

AMERICAN BAR ASSOCIATION**Section of Legal Education
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December 20, 2011

Dr. B. James Dawson
President
Lincoln Memorial University
6965 Cumberland Gap Parkway
Harrogate, TN 37752**Vice President and Dean Sydney A. Beckman**
Lincoln Memorial University
Duncan School of Law
601 West Summit Hill Drive
Knoxville, TN 37902

Dear President Dawson and Dean Beckman:

I am writing to report to you the action of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, taken at its meeting on December 2-3, 2011, with respect to the application of the Lincoln Memorial University, Duncan School of Law ("the School"), for provisional approval by the American Bar Association ("ABA").

On December 2, 2011, the Council considered the School's application for provisional approval in light of the report and recommendation ("Report and Recommendation") adopted by the Accreditation Committee of the Section of Legal Education and Admissions to the Bar ("the Committee"), at its meeting on September 29-30, 2011, as transmitted to you on behalf of the Committee by my letter to you dated October 12, 2011. In addition to the Committee's Report and Recommendation and all material considered by the Committee, as listed in my October letter, the transcript of the appearance of the School's representatives before the Committee at its September meeting, and the School's response to the Committee's Report and Recommendation, with attachments, dated November 18, 2011, the Council had the benefit of personal appearances made before it by President James Dawson, Vice President and Dean Sydney A. Beckman, Vice President for Academic Affairs Clayton Hess, Associate Dean for Academics April Meldrum, Associate Dean for Admissions Terence Cook, Professor Jonathan Marcantel, and Professor Melanie Reid.

The Conclusions of the Committee at its September 2011 meeting were as follows:

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CONCLUSIONS:

In accordance with Standard 102(a) and Interpretations 102-1 and 102-2, the Committee concludes that the Lincoln Memorial University, Duncan School of Law, has not established that it is in substantial compliance with each of the ABA Standards for Approval of Law Schools, and has not presented a reliable plan for bringing itself into full compliance with the Standards within three years after receiving provisional approval. Therefore, the Committee does not recommend to the Council of the Section of Legal Education and Admissions to the Bar that it grant provisional ABA approval to the Lincoln Memorial University, Duncan School of Law. In reaching this decision, the Committee finds that the Law School has not established substantial compliance with the following Standards and Interpretations:

- (a) Standard 203, in that the Law School has not demonstrated that it regularly identifies specific goals for improving the Law School's program, identifies means to achieve the established goals, assesses its success in realizing the established goals, and periodically re-examines and appropriately revises the established goals.
- (b) Standards 303(a) and (c) and Interpretation 303-3, in that the Law School has not demonstrated that it has and adheres to sound academic standards, including the obligation not to continue the enrollment of a student whose inability to do satisfactory work is sufficiently manifest so that the student's continuation in school would inculcate false hopes, constitute economic exploitation, or detrimentally affect the education of other students; and the obligation to provide the academic support necessary to assure each student a satisfactory opportunity to complete the program, graduate, and become a member of the legal profession.
- (c) Standard 501(b) and Interpretation 501-3, with respect to the Law School's obligation to maintain sound admission policies and practices, consistent with the objectives of its educational program and the resources available for implementing those objectives.
- (d) Standard 511, with respect to the Law School's obligation to provide all students with an active career counseling service to assist them in making sound career choices and obtaining employment.

Following the appearance of the School's representatives, the testimony provided at the December 2, 2011 hearing, and the Council's review of the record created by the Accreditation Committee, together with the November 18, 2011 response provided by the School, the Council concluded, based on information provided during the hearing before the Council, including the fact that the School has hired an additional professional in the Career Services Office and experienced success placing students in summer placements in 2011, that the School has established it is in substantial compliance with Standard 511, with respect to the School's obligation to provide all students with an active career counseling service to assist them in making sound career choices and obtaining employment.

The Council further concluded, however, in accordance with Standard 102(a) and Interpretations 102-1 and 102-2 of the ABA Standards for Approval of Law Schools, that the School has not established that it is in substantial compliance with each of the Standards and has not presented a reliable plan for bringing the School into full compliance with the Standards within three years after receiving provisional approval, specifically with respect to the following:

- (1) Standard 203, in that the Law School has not demonstrated that it regularly identifies specific goals for improving the Law School's program, identifies means to achieve the established goals, assesses its success in realizing the established goals, and periodically re-examines and appropriately revises the established goals. Specifically, the Law School has failed to establish that it has re-examined its goals and the means to achieve them in light of unanticipated economic conditions, affecting the assumptions in its feasibility study. The Law School has not established that it has determined the cause or evaluated the impact of the failure to meet its enrollment projections on its ability to meet its mission or to ultimately succeed as an institution. Although the Law School has recalculated its pro forma budgets, the Law School has failed to establish that it has re-evaluated and revised its goals given that, as currently appears based on past enrollment and present projections, it may be a significantly smaller law school than anticipated when it was founded.
- (2) Standards 303(a) and (c) and Interpretation 303-3, in that the Law School has not demonstrated that it has and adheres to sound academic standards, including the obligation not to continue the enrollment of a student whose inability to do satisfactory work is sufficiently manifest so that the student's continuation in school would inculcate false hopes, constitute economic exploitation, or detrimentally affect the education of other students; and the obligation to provide the academic support necessary to assure each student a satisfactory opportunity to complete the program,

graduate, and become a member of the legal profession. Specifically, although the Law School has adopted and adheres to clearly defined academic standards, the Law School has not demonstrated that the standards are sound. The Law School has not demonstrated that its standards for academic dismissal and readmission are sufficiently rigorous as to ensure that the Law School does not continue the enrollment of students whose inability to do satisfactory work is manifest. While the Law School has established an academic support program, it has not established that the program is effective. The program is not currently directed by a person with specific experience in academic support, and thus, without a demonstration of effectiveness of the program, it cannot be concluded that the Law School has demonstrated that it provides the academic support necessary to assure each student a satisfactory opportunity to complete the program, graduate, and become a member of the legal profession.

- (3) Standard 501(b) and Interpretation 501-3, with respect to the Law School's obligation not to admit applicants who do not appear capable of completing its educational program and being admitted to the bar. Specifically, in light of the comparatively low entering academic and admission test credentials of a significant percentage of the Law School's students, the attrition rates of its inaugural classes, the failure of the School to establish the effectiveness of the academic support program, and the fact that the Law School's graduates have yet to sit for a bar examination, the Law School has not demonstrated that it is not admitting applicants who do not appear capable of completing the educational program and being admitted to the bar.

The Council, therefore, adopted a motion to accept the Report and Recommendation of the Committee, excluding the Committee's Conclusion regarding Standard 511, and to deny provisional ABA approval to the Lincoln Memorial University, Duncan School of Law.

In accordance with Rule 11(b) of the ABA Rules of Procedure for Approval of Law Schools, the School may not reapply for provisional ABA approval until at least ten months after the date of this letter. The Chairperson of the Council may authorize an earlier application, for good cause shown. Should the School elect to reapply for provisional ABA approval and request authorization of an earlier application, please notify me, in writing, as soon as possible, but no later than January 19, 2012.

In accordance with Rule 10 of the ABA Rules of Procedure for Approval of Law Schools, the School has the right of appeal of a decision of the Council to

deny provisional approval. The written appeal, if any, must be filed within 30 days after the date of the Council decision letter and must conform to the requirements of Rule 10. Unless a timely, written appeal, which conforms to the requirements of Rule 10, is filed by the School with the Consultant's office no later than January 19, 2012, the December 2011 decision of the Council will become effective on that date. Should the School elect to file an appeal in accordance with Rule 10, the December 2011 decision of the Council will be stayed pending the outcome of the specific procedures for review of the appeal by an Appeals Panel, as outlined in Rule 10. A copy of Rule 10 of the ABA Rules of Procedure is attached to this letter.

The Council and the Consultant's office are obligated, pursuant to the Internal Operating Practices of the ABA Section of Legal Education, to advise you of the procedures that must be followed in the event of an adverse approval decision of the Council. In particular, your attention is directed to Internal Operating Practice 5, which provides:

Internal Operating Practice 5. Notification of Council Decisions

In accordance with Council policy, the Consultant shall:

- (a) Provide written notification to the Secretary of the Department of Education, the appropriate state licensing agency, and the appropriate accrediting agency, at the same time the Consultant notifies the law school in writing of any decision to deny, withdraw, suspend or remove the approval or provisional approval of the law school, or to place a law school on probation, but no later than thirty (30) days after the Council reaches the decision.
- (b) Provide written notification to the Secretary of the Department of Education, the appropriate state licensing agency, the appropriate accrediting agency, and the public, within thirty (30) days, of:
 - (i) a decision to grant provisional approval or full approval to a law school;
 - (ii) a decision by an approved or provisionally approved law school to withdraw from approved or provisionally approved status; and
 - (iii) a decision by a law school to allow its approval or provisional approval to lapse.
- (c) Provide written notification to the public within twenty-four (24) hours of the time the Consultant notifies the law school in writing of any decision to deny, withdraw, suspend or remove the

approval or provisional approval of the law school, or to place a law school on probation.

- (d) Make available to the Secretary of the Department of Education, the appropriate state licensing agency, the appropriate accrediting agency, and the public within sixty (60) days after a final decision, a brief statement summarizing the reasons for the decision to deny, withdraw, suspend or remove the approval or provisional approval of a law school and the comments, if any, which the affected law school may wish to make with regard to that decision, or evidence that the law school was offered but declined to provide any comments.

Please be advised, therefore, in accordance with Internal Operating Practice 5.(d), that you are invited, but not required, to submit official written comments regarding the decision of the Council which will be included with the Council's letter to those persons and entities set out in IOP 5.(d). Your written comments, if any, must be received by the Consultant's office no later than January 19, 2012. If you do not wish to submit any official written comments, please notify me, in writing, as soon as possible, but not later than January 19, 2012.

Please feel free to contact me, Deputy Consultant Scott F. Norberg, or Executive Assistant Cathy A. Schrage if you have any questions.

Sincerely yours,



Hulett H. Askew
Consultant on Legal Education
to the American Bar Association

HHA/cs
Attachment

cc: Professor Susan L. Brody
Professor Emeritus Mark Auburn
Professor Steven M. Barkan
Isidoro Berkman, Esq.
Dean LeRoy Pemell
Professor Suzanne Valdez

Rule 10. Appeal of an Adverse Decision of the Council

(a) A law school may appeal the following adverse decisions of the Council:

1. Denial of provisional approval;
2. Denial of full approval; or
3. Removal from list of approved law schools

(b) A law school may appeal the adverse decisions specified in Section (a) of this Rule, by filing with the Consultant a written appeal within 30 days after the date of the letter reporting the adverse decision of the Council to the law school.

(c) A written appeal must include:

1. Grounds for appeal; and
2. Documentation to support the appeal. The written appeal may not contain, nor may it refer to, any evidence that is not in the record before the Council.

(d) The grounds for an appeal must be based upon at least one of the following:

1. The decision was arbitrary and capricious; or
2. The Council failed to follow the applicable Rules of Procedure and the procedural error prejudiced its decision.

(e) On appeal, the law school has the burden of demonstrating that the Council's decision was arbitrary and capricious and not supported by the evidence on record, or inconsistent with the Rules of Procedure and that inconsistency prejudiced its decision.

(f) Within 30 days of receipt of a written appeal, the Consultant will refer the appeal to the Appeals Panel.

(g) The Appeals Panel shall consist of three people appointed by the Chair of the Council to serve a one year term beginning at the end of the Annual Meeting of the Section and continuing to the end of the next Annual Meeting of the Section. The Chair of the Council shall also appoint, at the same time and for the same term, three alternates to the Appeals Panel. All members of the Appeals Panel and alternates shall be (1) former members of the Council or Accreditation Committee or (2) experienced site team evaluators. The Appeals Panel and the panel of alternates will each include one legal educator, one judge or practitioner, and one public member. The Chair of the Council shall designate one member of the Appeals Panel to serve as its chair. Members of the Appeals Panel and alternates shall be:

1. Experienced and knowledgeable in the Standards, Interpretations and Rules of Procedure;
2. Trained in the current Standards, Interpretations and Rules of Procedure at a retreat or workshop or by other appropriate methods within the last 3 years;
3. Subject to the Section's Conflicts of Interest Policy, as provided in IOP 19; and
4. Appointed for a one-year term and eligible to serve consecutive terms.

In the event that any member of the Appeals Panel is disqualified under IOP 19 or is otherwise unable to serve on a particular Appeal, that member of the Appeals Panel shall be replaced for that Appeal by the alternate from the same occupational category. In the event that neither the member nor designated alternate in the same occupational category is able to serve on a particular Appeal, the Chair of the Council shall appoint a second alternate, from the same occupational category, for that Appeal.

(h) The Consultant shall inform the law school of the time, date, and place of the hearing at least thirty days in advance. The law school shall have a right to have representatives of the school, including legal counsel, appear and present written and/or oral statements to the Appeals Panel, subject to Sections (c) and (i) of this Rule. The hearing shall be transcribed by a court reporter and a transcript of the hearing shall be provided to the Council and the law school. The hearing will be held in closed session and not open to the public. The Council may establish additional rules of procedure for the hearing of appeals.

(i) The Appeals Panel shall consider the appeal at a hearing within forty-five days of having received its charge from the Consultant. The appeal shall be decided based on the record before the Accreditation Committee and the Council, the decision letters of those bodies and the documents cited therein, and transcripts from appearances by the law school. No new evidence shall be considered by the Appeals Panel. The Appeals Panel can take one of the following actions:

1. Affirm the adverse decision of the Council;
2. Reverse the adverse decision of the Council;
3. Amend the adverse decision of the Council; or
4. Remand the adverse decision of the Council for further consideration.

Within 30 days after the conclusion of the hearing, the Appeals Panel shall provide the Council and the law school with a written statement of the Appeals Panel's decision and the basis for that decision.

The decision of the Appeals Panel shall be effective upon issuance. If the Appeals Panel remands the adverse decision of the Council for further consideration by the Council, the Appeals Panel shall identify specific issues that the Council must address. The Council shall act in a manner consistent with the Appeal's panel decisions or instructions. In implementing the decision of the Appeals Panel, the Council may impose any monitoring, reporting or other requirements on the law school consistent with the Appeals Panel decision and the Rules of Procedure.

(j) The Consultant shall give written notice to the president and dean of the law school of the Council's adoption and implementation of the Appeal Panel's decision.

(k) When the only remaining deficiency cited by the Council in support of an adverse decision is a law school's failure to meet the standards dealing with financial resources for a law school, the law school may request a review of new financial information that was not part of the record before the Council at the time of the adverse decision if all of the following conditions are met:

1. A written request for review is filed with the Consultant within 30 days after the date of the letter reporting the adverse decision of the Council to the law school;
2. The financial information was unavailable to the law school until after the adverse decision subject to the appeal was made; and
3. The financial information is significant and bears materially on the financial deficiencies that were the basis of the adverse decision by the Council.

(l) The request to review new financial information will be considered by the Council at its next meeting occurring at least 30 days after receipt of the request.

(m) The Consultant shall inform the president and dean of the law school of the Council's decision in writing.

(n) A law school may request review of new financial information only once and a decision made by the Council with respect to that review does not provide a basis for appeal.