



The National Voice of the Hispanic Legal Community.

**Proposed New Interpretation 301-6 for Standard 301(a)
Section of Legal Education and Admissions to the Bar
American Bar Association**

**Comments of the
Hispanic National Bar Association**

July 23, 2007

**Council for the ABA Section of Legal Education and Admissions to the Bar
Proposed New Interpretation 301-6**

HNBA Comments

I. INTRODUCTION

The Hispanic National Bar Association (HNBA) is pleased to submit these comments on the proposed new Interpretation 301-6 for Standard 301(a) that is under consideration by the Council of the American Bar Association (ABA) Section of Legal Education and Admissions to the Bar (“Council”). In sum, the HNBA opposes the adoption of the proposed new Interpretation 301- 6.

The HNBA is dedicated to ensure the positive growth and development of U.S. Hispanic attorneys and their meaningful participation in the U.S. legal profession. This mission involves, among other things, substantive legal training, like continuing legal education courses, and programs that promote professional growth and development.

In addition, the HNBA, like the ABA and many other bar associations, actively supports and is engaged in efforts that promote greater diversity in the legal profession. The HNBA works with high school and college students to increase the flow of Hispanic students applying to law schools, and with Hispanic law students to assist their launching towards successful law careers. Recently, for example, the ABA announced its selection of the HNBA as a recipient of a 2007 ABA Partnership Award for its HNBA National Mentoring Program, a program that takes a unique mentoring approach by forming teams that consist of an attorney, a law student, a college student, and a high school student. The program is in effect in cities across the United States.

As these comments demonstrate, the implementation of the proposed new Interpretation 301-6 would likely have a significant adverse impact on the HNBA mission and, more broadly, hobble ongoing efforts to achieve greater diversity in the U.S. legal profession.

II. INTERPRETATION 301-6

The proposed new Interpretation for Standard 301(a) is set forth in a memorandum date June 18, 2007 from William R. Rakes, Chair of the Council, and Hulett H. Askew, ABA Consultant on Legal Education (“Memorandum”).¹ Standard 301 establishes various objectives for legal education programs. Standard 301(a) requires that laws schools maintain an educational program that prepares students for successful bar passage and effective and responsible legal careers.²

A principal objective of the Council in proposing and ultimately implementing the new Interpretation on bar passage rates is to achieve measurable benchmarks by which to gauge compliance by law schools in meeting their responsibilities under Standard 301(a).³ The Council also notes that applicable Department of Education (“DOE”)

¹ The June 18th document, hereinafter referred to as the “Memorandum,” was directed to a wide group of recipients, including “Leaders of other Organizations Interested in ABA Standards.” Although the HNBA has on prior occasion participated in the review process for ABA law school accreditation standards, in particular the equal opportunity standards, the HNBA did not receive a copy of the Memorandum and learned about the proposed new Interpretation via that new form of word-of-mouth, an email chain. The HNBA is grateful for the permission to submit these comments beyond the July 16 deadline noted in the Memorandum.

² Standard 301 provides as follows:

Standard 301. Objectives

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

³ Memorandum at 7.

regulations require that it maintain law school accreditation standards that are based on state certification examinations, *i.e.*, successful bar examination passage rates.⁴

In addition, the Council places special emphasis on the premise that the proposed new Interpretation is necessary as a measure of consumer protection.⁵ In this case, the consumers to be protected are (a) law students who pay a tuition to receive legal education, and (b) the general public which consumes legal services.⁶ Presumably, college students would also be afforded protection as they evaluate law schools to which they seek to apply.

In brief, Interpretation 301-6 would require that a fully approved law school demonstrate compliance with Standard 301(a) under one of the following two alternatives:

1. that for any three years out of the five most recent years, its first-time bar passage rates is no more than ten points below the average of first-time bar passage rates for graduates from ABA accredited law schools in the same jurisdiction and during the relevant year, and

if more than twenty percent of its graduates take their first bar examination in another jurisdiction, demonstrate that the first time bar passage rates are more than seventy percent on the two most recent tests; or
2. demonstrating that eighty percent of its graduates pass a bar examination within three bar exam sittings taken within three years of graduation.⁷

Similar requirements are imposed on provisionally approved law schools with an exception that the ten point average rule applies in the context of two of the three most recent bar examinations.

⁴ Memorandum at 2. *See also* 34 CFR 602.16.

⁵ Memorandum at 1.

⁶ Memorandum at 1 and 7.

⁷ Memorandum at Attachment, page 1.

III. INTERPRETATION 301-6 IS BASED ON INADEQUATE PROCEDURE AND INSUFFICIENT STUDY

The Council sets out in the Memorandum a provenance for Interpretation 301-6 that starts in November 2006. Specifically, it notes efforts by the Standards Review Committee to formulate a new Interpretation including by holding a series of recent meetings with DOE officials. The meetings with DOE appear to have been particularly influential in the Council's decision to abandon a sixty percent bar passage benchmark in favor of the more stringent rates contained in Interpretation 301-6. In addition, the meetings with DOE resulted in abandoning the use of "triggers" which served to prompt further review to determine whether a law school was in compliance, and if not, its causes. Instead, the DOE has urged the Council to adopt a bright line test under which a law school would be deemed to be out of compliance should strict numerical criteria not be satisfied.⁸

Apart from the explanations about the DOE meetings, the Council offers little to no rationale for the recommended changes. In particular, the Council fails to provide any empirical data that would demonstrate that the proposed bar passage rates would achieve the Council's stated objectives.

The HNBA believes that prior to the adoption of any new Interpretation for bar passage rates under Standard 301(a) that a detailed study should be undertaken on the

⁸ Memorandum at 5

probable effect and implications that would result from the proposed Interpretation. Absent such a study, the imposition of proposed Interpretation 301-6 would be made on an uninformed basis and thereby undermine one of the Council's stated objectives; ensure consumer protection through the provision of adequate information.

IV. IMPLEMENTATION OF INTERPRETATION 301-6 WOULD HAVE A POTENTIALLY SIGNIFICANT ADVERSE EFFECT ON MINORITY LAW SCHOOL ENROLLMENT

An intended, albeit unstated, objective for establishing bright line bar passage rates criteria would be to force law schools to improve the quality of legal education in order to achieve higher bar examination scores. While this is a laudable objective, the Interpretation would create a strong incentive and justification for law schools to reduce or eliminate from their student population ranks those students or groups of students that are identified as having the lowest bar examination scores and bar passage rates, minority students.⁹

Stated differently, law schools would be encouraged and rewarded for reducing or eliminating minority law student enrollment. This result is simply unacceptable. At minimum, the implementation of any new Interpretation on bar passage rates should contain enforceable safeguards that would prevent law schools from rolling back minority law student enrollments.

⁹Wightman, Linda F., LSAC National Longitudinal Bar Passage Study 27, (LSAC Study) 1998. For state data, see, Stephen P. Klein, Ph.D. and Roger Bolus, Ph.D. GANSK & Associates, Analysis of July 2004 Texas Bar Exam Results By Gender And Racial/Ethnic Group, ABA/LSAC Pipeline Diversity Conference, November 3-5, 2005 Panel: Points Along the Pipeline, December 15, 2004 report published by the Texas Board of Law Examiners. The full report is available online at http://www.ble.state.tx.us/one/analysis_0704tbe.htm.

V. IMPLEMENTATION OF INTERPRETATION 301-6 WOULD HAVE AN ADVERSE EFFECT ON EFFORTS TO ADVANCE DIVERSITY IN THE LEGAL PROFESSION

As noted above, the new Interpretation 301-6 would push law schools to reduce or eliminate minority law student enrollment as a means to ensure compliance with Standard 301(a) and protect their accreditation status. Another foreseeable effect of Interpretation 301-6 would be to target laws schools that historically serve minority law students, and schools with traditionally high minority law student enrollments. Similarly, the Interpretation would inhibit the establishment of new law schools, or the full approval of provisionally approved law schools, that by design or geographic location are dedicated towards education of minority law students. As a result, those law schools would be subject to an immediate prospect of un-accreditation status, a factor that would further discourage minority student applications.

The aggregate effect of the foregoing three results alone would be to immediately cast a chill on ongoing efforts to advance diversity in the legal profession. Because of this, the HNBA cannot support and indeed opposes Interpretation 301-6. At minimum, the HNBA urges the Council to undertake an immediate investigation on the impact and implications that Interpretation 301-6 would have on law schools that historically have served minority law students, and law schools with current or future high minority law student enrollments.

VI. IMPLEMENTATION OF INTERPRETATION 301-6 WOULD HAVE A SIGNIFICANT ADVERSE EFFECT ON CONSUMERS OF LEGAL SERVICES, IN PARTICULAR COMMUNITIES THAT HAVE THE LEAST ACCESS TO LEGAL SERVICES

The vast effort within the legal profession and the business community to achieve diversity within the legal profession is driven, among other reasons, by the need to provide adequate and meaningful legal services to the American public which itself is richly diverse. Hence, the diversification of the legal profession is, and should remain, a primary goal when adopting measures that are intended to instill consumer protection in the delivery of legal services to the general public.

Because the new Interpretation would undermine efforts to promote diversity in the legal profession, the HNBA is against its adoption. In this case, there exist no data that demonstrate that the implementation of Interpretation 301-6 would result in an improvement in the quality of legal services, greater access to legal services, or otherwise operate to adequately meet the future needs for legal services by the general public. Indeed, demographic data exist that show disparate differences between the U.S. minority population and the number of U.S. minority attorneys. This is particularly true with respect to the U.S. Hispanic community and the number of practicing Latino and Latina lawyers.¹⁰

The Council should tread carefully in the adoption of an Interpretation on bar passage rates for purposes of Standard 301(a). An important question that must be fully investigated is what are the future implications on U.S. society of an approach which, on

¹⁰ See Historical Reports, Educational Attainment, U.S. Census Bureau, available at www.census.gov/population/www/socdemo/educ-attn.html.

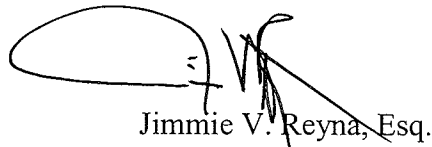
its face, appears likely to result in fewer minority law school applicants, fewer minority law school students, and the mandatory un-accreditation of laws schools that serve minority law student populations? Until these and similar questions are resolved, Interpretation 301-6 should not be adopted.

VII. CONCLUSION

The HNBA fully supports efforts to improve quality of legal education and to achieve higher bar examination passage rates. Yet, it is generally recognized that there are many factors involved in successful bar examination passages, not all of which are numerically based or explained.¹¹ The proposed new Interpretation 301-6 neither recognizes that other important factors exist nor leaves room to improve passage rates through improvement in those other factors. Therefore, Interpretation 301-6 should not be adopted until further data is generated and a full investigation on its probable effect and implications on the legal profession is completed.

The HNBA appreciates the opportunity to submit these comments and looks forward towards participating with the Council and the Standards Review Committee as work proceeds on this important issue.

Respectfully submitted,



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¹¹ See comments by William R. Rakes expressing concern that while law schools reportedly are admitting an increasing number of the brightest and most qualified students bar passage rates have remained stable for the past 40 years. Section Conclave Conference, "The Education Continuum for Lawyers: Collaborations Among the Academy, Bench and Bar," April 28, 2007 at 7. Available at www.abanet.org/legaled/committees/conclave.