

I want to express my concerns as Chancellor of the Southern University Law Center, an ABA accredited law school about the council's decision to present for a second time, proposed Standard 316, to the ABA House of Delegates at the ABA 2019 midyear meeting in Las Vegas, Nevada. As I understand, the ABA accreditation standards, the Council can present the proposed revised standard to the House at the mid-year meeting in Law Vegas and then implement it regardless of the House's vote.

The revised rule would require that at least 75 percent of a law school's graduates who sat for a bar examination pass a bar examination within two calendar years of the graduation. This 75 percent uniform national bar passage standard is problematic because different bar passage scores are required by different states and there are different pass rates across jurisdictions. In a January 13, 2017 letter, a group of deans of ABA accredited law schools expressed their belief that "there should be an opportunity for further reflection, and perhaps more careful study and analysis before a new standard is adopted especially because the standard could have serious, albeit unintended, consequences on the welfare of many law schools and students. Similarly, deans of HBCU law schools have expressed their concerns that the revised rule is one that could have dire consequences on their long and historic ability to provide access to the legal profession for under-represented minority students.

If the proposed revised standard would have been in effect in either 2017 and 2018, the following law schools would have not met the uniform ultimate bar passage standard for the 2015 cohort of graduates who sat for a bar examination within two calendar years of the calendar year of their graduation:

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| 1) Arizona Summit – 59.75% | 11) Pontifical Catholic University – 60.73% |
| 2) Atlanta's John Marshall – 67.5% | 12) Syracuse – 71.20% |
| 3) American University – 74.94% | 13) UDC Law School – 65-67% |
| 4) Barry University – 73.50% | 14) University of North Dakota – 73.21% |
| 5) Florida Coastal – 72.08% | 15) University of South Dakota – 72.73% |
| 6) Golden Gate – 72.26% | 16) University of Wyoming – 68.92% |
| 7) Howard University – 72.88% | 17) Western Michigan College – 69.75% |
| 8) Inter-America University of
Puerto Rico – 63.88% | 18) Whittier Law School – 74.26% |
| 9) New England Law School – 60-26% | 19) Valparaiso – 69.35% |
| 10) Northern Kentucky University – 64.10% | |

The question one must ask is what adverse actions would have been taken against those school that would not have been in compliance with the revised proposed standard?

If the revised bar passage standard would have taken effect, those schools would presumably have failed to comply with the revised 316 standard, and would be in violation of Standards 301 and 501.

Over the past 30 months, the Council of the ABA Section of Legal Education and Admissions to the Bar has taken adverse actions against schools that in their view were admitting

students who were not capable of graduating and passing the bar, a violation of Standard 501, and were not maintaining a rigorous program of legal education, a violation of ABA Standard 301.

Most of the schools that have been the subject of adverse action over the last 30 months based upon Standards 301 and 501, have or had large minority enrollments. The schools include 1) Arizona Summit Law School; 2) Atlanta's John Marshall Law School; 3) Ave Maria School of Law; 4) Charlotte School of Law; 5) Florida Coastal School of Law; 6) Indiana Tech Law School, 7) Thomas Jefferson School of Law; 7) Thurgood Marshall School of Law; 8) Valparaiso University School of Law; 9) North Carolina Central University Law School; and 10) Western Michigan University Thomas M. Cooley Law School. The total enrollment for the 10 aforementioned schools was approximately 5,700 and the total minority enrollment was approximately 53% or 3,050.

African Americans and Hispanics have historically scored lower on standardized tests, like the LSAT and bar examinations, than students of other races. Meanwhile, the Council's recent adverse actions-letters of noncompliance, censure, probation, and revocation of accreditation - are evidence that schools with high minority enrollments are in jeopardy of receiving adverse actions. If the proposed bar passage rule was in effect in 2017 and 2018, an additional 13 schools would have been presumably eligible to be subjected to adverse action by the Council. Hence, approximately 23 schools or approximately 11.5% of ABA-accredited law schools with approximate enrollments of minority enrollments of 49% potentially could have been subjected to adverse action of some kind by the Council.

According to the 2016 Labor Force Statistics from the Bureau of Labor Statistics, among the nation's estimated 1,133,000 lawyers only 4.4% are African American and 5.6% are Hispanic. Compare that to the total American workforce of 151,436,000 people over 16 years of age, where 11.9% are African American and 16.7% are Hispanic. While ABA Standard 206 requires that law schools provide an environment embracing diversity and inclusion; offer members of underrepresented groups, especially racial and ethnic minorities, the opportunity to study law and enter the profession; and have a diverse faculty staff and student body, the proposed bar passage rule is likely to discourage law schools from recruiting minority students, particularly African Americans and Hispanics. Law Schools and the legal profession would be detrimentally affected based upon the information gathered from the 2015 Ultimate Bar Passage Data. Potential adverse actions that could be taken by the Council due to the revised bar passage standard combined with the adverse actions already taken by the Council would only exacerbate the challenges that law schools and the profession would have in creating opportunities for underrepresented groups, especially racial and ethnic minorities to study law and enter the legal profession.

I believe that based upon the aforementioned data presented, the revised bar passage would have a disparate impact of law schools with large minority student enrollments and would discourage law schools from using "special recruitment efforts for students from underrepresented groups" due to the risks associated with being affected by an adverse action that might be generated because of the failure to comply with the revised bar passage standard. The disparate impact on the efforts of the ability of law schools and the legal profession to increase the member of attorneys from underrepresented groups should not be taken lightly. Given the current state of discourse related to race and diversity in America today, we believe that the adopting of revised Standard

316 sends the wrong message from a national organization that should be a leading voice on diversity and inclusion.

I urge the Council of the ABA Section on Legal Education & Admissions to the Bar to withdraw for the time being the proposed change to ABA Standard 316, the standard proposing a 75% national across the board requirement for bar passage to maintain accreditation. We believe this Council action requires further consideration and scrutiny in light of significant issues raised by member deans and by legal education organizations, and, more recently, by the results of the July 2018 administration of the California bar examination.

The California bar results, yielded frightening results-the lowest in 67 years. These results could potentially imperil the accreditation of a very large number of law schools-law schools whose history and profile have demonstrated over many decades an ability to educate and graduate successful law students by any reasonable measure. The California bar pass rate for July 2018 was 40.7%, marking a 67 year low for the most populous state in the United States. Hence, approximately 6 out of 10 California bar examinees failed the exam.

The results related to the 2018 California bar exam represents a 9 percent point drop from the July 2017 California bar exam results. The California bar exam results have declined significantly since 2008. Between 2008 and 2018, the California bar passage rates have steadily declined from 62% to 40.7%, a decline of 21.3 percentage points. The overall pass rate in California for the July 2018 bar exam by race was 49% for Whites, 35% for the Hispanics, 33% for Asians, and 20% for African Americans. The disparity in performance by race should be a great concern to everyone.

The example cited in California related to the decline in bar passage over the last ten years gives us even more reason to urge that the council withdraw its efforts to push through the proposed change to ABA Standard 316 because trying to impose a national uniform bar passage standard would be imprudent. The fact that bar examination scores have been in steady decline in California and indeed nationwide is indisputable. There are a multitude of complex and interrelated factors that are more likely playing a direct and indirect role in this decline. Implementing a revised bar passage standard may lead to unintended consequences that could affect legal education and the legal profession for decades.

The proposed revised standard fails to account for the non-uniformity in bar passage or cut scores on bar examinations across the country. Schools in states with higher bar passage or cut scores are unfairly penalized. The current standard that allows for a variance with state specific bar passage rates is fairer.

While I appreciate that one reason asserted for the proposed bar passage rule is to discourage law schools from accepting students that generally incur heavy student loan debt who might either flunk out, fail the bar exam, or not find employment as attorneys, the proposed solution to the aforementioned issues is a blunt hammer that would be unfortunate and cause unintended consequences. The proposed rule requires that law schools garner bar results for all of its graduates even though many jurisdictions do not make bar exam results for specific students publicly available. Furthermore, law school graduates are not required to supply their exam results

to schools. Many, if not most law schools have had to hire additional staff simply to try to track bar passage rates across multiple jurisdictions which drive up operating costs that may be passed on to students. Hence, the costs of attempting to comply with revised ABA Standard 316 will increase and will be passed on to students. Thus the proposed rule could be counterproductive to those who advocate for lowering the cost of attendance for law school students.