

September 1, 2022

Leo Martinez, Council Chair
Joe West, Council Chair-Elect
American Bar Association
Legal Education and Admissions to the Bar
Fernando.Mariduena@americanbar.org

Re: ABA Standards 501 and 503

Dear Mr. Martinez and Mr. West:

We write as law deans with a strong and steadfast record of supporting diversity, equity, and inclusion, to oppose the proposed revisions to Standards 501 and 503. Although these proposed revisions are well intentioned, we believe that their adoption would be premature and could have effects directly contrary to what is desired.

Specifically, we fear that an unintended consequence of removing Standard 503's requirement that J.D. applicants take a valid and reliable admissions test will be to diminish the diversity of law schools' incoming classes, by increasing reliance on grade point average and other criteria that are potentially more infused with bias. At the very least, we believe that more data and study on the effects of this precipitous change are needed. There are, moreover, other potential changes that have a greater chance of encouraging innovation with admissions methods that will increase access to law school and the diversity of our profession, without the risk of backsliding that the current proposed revisions present.

We start with two premises on which we think there is likely to be widespread agreement. First, standardized tests – including the LSAT – can be useful as one of several criteria by which to assess whether applicants are capable of succeeding in law school and to enhance the diversity of our incoming classes. Most law schools collaborate with the Law School Admission Council to produce an annual correlation study, which looks at the first-year law school GPA at the end of the first year, and uses a regression analysis to determine the predictive strength of the combined LSAT and GPA. This analysis produces an index score, which is intended to predict the first-year law school GPA. While there are always outliers, correlation studies are very accurate and critical tools in the evaluation of applicants' likelihood of success in the first year. Used properly, as one factor in a holistic admissions process, this index score can help identify students who are capable of performing at a satisfactory level, even though their grades alone and other indicia would not so indicate. That includes students who come from less advantaged backgrounds and underrepresented groups, as well as non-traditional or second-career students for whom GPA alone is not always a reliable predictor of law school success due to the lapse in time between completion of the undergraduate career and the application to law school.

The second premise is that the improper use of the LSAT or any other standardized test can lead to biased outcomes. Such tests are tools and, in the case of the LSAT, one that can be helpful in predicting whether students are capable of succeeding in law school and bringing in a class that is diverse in multiple dimensions, including race and socioeconomic status. But improperly

used, and especially if not employed as part of a holistic admissions process, these tools can also be harmful.

We believe that, if the proposed amendment to Standard 503 were adopted in its current form, it likely would be detrimental to law schools' goals of bringing in diverse classes of students and, ultimately, to the diversity of the legal profession. For if law schools abandon the LSAT (or some other validated test) in their admissions processes, something else will take its place. We do not know what those things will be, but it is quite possible – we think probable – that greater emphasis will be put on GPA, written or verbal recommendations, the reputation of undergraduate institutions, admissions officers' familiarity with those institutions, or other subjective factors. Will reliance on these other criteria produce more or less racial, socioeconomic, or other forms of bias than exist under current admissions practices? We don't know for sure, because not enough data or research is available to predict the effects of abandoning the LSAT (or another test) as an admissions factor. But it is distinctly possible – and again, we think probable – that the change will result in greater reliance on factors that are more prone to bias than test scores.

Without the LSAT as a factor, law schools may be less willing to take a chance on students who do not perform well on GPA or other metrics because they worked to put themselves through school, had to care for family, or other reasons, but would enhance the diversity of our institutions and ultimately the profession. Students who struggle early in college, which sometimes happens with first generation college students, may have lower initial grades and thus overall lower grade point averages. Test scores may help these students, both in determining which schools they should consider and in gaining admission. Again, the key point is that more study of the impact of this significant change on admissions standards is needed, to avoid potential consequences that have an effect on diversity, equity, and inclusion that is the opposite of what is intended.

This risk is especially pronounced at the current moment, given the risk that the U.S. Supreme Court will prohibit or sharply restrict consideration of race as a factor in admissions, in a case that is currently pending before it. In this context, eliminating a factor in admissions that often benefits diverse students should be of great concern.

We therefore believe that elimination of the LSAT as an admissions criterion could have undesirable effects on law school diversity that, directly contrary to what is intended by the proposed revisions to Standards 501 and 503. It is no answer to say that the amendment to Standard 503 would merely eliminate the mandate to use LSAT or another test in admissions, while giving law schools freedom to use them if they so choose. This response ignores the realities of law school admissions – particularly its interaction with law school rankings. It is an unfortunate reality that law schools compete fiercely with their peer schools for students. When one school eliminates the LSAT as a requirement, its peers will be under tremendous pressure to do the same, lest they lose applicants and suffer a ranking drop as a result. Thus, if Standard 503 is amended to eliminate the requirement of the LSAT or another admission test, we can expect others to follow suit. That will create a situation in which few, if any, schools require the LSAT, functionally eliminating this as a factor in admissions and making GPA and undergraduate institution even more pivotal. To be sure, there may be a few schools sufficiently insulated from competition that they can preserve the LSAT as a requirement without compromising their

applicant pool and putting their ranking at risk. But we suspect there will be precious few in that category.

Even if one is inclined to disagree with our assessment of the likely results of the proposed amendment to Standard 503, it would be premature to adopt the amendment without further study of its likely effects. For once the LSAT or other standardized test is abandoned as a requirement, the effects will be difficult to reverse.

There are, moreover, alternative ways of encouraging the type of innovation that would enable law schools to improve access and the diversity of our incoming classes. One possibility, by way of example is to expand the flexibility that now exists for law schools to admit some of their students without the LSAT under current Interpretation 503-3. That percentage might be increased from 10% to 20%. The ABA might consider allowing additional categories of students to be admitted without the LSAT, encouraging schools to experiment with other programs that reliably gauge readiness for law school. We applaud efforts to incentivize and adopt other means of evaluating the capacity to perform satisfactorily in law school, especially those that would expand access for students who perform less well on traditional metrics like GPA and LSAT. But the flat elimination of the LSAT or other standardized test as a requirement may have the opposite effect. There will be less reason for experimentation and innovation than currently exists.

Accordingly, we respectfully oppose the ABA's adoption of the proposed amendments to Standards 501 and 503 without much more study of its likely effects. For the reasons set forth above, we fear that their actual effects may be precisely contrary to the laudable goal of increasing diversity that the amendments are intended to have. Of course, we would be delighted to discuss the matter further with you or anyone else affiliated with the ABA.

Sincerely,

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