



Law Student Division

Assembly

Agenda

Voting & Credentials Procedure

Voting Floor Instructions

Roberts Rules Motion Chart

Assembly Standing Rules

Resolutions Summary

Resolutions Detail

LAW STUDENT DIVISION ASSEMBLY

Ala Moana Hotel – Honolulu, Hawaii

Saturday, August 5, 2006

- I. Opening of Assembly 9:00 a.m.
 - A. Call to Order
 - B. Color Guard
 - C. National Anthem

- II. Welcome by the Law Student Division Chair, Vicki Goodman

- III. Addresses by ABA Representatives
 - A. Karen Mathis, President-Elect, American Bar Association 9:20 a.m.
 - B. Michael S. Greco, President, American Bar Association 9:45 a.m.

- IV. Adoption of Reports to Organize as a Delegate Assembly
 - A. Credentials Committee
 - B. Board of Governors
 - C. Resolutions Committee

- V. Reports of Officers and Committees
 - A. Annual Elections Committee Progress Report
 - B. State of the Division Address
 - C. Student Hurricane Network Presentation
 - D. Work-A-Day – Public Service Initiative Presentation
 - E. Diversity Pipeline Initiative Presentation
 - F. Graduate Leverage
 - G. Standing Committee on Resolutions

VI. General Orders

Res. 06/08-01

Encourages the Law Student Division to collaborate with the ABA Standing Committee on Legal Assistance for Military Personnel and U.S. military services in developing procedures to provide potential military clients to law schools clinical programs and encourages law students, faculty and clinical programs to apply their legal training and skills as volunteers to support military lawyers and Operation Enduring LAMP attorneys in providing legal assistance to military personnel.

Report 106A

Concurs in the action of the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting Interpretation 302-10 providing opportunities for law Student participation in pro bono activities, as an addition to the *Standards for Approval of Law Schools and the Interpretations of the Standards*, dated August 2006.

Report 106B

Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting revisions to Standards 210-212 concerning equal opportunity and diversity, of the *Standards for Approval of Law Schools and the Interpretations of the Standards*, dated August 2006.

Report 110

Urges federal, state, territorial, local and tribal governments to enact or amend domestic violence civil protection order statutes that provide protection to victims who are dating the perpetrator of domestic violence or have been in a dating relationship with the perpetrator, but do not necessarily have a child with, live with, or are married to the perpetrator of the violence.

Report 113

Sponsor: ABA Advisory Committee on Diversity in the Profession
Urges all state, territorial and local bar associations to work with national, state and territorial bar examiners, law schools, universities, and elementary and secondary schools to address significant problems facing minorities within the pipeline to the profession

Report 120C

Sponsor: ABA Section of Litigation
Encourages law firms to consider (a) alternatives to mandatory minimum billing requirements that would reduce undue emphasis on lawyers' billable hours and (b) compensation systems that recognize and reward attorneys based on factors in addition to the number of hours they bill to client matters.

- VII. Announcement of Election Results
 - A. Vice Chair of SBA
 - B. Division Delegates
- VIII. Presentation of Awards to Outgoing Officers
- IX. Installation of 2006-2007 National Officers and Division Delegates
- X. Announcements
- XI. Adjournment *Sine Die* 1:00 p.m.

Voting and Credentials Procedures

The following credentials procedures will be used for certifying voting delegates at the Assembly sessions of the 2005 Annual Meeting in Chicago, Illinois. These procedures are in place to ensure the legitimacy of the voting process.

The Law Student Division Assembly is the principal voice of all accredited law schools in the country. When appropriate, resolutions that are passed by the Division Assembly are brought before the ABA House of Delegates. If adopted, the resolution becomes Association policy. Legislative issues may then be lobbied before Congress.

Section 3.4 of the Law Student Division Bylaws states, "Each school may send two delegates, one the SBA president or his or her proxy and the other the school representative or his or her proxy, to its circuit and the Assembly. The Assembly or the Board of Governors may regulate voting by proxy. Only a member of the ABA Law Student Division is eligible to be a delegate." Section 102.3 of the Assembly Standing Rules describes the credentials process. The outline below ensures smooth check-in and alleviates unnecessary delay at each Assembly session. The Division's Credentials Committee shall certify voting delegates according to the following policies:

1. ABA Representatives and SBA Presidents

Current ABA Representatives and SBA Presidents must show proof of office if they are not on the current list provided by the Chicago office. This may be accomplished by any of the following means:

- * a letter on ABA chapter letterhead if a representative;
- * a letter on SBA letterhead if a president;
- * a letter from the Dean on law school letterhead for either a representative or a president; or
- * recognition by the circuit governor or another member of the Board of Governors who can personally vouch for the claimant's status.

2. Proxies

If an ABA Representative or SBA President is unable to attend the Annual Meeting, he or she may send a proxy from the same law school to vote in his or her place. The Proxy must be a current member of the ABA Law Student Division. Proxies may register as voting delegates by any of the following means:

- * written authorization, preferably on letterhead, from the ABA Representative or SBA President;
- * written authorization from the Dean on law school letterhead if acting as proxy for the ABA Representative or SBA President; or
- * written notification prior to the meeting to the circuit governor of the proxy appointment. (Written notification must be presented to the Delegate Certification Desk personnel.)

3. One Delegate-Two Votes

If only one person from a law school is attending the Assembly, he or she may cast both votes only if he or she is certified for each vote. For example, an ABA Representative may register his/her own vote if he/she is on the current list mentioned above (#1) and register as a proxy for the SBA President by presenting a signed letter as mentioned above (#2).

4. Proof of Membership

Membership status of all prospective delegates will be verified through the ABA master membership list. All delegates should be prepared to furnish proof of current Law Student Division membership (e.g., membership card, cancelled check) before being certified. Anyone not listed on the ABA master membership list or unable to show proof of membership must enroll as a Division member by filling out an application and paying the \$20 annual fee at the registration desk. In the event this results in a duplicate payment/membership, the \$20 fee will be refunded.

5. Additional information

The Credentials Committee may request additional information if necessary to establish a delegate's credentials. The claimant, and any competing claimant, may offer relevant information to affirm or deny certification, and appeal any failure of certification to the Board of Governors or the Assembly. To avoid any problem, written certification is required.

6. Nonvoting students

All law students are welcome to attend the Assembly, including students from non-approved law schools. There will be an area in the Assembly hall where nonvoting attendees may observe the sessions. The only people allowed on the voting floor, however, will be each school's two delegates, a resolution author when moving his or her resolution, members of the Board of Governors, and other persons with privilege of the floor under rule 103.1 of the Assembly Standing Rules. *Delegates to the Assembly may proxy their vote to another student from their law school who is present, (such as a Lt. Governor), who must also be a member of the ABA Law Student Division, provided the proxy is in writing and presented to the Chair of the Credentials Committee. Such proxies are revocable at any time by the principal delegate. See the Assembly Standing Rules or your Circuit Governor for complete details.*

American Bar Association Law Student Division Assembly

Voting Floor Instructions

Certified Assembly Delegates (ABA Representatives and SBA Presidents, or their proxies, from each ABA-approved law school who are also members of the ABA) may vote on resolutions brought before the Assembly.

Please note that there is a specific procedure to enter and exit the voting floor of the Assembly. This procedure ensures that only certified Assembly Delegates receive a voting card(s), which in turn protects the integrity of the votes.

- Certified Assembly Delegates, identified by black delegate or pink proxy ribbon, will receive a voting card at the entrance of the voting floor.
- If the Assembly Delegate is also serving as a proxy, the Assembly Delegate will receive an additional voting card. In 2006 the voting cards are blue.
- Members of the Law Student Division Board of Governors are also permitted on the floor, with the right to make or debate motions, but shall not vote unless a certified Assembly Delegate.
- Assembly Delegates who wish to temporarily exit the voting floor must turn in their voting card(s) for an equal number of pass card(s). The pass card(s) will be exchanged for an equal number of voting card(s) once the Assembly Delegate returns to the floor. In 2006 the pass cards are pink.

Notes about Obtaining Certification

Assembly Delegates receive their black and/or pink ribbons at the Delegate Certification counter once they are certified. The Delegate Certification counter is adjacent to the Division's registration desk.

Robert's Rules of Order

The motions below are listed in order of precedence. Any motion can be introduced if it is higher on the chart than the pending motion.

| If You Want To: | You Say: | Interrupt? | 2nd? | Debate? | Amend? | Vote?* |
|--|--|------------|------|---------|--------|----------|
| Close meeting | I move to adjourn | No | Yes | No | No | Majority |
| Take break | I move to recess for | No | Yes | No | Yes | Majority |
| Register complaint | I rise to a question of privilege | Yes | No | No | No | None |
| Make follow agenda | I call the orders of the day | Yes | No | No | No | None |
| Lay aside temporarily | I move to lay the question on the table | No | Yes | No | No | Majority |
| Close debate | I move the previous question | No | Yes | No | No | 2/3 |
| Limit or extend debate | I move that debate be limited to... | No | Yes | No | Yes | 2/3 |
| Postpone to a certain time | I move to postpone the motion to... | No | Yes | Yes | Yes | Majority |
| Refer to a committee | I move to refer the motion to a committee | No | Yes | Yes | Yes | Majority |
| Modify wording of motion | I move to amend the motion by... | No | Yes | Yes | Yes | Majority |
| Kill main motion | I move that the motion be postponed indefinitely | No | Yes | Yes | No | Majority |
| Bring business before assembly (a main motion) | I move that [or "to"]... | No | Yes | Yes | Yes | Majority |

* Majority means more than ½ of the votes cast; 2/3 means at least 2/3 of the votes cast

Incidental Motions - no order of precedence. Arise incidentally and decided immediately.

| If You Want To: | You Say: | Interrupt? | 2nd? | Debate? | Amend? | Vote? |
|------------------------------|---|-------------------|-------------|----------------|---------------|--------------|
| Enforce rules | Point of order | Yes | No | No | No | None |
| Submit matter to assembly | I appeal from the decision of the Chair | Yes | Yes | Varies | No | Majority |
| Suspend rules | I move to suspend the rules | No | Yes | No | No | 2/3 |
| Avoid main motion altogether | I object to the consideration of the question | Yes | No | No | No | 2/3 |
| Divide motion | I move to divide the question | No | Yes | No | Yes | Majority |
| Demand rising vote | I call for a division | Yes | No | No | No | None |
| Parliamentary law question | Parliamentary inquiry | Yes | No | No | No | None |
| Request for information | Point of information | Yes | No | No | No | None |

Motions That Bring a Question Again Before the Assembly – no order of precedence. Introduce only when nothing else pending.

| If You Want To: | You Say: | Interrupt? | 2nd? | Debate? | Amend? | Vote? |
|------------------------|-------------------------------|-------------------|-------------|----------------|---------------|--------------|
| Take matter from table | I move to take from the table | No | Yes | No | No | Majority |
| Cancel previous action | I move to rescind | No | Yes | Yes | Yes | M or 2/3** |
| Reconsider motion *** | I move to reconsider... | No | Yes | Varies | No | Majority |

** Majority if previous notice; 2/3 without such notice

*** Can only be made by one who voted on the prevailing side of the motion to be reconsidered

American Bar Association
Law Student Division

ASSEMBLY STANDING RULES

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| Rule 106 | Order of Business | Rule 110 | Amendment and Suspension |
| § 106.1 | Resolutions Committee | § 110.1 | Amendment |
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Rule 101 General Provisions

§ 101.1 Proceedings Governed

These rules govern proceedings in the Assembly at the Annual Meeting.

§ 101.2 Bylaws Incorporated

These rules incorporate the Bylaws and the handbook including the meaning of terms defined therein.

Rule 102 Credentials

§ 102.1 Credentials Committee

(a) For the purposes of this rule:

(1) "Committee" means the Credentials Committee

(2) "Circuit Governor" includes his or her designee. The member whom the circuit governor appointed to the committee shall act as such a designee in the circuit governor's absence, unless the circuit governor otherwise notifies the member.

(b) The committee shall consist of one member from each circuit appointed by the circuit governor. This appointee shall not be a candidate running for the position of National Officer or Division Delegate at the Annual Meeting.

§ 102.2 Delegate Defined

(a) "Principal delegate" means the president of the student bar association or the school representative whether or not he or she attends the Annual Meeting.

(b) "Delegate" means a principal delegate, or his or her proxy, whose credentials are in order.

§ 102.3 Certification

(a) The certification of credentials confers the exclusive right to vote.

(b) The committee shall certify the credentials of any member who claims to be a delegate if it appears that the claimant is a member and is:

(1) a principal delegate recognized by his or her circuit governor or another member of the Board of Governors from that circuit;

(2) a principal delegate recognized by a national officer, national officer-elect, or division delegate who personally knows the claimant and vouches on the basis of direct personal knowledge for his or her claim;

(3) a principal delegate or the proxy of a principal delegate as evidenced by a letter from his or her dean on school letterhead, a letter or other record from the student bar association on its letterhead or, in the case of a school representative, a letter or other record from his or her school's chapter on its letterhead; or

(4) the proxy of a principal delegate who has filed written notification of his or her appointment with his or her circuit governor prior to the meeting.

(c) If none of the above appears, the committee shall inquire on the basis of all available information whether the claim is true and shall accordingly certify or not certify the claimant's credentials. The claimant, any competing claimant, any member from the claimant's school, and the circuit governor may participate in this inquiry; offer relevant information, including oral or written testimony; and affirm, deny or rebut such information.

§ 102.4 Rules

The committee shall not fail to certify a claimant's credentials because the claimant did not follow a rule that is not part of these rules unless:

- (a) the claimant had actual notice of the rule at least fifteen days before the Annual Meeting;
- (b) the rule is a bylaw or appears in the handbook; or
- (c) the rule was published before the meeting in the magazine or in a mailing sent at least fifteen days before the Annual Meeting to every member who had then registered for the meeting.

§ 102.5 Appeal

A claimant may appeal his or her failure of certification to the Board of Governors or the Assembly but not to both. Neither body shall act on any matter relating to the certification of a delegate once an appeal has been taken to the other body. Such an appeal shall outrank and suspend all other business.

§ 102.6 Proxies

(a) A certified delegate or the holder of his or her proxy may, by written notice to his or her circuit governor, give his or her proxy to a member from the same school. A delegate, separately certified for each vote, may cast both votes from his or her school but may not vote on behalf of another school. The circuit governor may certify the credentials of such a delegate.

(b) A principal delegate may, by written notice to his or her circuit governor, limit the exercise or transfer of his or her proxy. The circuit governor shall enjoin or suspend the exercise of any proxy that is otherwise exercised or transferred. This power of limitation, as limited by any prior holder, shall run with the proxy.

Comment. *A principal delegate may "limit the exercise or transfer of his or her proxy" by directing that it be voted a certain way on a certain question, that it be transferred only to a certain member or that it not be transferred to another member. A circuit governor may "enjoin or suspend the exercise of any proxy that is otherwise exercised or transferred" on his or her own motion or at the request of any delegate. Every delegate enjoys a right against his or her vote being diluted by an illegally exercised proxy and every member enjoys a right to an orderly decision-making process according to the published procedure whether or not he or she has a direct interest in the proxy itself. The means by which the governor can "enjoin or suspend the exercise of any proxy that is otherwise exercised or transferred" include merely calling the holder of the proxy to order, see H. Robert, Robert's Rules of Order Newly Revised § 60 at 640-41 (S. Robert ed. 1990), and refusing to certify or revoking the certification of the credentials of the holder of the proxy. The power of limitation "run[s] with the proxy" in the sense that the transferee of a proxy gets the full power that the transferor enjoyed except to the extent that the transferor reserves that power.*

(c) The holder of a proxy shall, upon request, surrender it to any prior holder. Such surrender shall destroy the prior holder status of anyone who held the proxy after the holder to whom the proxy is surrendered except to the extent that such a holder also held the proxy before the holder to whom the proxy is surrendered.

Illustration 1. *A is an SBA president. B is A's vice-president. C and D are other SBA officers from the same school who attend the Annual Meeting. A gives A's proxy to B. A is a "prior holder" of A's vote, so B must surrender the proxy to A upon request.*

Illustration 2. Same facts as Illustration 1. B gives A's proxy to C. A and B are now both prior holders as to C. A requests that C surrender the proxy to A, which C does. The surrender destroys B's status as a prior holder.

Illustration 3. Same facts as Illustration 1. B (Holder 2) gives A's proxy to C (Holder 3), who gives it to D (Holder 4). A, B, and C are now all prior holders as to D, the present holder. B is busy just off the floor on a committee that is redrafting a controversial resolution which is scheduled to be reconsidered in half an hour. D is attentively following the debate on the floor over another controversial resolution on which a minor amendment is about to be put to a vote. D needs to use the restroom and gives the proxy to B (Holder 5) with the understanding that D will reclaim it as soon as D returns from the restroom so that B can return to the committee. D updates B on the pending resolution and tells B how to vote on the amendment. D's transfer to B is not intended as a surrender so B is now both Holder 2 and Holder 5 and D is now a prior holder as to B (as Holder 5) even though B (as Holder 2) is also a prior holder as to D. D's transfer to B therefore does not destroy C's status as a prior holder: C can now reclaim the proxy from B who must surrender it; B's surrender destroys D's status as a holder "who held the proxy after the holder to whom the proxy is surrendered" but it does not destroy B's status as Holder 2 because B "also held the proxy before the holder to whom the proxy is surrendered."

Rule 103 The Floor

§ 103.1 Privilege of the Floor

(a) The following persons shall enjoy the privilege of the floor and, except as this rule prescribes otherwise, may speak or make a motion:

- (1) each delegate, provided that no two delegates shall be on the floor at the same time on behalf of the same principal delegate;
- (2) each member of the Board of Governors, including each nonvoting member;
- (3) each member of a standing or special committee of the Division with respect to any matter within or touching the committee's charge;
- (4) each liaison to or from another entity within the Association;
- (5) each national officer or division delegate candidate with respect to any matter concerning the election in which he or she is running;
- (6) the staff, as authorized by the Director, the Chair, the Assembly, or the Board of Governors without power to make a motion;
- (7) the mover of a resolution with respect to the resolution;
- (8) the authorized representative of another entity within or of an organization affiliated with the Association for the purpose of communicating or advocating the entity's policy on a resolution without power to make a motion;
- (9) any guest participating in a program planned by the Chair for the purpose of the program without power to make or debate a motion;
- (10) any other member or employee of the Association, as authorized by the Chair, the Assembly, or the Board of Governors without power to make a motion;
- (11) any former Chair; and
- (12) and any former member of the Board of Governors who is a member of the Law Student Division or the Young Lawyers Division.

Comment. According to Robert, the expression "privileges of the floor," sometimes used in legislative bodies or conventions, has nothing to do with having the floor but means merely that a person is permitted to enter the hall. It carries no right to speak or any other right of membership except as may be determined by rules or action of the body. H. Robert, *Robert's Rules of Order Newly Revised* § 3 at 29 n. (S. Robert ed. 1990) (emphasis in original).

Comment. *The intent behind § 103.1(a)(12) is to extend the privilege of the floor to any member of the Board of Governors for a reasonable period after his or her service as long as he or she stays in the Association.*

(b) Each person on the floor is subject to these rules in the same manner as a delegate is.

§ 103.2 Recognition

(a) A delegate or other person with speaking privileges may claim the floor by written notice to the Chair who shall ordinarily recognize speakers in the order in which the floor is so claimed. The Chair may, without regard to this order, entertain a motion from the floor in the belief that a sufficient number may favor the motion.

(b) The Chair may note when recognizing a speaker whom he or she expects to recognize next but such notice shall neither constitute recognition nor create a right to be recognized before debate expires or the chair recognizes another.

Comment. *This rule lets the Chair announce who is "on deck" without formal recognition. It both preserves the right of the Assembly to control its time through motions to limit and extend the limits of debate and prevents the Chair from abusing the power of recognition to extend the limits of debate without a vote.*

Rule 104 Decorum

§ 104.1 Attire

The proper attire for a meeting is business attire that is suitable for an appearance in court.

§ 104.2 Promptness

Each delegate is asked to be present and ready to proceed to business five minutes before the scheduled call to order.

§ 104.3 Conversation

No delegate shall converse, make loud noise or create any other intrusive sensation that may disturb another delegate. Any delegate who does so shall stop such behavior at the request of any delegate who claims to be disturbed thereby. A delegate who does not stop such behavior may be removed so that business may continue.

§ 104.4 No Smoking

There shall be no smoking on the floor or in the room.

Rule 105 Quorum

§ 105.1 Quorum Defined

A quorum shall consist of one-third, including proxies, of the certified delegates.

§ 105.2 Quorumlessness

A quorumless meeting may act as if a quorum was present but any such action, other than an action that can legally be taken in the absence of a quorum, shall be ineffective without

confirmation when a quorum is present. Each main motion passed in the absence of a quorum shall, upon reappearance of a quorum, be in order without debate in the form and order passed. Such a motion shall take a two-thirds vote or it shall revert to its status when the quorum disappeared and the negative vote shall not be reconsidered. If the Assembly adjourns sine die without voting on such a motion, the motion is referred to the Board of Governors for expedited consideration.

Rule 106 Order of Business

§ 106.1 Resolutions Committee

For the purposes of this rule "committee" means the Resolutions Committee. The committee or its designee shall be available on the floor throughout each meeting of the Assembly and the Board of Governors during the Annual Meeting to receive any notice from a delegate under this rule.

§ 106.2 Orders of the Day

For each timely introduced resolution the committee shall either certify that the resolution is in order or return it to the mover with particular objections within ten (10) working days of the deadline for timely introduced resolutions. The mover shall have fifteen (15) working days from the deadline for timely introduced resolutions to cure all objections at which time the committee shall certify that the resolution is in order. The committee shall, by a report at the beginning of the first Assembly meeting of the Annual Meeting, make each certified timely resolution a general order. A motion to amend this report is in order, but after each such amendment has been disposed of the report (as amended, if amended) shall stand adopted and shall not be reconsidered. A motion to amend something previously adopted is still in order, however, with respect to the report; likewise, a motion is still in order that makes a special order out of a resolution that the report made a general order.

Note: See § 403.2 of Resolution Procedures for Definition of Timely Introduced Resolution.

§ 106.3 Agenda

The agenda of each meeting shall be special orders, reports from committees on resolutions previously referred, unfinished business, general orders, and, if there is time, new business.

§ 106.4 Reports and Programs

The Chair may, notwithstanding this agenda, place an informational report or program anywhere in the order of business in which case the report or program shall outrank and suspend all other business.

§ 106.5 Consent Calendar

The committee, by a report at the first Assembly meeting of the Annual Meeting may place a resolution on the consent calendar if substantial opposition to the resolution is not expected. Any delegate may, by written notice to the committee before the second Assembly meeting, object to such placement in which case the resolution shall be a special order at the second Assembly meeting. Any resolution on the consent calendar to which timely objection is not made shall stand approved and a motion to reconsider such a resolution shall take a two-thirds vote.

§ 106.6 Late Resolutions

(a) Any movant may introduce a late resolution by written notice to the Resolutions Committee Chair. The committee shall either certify that a request to move the resolution is in order or return it to the mover with particular objections. Upon cure of the particular objects to the satisfaction of the committee, the request for a late resolution shall be in order. Such a request shall not be in order at the last meeting.

(b) The mover of a request to move a late resolution shall summarize the reasons why the resolution submission procedures should be waived and shall justify its lateness on grounds other than lack of notice of the deadline or poor planning. The mover shall not discuss the content of the resolution. A member of the committee who opposes the request, if there is one, may briefly reply. The question upon the request shall be put, without further debate, and shall take a two-thirds vote. If a two-thirds vote is obtained, the resolution shall be in order at the last meeting and the vote granting the request shall serve as previous notice. The committee unanimously, or the Assembly by a two-thirds vote, may make the resolution an order of the day at the last or an earlier meeting.

(c) Any other provision of these rules to the contrary notwithstanding, a late resolution shall not be in order until the mover, at his or her own expense, has distributed a paper copy to each delegate. Such expenses shall not be reimbursed by the ABA/LSD absent extraordinary circumstances. The mover shall not distribute copies of the late resolution by electronic mail (e-mail). The Resolutions Committee chair, upon the request of the mover and in consultation with the Chair, may distribute the late resolution by e-mail with an appropriate annotation that the late resolution has been approved to be in order by the Resolutions Committee.

NOTE: § 106.6 is intended to only apply to members who bring late resolutions during the Assembly meeting. This section does not permit e-mail notice to the Resolutions Committee Chair or sending out e-mail copies of the late resolution to the Assembly members in lieu of the paper copy because it is presumed that the sponsor and the Assembly members are present at the meeting. Thus, the notice and copies of the resolution should be given in person to avoid confusion. However, the Resolutions Committee chair may distribute the resolution by e-mail in addition to the paper copy if that is deemed appropriate by the Resolutions Committee Chair.

§ 106.7 Previous Notice

Any delegate may, at any meeting, give previous notice of a motion by written notice to the Chair who shall announce each such notice, in the order received, before the meeting is declared adjourned.

Comment. According to Robert, the term previous notice or notice, as applied to necessary conditions for the adoption of certain motions, has a particular meaning in parliamentary law. A requirement of previous notice means that an announcement that the motion will be introduced, indicating its exact content as described below, must be included in the call of the meeting at which the motion will be brought up or, as a permissible alternative, if no more than a quarterly time interval will have elapsed since the preceding meeting, the announcement must be made at the preceding meeting. If previous notice is given at a meeting it can be given orally unless the rules of the organization require it to be in writing, which is often the case with notice of amendments to Bylaws. Unless the rules require the full text of the motion, resolution, Bylaw amendment, etc. to be submitted in the notice, only the purport need be indicated. Such a statement of purport must be accurate and complete since it will determine what amendments are in order when the motion is considered. The notice becomes invalid if the motion is amended beyond the scope of the notice. H. Robert, Robert's Rules of Order Newly Revised § 10 at 199-20 (S. Robert ed. 1990) (emphasis in original) (cross-references omitted).

§ 106.8 New Business

If a meeting disposes of the orders of the day before the prescheduled adjournment, any delegate may move to bring a question again before the Assembly, request to move a certified late resolution, move a late resolution at the last meeting or make any other main motion other than a resolution. Such a motion or request shall be in order in the order in which previous notice was given followed by any motion or request (in the order received) for which previous notice was not given. If it is voted to adjourn or the prescheduled time for adjournment arrives before the mover of such a motion or request is recognized, the Chair, before the meeting is declared adjourned, shall announce each such motion or request of which previous notice was not already given as if the mover had given previous notice of it.

Rule 107 Debate

§ 107.1 Debate Generally

"Proponent" means a speaker who favors and "Opponent" means a speaker who opposes the pending motion. Debate shall generally alternate between proponents and opponents. The mover of a motion that the mover of a pending motion favors shall be recognized as a proponent and the mover of any other motion (even if the motion does not apply to the pending motion) as an opponent.

§ 107.2 Main Motions

Debate shall expire after twenty minutes on any resolution and after ten minutes on any other main motion. The expiration of debate shall not interrupt a speaker.

§ 107.3 Speeches

Each speaker may speak for up to two minutes per speech. The mover of a resolution may speak first and last thereon, for five and one minute respectively, without prejudice to his or her ordinary speaking privileges even if debate has been limited or the previous question has been ordered.

§ 107.4 Committee Reports

(a) If the Board of Governors or, in the absence of action by the Board, the Resolutions Committee, makes a recommendation as to the disposition of the resolution, the reporting member of the Board shall speak for up to four minutes on the resolution after the mover has spoken. The report shall include the reasons for the recommendation.

(b) The reporting member of any committee that makes a recommendation as to the disposition of the resolution may speak for up to four minutes on the resolution after the Board has reported or, if the Board does not report, after the mover has spoken. If the resolution was previously referred to the committee, the reporting member shall move the action, if any, that the report recommends and debate shall expire on that motion, if debatable, after ten minutes. If the report does not dispose of the resolution or is not adopted, debate shall continue on the resolution from the point where it was referred and shall expire after ten minutes.

§ 107.5 Secondary Motions

"Secondary motion" means a debatable motion that is in order while another motion is pending. The mover of a secondary motion may speak first thereon after which:

(a) if the mover of the main motion favors the secondary motion and there is no objection, the secondary motion shall stand approved;

(b) if the mover of the main motion favors the secondary motion but there is an objection, the Chair shall recognize the objector, the mover of the main motion and another opponent of the secondary motion after which the question shall be put; or

(c) if the mover of the main motion opposes the secondary motion, the chair shall recognize the mover of the main motion, a proponent of the secondary motion and another opponent of the secondary motion after which the question shall be put.

Rule 108 Motions

§ 108.1 Motions Generally

An incidental motion is in order from the floor. The Chair may entertain any other motion from the floor in the belief that a sufficient number may favor the motion. No motion is otherwise in order until the mover files it in writing with the Secretary-Treasurer.

§ 108.2 Amendment

No amendment to a resolution, other than an amendment made by the mover in moving the resolution or made by unanimous consent, is in order until the mover, an opponent, a proponent, and another opponent, if there are any, have debated the resolution.

§ 108.3 Limit Debate; Previous Question

Neither a motion to limit debate nor a motion for the previous question shall take effect until an opponent, if there is one, has spoken against any motion to which it applies. The Chair may note when putting the question how many speakers still seek the floor. Neither motion shall prejudice the right of the mover of a resolution to speak last thereon.

§ 108.4 Extend Limits of Debate

A motion to extend the limits of debate is in order notwithstanding any limit in these rules. Such a motion shall provide that debate be extended for a certain time, not less than four minutes, or for an even number of speakers.

§ 108.5 Lay on the Table

Any action that the Board of Governors returns under § 6.4 of the Bylaws is laid on the table.

§ 108.6 Division of the Assembly

Upon hearing a proper call for a division of the Assembly the Chair shall count or cause to be counted how many are voting for and against the question which result the minutes shall record.

§ 108.7 Point of Information

A point of information may request an objective fact or an expert opinion but may not request anyone, including the Chair or the mover of a resolution, to say how he or she expects or intends a resolution to be interpreted or applied by the present or a future administration.

Comment. *The Assembly cannot control how a resolution is interpreted or applied except by the language that it adopts. The kind of subjective expectation or intent that this rule prohibits, although it may sound authoritative, especially if it comes from the Chair, is therefore mere*

speculation and totally nonbinding. The purpose of this rule is to keep such speculation from turning into a poor substitute for carefully drafted and clearly worded text. A delegate who wants a resolution to mean something that it does not clearly say cannot rely or mislead others into relying on speculation by the mover or the Chair, and must instead move an amendment that properly clarifies the resolution.

§ 108.8 Order of Business

The Chair may, in his or her discretion, entertain from the floor as a question of privilege a motion relating to the order of business.

Comment. *The Chair has historically entertained at the last session several motions to make a general order into a special order. Absent this rule such motions are arguably out of order since the rules already prescribe an order of business. "The agenda of each meeting shall be special orders, reports from committees on resolutions previously referred, unfinished business, general orders, and, if there is time, new business." §106.3. "[A]ny other main motion other than a resolution" belongs under new business. §106.8. This rule approves the historical practice and thus liberalizes the right of the Assembly to control the order of business.*

Rule 109 Adjournment

A motion to adjourn before the prescheduled time, to recess until then or to recess most of the time until then shall take a two-thirds vote.

Rule 110 Amendment and Suspension

§ 110.1 Amendment

The Assembly may amend these rules by resolution. Such a resolution shall take a two-thirds vote or a simple majority after a favorable report from the Board of Governors.

Comment. *No such amendment binds the Assembly at any future Annual Meeting unless it is incorporated into the permanent standing rules drafted under § 5.4(a) of the Bylaws.*

§ 110.2 Suspension

A motion to suspend these rules or any part of them shall take a two-thirds vote. For the purposes of this rule there is no difference between an ordinary standing rule and a rule of order. The Assembly shall not suspend any other rule, policy, or procedure, except by resolution.

Comment. *This rule prevents confusion over the difference between an "ordinary" standing rule and a "rule of order" and removes doubt about whether a rule other than a standing rule can be suspended. See H. Robert, Robert's Rules of Order Newly Revised § 25 at 263 (S. Robert ed. 1990) ("An ordinary standing rule . . . is a rule that does not relate to parliamentary procedure as such . . . Standing rules . . . can be suspended by a majority vote as they do not involve the protection of a minority of a particular size."). Whether a rule is "ordinary" or a "rule of order" is a matter of characterization subject to dissent and abuse. This rule ignores the difference and characterizes all such rules uniformly. The minor sacrifice in the freedom to suspend an "ordinary" rule by simple majority is more than offset by the consistency that will result from, and the confusion that will be prevented by, such a uniform treatment. This rule also prohibits the suspension of a rule other than a standing rule except by resolution. What this resolution sacrifices in the freedom to suspend such a rule it more than compensates for in*

protecting the justified expectations that such a rule creates. There is, furthermore, very little sacrifice even in terms of freedom to suspend such a rule. A majority can still adopt a resolution for suspension, but only in suitable form and after previous notice. This resolution therefore maximizes care and forethought in any suspension of a rule without lessening the majority's freedom.

**AMERICAN BAR ASSOCIATION
LAW STUDENT DIVISION**

2006 ANNUAL MEETING OF THE LAW STUDENT DIVISION ASSEMBLY

RESOLUTIONS SUMMARY

** Resolution pending before the ABA House of Delegates*

Res. 06/08-01

Sponsor: Stephen Lessard, Law Student Division Liaison to the ABA Standing Committee on Legal Assistance for Military Personnel, Georgetown University Law Center

Encourages the Law Student Division to collaborate with the ABA Standing Committee on Legal Assistance for Military Personnel and U.S. military services in developing procedures to provide potential military clients to law schools clinical programs and encourages law students, faculty and clinical programs to apply their legal training and skills as volunteers to support military lawyers and Operation Enduring LAMP attorneys in providing legal assistance to military personnel.

Report 106A*

Sponsor: ABA Section of Legal Education and Admissions to the Bar

Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting Interpretation 302-10 providing opportunities for law student participation in pro bono activities, as an addition to the *Standards for Approval of Law Schools and the Interpretations of the Standards*, dated August 2006.

Report 106B*

Sponsor: ABA Section of Legal Education and Admissions to the Bar

Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting revisions to Standards 210-212 concerning equal opportunity and diversity, of the *Standards for Approval of Law Schools and the Interpretations of the Standards*, dated August 2006.

Report 110*

Sponsor: ABA Commission on Domestic Violence

Urges federal, state, territorial, local and tribal governments to enact or amend domestic violence civil protection order statutes that provide protection to victims who are dating the perpetrator of domestic violence or have been in a dating relationship with the perpetrator, but do not necessarily have a child with, live with, or are married to the perpetrator of the violence.

Report 113*

Sponsor: ABA Advisory Committee on Diversity in the Profession

Urges all state, territorial and local bar associations to work with national, state and territorial bar examiners, law schools, universities, and elementary and secondary schools to address significant problems facing minorities within the pipeline to the profession.

Report 120C*

Sponsor: ABA Section of Litigation

Encourages law firms to consider (a) alternatives to mandatory minimum billing requirements that would reduce undue emphasis on lawyers' billable hours and (b) compensation systems that recognize and reward attorneys based on factors in addition to the number of hours they bill to client matters.

This resolution has not been approved by the House of Delegates, Board of Governors, the Law Student Division, or the Law Student Division Board of Governors and, until approved, does not constitute the policy of the American Bar Association/Law Student Division.

No. 06/08-01

AMERICAN BAR ASSOCIATION

**LAW STUDENT DIVISION
BOARD OF GOVERNORS**

RESOLUTION

SERVING THOSE WHO SERVE OUR COUNTRY

RECOMMENDATION

BE IT RESOLVED that the Law Student Division Board of Governors supports and encourages clinical programs at ABA Law Schools to establish networks for students to provide support to military lawyers and Operation Enduring LAMP attorneys rendering legal assistance to military personnel.

Sec. 2. That the Law Student Division Board of Governors respectfully requests that the Standing Committee on Legal Assistance for Military Personnel collaborate with the military services and the Law Student Division in developing procedures to provide potential clients to Law School clinical programs.

Sec. 3. That the Law Student Division Board of Governors respectfully invites the Deans of all ABA-accredited law schools to encourage law students, faculty, and clinical programs to apply their legal training and skills as volunteers to support military lawyers and Operation Enduring LAMP attorneys in providing legal assistance to military personnel.

REPORT

U.S. military forces are deployed both within the United States and around the world. They consist of active duty and reserve personnel, all with a common requirement of civil legal assistance in terms of basic, day-to-day problems, as well as unique legal issues in the event of mobilization in response to a conflict. Military lawyers commonly provide legal assistance to clients in drafting and executing wills, powers of attorney, health care directives, and in marital situations involving distribution of military pensions. They also assist clients in divorce, adoption, and name change proceedings, child support and paternity claims, landlord-tenant disputes, consumer protection issues, and garnishment and other debt-related problems. These legal assistance programs are authorized by Title 10, United States Code, Section 1044.

Most legal assistance is provided to clients within the confines of military installations and aboard ships. In many instances, military lawyers advocate, negotiate, and resolve matters with lawyers representing opposing parties. However, because military lawyers tend to be stationed away from the state in which they 1) attended law school, 2) hold a current license in good standing, and 3) are familiar with local procedures, rules and customs, they are unable to advocate for their clients by appearing in court to represent them. Military legal assistance attorneys are often forced to refer clients to lawyers in private practice who can assist them in court.

Many military members and their dependents, however, do not have sufficient disposable income to hire lawyers, and many are further disadvantaged by being stationed at a location far removed from the states in which their legal problems need to be resolved. At the same time, most service members do not qualify for free legal services under the guidelines used by many pro bono or legal assistance agencies. In effect, service members are priced out of both the full-fee market and the no-fee market.

The mission of the ABA Standing Committee on Legal Assistance for Military Personnel is to help the military and the Department of Defense improve the effectiveness of legal assistance provided on civil matters to an estimated nine million military personnel and their dependents. Operation Enduring LAMP is an ongoing project of the Committee that is helping to organize and educate civilian lawyers who want to provide pro bono legal assistance to military personnel. It is a consortium of state and local bar associations that have made a commitment to recruit volunteer attorneys, and in many cases offer training and facilities to volunteers, in order to assist military legal assistance providers with civil law matters affecting service members. Different Operation Enduring LAMP efforts across the country offer varying kinds and levels of service.

Legal activities promoted by Operation Enduring LAMP include:

- Provision of direct legal assistance for military and their family members. Some forms of assistance include: 1) specially scheduled talk-to-a-lawyer events, 2) a pool of attorneys within the existing pro bono and lawyer referral system who are willing to either provide free legal services or waive normal consultation fees, 3) regularly-scheduled community education seminars with an associated advice component.
- Provision of one-on-one assistance for military legal assistance attorneys on questions relating to state law. Many military legal assistance attorneys are not licensed to practice in the jurisdiction to which they are assigned, and therefore are not knowledgeable about local law.

The ABA President has issued a call for a renaissance of idealism in the legal profession – a recommitment to the noblest principles that define the profession: providing legal representation to assist the poor, disadvantaged and underprivileged; and performing public service that enhances the common good. This resolution invites law students and ABA Law Schools to play an active role in furthering the public service mission of the LAMP Committee. Law Schools may create clinical programs that provide legal assistance for military personnel. George Mason University (GMU) School of Law has implemented such a clinic. As an alternative to establishing a new clinic dedicated solely to legal assistance for military personnel, existing legal clinics at ABA Law Schools could strive to include clients who are military personnel. The LAMP Committee could be utilized to establish procedures to provide potential military clients for the clinical programs.

FINANCIAL REPORT

The adoption of this resolution entails no financial expense for the ABA/LSD.

Respectfully submitted,

Stephen Lessard
Liaison to Standing Committee on Legal Assistance for Military Personnel
Georgetown University Law Center
Eleventh Circuit
2416 37th Street, N.W.
Washington DC 20007
(619) 459-6272

Jaimy Serbin
Eleventh Circuit Governor
George Mason University School of Law
Eleventh Circuit

No resolution presented herein represents the policy of the American Bar Association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House in its voting and represent only the views of the Section or Committee submitting them.

**AMERICAN BAR ASSOCIATION
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
REPORT TO THE HOUSE OF DELEGATES**

Recommendation

1 RESOLVED, That the American Bar Association House of Delegates concurs in the
2 action of the Council of the Section of Legal Education and Admissions to the Bar in
3 adopting Interpretation 302-10 concerning providing opportunities for law student
4 participation in pro bono activities as an addition to the Standards for Approval of Law
5 Schools and the Interpretations of the Standards dated August 2006.

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Interpretation 302-10:

Each law school is encouraged to be creative in developing substantial opportunities for student participation in pro bono activities. Pro bono opportunities should involve the rendering of meaningful service to persons of limited means or to organizations that serve such persons.

While law school pro bono programs should generally involve law-related services, pro bono programs that involve meaningful services that are not law-related also may be included within the law school's overall program of pro bono opportunities. Law-related pro bono opportunities need not be structured to accomplish any of the professional skills training required by Standard 302(a)(4). While most existing law school pro bono programs include only activities for which students do not receive academic credit, Standard 302(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of pro bono opportunities.

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REPORT

At its meeting of December 2-3, 2005, Council of the Section of Legal Education and Admissions to the Bar approved a new Interpretation 302-10, concerning providing opportunities for law student participation in pro bono activities, upon the recommendation of the Standards Review Committee following a period of public comment. For consistency and clarity, the Council last year agreed that henceforth all revisions to the Standards and Interpretations that the Council has approved would be submitted to the House of Delegates at its August meeting so that, upon House concurrence, all Standards revisions would be effective at the start of a new academic year.

Interpretation 302-10 was adopted in part because of the request of law school deans for additional guidance for determining compliance with the requirements of Standard 302(b)(2), which the Council adopted in August 2004 and in which the House concurred in February 2005.

Standard 302(b)(2) provides:

(b) A law school shall offer substantial opportunities for:

. . . .

(2) student participation in pro bono activities

When the Council initially approved the pro bono requirement, the Council did not intend to exclude any significant existing types of law school pro bono activities from being considered in fulfillment of the new requirement. Thus the Interpretation, building on existing Interpretation 302-2 concerning the professional skills requirement, encourages law schools to be creative in developing their pro bono programs. In recognition of the fact that, although most pro bono programs are law-related, some involve non-law-related activities, the Interpretation states that pro bono programs “should generally” involve law related services, but it also makes it clear that non-law-related activities may be included within a school’s overall pro bono program. Some non-law-related activities could assist students in developing some useful professional skills; doing intake interviewing at a rescue mission, for example, would assist in honing interviewing and counseling skills.

Many pro bono activities currently undertaken at law schools do involve professional skills – such as having students work as volunteers on pro bono matters under the supervision of law faculty or licensed attorneys in public or public interest legal settings. The Council, however, thought it important to emphasize in the Interpretation that such pro bono opportunities need not be designed to fulfill curricular professional skills training objectives (and thus would not necessarily require the level of law school supervision required of field placement or externship programs under Standard 305). The AALS Pro Bono Handbook contains a statement with similar effect.

The last sentence of the Interpretation again recognizes the existing range of pro bono programs at law schools by stating that, while most law school pro bono programs are not credit-granting, Standard 302(b)(2) does not preclude the inclusion of credit-granting programs within a law school’s overall pro bono programs.

The Council believes that the Interpretation provides guidance that is useful and necessary with respect to the pro bono requirement without being unduly prescriptive and without unduly impairing the Accreditation Committee's ability to make appropriate individualized determinations as it applies Standard 302(b)(2) to the particular facts presented by the programs of specific law schools. The Council also recognizes that, after some period of experience with the new Standard and Interpretation, it might be appropriate to consider further revisions of these regulations.

The Council respectfully requests that the House of Delegates concur in the addition of Interpretation 302-10 to the Standards for Approval of Law Schools and its Interpretations.

Respectfully submitted,

Steven R. Smith, Chairperson

August 2006

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GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Section of Legal Education and Admissions to the Bar

Submitted By: Dean Steven R. Smith, Chairperson

1. Summary of Recommendation(s).

That the House concur in the decision of the Council of the Section of Legal Education and Admissions to the Bar to add Interpretation 302-10, concerning providing opportunities for law student participation in pro bono activities, to the Standards for Approval of Law Schools and its Interpretations.

2. Approval by Submitting Entity.

Approved by the Council of the Section of Legal Education and Admissions to the Bar at its meeting of December 2-3, 2005.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The Interpretation provides additional guidance as to the requirements of Standard 302(b)(2), in which the House concurred in February 2005.

5. What urgency exists which requires action at this meeting of the House?

To promote and assure the smooth functioning of the ABA Standards for Approval of Law Schools and its interpretations, it is useful and important that revisions that are developed, widely discussed and adopted in one academic year be effective at the beginning of the following academic year. This revision was developed and circulated for comment in June 2005 and adopted by the Council in December 2005. The matter is now ready for consideration at the August 2006 meeting of the House.

6. Status of Legislation. (If applicable.)

None.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

The following groups were offered opportunities to comment on the proposed Interpretation: Deans of ABA-approved law schools, presidents of universities with ABA-approved law schools, chief justices of state supreme courts, bar admissions authorities, the ABA Standing Committee on Pro Bono and Public Service, the Law Student Division, the Young Lawyers Division, the Standing Committee on Legal Aid and Indigent Defendants, deans of unapproved law schools, and leaders of organizations interested in the law school approval process (including the Association of American Law Schools, the National Conference of Bar Examiners, the Law School Admissions Council, the National Association for Law Placement, the Conference of Chief Justices, and the National Conference of Bar Presidents). The proposed Interpretation and the memo soliciting comment also were posted on the Section's website.

10. Contact Person. (Prior to the meeting.)

| | |
|---|---------------|
| John A. Sebert, Consultant on Legal Education | 312-988-6746 |
| [At the Meeting, Moana Surfrider | 808-922-3111] |

11. Contact Person. (Who will present the report to the House.)

| | |
|---|---------------|
| Jose Garcia Pedrosa, Esq., Section Delegate | 305-243-5813 |
| [At the Meeting, Hilton Hawaiian Village | 808-949-4321] |

| | |
|---|---------------|
| Sidney S. Eagles, Jr., Esq., Section Delegate | 919-755-8771 |
| [At the Meeting, Sheraton Waikiki | 808-922-4422] |

12. Contact person regarding amendments to this recommendation.
(Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and ABA/net number of the person to contact below.)

None known at this time.

No resolution presented herein represents the policy of the American Bar Association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House in its voting and represent only the views of the Section or Committee submitting them.

**AMERICAN BAR ASSOCIATION
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR**

REPORT TO THE HOUSE OF DELEGATES

Recommendation

1 RESOLVED, That the American Bar Association House of Delegates concurs in the
2 action of the Council of the Section of Legal Education and Admissions to the Bar in
3 adopting revisions to Standards 210-212, concerning equal opportunity and diversity, of
4 the Standards for Approval of Law Schools and the Interpretations thereto dated August
5 2006.

STANDARDS FOR APPROVAL OF LAW SCHOOLS
[MARKED-UP]

Standard 210. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY.

(a) A law school shall foster and maintain equality of opportunity in legal education, including employment of faculty and staff, without discrimination or segregation on ground the basis of race, color, religion, national origin, sex, gender or sexual orientation, age or disability.

(b) A law school ~~may~~ shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, ~~sex~~ gender, ~~or~~ sexual orientation, age or disability.

~~(c) The denial by a law school of admission to a qualified applicant is treated as made upon the ground of race, color, religion, national origin, sex, or sexual orientation if the ground of denial relied upon is~~

~~(1) a state constitutional provision or statute that purports to forbid the admission of applicants to a school on the ground of race, color, religion, national origin, sex, or sexual orientation; or~~

~~(2) an admissions qualification of the school which is intended to prevent the admission of applicants on the ground of race, color, religion, national origin, sex, or sexual orientation though not purporting to do so.~~

~~(d) The denial by a law school of employment to a qualified individual is treated as made upon the ground of race, color, religion, national origin, sex, or sexual orientation if the ground of denial relied upon is an employment policy of the school which is intended to prevent the employment of individuals on the ground of race, color, religion, national origin, sex, or sexual orientation though not purporting to do so.~~

(ec) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff ~~which~~ that directly relate to this affiliation or purpose so long as (i) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (ii) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but shall not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, ~~sex, or gender~~ sexual orientation, age or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that ~~they~~ these policies are protected by the United States Constitution. It is administered as if though the First Amendment of the United States Constitution governs its application.

(fd) ~~Equality~~ Non-discrimination and equality of opportunity in legal education includes equal opportunity to obtain employment. A law school ~~should~~ shall communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement functions the school's firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, religion, national origin, gender, sexual orientation, age and disability in regard to hiring,

promotion, retention and conditions of employment, and will avoid objectionable practices such as

- ~~(1) refusing to hire or promote members of groups protected by this policy because of the prejudices of clients or of professional or official associates;~~
- ~~(2) applying standards in the hiring and promoting of these individuals that are higher than those applied otherwise;~~
- ~~(3) maintaining a starting or promotional salary scale as to these individuals that is lower than is applied otherwise; and~~
- ~~(4) disregarding personal capabilities by assigning, in a predetermined or mechanical manner, these individuals to certain kinds of work or departments.~~

Interpretation 210-1:

Schools may not require applicants, students, faculty or employees to disclose their sexual orientation, although they may provide opportunities for them to do so voluntarily.

Interpretation 210-2:

This Standard does not require a law school to adopt policies or take actions that would violate federal law applicable to that school.

Interpretation 210-32:

As long as a school complies with the requirements of Standard 210(ec), the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs. For example, it does not require a school to recognize or fund organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school.

Interpretation 210-43:

Standard 210(fd) applies to all employers, including government agencies, to ~~whom~~ which a school furnishes assistance and facilities for interviewing and other placement services. However, this Standard does not require a law school to implement its terms by excluding any employer unless that employer discriminates unlawfully.

Interpretation 210-4:

The denial by a law school of admission to a qualified applicant is treated as made upon the basis of race, color, religion, national origin, gender, sexual orientation, age or disability if the basis of denial relied upon is an admissions qualification of the school which is intended to prevent the admission of applicants on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability though not purporting to do so.

Interpretation 210-5:

The denial by a law school of employment to a qualified individual is treated as made upon the basis of race, color, religion, national origin, gender, sexual orientation, age or disability if the basis of denial relied upon is an employment policy of the school which is intended to prevent the employment of individuals on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability though not purporting to do so.

Standard 211. EQUAL OPPORTUNITY AND DIVERSITY EFFORT.

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate, or have carried out and maintained, by concrete action, a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of underrepresented groups, notably particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity, which have been victims of discrimination in various forms. This commitment typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, and a program that assists in meeting the unusual financial needs of many of these students, but a law school is not obligated to apply standards for the award of financial assistance different from those applied to other students.

(b) Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to having a faculty and staff that are diverse with respect to gender, race and ethnicity.

Interpretation 211-1:

The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 211. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 211 by means other than those prohibited by the applicable constitutional or statutory provisions.

Interpretation 211-2:

Consistent with the U.S. Supreme Court's decision in Grutter v. Bollinger, 529 U.S. 306 (2003), a law school may use race and ethnicity in its admissions process to promote equal opportunity and diversity. Through its admissions policies and practices, a law school shall take concrete actions to enroll a diverse student body that promotes cross-cultural understanding, helps break down racial and ethnic stereotypes, and enables students to better understand persons of different races, ethnic groups and backgrounds.

Interpretation 211-3:

This Standard does not specify the forms of concrete actions a law school must take to satisfy its equal opportunity and diversity obligations. The determination of a law school's satisfaction of such obligations is based on the totality of the law school's actions and the results achieved. The commitment to providing full educational opportunities for members of underrepresented groups typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, programs that assist in meeting the academic and financial needs of many of these students and that create a more favorable environment for students from underrepresented groups.

Interpretation 211-1:

This standard does not specify the forms of concrete actions a school must take in order to satisfy its equal employment obligation. The satisfaction of such obligation is based on the totality of its actions. Among the kinds of actions that can demonstrate a school's commitment to providing equal opportunities for the study of law and entry into the profession by qualified members of groups that have been the victims of discrimination are the following:

- a. Participating in job fairs and other programs designed to bring minority students to the attention of employers.*
- b. Establishing procedures to review the experiences of minority graduates to determine whether their employers are affording equal opportunities to members of minority groups for advancement and promotion.*
- c. Intensifying law school recruitment of minority applicants, particularly at colleges with substantial numbers of minority students.*
- d. Promoting programs to identify outstanding minority high school students and college undergraduates, and encouraging them to study law.*
- e. Supporting the activities of the Council on Legal Education Opportunity (CLEO) and other programs that enable more disadvantaged students to attend law school.*
- f. Creating a more favorable law school environment for minority students by providing academic support services, supporting minority student organizations, promoting contacts with minority lawyers, and hiring minority administrators.*
- g. Encouraging and participating in the development and expansion of programs to assist minority law graduates to pass the bar.*
- h. Developing and implementing specific plans designed to increase the number of minority faculty in tenure and tenure-track positions by applying a broader range of criteria than may customarily be applied in the employment and tenure of law teachers, consistent with maintaining standards of quality.*
- i. Developing programs that assist in meeting the unusual financial needs of many minority students, as provided in Standard 211.*

Interpretation 211-2:

Each ABA approved law school (1) shall prepare a written plan describing its current program and the efforts it intends to undertake relating to compliance with Standard 211, and (2) maintain a current file which will include the specific actions which have been taken by the school to comply with its stated plan.

Standard 212. REASONABLE ACCOMMODATION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES.

Assuring equality of opportunity for qualified individuals with disabilities, as required by Standard 210, may require a law school to provide such students, faculty and staff with reasonable accommodations.

~~A law school may not discriminate against individuals with disabilities in its program of legal education. A law school shall provide full opportunities for the study of law and entry into the profession by qualified disabled individuals. A law school may not discriminate on the basis of disability in the hiring, promotion, and retention of otherwise qualified faculty and staff.~~

Interpretation 212-1:

~~Individual with disability, f~~For the purpose of this Standard, and Standard 210, disability is defined in as in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 706-794, as further defined by the regulations on post secondary education, 45 C.F.R. Section 84.3(k)(3) and by the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.

Interpretation 212-2:

As to those matters covered by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, neither this Standard nor Standard 210 is not designed to impose obligations upon law schools beyond those provided by those statutes.

Interpretation 212-3:

~~The essence of proper service to individuals with disabilities is individualization and reasonable accommodation. Each individual~~ Applicants and students shall be individually evaluated to determine if whether he or she they meets the academic standards requisite to admission and participation in the law school program. The use of the term “qualified” in the Standard requires a careful and thorough consideration of each applicant and each student’s qualifications in light of reasonable accommodations. Reasonable accommodations are those that do not fundamentally alter are consistent with the fundamental nature of the program, school’s program of legal education, that can be provided without undue financial or administrative burden, and that can be provided without lowering while maintaining academic and other essential performance standards.

REPORT

As part of the current comprehensive review of the Standards for Approval of Law Schools, the Council of the Section of Legal Education and Admissions to the Bar and its Standards Review Committee during 2004 through 2006 examined Standards 210-212 and the Interpretations of those Standards, which deal with equality of opportunity and diversity. Those provisions had not been substantially reviewed or revised since 1994. The Committee and Council agreed that it was time to re-examine these provisions, especially in light of changes in the law and institutional practices since the existing Standards were adopted. They also concluded that a need existed for greater clarity regarding both what is permitted and what is required by the Standards in order to provide adequate guidance both to law schools and to the Accreditation Committee.

Preliminary discussion of proposed changes was begun at the November 2004 meeting of the Standards Review Committee. The Committee devoted its March 19, 2005, meeting to developing recommendations for presentation to the Council in August. At that time, the Committee already had before it various recommendations for revisions of these provisions prepared by the Section's Diversity Committee, and by Gary Palm ("the Palm proposals") on behalf of himself and other members of the Clinical Legal Education Association (CLEA) and the Society of American Law Teachers (SALT).

In developing its proposals in March of 2005, the Committee established several overarching goals for the proposed revisions:

1. To distinguish the obligations of non-discrimination and equality of opportunity (Standard 210) and the obligations of equal opportunity and diversity (Standard 211).
2. To determine which groups and individuals should be covered by these Standards and Interpretations.
3. To determine what law school activities and actions should be covered by these standards.

In August 2005, the Council considered the Committee's recommendations and the Palm proposals, and the Council approved distributing for comment proposed revisions to Standards 210 – 212 and the Interpretations of those Standards. The proposed revisions were widely distributed for comment and also were posted on the Section's website. A hearing to elicit comment was held during the Association of American Law Schools Annual Meeting on January 5, 2006, and many individuals appeared to speak to these proposals at that hearing. Also, a large number of written and e-mail comments were received during the formal comment period.

At its meeting on January 6, 2006, the Standards Review Committee carefully considered all of the comments that had been received, including the many comments that were made during the January 5 hearing. The Committee presented to the Council its final recommendations for revision of Standards 210 – 212 for review and action at the Council's meeting on February 11, 2006. The Council approved the recommended changes with some modification. This Report describes the revisions that the Council approved. Marked-up and restated versions of the approved revisions to Standards 210 – 212 are attached.

Misconceptions Concerning the Revisions and Their Effect

There has been an extensive amount of public commentary concerning the revisions adopted by the Council in February. Unfortunately, much of that commentary – which was not raised during the extensive public comment process that preceded the Council’s adoption of these revisions -- has been misinformed and reflects serious misconceptions concerning the revisions and their effect. Before moving to a section by section description of the revisions, it is necessary to address those misconceptions:

- The revisions do not impose significant new requirements on law schools. Most of the revisions merely provide greater clarity and transparency in the Standards and more guidance to law schools concerning long-standing practices of the Council and the Accreditation Committee in enforcing the current, but more generally phrased, Standards and Interpretations.
- The revised Standards and Interpretations do not require law schools to consider race or ethnicity in their admissions decisions. Interpretation 211-2 states only that law schools “may” use race and ethnicity in their admissions decisions in a manner permitted by *Grutter v. Bollinger*.
- The revised Standards and Interpretations do not establish or mandate a system of “quotas” for minority enrollment. In fact, the Committee and the Council explicitly rejected a recommendation that the Standards require that law schools enroll a “critical mass” of students from underrepresented minority groups and did so in part because such a requirement could be viewed by some as establishing a quota requirement. The requirement of the Standard is that law schools “demonstrate by concrete action . . . a commitment” to having a diverse student body, faculty and staff. Interpretation 211-3 does indicate that the results that a school achieves in its diversity efforts are “relevant”, but results are not dispositive and the requirement of the Standard is that law schools must demonstrate a commitment to diversity.
- The revised Standards and Interpretations do not require law schools to violate state or federal law that prohibits the consideration of gender, race, ethnicity or national origin in admissions or employment decisions. Because the Standards do not require a school to consider gender, race ethnicity or national origin in its admissions or employment selection policies, Interpretation 211-1 makes the logical point that a constitutional or statutory provision that prohibits the consideration of such factors in admissions or employment decisions does not relieve a law school of the obligation to comply with the requirements of Standard 211, which is to demonstrate a commitment to having a diverse student body, faculty and staff. The second sentence of Interpretation 211-1 makes it clear that law schools that operate under such constitutional or statutory constraints would have to demonstrate the commitment required by the Standards by means other than having race-conscious admissions or employment selection policies. In the admissions context, for example, schools could make, and have made, that demonstration by employing some of a large range of well known methods, other than race-conscious admissions decisions, for seeking to recruit and enroll a

diverse student body. A partial list of such efforts would include: admissions recruitment outreach to undergraduate campuses having a substantial population of minority students; “pipeline” efforts to encourage persons from underrepresented groups, even as early as high school, to consider the legal profession as a career; careful consideration of factors in addition to LSAT score and undergraduate gradepoint average, such as achievements in student leadership, the workplace and graduate education, when making admissions decisions; holding or collaborating in summer programs that assist those of all races and ethnic backgrounds to be more well prepared for admission to and success in law school; enhanced efforts to encourage minority students who have been admitted actually to enroll; etc.

Standard 210. Non-Discrimination and Equality of Opportunity

The revisions to Standard 210 state a comprehensive requirement of non-discrimination and equality of opportunity. “Non-discrimination” has been added to the title of the Standard. Changes throughout the Standard make clear that the two terms are linked and required. Except for a few new requirements that are highlighted below, these revisions are consistent with the manner in which the existing Standard has been applied over many years by the Accreditation Committee and the Council.

Throughout the Standard and Interpretations, “age” and “disability” were added to the categories designated for non-discrimination and equality of opportunity. Although age might be viewed as distinguishable from the other protected categories, the Council decided that age should be included within the protected categories, in part because discrimination on the basis of age is prohibited under federal law. The current prohibition against discrimination on the basis of disability also has been moved to Standard 210 from Standard 212 so that Standard 210 contains a comprehensive statement of the requirements of non-discrimination and equality of opportunity.

To reflect the prevailing terminology, “sex” was changed to “gender” throughout the Standard and Interpretations.

In section (b), “may” was changed to “shall” to be consistent with directive language of section (a).

The Standards Review Committee recommended the deletion of existing sections (c) and (d) as these sections appear no longer to have relevance as the type of de jure segregation to which these sections were directed no longer exists. Some of the comments that were received suggested that it might be a mistake to delete these two provisions, asserting that the underlying principle was still relevant and that deletion of these provisions might send a signal of a diminished commitment to prohibiting discrimination. The Council decided to retain section (c) (2) but as new Interpretation 210-4, and to retain section (d) but as new Interpretation 210-5. For both new interpretations the protected categories included are conformed to the changes made to sections (a) and (b).

Editorial revisions have been made to former section (e) [new section (c)], and revisions consistent with those in sections (a) and (b) also have been made.

In new section (d) [existing section (f)], “should” is changed to “shall” to be consistent with the directive language of sections (a) and (b), thus requiring a law school to communicate to employers who use the school’s placement assistance the expectation that they will observe the principles of non-discrimination and equal opportunity. The illustrations of possible violations of those principles contained in the current Standard have been deleted as unnecessary. Renumbered Interpretation 210-3 continues to provide that a school is not required to exclude from receiving placement assistance an employer that discriminates lawfully.

Interpretation 210-1

Faculty has been added to the list of groups who cannot be required to disclose their sexual orientation.

Current Interpretation 210-2

This interpretation was viewed as unnecessary and was deleted.

Renumbered Interpretations 210-2 and 210-3

These provisions contain minor editing and numbering changes from their predecessors.

Standard 211. Equal Opportunity and Diversity

Standard 211 had been primarily directed to the admission of students, although actions by the Accreditation Committee and Council have applied the same principles to faculty. The revisions make explicit that the Standard also applies to faculty and staff as well as to students. While equal opportunity and diversity may have different foundations (equal opportunity in social justice and diversity in educational policy), the two have become connected in practice and the revisions to the Standard recognize that connection.

The requirement of the Standard is stated in terms of a commitment that is demonstrated by concrete action. There was extended discussion on this issue, both when the Committee and Council were developing the proposed revisions in 2005 and in the comments on those proposals. Some urged that the Standard be stated in terms of results and also suggested that the Standard should build on the language of the *Grutter* case and require that law schools have a “critical mass” of students from traditionally underrepresented groups.

The Council was persuaded that it would be infeasible to develop and enforce a Standard that is based on requiring schools to attain a “critical mass” of persons from underrepresented groups, both because of the difficulty of defining “critical mass” and because of the widely varying demographics of the markets in which different law schools recruit their student bodies. There also was concern that a “critical mass” requirement could be viewed by some as establishing a quota requirement that might be impermissible under applicable federal or state law. The Council believes that the Standard should require a commitment demonstrable by concrete action. Because the core of the requirement extends beyond mere effort, the term “effort” was deleted from the title of the Section.

The Council also recognized that the results achieved are very relevant, though not dispositive, in evaluating commitment. Thus the second sentence of Interpretation 211-3 provides: “The determination of a law school’s satisfaction of such obligations is based on the totality of the law school’s actions and the results achieved.” The Council understands that this sentence is consistent with the current practice of the Accreditation Committee, which does consider the diversity results that a school has achieved as a factor in evaluating the school’s compliance with current Standard 211.

In section (a) “qualified” has been deleted as unnecessary given other Standards regarding student selection and retention. “Underrepresented” was added to qualify “groups” covered to be consistent with the equal opportunity element. Specific language was added to make it clear that a law school must demonstrate a commitment to having a student body that is diverse with respect to gender, race and ethnicity.

A new section (b) makes clear that a law school must demonstrate a commitment to having a faculty and staff that are diverse with respect to gender, race and ethnicity.

New Interpretation 211-1

As stated above, the revised Standards and Interpretations do not require law schools to violate state or federal law that prohibits the consideration of gender, race, ethnicity or national origin in admissions or employment decisions. Because the Standards do not require a school to consider gender, race ethnicity or national origin in its admissions policies, Interpretation 211-1 makes the logical point that a constitutional or statutory provision that prohibits the consideration of such factors in admissions or employment decisions does not relieve a law school of the obligation to comply with the requirements of Standard 211, which is to demonstrate a commitment to having a diverse student body, faculty and staff. The second sentence of Interpretation 211-1 makes it clear that law schools that operate under such constitutional or statutory constraints would have to demonstrate the commitment required by the Standards by means other than having a race-conscious admissions policy. (See the earlier discussion of possible ways that schools could make, and have made, the necessary demonstration of a commitment to seeking a diverse student body.) The Council understands that this Interpretation is consistent with the practice of the Accreditation Committee in applying the existing Standards.

New Interpretation 211-2

The first sentence relies on *Grutter* for the proposition that a school may use race and ethnicity in its admissions standards. The Interpretation also indicates that, as part of school’s effort to satisfy the basic requirements of Standard 211, schools “shall take concrete actions to enroll a diverse student body” that promotes cross-cultural understanding, helps break down racial and ethnic stereotypes, and enables students better to understand persons of different races, ethnic groups and backgrounds. The Council approved the use of “shall” in order to be consistent with the black-letter, which establishes an obligation (“shall”) to have a commitment to having a diverse faculty, staff and student body.

New Interpretation 211-3

The interpretation revises former Interpretation 211-1. It retains the language that meeting the requirements of the Standard will be determined by the totality of the law school's action, but replaces with a more general statement the prior list of actions that might demonstrate commitment to diversity. This change recognizes and encourages flexibility and innovation on the part of law schools in meeting the requirement. As explained above, the addition of the phrase "and the results achieved" at the end of the second sentence is intended to make it clear that the results achieved are relevant, although not dispositive, in determining a school's compliance with the Standard.

Current Interpretation 211-2

This Interpretation has been deleted. The Council agreed with the recommendation of the Standards Review Committee that requiring a law school to prepare a written diversity plan imposed an unnecessary burden on law schools. In addition, conscientious application of the existing diversity plan requirement by the Accreditation Committee has on occasion led to the anomalous result of citing a school for non-compliance with the diversity plan requirement when the school has nonetheless been successful in achieving significant diversity in its faculty and student body. The proposed revised Standard requires that a school demonstrate by concrete action a commitment to diversity, so if a school has not succeeded in attaining a diverse faculty or student body, the absence of a written plan still could be a factor in a determination by the Accreditation Committee that the school had not satisfied the requirements of the Standard.

Standard 212. Reasonable Accommodation for Qualified Individuals with Disabilities

The requirement of non-discrimination against individuals with disabilities has been moved from this Standard to Standard 210. Standard 212 now deals only with the required provision of reasonable accommodations to individuals with disabilities. In this Standard, the term "qualified" was retained to correlate with federal law's use of this term when considering the rights of persons with disabilities.

Interpretation 212-1

A reference to Standard 210 is added and an incorrect citation in the current Interpretation is corrected.

Interpretation 212-2

There has been minor editing to this Interpretation, and a reference to Standard 210 has also been added.

Interpretation 212-3

The statement of the law school's obligation is more clearly focused by editing to eliminate some advisory language. The Council made some changes to the existing language of the Interpretation to remove what could have been perceived, though not intended, as negative implications regarding reasonable accommodation.

* * *

The Council respectfully requests that the House of Delegates concur in the revisions of Standards 210-212 of the Standards for Approval of Law Schools and its Interpretations that the Council has adopted.

Respectfully submitted,

Steven R. Smith, Chairperson

August 2006

STANDARDS FOR APPROVAL OF LAW SCHOOLS [RESTATED]

Standard 210. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY.

(a) A law school shall foster and maintain equality of opportunity in legal education, including employment of faculty and staff, without discrimination or segregation on the basis of race, color, religion, national origin, gender or sexual orientation, age or disability.

(b) A law school shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.

(c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (i) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (ii) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but shall not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.

(d) Non-discrimination and equality of opportunity in legal education includes equal opportunity to obtain employment. A law school shall communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement functions the school's firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, religion, national origin, gender, sexual orientation, age and disability in regard to hiring, promotion, retention and conditions of employment.

Interpretation 210-1:

Schools may not require applicants, students, faculty or employees to disclose their sexual orientation, although they may provide opportunities for them to do so voluntarily.

Interpretation 210-2:

As long as a school complies with the requirements of Standard 210(c), the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs. For example, it does not require a school to recognize or fund organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school.

Interpretation 210-3:

Standard 210(d) applies to all employers, including government agencies, to which a school furnishes assistance and facilities for interviewing and other placement services. However, this

Standard does not require a law school to implement its terms by excluding any employer unless that employer discriminates unlawfully.

Interpretation 210-4:

The denial by a law school of admission to a qualified applicant is treated as made upon the basis of race, color, religion, national origin, gender, sexual orientation, age or disability if the basis of denial relied upon is an admissions qualification of the school which is intended to prevent the admission of applicants on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability though not purporting to do so.

Interpretation 210-5:

The denial by a law school of employment to a qualified individual is treated as made upon the basis of race, color, religion, national origin, gender, sexual orientation, age or disability if the basis of denial relied upon is an employment policy of the school which is intended to prevent the employment of individuals on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability though not purporting to do so.

Standard 211. EQUAL OPPORTUNITY AND DIVERSITY.

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.

(b) Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to having a faculty and staff that are diverse with respect to gender, race and ethnicity.

Interpretation 211-1:

The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 211. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 211 by means other than those prohibited by the applicable constitutional or statutory provisions.

Interpretation 211-2:

Consistent with the U.S. Supreme Court's decision in Grutter v. Bollinger, 529 U.S. 306 (2003), a law school may use race and ethnicity in its admissions process to promote equal opportunity and diversity. Through its admissions policies and practices, a law school shall take concrete actions to enroll a diverse student body that promotes cross-cultural understanding, helps break down racial and ethnic stereotypes, and enables students to better understand persons of different races, ethnic groups and backgrounds.

Interpretation 211-3:

This Standard does not specify the forms of concrete actions a law school must take to satisfy its equal opportunity and diversity obligations. The determination of a law school's satisfaction of such obligations is based on the totality of the law school's actions and the results achieved. The commitment to providing full educational opportunities for members of underrepresented groups typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, programs that assist in meeting the academic and

financial needs of many of these students and that create a more favorable environment for students from underrepresented groups.

Standard 212. REASONABLE ACCOMMODATION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES.

Assuring equality of opportunity for qualified individuals with disabilities, as required by Standard 210, may require a law school to provide such students, faculty and staff with reasonable accommodations.

Interpretation 212-1:

For the purpose of this Standard and Standard 210, disability is defined as in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as further defined by the regulations on post secondary education, 45 C.F.R. Section 84.3(k)(3) and by the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.

Interpretation 212-2:

As to those matters covered by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, neither this Standard nor Standard 210 imposes obligations upon law schools beyond those provided by those statutes.

Interpretation 212-3:

Applicants and students shall be individually evaluated to determine whether they meet the academic standards requisite to admission and participation in the law school program. The use of the term “qualified” in the Standard requires a careful and thorough consideration of each applicant and each student’s qualifications in light of reasonable accommodations. Reasonable accommodations are those that are consistent with the fundamental nature of the school’s program of legal education, that can be provided without undue financial or administrative burden, and that can be provided while maintaining academic and other essential performance standards.

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Section of Legal Education and Admissions to the Bar

Submitted By: Dean Steven R. Smith, Chairperson

1. Summary of Recommendation(s).

That the House concur in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting revisions to Standards 210- 212, concerning equal opportunity and diversity, of the Standards for Approval of Law Schools and the Interpretations thereto.

2. Approval by Submitting Entity.

Approved by the Council of the Section of Legal Education and Admissions to the Bar at its meeting of February 11, 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The revisions provide greater clarity and transparency in the Standards and more guidance to law schools concerning the requirements of the Standards concerning non-discrimination, equality of opportunity, and diversity.

5. What urgency exists which requires action at this meeting of the House?

To promote and assure the smooth functioning of the ABA Standards for Approval of Law Schools and its interpretations, it is useful and important that revisions that are developed, widely discussed and adopted in one academic year be effective at the beginning of the following academic year. This revision was developed in the spring of 2005, circulated extensively for comment in August 2005, and adopted by the Council in February 2006. The matter is now ready for consideration at the August 2006 meeting of the House.

6. Status of Legislation. (If applicable.)

None.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

The following groups were offered opportunities to comment on the proposed Interpretation: Deans of ABA-approved law schools, presidents of universities with ABA-approved law schools, chief justices of state supreme courts, bar admissions authorities, the Senior Lawyers Division, the Commission on Racial and Ethnic Diversity in the Profession, the Commission on Women in the Profession, the deans of unapproved law schools, and leaders of organizations interested in the law school approval process (including the Association of American Law Schools, the National Conference of Bar Examiners, the Law School Admissions Council, the National Association for Law Placement, the Conference of Chief Justices, and the National Conference of Bar Presidents). A hearing was held to hear comments on the proposed revisions in January 2006 and the proposed Interpretation and the memo soliciting comment also were posted on the Section's website. Numerous comments were received at the hearing and by e-mail and letter, and all comments were carefully considered as the final revisions were adopted.

10. Contact Person. (Prior to the meeting.)

| | |
|---|---------------|
| John A. Sebert, Consultant on Legal Education | 312-988-6746 |
| [At the Meeting, Moana Surfrider | 808-922-3111] |

11. Contact Person. (Who will present the report to the House.)

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|---|---------------|
| Jose Garcia Pedrosa, Esq., Section Delegate | 305-243-5813 |
| [At the Meeting, Hilton Hawaiian Village | 808-949-4321] |

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|---|---------------|
| Sidney S. Eagles, Jr., Esq., Section Delegate | 919-755-8771 |
| [At the Meeting, Sheraton Waikiki | 808-922-4422] |

13. Contact person regarding amendments to this recommendation.
(Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and ABA/net number of the person to contact below.) None known at this time.

EXECUTIVE SUMMARY**Summary of the Recommendation**

That the House concur in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting revisions to Standards 210- 212, concerning equal opportunity and diversity, of the Standards for Approval of Law Schools and the Interpretations thereto.

Summary of the Issue that the Recommendation Addresses

The revisions provide greater clarity and transparency in the Standards and more guidance to law schools concerning the requirements of the Standards concerning non-discrimination, equality of opportunity, and diversity.

Explanation of How the Proposed Policy Addresses the Issues

This new Interpretation was adopted by the Council in February 2006 after extensive opportunities for comment by law school deans and others interested in the Standards for Approval of Law Schools and its Interpretations. Concurrence by the House of Delegates is necessary in order for the new Interpretation to be effective.

Summary of Minority Views or Opposition

None at this time.

No resolution presented herein represents the policy of the American Bar Association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House in its voting and represent only the views of the Section or Committee submitting them.

AMERICAN BAR ASSOCIATION

**COMMISSION ON DOMESTIC VIOLENCE
NATIONAL ASSOCIATION OF WOMEN LAWYERS
COMMISSION ON IMMIGRATION
COMMISSION ON WOMEN IN THE PROFESSION**

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association urges federal, state, territorial, local, and tribal
- 2 governments to enact or to amend domestic violence civil protection order statutes that provide
- 3 protection to victims who are dating the perpetrator of domestic violence or have been in a dating
- 4 relationship with the perpetrator, but do not necessarily have a child with, live with, or are
- 5 married to the perpetrator of the violence.

REPORT

Introduction

Domestic violence is a pattern of behavior in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation and emotional, sexual or economic abuse to control the other partner in the relationship. The violence is not defined by physical acts, rather it is a combination of factors that impact the entire family, community, and workplace. Abuse knows no economic, racial, ethnic, religious, age or gender limits – no one can count on not being a victim in their lifetimes. Although anyone, regardless of gender may be a victim of domestic violence, women are at a significantly greater risk of intimate partner violence than men. By conservative estimates, 1.5 million women in the United States are assaulted by their intimate partners every year.¹ The victim and perpetrator may be married or unmarried; heterosexual, gay or lesbian; living together, separated or dating. In fact, more than 4 in every 10 incidents of domestic violence involves non-married persons² and 53% of victims of domestic violence were abused by a current or former boyfriend or girlfriend.³ Moreover, studies indicate that teens who are victims of domestic violence and older persons who experience domestic violence frequently are victimized by persons to whom they are not married. Acknowledgement of the various types of relationships that victims of domestic violence have with their perpetrators is recognized by Congress and President Bush, as indicated by passage of the Violence Against Women Act of 2005.⁴

Many states require that those seeking civil protection orders meet current or former relationship requirements. Several of the requirements mandate that the parties are or have been married or are or have been living together. Other requirements include having a child in common with the perpetrator of the violence or being related by blood or marriage to the perpetrator. Much of the violence experienced in intimate relationships happens outside of these parameters. By definition, those who experience violence in a dating relationship may be precluded from seeking protection if the former criteria are not met.

The result is that those of all ages who are in dating relationships, whether teens, middle aged or elderly, often are without recourse for protection through the civil protection order. While other civil remedies may be available, it is the civil protection order that is recognized by law enforcement for purposes of arresting offenders. Typically, it is only the violation of a civil protection order that carries the criminal sanctions necessary for police enforcement.

Legal protections provided to victims of domestic violence through civil protection orders must include the almost 50% of survivors of domestic violence victims who are not married to, living with, or have a child in common with the perpetrator of the

¹ *National Violence Against Women Survey*, National Institute of Justice and Centers Disease Control and Prevention, July 2000.

² Bureau of Justice Special Report: Intimate Partner Violence, May 2000.

³ Bureau of Justice Statistics, Special Report: Intimate Partner Violence and Age of Victim, 1993-1999, Washington, DC (2001).

⁴ H.R. 3402 EAS, Sec. 40002 (2005)(“Violence Against Women and Department of Justice Reauthorization Act of 2005”).

violence and should provide protections to survivors who are dating the batterer, regardless of their age or gender, or that of the perpetrator. Although more than half of the states' civil protection order statutes permit victims of domestic violence to obtain a protection order against their dating partner, several do not, leaving many victims without access to justice.

Current Law in Most States Provides Protections to Dating Victims of Domestic Violence

One of the most effective tools available to victims of domestic violence to ensure their safety and to reduce violence is the legal system, particularly the civil protection order.⁵ Beginning with Pennsylvania and the District of Columbia in the 1970s, by 1989 every state had enacted legislation to authorize protective orders to prevent further domestic violence.⁶ Orders are issued by civil courts and are intended to prevent future abuse. Protection orders include a variety of provisions that vary from state to state requiring, *inter alia*, that the batterer (1) stay a certain distance from the victim of domestic violence and her children, (2) not hit or otherwise abuse the victim and (3) not contact the victim in any way. Orders of protection vary in their duration (emergency, temporary or "permanent"), and in many jurisdictions remedies required in a protection order may include temporary custody of children, child support and forms of restitution.⁷ In these ways, orders of protection are intended to provide tangible, specific protection from abuse for victims of domestic violence.

Today, 40 states allow adults who are dating to obtain a civil protection order against their dating partner.⁸ Of those 40 states, 6 require an intimate or romantic relationship⁹ and 3 require a sexual relationship.¹⁰ Thirty-five (35) states allow for minors to obtain

⁵ See e.g., Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 CONTEMPORARY ECONOMIC POLICY 158 (April 2003).

⁶ Leigh Goodmark, *Symposium, The Legal Response to Domestic Violence: Problems and Possibilities, Law is the Answer? Do We Know That For Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 St. Louis U. Pub. L. Rev. 7, 10. (2004).

⁷ OFFICE FOR VICTIMS OF CRIME, U.S. DEP'T OF JUST., LEGAL SERIES BULLETIN 4, ENFORCEMENT OF PROTECTION ORDERS 1 (Jan. 2002).

⁸ ALASKA STAT. § 18.66.990(5)(C) (2005), ARK. CODE ANN. § 9-15-103(4)(A) (2005), CAL. FAM. CODE § 6211 (2002), COLO. REV. STAT. § 13-14-101(2) (2006), CONN. GEN. STAT. § 46b-15 (2006), D.C. CODE ANN. § 16-1001(5)(B) (2004), FLA. STAT. ch. 784.046 (2005), HAW. REV. STAT. § 586-1 (2004), IDAHO CODE § 39-6093 (2005), 750 ILL. COMP. STAT. 60/103-103(6) (2005), IND. CODE § 34-26-5 (2004), IOWA CODE § 236.2(e) (2006), KAN. CIV. PROC. CODE § 60-3102 (2003), LA. REV. STAT. ANN. § 46:2151 (2004), ME. REV. STAT. ANN. tit. 19A § 4002(4) (2004), MD. CODE ANN., FAM. LAW § 4-510 (2004), MASS. GEN. LAWS ch. 209A, §1 (2004), MICH. COMP. LAWS § 600.2950 (2004), MINN. STAT. § 518B.2 (2005), MISS. CODE ANN. § 93-21-3 (2004), MO. REV. STAT. § 455.010(5) (2005), MONT. CODE ANN. § 45-5-206 (2005), NEB. REV. STAT. § 42-903 (2003), NEV. REV. STAT. 33.018 (2003), N.H. CODE ADMIN. R. ANN. 173-B:1 (2004), N.J. STAT. ANN. § 2C:25-19 (2006), N.M. Stat. Ann. § 40-13-2 (2005), N.C. GEN. STAT. § 50B-1 (2005), N.D. CENT. CODE § 14-07.1-01 (2005), OKLA. STAT. tit. 22, § 60.1 (2005), OR. REV. STAT. § 107.705 (2005), 23 PA. CONS. STAT. § 6102 (2004), R.I. Gen. Laws § 8-8.1-1 (2003), TENN. CODE ANN. § 36-3-601 (2003), TEX. FAM. CODE ANN. § 71.0021 (2003), VT. STAT. ANN. tit. 15 § 1101 (2003), WASH. REV. CODE § 26.50.010 (2004), W. VA. CODE § 48-27-204 (2005), WIS. STAT. § 813.12 (2005), WYO. STAT. ANN. § 35-21-102 (2005)

⁹ ARK. CODE ANN. § 9-15-103(4)(A) (2005), COLO. REV. STAT. § 13-14-101(2) (2006), FLA. STAT. ch. 784.046 (2005), IOWA CODE § 236.2(e) (2006), MINN. STAT. § 518B.2 (2005), N.H. CODE ADMIN. R. ANN. 173-B:1 (2004).

¹⁰ ME. REV. STAT. ANN. tit. 19A § 4002(4) (2004), OR. REV. STAT. § 107.705 (2005), 23 PA. CONS. STAT. § 6102 (2004).

civil protection orders against their dating partners, with various restrictions depending upon the age of the minor.

While those of all ages and genders who are in dating relationships are entitled to protection from abuse, there are some categories of victims who are particularly vulnerable:

Unmarried College-Age Women and Teenage Girls Ages 16 to 24 Experience the Highest Rates of Domestic Violence

Recent surveys of high school and college students indicates that they experience the highest rates of domestic violence per capita and the vast majority of them are not married to, live with, or have a child in common with the perpetrator. Most of them experienced this violence at the hands of a person with whom they were dating. Nearly 1 in 5 teenage girls who have been in a relationship report that their boyfriend threatened violence or self-harm when presented with a breakup.¹¹ Thirteen percent (13%) of teenage girls who have been in a relationship report being physically hurt or hit.¹² Forty percent (40%) of teenage girls ages 14 to 17 say they know someone their age who has been hit or beaten by a boyfriend. Between 30 and 50% of female high school students report having experienced teen dating violence. Twenty-one percent (21%) of college students report they have experienced dating violence by a current partner and 32% report experiencing dating violence by a previous partner.¹³ Sixty percent (60%) of acquaintance rapes on college campuses occur in casual or steady dating relationships.¹⁴

Domestic Violence Occurs at the Same Rates in Same-Gender Relationships as it Does in Opposite-Sex Relationships

Twenty to thirty-five percent (20-35%) of men and women in gay and lesbian relationships experience domestic violence.¹⁵ To ensure that the same protections are provided to victims of domestic violence in same-gender relationships, protection order statutes must not require marriage between the victim and the partner as a prerequisite, since same gender couples may not marry in most states in the country.

Survivors of domestic violence who are in a dating relationship with the perpetrator of the violence but are not married to, live with or have a child in common with the perpetrator are no less victims of violence than those who are. Protection for these victims is most readily obtained through the civil protection order statutes. The goal of the statutes is to prevent abuse wherever it is occurring in the domestic relationship. By urging states to amend their protective order statutes to include victims of dating violence, the American Bar Association will be recognizing the reality of domestic

¹¹ Liz Claiborne Inc., Study on Teen Dating Abuse, Teenage Research Unlimited, www.loveisnotabuse.com (February 2006).

¹² *Id.*

¹³ C. Sellers and M. Bromley, "Violent Behavior in College Student Dating Relationships," *Journal of Contemporary Justice* (1996).

¹⁴ I. Johnson and R. Sigler, "Forced Sexual Intercourse on Campus," *Journal of Contemporary Criminal Justice* (1996).

¹⁵ Lundy, S., "Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts," 28 *New England Law Review* 273 (Winter 1993).

violence and of survivors of that violence and encouraging states, local, tribal governments, and territories to do the same.

Respectfully Submitted,

Margaret Drew, Chair
Commission on Domestic Violence
August 2006

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Commission on Domestic Violence

Submitted By: Margaret Drew, Chair

1. Summary of Recommendation(s).

A high percentage of victims of domestic violence are not married to, have a child in common with or live with the perpetrator of the violence, and yet, many states statutes require one of these types of relationships in order to be eligible for a civil protective order. Recognizing that survivors of domestic violence who have dated their perpetrator should be entitled to the same protections as those who are married to, have a child in common with or live with their batterers, the Commission on Domestic Violence urges state, local territorial and tribal jurisdictions to amend their civil protection order statutes to include victims of domestic violence who have dated their perpetrators.

2. Approval by Submitting Entity.

The Commission voted unanimously in support of the recommendation at our Spring Business Meeting in Nashville, Tennessee on April 22, 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

As listed here, the ABA has previously adopted policy regarding access to protections afforded victims of domestic violence for adolescent survivors of domestic violence. This policy recommendation is different, however, because it expressly is focusing the relationship component of civil protection order statutes, urge states to make protections available to victims who have dated their perpetrators, regardless of the perpetrator's age or gender.

Previously policies adopted by the ABA and the dates that they were adopted:

2/78:

Be it Resolved That the ABA supports federal, state and local efforts to combat the incidence, causes and effects of family violence and supports the implementation of programs to protect the victims of family violence

8/00:

Resolved That the ABA encourages state and territorial legislatures to include within domestic violence statutes the same remedies, protections, and services to adolescents that are available to adults, including domestic violence restraining orders; access to shelters and safe houses; support groups, education, and counseling; other programs to aid in the prevention and elimination of violence; and access to legal assistance for adolescent victims; and

Furthermore resolved, That the ABA urges educational authorities, law enforcement journals, juvenile courts, and other government agencies to support more effectively adolescent dating awareness programs, domestic violence awareness programs, adolescent victim services, and teen offender intervention programs.

8/02

Resolved, that the ABA supports efforts to improve the response of federal, state, territorial and local governments and of the criminal and civil justice systems to elder abuse, neglect and exploitation.

5. What urgency exists which requires action at this meeting of the House?

Recent surveys of victims of domestic violence have raised awareness about the high percentage of survivors of domestic violence who are not married to, have a child in common, or live with their perpetrators, and yet are unable to obtain access to legal protection from ongoing abuse. At the Commission we have learned of recent struggles by attorneys to seek protection for their clients who were victimized by someone they dated.

6. Status of Legislation. (If applicable.)

Currently, 38 states enable adult victims to obtain protective orders against someone whom they have or are currently dating. Five of those states require a higher level of intimacy to obtain protections.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

9. Referrals.

Commission on Women
 Individual Rights and Responsibilities Section
 Family Law Section
 Steering Committee on the Unmet Legal Needs of Children
 Young Lawyers Division
 National Association of Women Lawyers
 Commission on Immigration
 Commission on Homelessness and Poverty

10. Contact Person. (Prior to the meeting.)

Robin Runge, Director, Commission on Domestic Violence

740 15th Street, NW, Washington, DC 20005 (202) 662-8637

11. Contact Person. (Who will present the report to the House.)

Margaret Drew, Chair, Commission on Domestic Violence

No resolution presented herein represents the policy of the American Bar Association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House in its voting and represent only the views of the Section or Committee submitting them.

AMERICAN BAR ASSOCIATION

PRESIDENTIAL ADVISORY COMMITTEE ON DIVERSITY IN THE PROFESSION

KANSAS BAR ASSOCIATION

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

NATIONAL ASSOCIATION OF WOMEN JUDGES

NATIONAL BAR ASSOCIATION

BAR ASSOCIATION OF ERIE COUNTY

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

NEW YORK STATE BAR ASSOCIATION

THE FLORIDA BAR

NEW JERSEY STATE BAR ASSOCIATION

SECTION OF INTERNATIONAL LAW AND PRACTICE

SAN DIEGO COUNTY BAR ASSOCIATION

NATIONAL LESBIAN AND GAY LAW ASSOCIATION

STATE BAR OF NEW MEXICO

KING COUNTY BAR ASSOCIATION

MARYLAND STATE BAR ASSOCIATION

BAR ASSOCIATION OF BALTIMORE CITY

SECTION OF TAXATION

BAR ASSOCIATION OF SAN FRANCISCO

SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE

NEW YORK COUNTY LAWYERS' ASSOCIATION

SECTION OF BUSINESS LAW

SENIOR LAWYERS DIVISION

SECTION OF DISPUTE RESOLUTION

OREGON STATE BAR

JUDICIAL DIVISION

TENNESSEE BAR ASSOCIATION

ILLINOIS STATE BAR ASSOCIATION

STATE BAR OF WISCONSIN

LOS ANGELES COUNTY BAR ASSOCIATION

HENNEPIN COUNTY BAR ASSOCIATION

OHIO STATE BAR ASSOCIATION

SOUTH CAROLINA BAR

DADE COUNTY BAR ASSOCIATION

SECTION OF HEALTH LAW

DuPAGE COUNTY BAR ASSOCIATION

SECTION OF LITIGATION

REPORT TO THE HOUSE OF DELEGATES**RECOMMENDATION**

1 RESOLVED, That the American Bar Association urges the National Conference of Bar
2 Examiners and urges all state and territorial bar associations to collaborate with that state or
3 territory's bar examiner to ensure that the bar examination does not result in a disparate impact
4 on bar passage rates of minority candidates.
5

6 FURTHER RESOLVED, That the American Bar Association urges the Law School Admission
7 Council and all state, territorial and local bar associations to collaborate with accredited law
8 schools to combat high rates of minority student attrition and to ensure that admission policies do
9 not result in a disparate impact on acceptance rates of minority applicants.
10

11 FURTHER RESOLVED, That the American Bar Association urges all state, territorial and local
12 bar associations to collaborate with colleges and universities to develop and support pre-law
13 programs that will increase minority applications to law schools and will increase the readiness
14 of minority applicants for law school.
15

16 FURTHER RESOLVED, That the American Bar Association urges all state, territorial and local
17 bar associations to collaborate with elementary and secondary schools to develop and support
18 programs that will increase minority applications to college and will increase the readiness of
19 minority applicants for college.

REPORT

The American Bar Association has long held that diversity of the legal profession is essential for the maintenance of our system of justice. As the following report will show, however, it will be impossible to achieve true diversity at the current rate of matriculation into the profession. The minority representation in the United States population continues to grow. The disparity between the minority representation in the legal profession and the minority representation in the United States population is considerable, and that gap continues to grow. The current graduation rate from accredited law schools will not reverse this disparity. The current application pool of minority candidates to law school will not reverse this disparity. The current applicant pool of minority candidates to colleges and universities with an interest in the legal profession will not reverse this disparity. The pipeline into the profession must be strengthened and filled to diminish this disparity.

On November 3-5, 2005, the American Bar Association together with the Law School Admissions Council sponsored a Pipeline Diversity Conference to address the best ways to strengthen the pipeline. This resolution is the result of the findings of that conference.

I. RECOGNIZING THE PROBLEM

Many professions and businesses have recognized that a diverse workforce benefits clients, the workforce itself, and the general population. They also recognize that diversity in highly skilled or professional positions requires investments in minority youth who form the “pipeline” to the workforce. Yet, while other professions have implemented diversity pipeline programs for decades, the legal profession has largely remained disengaged from this effort, causing it to lag behind. Even well-intentioned employers cannot recruit the requisite numbers of attorneys of color if they are fighting over the same diminishing pool of candidates, culled from a system of legal education that is failing to enroll and graduate sufficient numbers of the best and the brightest members of our ethnic communities.

Former American Bar Association President Dennis Archer puts the need for diversity in our profession into the most basic terms:

- i) Too often, where white people see justice in our legal system, people of color see justice short-changed. When you recognize that in the United States, it is the ability to petition our courts for fairness that keeps people from seeking justice in the streets, then you understand that diversity in the legal profession is critical for democracy to survive.¹

¹ Remarks at ABA Council on Racial & Ethnic Justice Conference “Diversity in the Legal Profession: Opening the Pipeline,” Oct. 22-23, 2003, in Washington, DC.

A. The Racial Divide

While racial and ethnic minorities make up approximately 30% of the U.S. population, they make up less than 15% of the practicing attorneys in this country.¹ This racial divide will only become greater, as statistics project that by the year 2050, the United States will nearly be a “majority-minority” country, and the Latino population will exceed all of the other minority populations combined; a true demographic sea change.² Achieving a student body reflective of the population’s exact racial proportions is not necessarily the goal of the legal academy or the profession, but it is instructive to compare the racial/ethnic composition of the U.S. population to the percentage of minorities in law school and the profession. Law school enrollment in 2003-04 consisted of 20.3% racial and ethnic minorities, which represented a slight drop from the previous year.³ Contributing to this disproportion is the phenomena that at each step of the way, the pipeline for minority students--from pre-kindergarten into the legal profession—is leaking. Many reputable, research-oriented organizations and individuals have studied the racial/ethnic disparities in the educational pipeline. Gleaning from their reports and statistics, this brief overview highlights the pipeline problem facing the legal academy and the profession.

B. Pre-Kindergarten to Law School

Children as young as three years old already experience disparate problems as students in pre-kindergarten programs. One study⁴ reported that African-Americans attending state-funded pre-kindergarten were almost twice as likely to be expelled as Latino or white children, and boys of all colors and ethnicities were expelled at a rate more than 4.5 times that of girls.

High school is another point in the pipeline for which documentation of a differentiation exists for minorities. A 2004 report from The Civil Rights Project at Harvard University found that white high school students had a 74.9% graduation rate, compared to a 50.2% high school graduation rate for blacks. At 51.1%, graduation rates for American Indian high school students were slightly above blacks, while Hispanic students were at 53.2%. Asian/Pacific Islander students had the highest high school graduation rate, at 76.8%.⁵

¹ UNITED STATES CENSUS BUREAU, CENSUS 2000, *available at* www.census.gov/main/www/cen2000.html; COMM’N ON RACIAL & ETHNIC DIVERSITY IN THE PROFESSION, AM. BAR ASS’N, STATISTICS ABOUT MINORITIES IN THE PROFESSION FROM THE CENSUS (2000), *available at* www.abanet.org/minorities/links/2000census.html. The statistics referenced in this article cover different time periods and are drawn from several sources, including the United States Census and the American Bar Association. Recognizing that there is some debate over which groups should be included in which racial/ethnic categories—e.g., whether “African-American” includes Caribbean blacks who live in the United States—this report uses the descriptive categories that the respective original source used.

² BLACKWELL, KWON, AND PASTOR, SEARCHING FOR THE UNCOMMON COMMON GROUND 22 fig.1-1 (2002).

³ ELIZABETH CHAMBLISS, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 8 (2004), *available from* American Bar Association Commission on Racial and Ethnic Diversity in the Profession.

⁴ WALTER S. GILLIAM, YALE UNIV. CHILD STUDY CTR., PRE-KINDERGARTENERS LEFT BEHIND: EXPULSION RATES IN STATE PRE-KINDERGARTEN SYSTEMS 6 (2005).

⁵ GARY ORFIELD ET AL., LOSING OUR FUTURE: HOW MINORITY YOUTH ARE BEING LEFT BEHIND BY THE GRADUATION RATE CRISIS (2004). A joint release by The Civil Rights Project at Harvard University, the Urban Institute, Advocates for Children of New York, and the Civil Society Institute; accessible from www.civilrightsproject.harvard.edu/.

From high school graduation to college we lose considerable numbers of minority students—in higher proportions than their white counterparts. For example, 64% of white high school graduates in 2001 immediately enrolled in college. For that same year, 55% of black students attended college right after high school.⁶ Minority students do, however, regain some ground when overall college enrollment rates are considered.

College enrollment rates have been increasing steadily among high school graduates from all racial-ethnic groups, so that by 1998, just over 68% of the white population between 18 and 24 had been enrolled in (four-year) college for one or more years. Because African-American and Hispanic high school graduates do not enter four-year colleges at the same rate as their white peers, the comparable percentages of African-American and Hispanic 18-to-24 year olds that had been enrolled in college for at least one year were 62 and 53.⁷

Examining the distribution of college degrees awarded provides another snapshot of the racial/ethnic disparity. For academic year 2002-03, white/non-Hispanic college students received 70% of the Bachelor of Science degrees conferred in Title IV degree-granting institutions. Black/non-Hispanic students earned 8.7% of college degrees that year; with comparable rates of 6.3 for Hispanics; 6.2% for Asian/Pacific Islanders; and 0.7 for American Indian/Alaska native.⁸

Another leaky portion in the pipeline is college matriculation through graduation. A 2005 report from the National Center for Education Statistics found that only 38.5 % of black (non-Hispanic) students at 4-year colleges graduated “on time.” Hispanic students graduated at a higher rate, 43.5%, but Asian/Pacific Islander students had the highest college graduation rate at 63%, while white (non-Hispanic) had a 57.3% college graduation rate.⁹ As is too often true, the male students of color fare even worse. In that same NCES study, only 32.8% of African-American men who started college graduated in the standard time period, compared to 40% of Hispanic men, 54.4% of white men, and 59.6 of Asian men.¹⁰

The process for recruiting ethnically and racially diverse students into post-secondary educational institutions faces even greater challenges in states that ban affirmative action in public schools. The University of California system overall admitted 3,400 fewer students in the fall of 2003 and rerouted 7,600 more would-be first-year students to community colleges. The lower admission numbers have hit underrepresented minorities the hardest. The most striking drop was among African-American student applicants, whose admission numbers were down 15% from the 2002 admission year. As of late spring 2004, only 98 African-American students

⁶ See generally National Center for Education Statistics Website at <http://nces.ed.gov/> [hereinafter NCES Website].

⁷ GITA Z. WILDER, THE ROAD TO LAW SCHOOL AND BEYOND: EXAMINING CHALLENGES TO RACIAL AND ETHNIC DIVERSITY IN THE LEGAL PROFESSION 1 (2003), accessible from www.lisacnet.org (click on “Research Reports”).

⁸ See generally NCES Website.

⁹ L.G. KNAPP ET AL., ENROLLMENT IN POSTSECONDARY INSTITUTIONS, FALL 2003; GRADUATION RATES 1997 & 2000 COHORTS; AND FINANCIAL STATISTICS, FISCAL YEAR 2003 (NCES 2005-177). U.S. Dept. of Education. Washington, DC: National Center for Education Statistics.

¹⁰ *Id.* at 12.

had registered for fall re-enrollment, out of an expected class of 3,821 at University of California at Berkeley. Data shows that the overall campus-wide drop in African-American students was followed by a 9.2% decrease for Native American students, 3% for Latinos, and 2% for Asian-Americans.¹¹

C. Law Schools and Students of Color

The crisis in the pipeline to the legal profession continues in disproportionately lower application, enrollment, and graduation rates of minorities in U.S. law schools. In fall 2004, Caucasian/white students made up nearly 65% of all applicants to ABA-accredited law schools. That same group of applicants consisted of 10.6% African-Americans; 8.5% Asians, and 7.9% total for the combined Hispanic groups (Chicano/Mexican American, Hispanic/Latino, and Puerto Rican).¹² The comparison of minority law school applicants to actual first-year enrollment reveals a slight increase in the percentage of students of color for most groups. Consider the 2004 statistics:

2004 MINORITY LAW SCHOOL APPLICANTS & FIRST-YEAR ENROLLEES¹³

| | Total applicants | % of all applicants | Total 1 st year | % of all 1 st year |
|----------------------------|------------------|---------------------|----------------------------|-------------------------------|
| All Minorities | 27,992 | 28.0% | 10,694 | 22.0% |
| African-American | 10,674 | 10.6% | 3,457 | 7.2% |
| Hispanics (combined) | 7,969 | 7.9% | 2,868 | 5.9% |
| Asian/Pac. Islander | 8,568 | 8.5% | 3,982 | 8.2% |
| Amer. Indian/Alaska Native | 781 | 0.8% | 387 | 0.8% |

Nonetheless, the numbers of matriculating law school students of color is—modestly put—disturbing. Between the years 2000 and 2004, the number of first-year African-American law students rose from 3,402 to 3,457; a mere 1.6% increase (55 students) in a four-year period. The numbers of matriculating Latino students, from all subgroups, remains very small in relationship to their increasing numbers in the overall general population. In 2004, there were fewer than 400 Native Americans matriculating to law school nationally. Asian Americans represent the only real gains in matriculants, with a first-year law school enrollment increase of more than 36%, going from 2,924 in the year 2000 to 3,982 in 2004.¹⁴

Once the minority students have entered law school, the next point along the pipeline to examine is enrollment. In the past decade, minority law school enrollment has hovered around 19-21% of

¹¹ Jerrod Thompson-Hicks, “Minority Admits Down in UC System; Groups Say Regent Using Asians as ‘Pawns,’” June 9, 2004, available at www.civilrights.org.

¹² LAW SCH. ADMISSION COUNCIL, LSAC VOLUME SUMMARY BY ETHNIC AND GENDER GROUP, available at www.lsacnet.org.

¹³ ABA SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, LEGAL EDUCATION STATISTICS, available at www.abanet.org/legaled/statistics/minstats.html.

¹⁴ *Id.*

all law school students. Interestingly, there was a notable one-year increase from 1993-94, when minorities were 17.8% of law school students, to 1994-95, when they made up 19.1% of law students. Such a sizeable increase in percentage points has not happened since then. In the past ten years, the net improvement of minority law school enrollment has inched up from the 19.1% in 1994-95 to 28% in 2004-05. Yet, the news for African-American students is not as encouraging. In the past decade, the highest enrollment for African-Americans was 7.5% of all law school students, both in 1994-95 and 2000-01. In 2003-04, the percentage of African-Americans dipped to a 13-year low, with a representation of only 6.6% of all law school students. The next year (2004-05) the comparable statistics did increase four percentage points, to 10.6%. Hispanic and Native American enrollment has held relatively steady in the past few years, around 7.9% and 0.8% respectively.¹⁵

Asian-Americans have seen a steady increase in both their number and percentage of law school enrollment since 1997-98. In 2003-04, for the first time, the percentage of Asian-American law students surpassed the percentage of African-American students.¹⁶ In 2004, the percentage of Asian-Americans was considerably larger than any other minority group at some law schools. For example, at Western State University in California, 21% of the minority students admitted was Asian-American; at Santa Clara University (CA), the percentage was 28%. The greatest percentage of Asian-Americans in a U.S. law school exists at the University of Hawaii, with 61%. Yet, not all law schools experience such high percentages of Asian Americans. For example, at the University of Missouri and the University of Maine, the percentages of Asian American law students are considerably lower: 4% and 3%, respectively.¹⁷

Unfortunately the pipeline constricts further during law school due to a higher attrition rate for racially and ethnically diverse law students than that of white law students. It is commonly noted that minority law students have a higher attrition rate, but pinpointing specific statistics can be challenging.

National data about persistence in law school are difficult to come by and often must be inferred by juxtaposing information from different sources. Since attrition is the obverse of persistence, one approach is to examine enrollment figures—supplied by the ABA—for first-, second-, and third-year students in three successive years. The difference between one year's enrollment figures and those of the previous year can be considered attrition.¹⁸

The inferred attrition rate for students entering law school in 1998 affirms the anecdotal evidence: minorities leave law school before securing their J.D. at a faster rate than their white counterparts.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *America's Law School Diversity Index*, 2004, U.S. NEWS & WORLD REPORT.

¹⁸ WILDER, *supra* note 9, at 20.

ATTRITION: PERCENT OF FIRST YEAR STUDENTS REMAINING IN LAW SCHOOL¹

| | 2 nd year, % remaining | 3 rd year, % remaining |
|----------------------------|-----------------------------------|-----------------------------------|
| All Minorities | 86.8% | 84.7% |
| African-American | 83.5% | 79.3% |
| Hispanics (combined) | 87.3% | 86.2% |
| Asian/Pac. Islander | 91.2% | 90.9% |
| Amer. Indian/Alaska Native | 81.4% | 80.3% |
| White | 93.6% | 91.2% |

D. LSAT and the Bar Exam

According to many experts, the test score gap between people of color (especially African-Americans) and majority students begins as early as the fourth grade.² This gap continues through college entrance examinations at the undergraduate and graduate level. Because the gap is so large, test scores are another point of leakage on the diversity pipeline. While the LSAT remains a reliable predictor of success in law school and the Law School Admission Council (makers of the LSAT), warn against over-reliance on numerical qualifiers alone,³ low-scoring test takers do not have the same probability of being admitted as high-scoring candidates.

Comparable to the test to enter law school, the exam at the end of law school reveals another juncture in the pipeline that stymies aspiring attorneys of color. Bar passage rates for racially diverse law students are generally lower than whites, but the vast majority of all students who take the bar exam do eventually pass. The oft-cited 1998 LSAC National Longitudinal Bar Passage Study found that 94.8% of all students in the research group eventually passed the bar. Blacks had the lowest percentage rate, 77.6%, while Asian Americans, at 91.9%, had the highest among minority groups. White students in this study passed the bar exam at a 96.7% rate.⁴

Spotlighting more recent statistics for one state bar shows much lower passage rates for all groups. In California, 68.8% white first-time bar exam takers passed the July 2004 exam, while 37.4% African-Americans passed, 49.4% Latinos passed, 61.4% Asian-Americans passed and 48.4% of other minorities passed.⁵ The passage rates for the July 2005 California Bar Exam, continue to display this disparate trend: 69.1% of the white first-time test takers passed. However, the pass rate for African-Americans was 33.8%; for Hispanics, 48.8%; for Asians, 61.7%; and for other minorities, 53.3%. It should also be noted that not only are the percentages low, but the absolute

¹ *Id.* at 21.

² CHRISTOPHER JENCKS AND MEREDITH PHILLIPS, eds. *THE BLACK-WHITE TEST SCORE GAP* (1988).

³ LAW SCH. ADMISSION COUNCIL, *CAUTIONARY POLICIES CONCERNING LSAT SCORES AND RELATED SERVICES* (1999), available at www.lsacnet.org/lsac/publications/CAUTIONARYPolicies2003.pdf.

⁴ LINDA F. WRIGHTMAN, *LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY, RESEARCH REPORT 32* (1998). Accessible from www.lsacnet.org (click on "Research Reports").

⁵ Statistics provided by the California Bar Association, April 2005.

numbers of graduates who take the exam are disappointingly low. For the July 2005 California Bar Exam, the total reported number of first-time takers was 3,704 white persons, compared to 198 African-Americans, 477 Hispanics, 818 Asians and 360 other minorities.⁶ Clearly it is disturbing that such a comparatively low pass rate exists for such a small pool of potential lawyers of color.

E. The Cumulative Effect

Fewer applicants, lower admissions and matriculation rates into law school, higher attrition rates during law school and lower bar passage rates upon completion of law school all contribute to the constriction of the pipeline into the legal profession for students of color. The severe effect of this accumulated leakage is graphically portrayed by the LSAC 2004 presentation in Attachment A.⁷ The cumulative effect also manifests itself in the racial and ethnic make-up of new lawyers as they secure their first jobs in the profession. Of 30,035 jobs obtained across the country by the 2004 graduating law class, minorities captured 19.7% % of the jobs. By gender, minority men obtained 8.2% of all jobs (white men had 42.5%) and minority women secured 11.5% of all jobs (white women had 37.8%).⁸

II. MOVING COLLABORATIVELY TOWARDS SOLUTIONS

Collaboration is the key to the ultimate success of the diversity pipeline project. Conference participants from each of the focus areas repeatedly cited the need for cooperation among and between all groups both directly *and* indirectly related to the pipeline. In order to understand the importance of collaboration to the task at hand it is necessary to view the pipeline as a whole unit or continuum. In so doing, we see that each component of the continuum must feed into the next. No component can exist without its predecessor component. If one component fails to support the next, the continuum ceases to exist. Based on this analogy, the value of collaboration to the pipeline diversity project is clear. There can be no pipeline of diversity into the legal profession without support from the legal academy. If the educational system fails to produce academically prepared students of color, there will be no students of color to guide along the pipeline into the profession.

Building collaborations and working comfortably and successfully within those collaborations is no easy feat. Parties must first share a common goal and agree to collaborate. They may have to step out of their comfort zones and/or give up a little power to accomplish this, which can be a difficult and stressful thing to do. It is essential that collaborating parties develop trusting, non-threatening relationships with each other in order to achieve their common goals. Some groups may require professional team building services to assist them in this endeavor. Once parties have agreed to work together, they must contribute fully, take responsibility for their contributions, and value the contributions of their partners in collaboration.

⁶ *Id.*

⁷ Included in the presentation “Diversity in the Pipeline to the Legal Profession,” Law School Admission Council, 2004 LSAC Annual Meeting and Educational Conference.

⁸ NATIONAL ASSOCIATION OF LAW PLACEMENT, “Jobs for New Law Graduates—Trends from 1994-2004,” *accessible from* www.nalp.org/content/index.php?pid=143.

There are undeniable challenges to establishing strong collaborations. Not every collaborative relationship is successful. The conference participants acknowledged this reality but felt strongly that the goal of pipeline diversity is too important to allow these challenges to derail their efforts.

Conference participants identified several potential collaborators specifically related to the pipeline diversity project and examples of what each one can bring to a collaborative effort:

- Local and state bar associations, corporations, and law firms/*providing bar preparation course scholarships and stipends*
- Law schools and bar associations/*keeping records of bar exam passage rates based on race and sex*
- Law firms and corporate legal departments/*providing mentoring, success training, and counseling to associates of color*
- All legal employers/*training managers and staff to identify racism and sexism*
- Law schools and local bar associations/*providing a clearinghouse of job opportunities for lawyers of color who pass the bar exam*
- All law schools/*counseling students on how to be successful law school graduates*
- Law firms and large corporations/*funding, employment opportunities, and mentoring*
- Local, state, national, and minority bar associations/*providing access to other collaborators, leadership, mentoring, and funding*
- Community Colleges/*providing sources of first generation lawyers and Street Law programs*
- Law students/*mentoring*
- Schools, school districts, and state education agencies/*academic programming*
- Foundations/*Funding*
- LSAC/ "*Got Law*" and other programs
- Universities/*faculty in non-legal disciplines*
- Local, state, and federal government offices/*career options, summer internships, and mentoring*
- Judiciary/*clerkship opportunities and mentoring*
- Bookstores, publishers, computer companies/*funding*
- Parents/*student support*
- National student organizations (BLSA, HLSA, etc.)/*student support*
- CLEO, OLIO, PRLDEF, and the American Indian Law Center/*academic support services*
- Law schools and Academic Assistance programs/*academic assistance*
- K-12, college, & law school programs/*identifying students of color interested in the law*
- K-12, college, law school programs, and practitioners/*introducing students to the legal profession, Street Law programs, and mock trials*
- Birth-3, K-12, college, and law school programs/*minority placement*
- High school counselors and law schools/*career awareness and law school admissions process*
- K-12 and parenting organizations/*educational enhancement*

The issue of funding will be an ongoing challenge for the Pipeline Diversity project. Law firms, corporations, bar associations, foundations, and community organizations are the obvious first-line sources for financial support of pipeline programming. Other sources may include colleges and universities, alumni associations, fraternities and sororities, and individual donors. Successful funding of pipeline diversity will require tenacity, creativity, and significant collaborative effort. The acquisition of adequate funding will most likely be tied directly to the ability of stakeholders to educate the community on the benefits of pipeline diversity. This report is intended to be a “first step” toward that goal.

III. APPROACHES TO SOLVE THE PROBLEM

A. Starting Early

The time to plug a leaky pipeline is before its precious flow seeps away. For the legal academy and the legal profession, that time well precedes law school and ideally would begin in grades K-12. Then, proactive measures have a much better chance of positively impacting minority preparation for and progress through college and law school. In fact, the pervasive nature of the problem suggests that the legal academy and the profession may need to consider participating in collaborations that address the achievement gap even before kindergarten. Disparities in school preparation begin before children enter elementary school. Research has found that African-American and Hispanic children are more likely than white or Asian children to enter kindergarten with fewer school-related skills.⁹

To further illustrate the need to start early, California provides another example of K-8 disparities. School performance in California is measured by a standardized test from the Academic Performance Index. Schools ranking in the lowest 30% are considered “low-performing.” Only 10% of white elementary students in California attend low-performing schools. In contrast, 52% of Hispanic and 43% of African-American students attend low-performing schools in that state. A low teacher-to-student ratio also adversely affects student performance. In California, Hispanic and African-American children are much more likely than white students to be in overcrowded schools.¹⁰

While some in the legal academy and legal profession may find it daunting to extend their outreach efforts across the educational chasm all the way back to pre-kindergarten and elementary school, professionals in all aspects of the law must at least increase their presence in initiatives targeted towards high school and college students of color. Research and statistics clearly show that if we wait until law school to implement effective outreach, the pool of racially and ethnically diverse students is too small to produce a sufficient flow of new lawyers of color.

⁹MARGARET BRIDGES et al., “Preschool for California’s Children: Promising Benefits, Unequal Access,” POLICY BRIEF, POLICY ANALYSIS FOR CALIFORNIA EDUCATION, University of California, Berkeley and Stanford University, at 118 (September 2004), U.S. Dept. of Education.

¹⁰ DEBORAH REED, “Educational Resources and Outcomes in California, by Race & Ethnicity,” CALIFORNIA COUNTS Vol. 6:3 at 9; *accessible from* the Public Policy Institute of California Website, www.ppic.org/main/home.asp.

B. Address the Perspective That the Law is the Enemy

In general, Americans don't like lawyers. Both 1998 and 2002 ABA research projects, as well as other previous studies, found that "the legal profession is among the least reputed institutions in American society."¹¹ Within the context of this American cultural distaste for lawyers, people of color often hold even more negative perceptions of the U.S. justice system due, in part, to their own (or someone they know) encounters with the system. Racial profiling, over-representation of minorities on death row and in the juvenile justice system, or any number of other recent news topics serve as fodder for many minorities' belief that the "law is the enemy." Thus, effective outreach to some students of color, particularly those in the lower socio-economic levels, may need to address this potential perspective and seek to show the students how law can be a tool for justice.

C. Use & Misuse of LSAT Scores

The troubling relationship between LSAT achievement and students of color bears further examination. As with other types of tests, there is a significant achievement gap between minority students (particularly African-Americans) and white students relative to LSAT scores. The gap is so substantial that the LSAT represents another major point of leakage on the diversity pipeline. The LSAT is considered to be a reliable predictor of law school success and first-time bar exam passage.¹² Accordingly, applicants who score low on the LSAT have a lower probability of law school admission than their high-scoring counterparts.

Some suggest that because LSAT success is such a strong indicator of success on the bar exam, many ABA-accredited law schools are less willing to admit or "take a chance" on students of color (who often perform poorly on such tests) for fear of jeopardizing their accreditation and bar passage rankings. Likewise, they argue, new law schools desiring to serve minority communities are unable to obtain accreditation because of their admission of low-scoring students. In their opinion, what results is a chilling effect on the admission of minorities into ABA-accredited law schools, which serves to further constrict the diversity pipeline.

Contrary to this opinion, the ABA Accreditation Committee maintains that law schools do not risk loss of accreditation for simply admitting low LSAT-scoring applicants, particularly when such schools provide sufficient academic assistance and bar prep support to those students, bettering their chances for a successful academic outcome and first time passage of the bar exam. Only those law schools that fail to meet the academic and bar preparation needs of their students, resulting in high attrition rates and low bar passage rates, are at risk of losing their accreditation status. The ABA cites Accreditation Standards 301(a) and 501(b), which state, respectively:

A law school shall maintain an educational program that prepares students for admission to the bar and effective and responsible participation in the legal profession.

¹¹ ABA SECTION OF LITIGATION, "Public Perceptions of Lawyers: 2002 Consumer Research Findings," *available at* www.abanet.org/litigation/lawyers/home.html.

¹² ABA SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, "Addressing Misperceptions Concerning the Use of LSAT and Bar Passage Data in the Accreditation Process, 2005 at B. 1.

A law school shall not admit applicants who do not appear capable of satisfactorily completing its educational program and being admitted to the bar.

The ABA Accreditation Committee is careful to state that LSAT scores are merely an indicator of success, and that the committee does not apply the latter standard to require non-admission of low-scoring students. This is an extremely contentious issue that will not be resolved easily. It is clear, however, that the controversy around the LSAT represents yet another significant hurdle for students of color to overcome.

The law school admissions process and LSAT scores continue to be entrenched barriers at the law school level. Conference participants identified the following strategies to overcome the barriers at this level. These include:

- tying LSAT scores to ultimate bar passage instead of first-time bar passage
- de-emphasizing the importance of LSAT scores by discontinuing the practice of reporting scores to US News and World Report magazine
- requiring law schools to include LSAT scores for transfer students and first year students in their reporting
- opening a transparent dialogue with the ABA Accreditation Committee with regard to determining an acceptable rate of student attrition and bar passage

D. Other Issues for Law School and Beyond

Another stumbling block that surfaces at this point on the pipeline is the inability (or unwillingness) of many law schools to create and foster an inclusive and welcoming environment for minority students. This leads to feelings of isolation among students of color, which has a direct impact on attrition rates. Possible solutions include:

- retaining a diversity consultant or opening a campus office of diversity to assist school administrators and staff in targeted planning on diversity related issues
- providing diversity training to all students in conjunction with first-year orientation programs
- making diversity a stronger factor in accreditation considerations

The institutional barriers to success in the transition phase (the period between law school graduation and the successful acquisition of legal employment) must also be addressed. The most daunting of these barriers are passing the bar exam and securing employment. Yet, these, too, can be overcome if the legal academy and profession take the following proactive steps:

- jointly sponsoring supplemental bar exam preparatory workshops, such as Minority Legal Education Resources, to strengthen test-taking techniques and writing skills
- underwriting the costs of such workshops through scholarships and grants
- providing students of color with job search and placement assistance (particularly those who are not in the top 25 percent of their class and do not have access to on campus interviewing)

- promoting and encouraging affirmative outreach efforts within law firms and other legal employers to increase the job opportunities for minority students
- creating and supporting programs aimed at the recruitment and retention of minority associates in law firms
- offering financial assistance in the form of stipends to students of color as they seek employment

E. The Value of Personal Contact

Students of color must be exposed to effective mentoring and networking programs at all points along the pipeline continuum, starting at the kindergarten level. Such programming should become more intensive as students progress along the pipeline. Mentoring and networking programs aimed at students of color should be multi-faceted and offer:

- successful and committed mentors and role models who can guide students of color, keep them focused on their goals, offer encouragement, and provide recommendations, introductions, and access to important networks
- intervention programs for at-risk minority students aimed at drop-out prevention and promoting the value of education and academic achievement
- services to educate minority parents on the educational opportunities and financial and educational resources available
- career awareness services that provide information about the law and expand students' knowledge of the legal system's positive role in society. Such programming should be targeted at students' specific interests. For example, students interested in science can be introduced to the field of patent law; students interested in sports and entertainment can be introduced to sports and entertainment law, etc.
- character education workshops that encourage students to make positive life choices from an early age
- extra-curricular and summer enrichment activities that provide opportunities for students to visit law schools and meet minority law students. Such immersion activities give students a realistic view of life as a law student and can help plant the seed or vision that attending law school is an attainable goal
- extra-curricular and summer enrichment activities, such as job shadowing, that provide students of color with the opportunity to visit law firms, government offices, and court buildings and meet practicing lawyers and judges. Again, such activities reinforce the idea that the law is an attainable profession
- assistance to students in developing pre-law clubs and other law-related activities
- quality pre-law counseling services to aid students of color in proper course selection, obtaining financial assistance and scholarships, and understanding the importance of character and fitness, leadership, and community involvement in preparation for admission to law school
- career planning assistance with regard to obtaining clerkships, internships, and employment
- services to track the progress of students of color beginning in their first year of law school and going forward through their acquisition of employment

- assistance to students of color in preparing for the bar exam
- exposure to information and experiences that will help students of color become well-rounded and culturally adept
- workshops on developing effective job interview skills
- assistance to students of color in obtaining financial support while they prepare for the bar exam so that students can devote their undivided attention to their studies without financial worry. This support should cover the costs of bar review courses, living expenses, and bar exam fees
- opportunities to participate in practice-oriented and minority organizations on campus, alumni associations, bar associations, and other organizations such as the Inns of Court
- career planning and resume building services

F. Academic Assistance at All Levels

In order to make the pipeline into the profession a successful reality, it is essential that students of color have access to the best academic assistance and support available. Academic programming should be flexible enough to meet the needs of *every* student at *every* grade level. Collaboration between the various components of the pipeline must be encouraged if students are to benefit. Academic assistance can take the form of:

- sustained development of reading, writing, comprehension, math, and critical analysis skills at every grade level to ensure promotion
- tutoring services to strengthen core academic (reading, writing, math) and test-taking skills
- remedial support (when necessary)
- mandatory summer school
- extra-curricular and summer enrichment programs
- skill building in specific areas such as writing, comprehension, and critical thinking
- career academic services that teach students how to plan their educational careers into the future through course selection, prerequisite coursework, etc.
- programs and activities that teach logic and reasoning
- test prep services
- academic Success programs in law school
- performance tracking of first-year law students

IV. THE FUTURE

Beyond the moralistic responsibility, it also makes good business sense for the legal profession to invest time and resources in the diversity pipeline. Law firms, corporate legal departments, government, and the judiciary cannot recruit attorneys of color who do not exist. Diversity efforts will encounter inherent obstacles as long as there remain too few people of color who decide to enter the profession in the first place. Forward-thinking legal employers have already accepted this reality, and label their diversity pipeline “donations” as recruitment expenses.

To fully maximize its efforts, the legal academy and the profession must tap into the power of collaboration. Effectively reaching elementary (or earlier), high school, and college students requires working closely with educators who are on the front lines with these students. Fortunately, many education-related individuals, institutions, associations and organizations are already addressing these issues. The legal academy and the legal profession—from law schools and bar associations to judges and senior lawyers—must now lend their collective weight to help make a difference.

Respectfully Submitted,
Evet L. Simmons, Chair
ABA Presidential Advisory Commission on Diversity in the Profession
August 2006

GENERAL INFORMATION FORM

Submitting Entity: ABA Presidential Advisory Council on Diversity in the Profession

Submitted by: Evett L. Simmons, Chair

1. Summary of Recommendation(s).

The Recommendation urges the American Bar Association and all state, territorial and local bar associations to work with national, state and territorial bar examiners, law schools, universities and elementary and secondary schools to address significant problems facing minorities within the pipeline to the profession.

2. Approval by Submitting Entity.

The Recommendation was approved by the ABA Presidential Advisory Council on Diversity in the Profession in February 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?

Yes, the ABA has a strong history of promoting diversity in the profession.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The ABA created the Legal Opportunity Scholarship in 2000 and created the ABA Presidential Advisory Council on Diversity in the Profession in 2000 in order to promote strengthening the pipeline into the profession. This recommendation would enhance that goal by seeking to involve all state, territorial and local bar associations in the effort.

5. What urgency exists which requires action at this meeting of the House?

Action is timely.

6. Status of Legislation

N/A

7. Cost to the Association

None

8. Disclosure of Interest

N/A

9. Referrals.

The report and recommendation have been referred to every entity represented in the House of Delegates.

10. Contact Person

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No resolution presented herein represents the policy of the American Bar Association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House in its voting and represent only the views of the Section or Committee submitting them.

AMERICAN BAR ASSOCIATION

SECTION OF LITIGATION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 **RESOLVED**, That the American Bar Association encourages law firms to consider: (a)
2 alternatives to mandatory minimum billing requirements that would reduce undue emphasis on
3 lawyers' billable hours and permit law firms the flexibility necessary to manage themselves
4 under their own circumstances and more accurately to measure each individual's contribution to
5 achieving all of the firm's important goals; and (b) compensation systems that recognize and
6 reward attorneys based on factors in addition to the number of hours they bill to client matters,
7 including pro bono work, community service, mentoring and training, speaking, writing and
8 teaching, and other activities that enhance professional development and standing in the legal
9 profession as a whole.

REPORT

Introduction

For at least 200 hundred years, lawyers have worked tirelessly to promote the legal rights of their clients. By zealously pursuing their clients' interests and carefully guarding the attorney-client privilege, lawyers have built the trust and loyalty that are the cornerstone of the attorney-client relationship.

However, the nature of that relationship has evolved as times have changed. Clients are no longer committed to a relationship with a single trusted counselor and advisor. Instead, they sometimes view lawyers as selling a largely fungible commodity, for which the cost may be an important distinguishing factor.

As the legal marketplace has become more competitive, and as information about a firm's financial performance has become widely available, lawyers are now forced to focus on the profitability of their business in a way they never have had to before. Profits are a measure of success and, regardless of any individual's personal financial aspirations or even indifference, a lawyer and law firm's reputation for success are critical in recruiting and retaining both lawyers and clients.

The increased emphasis on revenues and profitability exerts pressure on the attorney-client relationship. It also takes its toll on lawyers in many ways: the most direct and obvious result is that lawyers work harder than ever before; that work can be less fulfilling when hours and profits become the focus; and increased billings inevitably take away from not only personal, but also professional activities – including community service, pro bono work, teaching and mentoring – that historically have been a hallmark of the profession and the source of great personal satisfaction.

The proposed resolution is premised on the belief: (a) that it is important for lawyers to engage in pro bono work and community service, and (b) that such work and service are consistent with law firms' profitability goals. Success of a law firm depends on two critical constituencies – clients who need legal services and are able to pay their bills, and lawyers who are able to provide those services at the highest possible level. Pro bono work and community service provide lawyers (particularly newer lawyers) with invaluable experiences, enabling them to broaden the skills necessary to serve their paying clients. A firm that encourages its lawyers to live full and satisfying professional lives will be valued by both newer and seasoned lawyers, allowing those firms to recruit and retain the most skilled lawyers at all levels. Moreover, a lawyer or law firm's stature in the community can be a powerful attraction to clients. That stature can be built not just through results in paying cases, but also through commitment to activities that benefit the broader community.

The proposed resolution recognizes the realities of the legal marketplace but also encourages firms to consider approaches that are broader than a rigid emphasis on billing more and more hours. The resolution encourages firms to adopt practices that encourage lawyers to engage in non-billable professional and community activities with the goals of (i) increasing lawyers' personal satisfaction and thereby attracting and retaining the best lawyers, (ii) broadening lawyers' professional experiences, skills and judgment, and (iii) enhancing the reputations of the

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lawyers and firms those who engage in them. These activities, the sponsors of this resolution submit, improve lawyers' ability to serve their clients, build better law firms, and enhance attorney-client relations.

The Historically Broad Role of Lawyers

Lawyers have been in the forefront of efforts to ensure that legal rights extend to all individuals, regardless of race, ethnic background, gender or other identifying characteristic. From John Adams' representation of the British soldiers charged with the Boston Massacre, to Thurgood Marshall's decades-long struggle to integrate public schools, to lawyers' work in the Civil Rights Movement of the 1960's, lawyers have strived to make the American Dream available to everyone in our country.

American history is filled with lawyers who were able to combine private practice with public service. Alexander Hamilton, Daniel Webster, Abraham Lincoln and William Jennings Bryan are only a few of the lawyers who contributed so much to the public good. More recently, many lawyers have had considerable success at private law firms, but also achieved great stature through public service.

While many of these lawyers are nationally known for their public service, others may be recognized only as local heroes for providing legal services to the poor, assisting nonprofit organizations, serving on local school boards, or engaging in similar community service. Without much fanfare, lawyers historically have devoted thousands of hours every year to pro bono and community service work. By helping their communities and the people who live in them, these lawyers have achieved a personal satisfaction to which many aspired when they became lawyers.

On the business side, these good works offer rich opportunities for the lawyers who engage in them. Many have met other leaders—indeed, potential clients—in the course of their community activities. Others have been able to cement relations with existing clients who support the same causes they support. The lawyers have had the opportunity to showcase their knowledge, judgment, and effectiveness in a much more persuasive way than in any client “pitch.” And they have enhanced their general stature and reputation in the community, while simultaneously honing the skills that serve lawyers equally well in their daily practices.

Raise the Bar – Issues Affecting Lawyer Satisfaction

The Section of Litigation began its *Raise the Bar* initiative two years ago to address what we perceived to be serious issues affecting lawyers' satisfaction within the profession. Starting with two focus groups in Atlanta in August 2004, we hypothesized that there is a generational gap in the profession such that newer and more seasoned lawyers would have very different views about those issues.

What we found in these focus groups, and in four subsequent conferences around the country, was very different. In fact, we learned that the issues confronting newer and seasoned lawyers are generally the same. The pressure of being “on call” 24/7 with blackberries and cellular phones; diminished collegiality; inadequate mentoring; fewer opportunities for pro bono work and public service; less client loyalty and trust; greater competitiveness within and among law

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firms; and, most of all, the pressure to bill hours—all of these were repeatedly cited as reasons why lawyers are becoming increasingly dissatisfied with their careers and why many have left the profession altogether.

Many if not all of these problems coincide with the transition of legal practice over the past 20-30 years from a “profession” to a “business.” The increasing emphasis on “profits per partner”, billable hours and the like has made law firms more competitive—internally and externally—and has created a real risk that many lawyers will perceive that the only path to success is through hard work, measured in billable hours. The potential consequences to the legal profession are serious and profound, as lawyers (particularly newer lawyers) might decide to reduce their pro bono and community service activities, to say nothing of lessening their efforts to train and help other lawyers whom they perceive as competitors.

The proposed resolution encourages law firms to consider (1) alternatives to mandatory minimum billing requirements that would reduce undue emphasis on billable hours, and (2) compensation systems that would recognize and reward attorneys based on factors in addition to billable hours, including factors like pro bono work, community service, mentoring and others. These alternatives would communicate to lawyers that non-billable professional activities are also important and valued by their firms.

Client Tensions and Law Firm Profitability

Law firms’ rigid emphasis on billable hours and profitability has not been lost on clients. Thirty years ago it was rare for a dispute between a lawyer and her client to end up in litigation. Now clients often sue lawyers for malpractice, breach of fiduciary duty and even fraud; and lawyers sue clients to collect unpaid bills.

But not only litigation demonstrates the negative changes in the attorney-client relationship. Increases in billing rates and for other charges have brought home to clients the business aspects of the legal practice. The results have been increased tension in the attorney-client relationship, as both the lawyer and her client have had to divert attention from the problem at hand to the financial aspects of their relationship.

Thirty years ago attorney-client relationships, at least the best ones, functioned almost as partnerships. The lawyer and her client worked together to solve the client’s problems. Trust and candor were essential to the success of that partnership. Now, by contrast, many attorney-client relationships are replete with skepticism and distrust.

These problems have been exacerbated, not helped, by the explosion of electronic means of communication. Even five or ten years ago, lawyers would meet regularly with their clients to hash out strategies and solutions to the clients’ problems. Now, with email and cellular telephones, lawyers can work for a client for years without ever meeting face-to-face.

Conclusion

The proposed resolution attempts to address some of these serious problems affecting the legal profession, its lawyers and their critical relationship with clients. The proposed resolution encourages law firms to consider steps that would recognize and reward lawyers for undertaking

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pro bono work, community service, and other non-billable activities that promote these societal values -- while at the same time developing important legal skills, client relationships and the stature of lawyers and law firms. These steps, the sponsors of this resolution submit, will help maintain the vitality of law firms and ensure that lawyers continue to play vital roles in their communities as we move ahead in the 21st Century.

Respectfully submitted,

Brad D. Brian, Chair
Section of Litigation
August 2006

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GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Section of Litigation

Submitted By: Brad Brian, Chair of the Section

1. Summary of Recommendation(s).

The report and recommendation encourage law firms to: (1) consider alternatives to mandatory minimum [billing](#) requirements [that permit law firms](#) the [necessary management flexibility yet measure more accurately each individual's contributions to achieving the firm's](#) goals; and (2) [develop](#) compensation systems that reward [lawyers for](#) pro bono, public interest and bar association activities, the training and mentoring of lawyers, continuing legal education, writing and teaching, and [other activities that enhance professional development, standing in the community, and the legal profession as a whole.](#)

2. Approval by Submitting Entity. The report and recommendation were approved by the Section of Litigation Council on May 2, 2006

3. Has this or a similar recommendation been submitted to the House or Board previously?
No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption? This would enhance ABA policies on pro bono, public service and work-life balance

5. What urgency exists which requires action at this meeting of the House? None

6. Status of Legislation. (If applicable.) N/A

7. Cost to the Association. (Both direct and indirect costs.) None

8. Disclosure of Interest. (If applicable.)N/A

9. Referrals. All Sections and Divisions

10. Contact Person. (Prior to the meeting.)

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