

January 28, 2021

William E. Adams, Jr.
Managing Director, Accreditation and Legal Education
ABA Section of Legal Education and Admissions to the Bar
321 N. Clark St., 19th Floor
Chicago IL 60654

Re: Standard 316

Dear Bill:

The legal profession is at a crossroads. With the COVID-19 pandemic vividly demonstrating the effects of longstanding structural racism, and with the killings of unarmed Black people at the hands of state and private actors continuing,¹ the need for diversity on the bench, in public defender and prosecutor offices, among lawmakers, and in all areas of the legal profession could not be clearer. Despite the need, however, the profession remains one of the most homogenous—according to the ABA, fully 85% of attorneys are white.² The time for change has long passed. We write to urge the Council to take concrete measures to make the profession diverse, equitable, and inclusive and, in so doing, to help afford legitimacy to the legal system.

The “Brief Overview of Roundtable Questions and Discussions on October 2, 2020,” suggests a way forward. Specifically, the Council asked participants in two roundtables focused on diversity, equity, and inclusion whether they had “concerns about the interaction between Standard 206 and Standard 316.” Both groups said yes. Table 1 observed that the “Council cannot speak credibly about a commitment to diversity while continuing to enforce Standard 316 during the pandemic,” based on the disproportionate impact of COVID-19 on African Americans, Native Americans, Pacific Islanders, and Latinx people in terms of rates of death, unemployment, and economic losses.³ These disparate outcomes result from

¹ See, e.g., Laurie Ure, Rebeka Riess, Eric Levenson, and Nicquel Terry Ellis, “Feds to Investigate after a Sheriff’s Deputy Killed a Black Man Entering His Own Home in Columbus, Ohio, (December 9, 2020), <https://www.cnn.com/2020/12/08/us/ohio-police-shooting-casey-goodson/index.html>.

² ABA Profile of the Legal Profession, 9 (2019).

³ Council of the ABA Section of Legal Education and Admissions to the Bar, “Brief Overview of the Roundtable Questions and Discussions on October 2, 2020, 7-8 https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov20/20-nov-roundtable-report.pdf.

longstanding structural racism in our society.⁴ Because of the likely impact of these conditions on students of color, Table 1 recommended suspending enforcement of Standard 316 for at least one year. Table 2 also expressed concern about the interaction between Standards 206 and 316 for reasons not tied to the pandemic. Rather, participants highlighted the possible disparate impact of 316 on law schools with part-time programs. This group urged the Council to “study and track performance of certain groups.”⁵

We recognize and appreciate the importance of ensuring that law schools will graduate students who are competent to practice; indeed, each of us is dedicated to ensuring that our students are the zealous, prepared practitioners whom their clients deserve. We also recognize that this year has presented an unprecedented number of barriers to success that stem from and extend beyond the pandemic; among those barriers are delays in state administration of the bar exam, technological glitches, a changed format in the midst of the period in which students studied, proctoring software that failed to recognize people with dark skin,⁶ as well as reports of persons testing positive for the virus after they sat for the exam.⁷ Additionally, states struggled to adapt. For example, Florida changed its summer bar exam test date several times due to technological problems—once just days before the test was to be given.

These unprecedented circumstances, coupled with the historic moment in which bar associations, law schools, practitioners, and judges alike are re-examining and recommitting their efforts toward racial justice, require concomitant action by the Council.

Recalling that Goal III of the ABA is promoting full and equal participation in our profession and the justice system, as well as eliminating bias and enhancing diversity in the legal profession, we urge the Council to suspend enforcement of Standard 316 for one year. At the very least, Council should invite discussion specifically on this standard in the next set of Roundtables.

A legal system in which persons of color are overrepresented in prison and underrepresented at the bar is highly problematic,⁸ to say the least. Addressing the inequities related to the bar exam and its administration during these challenging times is a good place to start.

⁴ Ruqaiijah Yearby, Seema Mohapatra, “Law, Structural Racism, and the COVID-19 Pandemic, *J. of Law and the Biosciences*, Volume 7, Issue 1 (January -June 2020), <https://doi.org/10.1093/jlb/ljaa036>.

⁵ Brief Overview, *supra* n. 2, at 9.

⁶ “Some dark-skin students getting ‘Unable to Identify Your Face’ messages while attempting to take online bar exam,” *The National Jurist*, 12/3/2020, <https://www.nationaljurist.com/national-jurist-magazine/some-dark-skin-students-getting-%E2%80%99unable-identify-your-face%E2%80%99-messages-while>.

⁷ See, e.g., Paolo Zialcita, “Law Student Tests Positive for Corona Virus After Taking the Colorado Bar,” *CPR News* (July 30, 2020), <https://www.cpr.org/2020/07/30/law-student-tests-positive-for-coronavirus-after-taking-colorado-bar-exam/>.

⁸ See, e.g., Yolanda Young, “Why the US needs black lawyers even more than it needs black police,” *The Guardian* (May 11, 2015), <https://www.theguardian.com/world/2015/may/11/why-the-us-needs-black-lawyers>.

Sincerely,

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