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SALT Calls on the Council of the Section on Legal Education and Admission to the Bar of the American Bar Association to Suspend ABA Standard 316

COVID-19 disruptions to the 2020 bar exam nationwide necessitates that ABA Standard 316, Bar Passage, be suspended.

We write on behalf of the Society of American Law Teachers [SALT] to encourage the Council to suspend ABA Standard 316, Bar Passage, in light of the COVID-19 disruptions to the 2020 bar exam nationwide.

ABA Standard 316 requires “at least 75 percent of a law school’s graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.” As a graduate’s bar passage from any state applies towards that school’s ultimate bar passage rate, Standard 316 presumes as well as relies upon stable, predictable, and regular administrations of the bar exam in all jurisdictions.

The COVID-19 global pandemic has caused significant disruption to the administration of the bar exam nearly everywhere. Approximately one-half of the jurisdictions have announced cancellations or alterations to their regularly scheduled bar exam dates for 2020 and/or to its format. Some jurisdictions have also created new rules prioritizing exam takers based upon the geographic location of their law schools or their state of residency or domicile. Yet others instituted first-come first-served rules, which penalize test takers hoping to adapt to the sudden impact of being de-prioritized by applying to a new jurisdiction for the exam at this late date in the cycle.

The National Conference of Bar Examiners (NCBE) reflects the same level of disruption. On April 3, 2020, the NCBE announced making additional sets of exam materials available for two alternative bar exam dates in September 2020, as well as the previously scheduled July exam date, for states who delayed their July exams or decided to offer an additional administration in the fall in the event they must limit seating for the July exam. Based upon the significant number of jurisdictions canceling their summer exams, many jurisdictions were awaiting confirmation by the NCBE regarding the true availability of a July exam before making any final decisions in individual states. On May 5, 2020, the NCBE announced the plan to make its exam materials, MBE, MEE, and MPT, available to those jurisdictions that choose to administer an exam in July 2020.

At the time of the NCBE’s announcement, 19 jurisdictions had announced their intention to cancel or postpone the July bar exam. Other jurisdictions either plan to go ahead with the July exam or have not yet made a decision. Even for jurisdictions that

decided to move forward with a July exam relying on the NCBE's recent announcement have also announced changes to test site locations, test site conditions and requirements. Some require that out-of-state applicants traveling from out-of-state for the exam self-quarantine for 14-days prior to the start of the examination.

Because COVID-19 has created an uncertain environment for nearly every test taker of the 2020 bar exam across the United States, suspension of Standard 316 is a reasonable accommodation and should be adopted. Inevitably every law school will have graduates adversely impacted by the pandemic which, based on no individual fault, endangers their bar passage. Law graduates will have faced unprecedented challenges in the months leading up to the exam, whether the impacts be medical, financial, or otherwise. In this climate, overall bar passage rates will bear no relation to the quality of the graduates or their respective law schools. The rates will reflect the impact that COVID-19 disruptions had on the bar takers personally. These impacts are also more acute in regions particularly hard hit by the virus, such as Washington, New York, California, and Illinois. Additionally, the pandemic data has shown that COVID-19 has affected certain racial groups disproportionately and more severely than others. Thus, law schools with high percentages of graduates disproportionately impacted for whatever reason would be unfairly measured by Standard 316 without a suspension of the rule.

Suspension of Standard 316 is consistent with the determination made by many law school faculties throughout the country that adjusted their traditional grading rules this Spring 2020 due to the pandemic. One school articulated: "During a time of pandemic, the need to differentiate students' accomplishments and aptitude remains important; however, at the same time, there are valid concerns that grades this semester would serve to differentiate students not on their exam performance but on the extent their lives have been affected by the COVID-19." Another law school stated: "Although all of our students will be under pressure, some students will feel it more intensely. Students from disadvantaged backgrounds are likely to have the hardest time . . . and thus would be at a special disadvantage during exams. . . . Some will have obligations to family and distractions Some will face anxiety about the wellbeing or even survival of loved ones." The varied burdens and impacts associated with taking the bar exam during the pandemic eliminates any meaning the passage rate would normally have.

The bar passage scores for 2020 will not measure the quality of the academic institutions of those bar takers and thus should not limit the accreditation for any law school. For these reasons, SALT calls on the Council to suspend rule 316.