January 30, 2017

Board of Governors
American Bar Association
Chicago, Illinois 60654

Dear Members of the Board and the Member Services Committee:

The Council of the Section of Legal Education and Admissions to the Bar writes to express its concerns regarding President-elect Hilarie Bass’s proposal relating to the Section, the basics of which were conveyed to the Council on January 13, 2017 and which is included in the Board’s meeting agenda materials. We express this unease at the same time as agreeing that the President-elect and the Council share the same goal – to ensure that legal education continues to produce lawyers who support the rule of law in the United States and around the world and are prepared to practice in the rapidly changing environment of the 21st century.

Support of legal education was among the reasons for the creation of the ABA and remains at the core of its identity. The ABA’s work on legal education is conducted through the Section of Legal Education and Admissions to the Bar, the first section established by the ABA. The Council wears two hats and has done so comfortably and effectively for many years. It has primary responsibility for accreditation of U.S. law schools. It also supports many programs and services that benefit the Section’s members. The proposal, unless thoughtfully implemented, has the potential to change the way the ABA relates to the legal academy, the profession, bar admissions authorities, and society at large in connection with legal education and bar admissions. The matter deserves an opportunity for a full discussion among the Section leadership, the members of the Section, and all interested parties before it is adopted as described in President-elect Bass’s

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1 The Council first heard President-elect Bass outline the idea for a restructuring of the Section on December 2, 2016, when she appeared before the Council. A first draft of the proposal was sent to the Council’s chair and the Section’s Managing Director on January 6, 2017. We understand that the final draft of the proposal was completed and submitted to the Board agenda process on January 12 and was sent to the Managing Director and the Council chair on Friday, January 13.

2 The Council is recognized by the United States Department of Education as the accreditor of “first-professional degree in law” programs (J.D. programs). Its approval of a law school’s J.D. program is also accepted by the state supreme courts and bar admissions authorities as an appropriate measure of the legal education that a person must complete to qualify to sit for the jurisdiction’s bar examination.
proposal. We believe that we can have that discussion even as the commission she seeks to establish is formed and begins its work.

Briefly stated, our concerns are:

1. The Council respectfully submits that, before the change is finalized, the United States Department of Education should be notified and an assessment obtained of the likely effect on continued recognition of the ABA as the national accrediting agency for law schools. Although the proposal is intended to and, indeed, does seem to enhance the “separate and independent” nature of the accreditation function, that question is not for us to decide. The Council of the Section of Legal Education and Admissions to the Bar of the ABA has been authorized by the Department to be the accrediting agency for American law schools since 1952. It would be bad form – particularly on the part of a group of lawyers – not to request its input and approval, if necessary, prior to changing the structure of the Section.

2. The non-accreditation and accreditation work of the Section supplement each other. This is unique among accrediting groups. This complementary relationship is another reason DOE input is important. Additionally, it is worth recalling that in part because of this unique relationship, the 2009 ABA Accreditation Task Force’s Report recommended the “enhanced” Section model (as President-elect Bass’s memo acknowledges).

3. National legal education groups besides the schools and their faculties -- like the Conference of Chief Justices, the bar examiner community, and other professional groups -- are connected to the Section. One might reasonably question whether their reliance on the Section and connection with the ABA will effectively shift to a Commission on the Future of Legal Education. Would their appreciation for the ABA’s support of legal education, and in turn their appreciation and support of the ABA, diminish if these changes are made?

4. Several financial questions deserve attention. The Section of Legal Education and Admissions to the Bar provides a number of programs and services to law schools and their faculties and staffs in return for member dues, primarily through a faculty group membership program. These include conferences, publications, and research reports, to name a few. Will the commission still provide these services? Will the Section’s dues, now transferred to the commission, suffice to perform those services and the Commission’s initiatives? If these services are not provided, will law schools still support faculty group memberships for the newly named Section on Accreditation, particularly since schools already pay non-

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3 The timing of the proposal has precluded our seeking and receiving comments from affiliated groups such as the Association of American Law Schools, the National Conference of Bar Examiners, the Conference of Chief Justices, and a number of other organizations that have particular interest in legal education and bar admissions.
trivial fees to the ABA yearly to maintain their accreditation? Even if the commission does provide the Section’s usual services, would members be content with decisions about future services resting in the hands of a commission that provides for ostensibly minimal participation by the dues-paying members? The President-elect’s proposal notes that the “specifics of the new membership structure would be worked out” – including, by inference, the finances. We respectfully request that the financial details be worked out prior to full implementation of the proposal. This would help to avoid unintended consequences and acknowledge that careful financial planning now would help prevent the commission from having to draw down the Section reserves or seek appropriations from the ABA general budget to continue operating.

5. The Council is well aware of the negative press both it and legal education have received particularly since the last recession. The Council welcomes the prospect of the ABA’s becoming a strong voice in defending legal education, and in recommending changes to the Standards for Approval of Law Schools (Standards) through the Council’s accreditation process. Of course, the ABA can do that through a commission or otherwise without changing the current structure of the Section of Legal Education. Indeed, for example, comments from the ABA, its sections, or practicing lawyers generally, have been notably absent when the Council has put revised Standards out for notice and comment. Frankly, most of the comments have come from the regulated entities and their faculties. We would have benefited greatly from comments from other constituencies. Even without them, the Council has revised the Standards to adjust the regulatory framework to account for dramatic changes in legal education caused primarily by the decline in the market for new lawyers. The revised Standards provide more flexibility to schools; require additional transparency in reporting statistics; and offer significant consumer protection through disclosure. The Council, after affording schools the due process to which they are entitled, is acting to discipline schools that are operating out of compliance with the Standards. The Standards cannot, however, for example, regulate tuition or encourage students to apply to law school – the commission might usefully consider the work of other entities that have studied these issues as it too begins to grapple with them.

6. The proposal will accentuate the isolation of the accreditation function within the ABA, marginalizing it, and perhaps ultimately driving accreditation out of the ABA. The Council believes that the ABA is the best home for law school accreditation, and would like to see the ABA’s support of this function enhanced and emphasized.

7. While we acknowledge the Board’s power to approve the President-elect’s proposal, the Council respectfully submits that the matter deserves an opportunity for a broader discussion. Otherwise, by the Council’s next meeting in March, an important part of the functions of the Section may be well reside elsewhere or nowhere at all.
The Section as now configured supports the first objective of Goal II of the ABA: to "promote the highest quality legal education." The Council respectfully suggests that, if the Board approves the commission that President-elect Bass proposes, it defer action on the other proposed changes, such as changing the name of the Section and adjusting budget and staffing. We encourage maintaining the status quo until the matters cited above can be adequately vetted. During President-elect Bass’s presidential year, the commission may begin meaningful work. We will support its work next year and thereafter if (after appropriate study), it turns out to be the best way to move forward. We simply request that, given the importance of this initiative to the ABA, it be given the thoughtful consideration it deserves.

With thanks for your time and attention,

Greg Murphy, Chair
On behalf of the Council of the Section of Legal Education and Admissions to the Bar