

TESTIMONY OF **STEVEN BAHLS** BEFORE THE LAW AND JUSTICE INTERIM COMMITTEE OF THE MONTANA STATE LEGISLATURE

February 20, 2024

My name is Steve Bahls and I live in Missoula. I have been an Active Attorney Member of State Bar of Montana since 1989. I also served as a law professor at University of Montana School of Law from 1985 to 1994, where I also served as Associate Dean.

I am a member of the twenty-member Council of the American Bar Association's Section on Legal Education and Admissions to the Bar.<sup>1</sup> I am here today to describe the ABA's proposed rule to allow for accreditation of wholly online law schools, which, if adopted (as I expect it will in some form), could increase the number of lawyers qualifying for admission to the bar in Montana.

But first, a word about the Council that sets the ABA accreditation standards. The Council is made up of both lawyers and non-lawyer members of the public. The Council and the Section are **independent** of the ABA. This means that the Section, not the larger ABA, establishes and enforces accreditation standards.

Almost all state supreme courts limit eligibility for first-time bar admission to graduates of ABA-approved schools. The few states that do not require graduation from an ABA-accredited law school for first-time admission to a bar have other requirements such as that applicants are graduates of state accredited law schools (California), are graduates of law schools seeking ABA accreditation (Vermont), have an advanced degree from an ABA-approved law school (Washington), or have completed of an extensive "law reader" program under the supervision of a practicing attorney or judge (Virginia). Those states allowing for state accreditation or "law reader" programs have an extensive, complex, and expensive regulatory scheme for those programs<sup>2</sup>

The Council's goals are to ensure that accredited law schools provide a "rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession." In addition, the Council's Standards have a consumer protection function, seeking to ensure that law students are not exploited by paying for an education that is low quality and not likely to prepare them to pass the bar and be admitted to the legal profession.

The ABA Accreditation Standards permit its accredited law schools with a physical facility to offer an approved online JD. Currently 17 law schools are approved by the Section to offer online, distance education.<sup>3</sup> The first ABA-approved fully online law school launched in fall of 2022.<sup>4</sup> At its meeting on November 16-17, 2023, the Council approved for Notice and Comment proposed revisions that permit

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<sup>1</sup> Though I am a member of the Council of the ABA Section of Legal Education and Admission to the Bar, the opinions I express are not necessarily the opinions of the Council.

<sup>2</sup> <https://barexam.virginia.gov/reader/readerrules.html>;

[https://www.calbar.ca.gov/Portals/0/documents/rules/Rules\\_Title4\\_Div2-Acc-Law-Sch.pdf](https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title4_Div2-Acc-Law-Sch.pdf)

<sup>3</sup> [https://www.americanbar.org/groups/legal\\_education/resources/distance\\_education/approved-distance-ed-jd-programs/](https://www.americanbar.org/groups/legal_education/resources/distance_education/approved-distance-ed-jd-programs/)

<sup>4</sup> <https://www.stmarytx.edu/2021/online-jd-launch/>

law schools to gain full accreditation for online programs leading to the JD degree even if they do not have a physical facility.<sup>5</sup> Specifically, the proposed interpretations to the proposed standards state:

*A law school need not have a physical campus, provided it can show that its operations, equipment, technology, and technology support are adequate to enable it to operate in compliance with the Standards and carry out its program of legal education.*<sup>6</sup>

The proposed standards, according to the rules of the U.S. Department of Education Office of Postsecondary Education, must be published to allow adequate time for public comments. As such, the earliest that the standards could take effect is in late 2025. This will give time for wholly online law schools to prepare to meet ABA accreditation standards and for currently approved law schools, such as the University of Montana, to prepare to offer an online program, if it so desires.

Among the reasons the Council drafted the proposed changes to allow for accreditation of wholly online law schools was its desire to increase the number of lawyers serving those not currently served by lawyers, particularly in rural areas. The Council recognizes that prospective law students may not be able to attend traditional law schools due to work or family obligations, military service, or other geographical limitations. Likewise, the proposed standards will result in the approval of more online law schools with the potential to create competition that could well lower the cost of legal education.

Given the Council's serious and timely consideration of amending its standards to facilitate the accreditation of online law schools, this is not the time for Montana to make exceptions to its requirement that its lawyers graduate from an ABA-approved law school simply to accommodate unaccredited online schools wanting to place their graduates in Montana. If the proposed standards are adopted (which, again, I believe will be in some form), wholly online schools with rigorous educational programs will have a path forward to place their graduates in Montana. It is in the interests of Montana to require online law schools to meet the ABA's other accreditation standards to protect Montanans from unqualified lawyers and to protect Montanans against enrolling in low quality law school with little chance of passing the bar.

The ABA's Standards, among other things, require law schools to provide rigorous programming and learning outcomes to help ensure lawyers have the professional skills to be effective, responsible, and ethical. The Standards require instruction in legal ethics, legal writing, and experiential learning (such as legal clinics or field placements) to ensure lawyers have the skills to effectively represent clients. Accredited law schools must disclose needed consumer information, ensure academic freedom and freedom of speech, and provide academic and placement support, as well as provide skilled faculty and student support services. Law schools cannot exploit law students for financial gain, because to maintain accreditation, at least 75 percent of its graduates must pass the bar within the first few times of taking it. We should not want Montana to become a haven for graduates of unaccredited law schools not held to the high standards of the ABA.

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<sup>5</sup>[https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/comments/2024/24-jan-notice-and-comment-memo-fully-online-law-school-102-306.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2024/24-jan-notice-and-comment-memo-fully-online-law-school-102-306.pdf)

<sup>6</sup> American Bar Association Standards for Approval of Law Schools, *Proposed Interpretation 701-2*

It is in the public interest that a national solution to the shortage of lawyers be developed and not state-by-state piecemeal solutions. Lawyers, graduates of law schools and clients cross state lines. Piecemeal solutions risk the admission of less well-prepared lawyers in some states and not others. The requirement of attorneys graduating from an ABA-accredited law school facilitates attorneys moving from state to state, enhancing Montana's ability to attract attorneys trained or licensed out of state. The solution to the shortage of lawyers is not to lower the requirements for lawyers. A solid solution has been proposed by the ABA: permit accreditation of high-quality, wholly online law schools. It is a national solution that benefits Montana.

Thank you for considering my testimony.