

ADVANCING TRANSPARENCY IN LAW SCHOOL EMPLOYMENT DATA: THE ABA'S NEW STANDARD 509

by David Yellen

Law schools have come under some withering attacks in the past few years. Lawyers, judges, and many within legal education question whether we adequately prepare students for the practice of law. The escalating cost of tuition, resulting high debt loads, and large numbers of graduates struggling to find employment have led to questions about our economic model. And there have been charges—in news articles, blogs, and over a dozen lawsuits—that schools have misled applicants and students about the employment outcomes of their graduates.

Recently, the American Bar Association's Section of Legal Education and Admissions to the Bar (hereinafter ABA), which is recognized by the United States Department of Education as the national accrediting agency for American legal education, took a major step to ensure that prospective law students will have access to a great deal of detailed information about the employment outcomes of each law school's graduates. In August 2012, the ABA House of Delegates approved amendments to Standard 509 of the ABA's *Standards and Rules of Procedure for Approval of Law Schools*. The amended Standard 509, Consumer Information, clarifies law schools' obligations regarding reporting and publication of consumer information, including employment data, and strengthens the range of sanctions that may be imposed upon a law school that violates the Standard by providing incomplete, inaccurate, or

misleading information.¹ Although significant problems remain in legal education, the ABA deserves much credit for acting to enhance transparency in the reporting of law school employment data.

HOW LAW SCHOOLS HAVE HISTORICALLY REPORTED EMPLOYMENT DATA

For many years, law school students and applicants have had access to a variety of information about their job prospects.² The ABA has required schools to report data annually on the employment status of graduates nine months after graduation. The ABA has published this data in the *ABA/LSAC Official Guide to ABA-Approved Law Schools*. In addition, schools typically post employment statistics on their websites and include them in recruiting materials. Standard 509 has long required schools to publish "basic consumer information," including placement rates. Many schools also publish salary data, either for the entire graduating class or by job category. Virtually all law schools report data to the National Association for Law Placement (NALP), which produces many valuable reports, and to *U.S. News and World Report*, which uses that data in its law school ranking formula.

The career placement profile in the 2012 edition of the *Official Guide* for my school, Loyola University Chicago, is shown on page 7 (data are for class of 2009 graduates).

ABA CAREER PLACEMENT PROFILE
FOR LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW 2009 GRADUATES

Loyola University Chicago School of Law		
Employment (9 months after graduation)		
	Total	Percentage
Employment status known	299	97.4
Employment status unknown	8	2.6
Employed	274	91.6
Pursuing graduate degrees	14	4.7
Unemployed (seeking, not seeking, or studying for the bar)	7	2.3
Type of Employment		
# employed in law firms	145	52.9
# employed in business and industry	52	19.0
# employed in government	46	16.8
# employed in public interest	14	5.1
# employed as judicial clerks	12	4.4
# employed in academia	5	1.8
Geographic Location		
# employed in state	221	80.7
# employed outside the United States	2	0.7
# of states where employed	18	

Source: LAW SCHOOL ADMISSION COUNCIL AND AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA/LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 2012 EDITION 425 (2011).

The profile contains much valuable information, but the data are incomplete and potentially misleading. A prospective student might ask several important questions that are left unanswered by this profile:

- Of the graduates working in law firms, how many are in permanent positions as associates, and how many are in temporary positions as law clerks? How many are employed full time versus part time? What size are the law firms?
- Are the graduates in business and industry working as attorneys, in other professional positions, or in nonprofessional jobs?
- How much are graduates earning?

Some schools, Loyola included, have provided students with additional information. But before the financial crisis and Great Recession of 2008–2009, not much attention was really paid to these questions. Most students were getting good jobs, student loan default and attorney unemployment rates were very low, and optimism about the future pervaded legal education. There were occasional reports of schools “gaming the system,” but most schools treated this data collection and dissemination seriously and honestly. Few applicants or students seemed troubled by the available employment information.

HOW THE RECENT ECONOMIC DOWNTURN LED TO SCRUTINY OF THE DATA

This situation changed dramatically after 2008. In the wake of the financial crisis and Great Recession,

law firm and government hiring slowed dramatically. Students who had been offered jobs with large firms saw their positions deferred or eliminated. Many graduates were able to find only part-time or temporary jobs. Although many of us expected hiring to bounce back strongly after the recession ended in 2009, it did not. Just as in other segments of the economy, globalization and technology have affected long-term prospects for law firms, and although many have returned to high levels of profitability, they have been reluctant to hire at their pre-recession rates. State and local governments still struggle with deep financial problems, which affect their ability to hire lawyers.

In light of this major downturn, many people became concerned that employment data reported by law schools were inappropriately strong. Most schools were still reporting employment rates of around 90% or more, even as more and more graduates were struggling to find truly meaningful jobs. There were a couple of reasons for this disconnect.

First, when schools (or the ABA, NALP, or *U.S. News*) use a single “employed” number, this includes part-time, temporary, and non-law-related jobs. Even at the height of the recession, most law school graduates were not unemployed, but many were getting by with less-than-ideal situations. Clearly, more graduates were underemployed than in the past, but this fact would not show up in a single employment statistic.

Also, some schools began hiring significant numbers of their own graduates in temporary positions. The schools said that these jobs were useful

bridges to practice in a tough economy, while skeptics believed that these positions were designed to prop up the schools' employment rates (and *U.S. News* rankings). Regardless of one's view, I think it is fair to say that no one goes to law school hoping, upon graduation, to work in a short-term position at his or her school. For all of these reasons, employment rates of 90% just did not ring true and certainly understated the problems in the job market.

A variety of individuals and groups began to pay attention to this problem. Two students at Vanderbilt University Law School founded Law School Transparency in 2009 in an effort to publicize issues about employment data and to exert pressure on the ABA and individual schools to make changes. Stories about the law job market began to appear in major publications such as the *New York Times* and the *Wall Street Journal*. Beginning in 2011, class action lawyers got involved, finding plaintiffs to sue 15 law schools for consumer fraud.

THE ABA SECTION'S STANDARDS REVIEW COMMITTEE TAKES ACTION

At around the same time, the Standards Review Committee of the ABA's Section on Legal Education and Admissions to the Bar took up the issue from a regulatory standpoint. In 2008, the Section began a comprehensive review of its *Standards and Rules of Procedure for Approval of Law Schools*. (This type of review is required by the U.S. Department of Education of all recognized accrediting bodies.) The Standards Review Committee was charged with reviewing all of the Standards and making

recommendations about changes. I served on the Committee from 2006 to 2012. From the beginning of the review, the Committee recognized that Standard 509, regarding disclosure of consumer information by law schools, was inadequate and needed revision. Although not among the first few items the Committee took up, this issue was taken under consideration in relatively short order.

I was asked to chair a subcommittee on Standard 509. Our subcommittee, and then the Standards Review Committee as a whole, engaged in a deliberate process intended to craft a new rule that would satisfy the legitimate need for applicants and students to have complete and accurate employment information, without unduly burdening schools. We coordinated our work with the ABA Section's Questionnaire Committee, which drafts policies regarding the data that law schools must submit to the ABA. With the exception of one significant area, which I will discuss shortly, the two committees were in full agreement about how to proceed.

REVISIONS TO STANDARD 509

In early 2012, the Standards Review Committee approved a proposed revision to Standard 509 and sent it to the ABA Section Council. Later that spring, the Council adopted most of that proposal. The proposed revisions were circulated to interested parties for notice and comment, a public hearing was held, and the Council made its final approval in June, followed by ABA House of Delegates approval in August 2012. The parts of new Standard 509 dealing with employment data read as follows:

Standard 509. CONSUMER INFORMATION

...

(d) A law school shall publicly disclose the employment outcomes of its J.D. graduates on its website.

(1) The employment outcomes shall be posted on the school’s website each year by March 31 or such other date as the Council may establish.

(2) The employment outcomes posted must be accurate as of February 15 for persons who graduated with a J.D. degree between September 1 two calendar years prior and August 31 one calendar year prior.

(3) The employment outcomes posted shall remain on the school’s website for at least three years, so that at any time at least three graduating classes’ data are posted.

(4) The employment outcomes shall be gathered and disclosed in accordance with the form, instructions and definitions approved by the Council.

...

Interpretation 509-2

Subject to the requirements of subsection (a) above [mandating that all consumer information shall be complete, accurate, and not misleading, and that schools shall use due diligence in obtaining and verifying consumer information], a law school may publicize or distribute additional information regarding the employment outcomes of its graduates.

Interpretation 509-3

Any information, beyond that required by the Council, regarding graduates’ salaries that a law school reports, publicizes or distributes must clearly identify the number of salaries and the percentage of graduates included in that information.³

As you can see, the Standard itself is fairly simple, directing schools to disclose three years of

employment data on their websites, and to gather and disclose that data according to rules developed by the Council. But in reality, this is a far-reaching proposal because of the detailed employment information required in the form that schools must complete. The information requested by the Council under the new Standard for Loyola’s class of 2011 is shown on page 11.

A PROSPECTIVE STUDENT LOOKING AT THIS CHART WILL HAVE A VERY GOOD IDEA ABOUT HOW OUR GRADUATES WERE DOING NINE MONTHS AFTER GRADUATION. AND IMPORTANTLY, BECAUSE THE ABA HAS POSTED ALL SCHOOLS’ EMPLOYMENT INFORMATION ON ITS WEBSITE, AN APPLICANT CAN EASILY COMPARE DIFFERENT SCHOOLS’ DATA.

The chart lays out in useful detail information about whether the jobs obtained by Loyola’s graduates were full- or part-time, permanent or temporary, whether a J.D. degree was required, the size of the law firms in which graduates were employed, and more. A prospective student looking at this chart will have a very good idea about how our graduates were doing nine months after graduation. And importantly, because the ABA has posted all schools’ employment information on its website, an applicant can easily compare different schools’ data.⁴

Salary Information Disclosure

The one major area where there was disagreement between the Standards Review Committee and the

ABA CAREER PLACEMENT PROFILE
FOR LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW 2011 GRADUATES

Loyola University Chicago Employment Summary for 2011 Graduates

Employment Status	Full Time Long Term	Full Time Short Term	Part Time Long Term	Part Time Short Term	Number
Employed—bar passage required	126	12	4	2	144
Employed—JD advantage	26	7	6	12	51
Employed—professional position	14	0	0	1	15
Employed—non-professional position	2	0	1	4	7
Employed—undeterminable*					1
Pursuing graduate degree full time					10
Unemployed—start date deferred					0
Unemployed—not seeking					1
Unemployed—seeking					22
Employment status unknown					0
Total graduates					251

* A graduate in undeterminable category may or may not have a term defined

Law School/University Funded Position	Full Time Long Term	Full Time Short Term	Part Time Long Term	Part Time Short Term	Number
Of employed—law school/university funded	0	0	0	7	7

Employment Type	Full Time Long Term	Full Time Short Term	Part Time Long Term	Part Time Short Term	Number
Law firms					
Solo	5	0	0	0	5
2–10	45	2	6	2	55
11–25	12	2	0	2	16
26–50	6	0	0	0	6
51–100	4	0	1	0	5
101–250	11	0	0	0	11
251–500	4	0	0	0	4
501 +	8	0	0	0	8
Unknown	0	0	0	0	0
Business & industry	32	8	3	5	48
Government	22	6	1	1	30
Public interest (incl. public def.)	4	1	0	1	6
Clerkships—federal	4	0	0	0	4
Clerkships—state & local	8	0	0	0	8
Clerkships—other	0	0	0	0	0
Academia	3	0	0	8	11
Employer type unknown	0	0	0	0	1
Total	168	19	11	19	218
Employment Location	State				Number
State #—largest employment	Illinois				180
State #—2nd largest employment	Michigan				6
State #—3rd largest employment	Minnesota				4
# employed in foreign countries					1

Source: American Bar Association Section of Legal Education and Admissions to the Bar, Section of Legal Education Employment Summary Report, available at <http://employmentsummary.abaquestionnaire.org/>.

Council had to do with salaries. There have been a number of problems with how some law schools have publicized salary information. As you can see from Loyola's data, we were able to identify the employment status of all of our graduates nine months later. This is no easy undertaking, requiring hundreds of staff hours. We also ask our graduates to tell us their salaries. Here, however, graduates tend to be much less likely to comply with our request. It is not uncommon for schools to have salary information from half or less of their graduating class. There is also a tendency for graduates earning more money to be more likely to share their salary information with schools than those earning less money. So if a school publicizes a single median or average salary for its graduates, it is likely presenting a misleading picture.

The Committee recommended that schools be required to disclose the 25th, 50th, and 75th percentile salaries for all categories on the ABA's chart where the school could obtain at least five salaries. The Questionnaire Committee disagreed, and the Council ultimately rejected this recommendation. Apparently, the Council believed that information based in some cases on very small numbers of graduates would be inherently misleading. Some schools, like Loyola,⁵ make this information available to applicants, but many schools do not.

Conditional Scholarship Retention


At the same time it recommended changes to Standard 509 regarding employment data, the Standards Review Committee also addressed another issue of transparency, this time involving scholarships. Most schools offer merit scholarships to students with high LSAT scores and high college grade point averages. Some schools make the retention of these scholarships beyond the first year of

law school dependent upon the student attaining a minimum grade point average during the first year. As a result, some students at these schools lose their scholarships after the first year and have to pay the full tuition rate in subsequent years.

Schools offering these "conditional scholarships" inform applicants of their retention policies. However, very few schools inform applicants about how many or what percentage of scholarship recipients lose their scholarships after the first year. The Committee recommended adding to Standard 509 a requirement that schools inform each applicant being offered a conditional scholarship about retention rates and post those rates on the school's website. The Council accepted this recommendation, which is now part of Standard 509:

(e) A law school shall publicly disclose on its website, in the form designated by the Council, its conditional scholarship retention data. A law school shall also distribute this data to all applicants being offered conditional scholarships at the time the scholarship offer is extended.⁶

CONCLUSION

From discussions at meetings of the Standards Review Committee, and from my own review of accreditation standards for other professions, it is my understanding that other accrediting agencies don't seem to require anything in the way of employment outcome disclosure. The ABA's revised Standard 509 will not only result in a significant improvement in the transparency of employment data reported by law schools for their graduates but will allow the ABA to become a leader among accrediting bodies in providing valuable consumer information to the public. 

NOTES

1. The revisions to Standard 509 were effective immediately. Questionnaires sent to law schools in February 2012 for reporting class of 2011 data already reflected an expanded request for data in line with the revised Standard.
2. Interestingly, it is not clear that prospective students pay a great deal of attention to employment statistics. According to a Kaplan Test Prep survey of LSAT takers, students considered other factors much more important in choosing a law school, such as the school's ranking, location, academic programs, and affordability/tuition. See Kaplan Test Prep, Kaplan Test Prep Survey: Despite an Uncertain Employment Landscape, Law School Applicants Still Consider School Rankings Far More Important than Job Placement Rates When Deciding Where to Apply, <http://press.kaptest.com/press-releases/kaplan-test-prep-survey-despite-an-uncertain-employment-landscape-law-school-applicants-still-consider-school-rankings-far-more-important-than-job-placement-rates-when-deciding-where-to-apply> (last visited Nov. 13, 2012).
3. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, 2012–2013 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, *available at* http://www.americanbar.org/groups/legal_education/resources/standards.html.
4. These data are available in the American Bar Association Section of Legal Education and Admissions to the Bar, Section of Legal Education Employment Summary Report, *available at* <http://employmentsummary.abaquestionnaire.org/>.
5. See Loyola University Chicago School of Law Class of 2011 Employment Summary Report, *available at* <http://www.luc.edu/law/career/pdfs/2011.pdf>.
6. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *supra* note 3.



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