Committee.

Born in Toledo, Professor Palm earned an undergraduate degree at Wittenburg University in Springfield, Ohio, and a J.D. from the University of Chicago Law School, where he was awarded the Order of the Coif. He joined the Chicago faculty in 1970 and was an integral part of the law school's Edwin F. Mandel Legal Aid Clinic for three decades. Professor Palm also practiced in the areas of employment discrimination law and welfare-to-work advocacy.

At the March 2016 Council meeting, Council members Jane Aiken and James Klein offered this [Remembrance of Gary Palm](#).

Beverly Tarpley



Beverly Tarpley, who served as Council chair from 1997 to 1998, died on February 14, 2016, in Abilene, Texas. Ms. Tarpley was born in 1930 in Houston. She earned both a bachelor's degree and a law degree at the University of Texas at Austin. In 1957, at the age of 27, she became the youngest lawyer and the first female Texas lawyer to argue a case before the U.S. Supreme Court.

Other firsts include the first woman president of the Abilene Bar Association, the first woman appointed to the Texas Board of Law Examiners, and the board's first female chair.

Ms. Tarpley served on the Section's Council from 1990 to 1999; the ABA's House of Delegates from 1993 to 1996; and as chair of the National Board of Bar Examiners from 1992 to 1993.

At its March 2016 meeting, the Section's Council adopted a [Resolution In Memoriam](#) of Beverly Tarpley.

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Join Us for an Upcoming Conference



Bringing together law school deans and development professionals to learn, collaborate and discuss the changing philanthropic landscape, new development approaches and best practices, you will not want to miss [Fostering Engagement and Engagement in a Time of Change](#). The conference kicks off with a welcome reception and keynote dinner roundtable discussion on Tuesday, May 31st moderated by **Dean Deanell Tacha of Pepperdine University School of Law** and featuring **Dr. John Sexton, President Emeritus, New York University**, and **Kurt Schmoke, President, University of Baltimore**.

ABA ASSOCIATE DEANS CONFERENCE



ADAPTING TO A Changing Landscape

JUNE 16-19, 2016

Loews Minneapolis Hotel
Minneapolis, Minnesota

There is little about legal education that is not in transition right now. Associate Deans are all adjusting to similar challenges and opportunities across the nation. How do law schools respond to the new accreditation requirements and innovate in curricular design with decreasing resources? How do law schools educate a changing student population that is also facing increasing student debt loads and a legal job market that looks very different from when you graduated? How are you managing the shifting demands on your academic programs, student services, and faculty research? Don't go at it alone. Join your fellow associate deans in Minneapolis, June 16-19, for a rich discussion on [Adapting to a Changing Landscape](#).

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**Section Headquarters Hotel
Park Central San Francisco
50 Third Street
415.974.6400
Preliminary Section Schedule**

Thursday, August 4

Legal Education/Law Student Division Program
Council Meeting
Chair's Dinner

Friday, August 5

Council Meeting
Kutak Award Reception

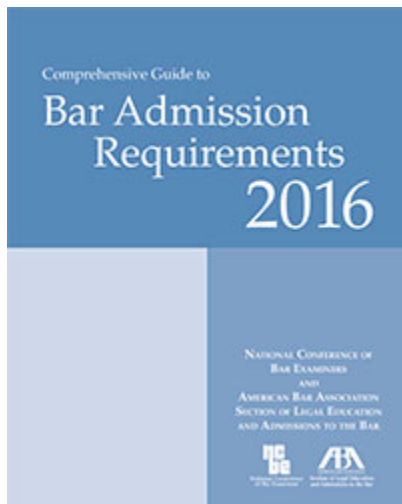
Saturday, August 6

Deans Breakfast
Annual Section Business Meeting

Details will be posted on the Section's [website](#) as they become available.

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New Section Publications



The Comprehensive Guide sets out the rules and practices of all U.S. jurisdictions for admission to the bar by examination and on motion, including legal education, character and fitness, bar examinations, and special licenses. It is available as a free [download](#) or for purchase in the [ABA webstore](#)



The [Annual Report](#) is an overview of the activities and accomplishments of the ABA Section of Legal Education and Admissions to the Bar during the previous Association year. It includes lists of law school site evaluation visits, Section leadership, and ABA-approved law schools.

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Meet Innovative Lawyers at the ABA's Monthly Google Hangout



Jeff Seder: Want to live your dreams? Hear how this attorney turned his passion for horses into a practice involving thoroughbred racehorses.

February 25, 2016.

Beth Heifetz: As the country's top judicial clerk recruiter, this attorney has a knack for spotting new legal talent. Would you catch her eye?

March 25, 2016

Julianne Walsh: Don't let a resume gap stop you. This BigLaw lawyer turned stay-at-home mom turned hi-tech lawyer knows how to navigate mid-career changes.

April 2016 (Date & Time TBD)

Phyllis Frye: From Eagle Scout to transgender activist, this groundbreaking judge has found success and happiness on her own terms.

May 2016 (Date & Time TBD)

Read *10 Questions* each month in the *ABA Journal* and continue the conversation when you hang out with our featured lawyer.

Register and submit your own questions at [10 Questions LIVE!](#)

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Third Party Comments Invited for Law Schools Undergoing Accreditation Site Visits in Fall 2016

The law schools listed below are scheduled for sabbatical, provisional, or full approval site evaluation visits in Fall 2016. Any additional visits scheduled after this notice will be posted on the Section's [website](#).

Consistent with Internal Operating Practice 3(a), written comments related to current compliance with the Standards for the Approval of Law Schools may be submitted to the ABA Section of Legal Education and Admissions to the Bar. Comments on law schools with visits in Fall 2016 should be sent by August 15, 2016. Please click on the link to submit [third party comments](#).

Law schools undergoing accreditation site visits in Fall 2016 are:

- Barry University (Sabbatical)
- University of California-Berkeley (Sabbatical)
- University of California-Irvine (Three-Year Interval)
- Concordia University (Provisional Two-Year Interval)
- Creighton University (Sabbatical)
- University of Florida (Sabbatical)
- Indiana University-Indianapolis (Sabbatical)
- Judge Advocate General's School (Sabbatical)
- Marquette University (Sabbatical)
- Northern Kentucky University (Sabbatical)
- Pepperdine University (Sabbatical)
- South Texas College of Law (Sabbatical)
- Texas A&M University (Sabbatical)
- Vanderbilt University (Sabbatical)

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