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## ABA Resolution 110B: Changing the Law School Accreditation Standard on Bar Passage and Giving Young Lawyers a Seat at the Table

By Dana M. Hrelc

At its February 2017 Midyear Meeting, the American Bar Association House of Delegates considered ABA Resolution 110B, submitted by the ABA Council of the Section of Legal Education and Admissions to the Bar (“the council”), modifying Accreditation Standard 316, on Bar Passage, of the Revised Standards for Approval of Law Schools. Specifically, the resolution would change the language of the standard to require that “[a]t least 75 percent of a law school’s graduates in a calendar year, who sat for a bar examination, must have passed a bar examination administered within two years of their date of graduation” in order for a law school to maintain its accreditation.

After heated debate, the resolution failed before the ABA House of Delegates and, in accordance with this action, the House referred the resolution back to the council for further consideration. Notably, this resolution had also failed before the Assembly of the ABA Law Students Division, as well as before the Assembly of the ABA Young Lawyers Division, which went so far as to adopt the resolution in the negative—requiring its House of Delegates representatives to vote against it.

But why? What does this resolution mean and why is it so contentious? Here are some of the notable changes:

**Present Standard 316:** Requirements include that a law school must show it has achieved a 75 percent passage rate within five calendar years from the date of graduation, and the school has the option to show that the classes in three out of five of those years achieved a 75 percent passage rate instead. Also, a law school may demonstrate the necessary requirements under Standard 316 on the basis of its bar pass rate for first-time takers.

**Revised Standard 316:** In the revised Standard, the five calendar years has changed to two years, and the latter option has been eliminated. Now, a law school may report its ultimate pass rate based on only 70 percent of its graduates. In the revised Standard, that option has been eliminated. The opportunity for law schools to demonstrate the necessary requirements under Standard 316 on the basis of its bar pass rate for first-time takers is no longer available.

Proponents of the resolution suggest that creating an “ultimate pass rate [for each

graduating class of a law school] within [a] two-year period is the more appropriate measure of whether a school is operating a sound program of legal education.” See 110B Report at 1. They emphasize that the revised standard does not attempt to place a limit on the number of times that an individual may sit for a bar exam; rather, it speaks “only to the ultimate bar passage rate expected of a law school for accreditation purposes.” *Id.* As it stands, no accredited law school has ever been out of compliance with Standard 316. Moreover, they argue, given the fact that many law schools are being criticized for enrolling and graduating too many law students who cannot pass the bar exam yet who graduate with significant debt, this requirement will help hold law schools more accountable for preparing students to pass the bar and practice law.

Opponents of the resolution, however, point out that the proposal fails to address racial inequities in the law school admissions process and legal education. For example, at a notice and comment hearing held in August by the Section of Legal Education and Admissions to the Bar on the proposed revisions, data was submitted demonstrating that 33.4 percent of African American students in California and 29.8 percent of the state’s Hispanic law

students attend the five ABA-accredited law schools that would be most at risk of violating the proposed revision.

Additionally, the National Black Law Students Association testified in opposition to the revised standard at the hearing, noting that students of color score lower on the LSAT, which has a strong correlation with bar passage. It suggested that, “If Standard 316 is amended as proposed, law schools would focus more on higher LSAT scores, reducing the diversity in their law schools and in the legal profession as a whole.” Put simply, the 75 percent bar passage rate requirement is over-inclusive and would disproportionately impact communities of color. Moreover, it attested that instead of setting such an over-inclusive requirement, the ABA should “consider a more holistic and comprehensive review of the bar exam and law school accreditation process.” Opponents of the revised Standard echoed these sentiments before the House of Delegates.

After failing before the ABA Law Student Division, the ABA Young Lawyers Division, and the ABA House of Delegates, revised Standard 316 will return to the council for further consideration and prompt review. As it embarks on this important task, I advise the council to invite more young law-

yers to the table. The participation and perspective of young lawyers—those who have recently graduated from law school, who are taking the bar exam, and who are paying off high school loans—is absolutely critical to consideration of the standards to which we should be holding legal education institutions. Notably, only one young lawyer liaison sits on the council, and that young lawyer holds a non-voting position, meaning that whenever the issue of accreditation is raised and the body goes into executive session, that young lawyer liaison must leave the room. This is counterintuitive to the spirit of true improvement to legal education and the legal profession, and it must change.

I urge young lawyers who do not have a physical seat at the council table to pay more attention to these critical issues affecting ourselves and our colleagues. We are the future of our profession and must be vigilant in pushing it toward a brighter future. To this end, I invite my friends and colleagues in the Connecticut Bar to join me in reviewing the council’s next set of revisions to Standard 316, so that we can use our voice to make an impact this second time around. **CL**

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