

March 25, 2024

Bridget Mary McCormack
Council Chair
ABA Legal Education and Admissions to the Bar
c/o

RE: Comments on Fully Online Law Schools (Standards 102 and 306)

Dear Council Chair McCormack:

Thank you for the opportunity to provide feedback on proposed revisions to Standards 102 and 306, allowing fully online law schools. Our own experiences, along with those of fellow deans, lead us to believe that well-designed online programming has the potential to enhance legal education. The Council of the Section of Legal Education and Admissions to the Bar (Council) has, to this point, considered and approved carefully tailored proposals by existing law schools to use online education to expand access to the communities they serve. This approach has enabled a variety of creative and novel programs around the country. The Council has not, as far as we know, articulated a rationale for departing from this practice or identified the problem that the proposed revisions to Standard 102 and 306 are intended to solve. For the reasons we express below, we hope that the Council will delay implementing the revisions to (1) allow for further discussion of their intended impact and to (2) permit additional data collection from the existing online J.D. programs to inform the analysis of whether the revisions will advance the Council's intended goals.

Online legal education is a new phenomenon. The first hybrid J.D. offered by Mitchell Hamline is less than a decade old, and the first fully online J.D. program at St. Mary's Law School did not begin enrolling classes until 2022. While there are now several law schools offering J.D. programs that rely heavily on online coursework, the vast majority still require residencies that provide students the opportunities to interact with each other and their faculty at key moments in their legal education. This fall, Southwestern will launch its first of a kind, asynchronous J.D. program, further expanding the scope of online legal education. The rapid expansion of these varied programs means that we lack the data to determine whether they are as effective as the alternative in preparing students for the bar exam and practice. Because the ABA does not publish disaggregated bar passage and employment information for the law schools that have both hybrid/online and traditional programs, we do not know whether even the more established hybrid programs are performing well on these basic metrics.

Beyond bar passage, we also currently have no way to measure whether hybrid and online J.D. programs are as successful as their traditional counterparts in preparing students for practice. This is problematic given the current discussion among thought leaders about whether traditional law schools are doing enough to train practice ready attorneys. The Conference of Chief Justices and

the Conference of State Court Administrators have partnered to create the Committee on Legal Education and Admissions Reform (CLEAR), which will examine this question. Simultaneously, the Council is considering a significant expansion of experiential learning hours. Close in-person interactions, whether through clinical, field placement, or simulation experience or through pro bono service, have historically been core to practice-readiness, as well as professional identity formation. The current hybrid and online programs approved by variance were required to put substantial effort in developing alternative programming to meet these learning outcomes, and as their first classes of graduates move into the practice, we will learn more about the effectiveness of these alternatives. The results of these national conversations on practice-readiness and the current program data should inform the Council's decision on whether and how to expand online J.D. education.

Finally, while we do believe that many of the current hybrid and online programs do and will provide excellent educational opportunities to previously underserved populations, we can also posit ways that online and hybrid programs connected to physical law schools might have advantages over those that do not. The existing online/hybrid programs are built on connections that a community of people in the physical location have to each other and to a place. These relationships facilitate shared governance, program development, experiential learning, bar passage, and career placement. The importance of these connections with community is recognized in the Standards, mostly recently in the proposed changes to Standard 315(b), which would require law schools to update their programmatic learning outcome based on feedback from their students' employers. Translating aspects of these existing successful relationships into models that work for students pursuing degrees online or in other locations is very different than building them from scratch with faculty and staff who, along with their students, may be widely distributed and lacking deep relationships with each other or any bench and bar. Again, taking the time to study and learn from the experiences of the currently approved hybrid and online J.D. programs could provide valuable lessons – and possibly inform separate Standards – that would ensure that stand-alone online programs are successful in serving their students.

In sum, we are still at the very beginning of learning about the possibilities and limits of online legal education. At present, students who enroll in these programs have the assurance that they are being developed by experts in legal education, our traditional ABA-accredited law schools, whose innovations are being individually reviewed and assessed by the Council on Legal Education. This provides a measure of protection and security for students taking on the substantial obligation of time and money that law school requires. We hope that the Council will pause implementation of the revisions to Standards 102 and 306 to allow for additional discussion and study before allowing new and qualitatively different entrants into online legal education.

Thank you for your consideration.

Sincerely,

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