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## **LAW SCHOOLS: VIOLATING ETHICAL OBLIGATIONS AND THE MODEL RULES OF PROFESSIONAL CONDUCT – THE VERY SUBJECTS THEY TEACH**

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### **Introduction**

The significant downturn in the United States economy has not only affected the ability for law school graduates to find jobs, it has caused significant problems for law schools as well. Law schools rely on their reputations and statistics to entice prospective students to apply to their schools and many applicants rely heavily on this information when choosing which school to attend. As a result, the spotlight has been put on law schools that have publicly reassured potential students that they will be able to find jobs, even during these turbulent economic times, by posting employment percentage rates for students after graduation. Given the decline in legal jobs, some students have begun to take action against their law schools that posted employment percentage rates that did not accurately reflect graduates with law-related employment. Skewing employment statistics has been considered by many to constitute false advertising, which is not only illegal, but also violates the ethical laws that lawyers must adhere to and goes against what is taught in essential

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law school courses. As a result, the question remains: how can law schools expect students to make ethical decisions as lawyers when school administrators are violating the very laws they teach?

Law schools throughout the country become accredited after the American Bar Association (the “ABA”) recognizes that these schools have met certain standards. Beginning in 1952, the United States Department of Education approved the ABA to act as the national agency responsible for accrediting law schools and ensuring that all accredited law schools adhere to its rules and procedures.<sup>2</sup> Although some law schools are not accredited by the ABA, most states only allow graduates from ABA-accredited law schools to sit for their bar exams.<sup>3</sup> In fact, twenty states require that students attend ABA-accredited law schools before they can sit for the bar in that state.<sup>4</sup> The states that do not require this usually accept bar admission from another state or have additional requirements that can make the application process more difficult.<sup>5</sup>

### **ABA Accreditation Requirements**

The ABA requires law schools to report basic consumer information.<sup>6</sup> This requirement, known as Standard 509, ensures that accredited law schools report information “in a fair and accurate manner reflective of actual practice.”<sup>7</sup> This basic consumer information includes admission data, tuition, fees, living costs, financial aid, enrollment data and graduation rates, composition of faculty and administrators, curricular offerings, library resources, physical facilities, bar passage data and placement rates.<sup>8</sup> During these difficult economic times many schools are misrepresenting the number of students who have secured legal jobs after graduation, which contravenes the ABA’s

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<sup>2</sup> *Standards and Rules of Procedure for Approval of Law Schools*, A.B.A. 1, 4 (2011-2012 Edition).

<sup>3</sup> *Id.*

<sup>4</sup> NAT’L CONFERENCE OF BAR EXAM’R & A.B.A., COMPREHENSIVE GUIDE TO ADMISSION REQUIREMENTS 2012 8-9 (2012), available at [http://www.ncbex.org/assets/media\\_files/Comp-Guide/CompGuide.pdf](http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> *Standards and Rules of Procedure for Approval at Law Schools*, *supra* note 2, at 40.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 41.

requirement of accurate placement rates. Many schools avoid detection of this type of conduct because the ABA is not enforcing these requirements.

Despite the economic downturn in 2008 and the corresponding decrease in legal jobs, the number of prospective students applying to law schools continued to rise through 2010.<sup>9</sup> Presumptively, applications had increased because many applicants were unable to obtain jobs in other industries, but it also appears that false reporting by law schools served as an incentive for individuals to apply to law school. In 2009, applications were up 3.8% from 2008, amounting to 86,600 applications.<sup>10</sup> Then, in 2010, applications were up 1.5% from 2009, amounting to 87,900.<sup>11</sup> Recent reports reveal that applications began to largely decrease in 2011,<sup>12</sup> but given the amount of lawsuits that emerged around that same time by current and former students against their law schools,<sup>13</sup> this is not surprising. It appears that “[t]he situation is so bleak that some students and industry experts are rethinking the value of a law degree, long considered a ticket to financial security.”<sup>14</sup> In fact, industry experts have said that “[p]art of the problem is supply and demand. Law-school enrollment has held steady in recent years, while law firms, judges, the government and other employers have drastically cut hiring in the economic downturn.”<sup>15</sup>

The main issue that law schools must now address is how they are reporting their numbers, especially the percentage rates of students who they allege have acquired jobs after graduation. Many have questioned how the placement rates can be accurate given the economic climate. Indiana

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<sup>9</sup> LAW SCHOOL ADMISSION COUNCIL, *LSAC Volume Summary* (2012), available at <http://www.lsac.org/LSACResources/Data/PDFs/LSAC-volume-summary.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; Anna Susman, *Law Schools Applications Dwindle, Admissions Offices Offer More Scholarships*, THE HUFFINGTON POST (Jul. 31, 2012; last updated Aug. 21, 2012), [http://www.huffingtonpost.com/2012/07/31/law-school-admissions-str\\_n\\_1724093.html](http://www.huffingtonpost.com/2012/07/31/law-school-admissions-str_n_1724093.html).

<sup>13</sup> Susman, *supra* note 12.

<sup>14</sup> Nathan Koppel, *Bar Raised for Law-Grad Jobs: Employment Prospects Dim as Firms Retrench, Derailing Career Paths for Many*, WALL ST. J., May 5, 2010, <http://online.wsj.com/article/SB10001424052748704866204575224350917718446.html#articleTabs%3Darticle>.

<sup>15</sup> *Id.*

University law professor William Henderson has said that “Enron-type accounting standards have become the norm [by law schools]” and “[e]very time I look at this [inaccurate] data, I feel dirty.”<sup>16</sup> Professor Henderson, along with many other insiders, reveals “that schools finesse survey information in dozens of ways.”<sup>17</sup> These surveys are established by the ABA and the National Association for Law Placement who “all but invite trimming.”<sup>18</sup> When the survey asks how many students are employed after nine months of graduation, law school statistics have included graduates who work in non-legal settings, including fast-food restaurants and “stocking aisles at Home Depot.”<sup>19</sup>

“Number-fudging games are endemic, professors and deans say, because the fortunes of law schools rise and fall on rankings, with reputations and huge sums of money hanging in the balance.”<sup>20</sup> “You may think of law schools as training grounds for new lawyers... [but] [t]hey are also cash cows.”<sup>21</sup> Law schools rely on tuition for financial security and many place students in large lecture halls where up to a few hundred students take a class with one professor. These tactics earn money for the school and force schools to engage in false reporting in order to secure applications for future years. Thus, “the glut of diplomas, the dearth of jobs and those candy-coated employment statistics have now yielded a crop of furious young lawyers who say they mortgaged their future under false pretenses.”<sup>22</sup>

### **False Advertising**

It is essential that the ABA take steps to ensure law schools are adhering to its guidelines by reporting accurate numbers. If not, the ABA would, in essence, be allowing law schools to

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<sup>16</sup> David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, [http://www.nytimes.com/2011/01/09/business/09law.html?\\_r=1](http://www.nytimes.com/2011/01/09/business/09law.html?_r=1).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Standards and Rules of Procedure for Approval at Law Schools*, *supra* note 2, at 41.

continuously engage in false advertising. Under the Lanham Act, false advertising is defined as "[a]ny advertising or promotion that misrepresents the nature, characteristics, qualities or geographic origin of goods, services or commercial activities."<sup>23</sup> Law schools require students to take courses in contract law and ethics, so they, too, should have an obligation to tell the truth. Instead, they are engaging in unethical practices. In fact, Professor Henderson has stated that students are "beginning [their] legal education at an institution that is engaging in the kind of disreputable practices that [law schools] would be incredibly disappointed to discover [their] graduates engaging in."<sup>24</sup>

Under the Lanham Act, which involves federal law, if a petitioner sues for false advertising, he must prove five elements:

- (1) the defendant made a false or misleading statement of fact in a commercial advertisement about a product;
- (2) the statement either deceived or had the capacity to deceive a substantial segment of potential consumers;
- (3) the deception is material, in that it is likely to influence the consumer's purchasing decision;
- (4) the product is in interstate commerce; and
- (5) the plaintiff has been or is likely to be injured as a result of the statement.<sup>25</sup>

Here, it is evident that law schools are reporting incorrect employment numbers and advertising those statistics to the public at large. These misleading statements deceive potential law students who rely on that information when applying and end up paying the large amount of tuition to ultimately "purchase" a law degree. Thus, the first three elements set forth above are met (as long as schools admit or others discover that false numbers have been reported). The "product" is in interstate commerce since those around the country and the world are applying and accepting admission into these law schools. It is evident that plaintiffs are injured as a result, especially during bad economic times where tuition and debts are increasing, while legal jobs are plummeting.

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<sup>23</sup> Lanham Act, 15 U.S.C.A. § 1125(a) (2012).

<sup>24</sup> Segal, *supra* note 16.

<sup>25</sup> Courtland L. Reichman & M. Melissa Canady, *False Advertising Under the Lanham Act*, 21 FRANCHISE L.J. 187 (2002), <http://www.kslaw.com/library/pdf/ReichmanCannady-rp.pdf>.

It appears that false reporting by law schools is well-known by law professors, administrators and even the President of the ABA, yet little has been done to enforce the ABA rules to which law schools are *required* to adhere in order to keep their accreditation.<sup>26</sup> The ABA is supposed to take complaints against law schools seriously, and thus, it is imperative that “ABA standards criteria...include having and enforcing an Honor Code as a primary means of developing professional identity and inculcating ethics in law students,” especially if the law schools are not practicing what they preach.<sup>27</sup> Law schools take their honor codes seriously and “schools must investigate and punish unethical conduct because cheating [or lying for that matter] has a far more destructive impact on the cheater, herself, and also on those who become aware that the cheating occurs, if it goes unpunished.”<sup>28</sup> Similarly, if law schools do not suffer consequences for their practices, students will start to believe that one “must either cheat in order to succeed [in the legal profession], or...leave the profession altogether,”<sup>29</sup> because no one will want to work in an unethical field, and society will not want to hire lawyers who they think are immoral.

### **The Model Rules of Professional Conduct**

In addition to engaging in false advertising, law schools are also violating the very subjects they teach, including ethical and legal obligations. Standard 504 of the ABA requires law schools to “advise each applicant that there are character, fitness and other qualifications for admission to the bar” and encourage students to determine “what those requirements are in the state(s) in which the applicant intends to practice” after passing the bar exam.<sup>30</sup> Even if a law school graduate passes the bar exam, he will not be admitted to the bar in that state if he does not pass the character and fitness

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<sup>26</sup> *Id.*

<sup>27</sup> Amy Timmer & John Berry, *The ABA's Excellent and Inevitable Journey to Incorporating Professionalism in Law School Accreditation Standards*, 20 ABA PROF. LAW. 1, 12 (2010).

<sup>28</sup> *Id.* at 16.

<sup>29</sup> *Id.*

<sup>30</sup> *Standards and Rules of Procedure for Approval at Law Schools*, *supra* note 2, at 165.

test. Thus, accurate reporting by graduates is essential to fulfilling their legal destinies, and law schools are severely damaging their students by violating the very subjects they teach.

In addition to passing the character and fitness test, law school graduates and attorneys must adhere to a code of legal ethics and professional responsibility. Law schools are required to ensure that graduates “understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice.”<sup>31</sup> The federal government in the United States does not regulate legal ethics. Each state is responsible for implementing a code of conduct, and the ABA has put together the Model Rules of Professional Conduct that states can use as a guide when drafting their own laws.<sup>32</sup>

Since the rules of professional conduct are so vital to lawyers and the legal community, law schools are required to offer a course in professional responsibility that encompasses general issues of legal professionalism and legal ethics.<sup>33</sup> The ABA’s goal is to ensure that the accredited law schools have “a program of instruction which will develop the cognitive, performance, and professional identity competencies that the profession and the public expect of a lawyer and member of the legal profession.”<sup>34</sup> In 2009, a survey of these courses at American law schools was conducted by three law professors to determine how often the course was taught and the topics on which each professor focused during the course.<sup>35</sup> These types of surveys help ensure that law schools are offering these courses to their students since all lawyers are required to adhere to the code of professional conduct when practicing law.

These law school courses focus on the rules lawyers must adhere to once admitted to practice law – the very rules that law schools are violating when engaging in false advertising and

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<sup>31</sup> *Id.* at viii.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Timmer & Berry, *supra* note 27, at 2.

<sup>35</sup> Andrew M. Perlman, et al., *A Survey of Professional Responsibility Courses at American Law Schools in 2009*, LEGAL ETHICS FORUM, <http://www.legalethicsforum.com/files/pr-survey-results-final.pdf>.

reporting practices. For example, Rule 4.1 of the ABA Model Rules of Professional Conduct states that when a lawyer represents a client, he should not knowingly “make a false statement...or... fail to disclose a material fact to a third person when disclosure is necessary.”<sup>36</sup> In addition, Rule 8.4 addresses misconduct, stating that a lawyer partakes in professional misconduct if he “engage[s] in conduct involving dishonesty, fraud, deceit or misrepresentation.”<sup>37</sup> Although these rules provide students with general guidelines on how to practice law, it is difficult for graduates to determine if they are adhering to these guidelines when their schools are violating those same rules. If law schools engage in wrongful reporting practices and false advertising with no consequences, why would students believe that they would be subject to punishment should they engage in similar conduct when practicing law? This question raises a problematic issue for the ABA, which is not disciplining those schools for failing to adhere to their rules, especially considering that lawyers can be fined, disciplined and even disbarred for engaging in such conduct.<sup>38</sup> This further supports the notion that the ABA must take false reporting seriously and take disciplinary action against law schools that engage in such conduct.

Law schools are typically run by former practicing attorneys who were required to adhere to the rules of professional conduct when they practiced. Their transition to the educational system should not diminish those requirements, as they are responsible for guiding professors and shaping law students to become honest members of the profession. As a result, the ABA should also ensure that administrators who run law schools are meeting their legal requirements and adhering to the same standards of the profession.

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<sup>36</sup> MODEL RULES OF PROF'L CONDUCT R. 4.1(a) and 4.1(b) (2011).

<sup>37</sup> MODEL RULES OF PROF'L CONDUCT R. 8.4(c) (2011).

<sup>38</sup> MODEL RULES OF PROF'L CONDUCT R. 8.5(a) (2011).



### Lawsuits: Alumni v. Their Law Schools

During 2011, the media was buzzing about cases being filed by current and former students against their law schools alleging false representation and false advertising.<sup>39</sup> These students argued that “school[s] . . . [are] inflating statistics on graduates’ jobs and pay.”<sup>40</sup> What, you might ask, is their goal? According to David Anziska of New York-based firm Kurzon Strauss LLP, the attorney representing the students, they “hope these suits bring systematic change in the way legal education is marketed by making transparency and accuracy the rule, not the exception.”<sup>41</sup> The hope is that the ABA or some other authoritative body will take a stand and stop these institutions from violating their ethical obligations. Although the schools may not appear to be breaking the law, it is their responsibility to report accurate information to prospective students, including data relating to their graduates’ jobs and salaries, instead of inflating their statistics by including graduates who have obtained part-time or non-legal work. In fact, “the ABA is in the best position to understand and embrace the need for professionalism inculcation in law school, and is the organization *best* positioned to urge that such inculcation be *required* when and where it must start – in law schools.”<sup>42</sup> If the ABA does not take a stand now, law schools will continue to believe that the ethics and professional standards they teach their students do not apply to them.

New York Law School (“NYLS”) in New York City and Cooley Law School (“Cooley”), with four campus locations in Michigan, were the first two law schools to make national headlines regarding this issue during the economic recession. NYLS reported that 90-95% of its graduates were employed after graduation, and the formal complaint alleged that NYLS committed “two uniform, written, misrepresentations” by providing this employment information in its print and

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<sup>39</sup> Sophia Pearson, *New York Law School Sued by Students Over Claims About Graduates’ Success*, BLOOMBERG NEWS (Aug. 10, 2011) <http://www.bloomberg.com/news/2011-08-10/new-york-law-school-sued-by-students-over-claims-about-graduates-success.html>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Timmer & Berry, *supra* note 27, at 6. (emphasis added).

online marketing materials.<sup>43</sup> In addition, the complaint alleges that “NYLS also grossly inflates its graduates’ reported mean salaries, by calculating them based on a small, deliberately selected subset of graduates who actually submit their salary information.”<sup>44</sup> The complaint against Cooley law school alleges that about 1,000 students graduate each year from the law school and pay \$100,000 in tuition.<sup>45</sup> In 2010, the school reported a high job placement rate despite the economic downturn.<sup>46</sup>

More recently in June of 2011, a 2008 graduate of Thomas Jefferson School of Law in San Diego, California sued her alma mater because she was unable to find employment after graduation.<sup>47</sup> Her complaint, like the complaints against NYLS and Cooley, focused on the law school’s false reporting of post-graduate employment.<sup>48</sup> Although the former student graduated with honors and passed the bar exam on her first attempt, she was unable to obtain a legal job.<sup>49</sup> The Dean of Thomas Jefferson School of Law denied the allegations and responded only by saying that the law school never guarantees employment after graduation and that securing jobs is not the responsibility of the law school.<sup>50</sup>

A day after the announcement of the many lawsuits filed against law schools, Senator Barbara Boxer from California “sent a letter to the ABA pressing for quick collection and dissemination of more detailed job statistics.”<sup>51</sup> Soon after, the ABA Section of Legal Education and Admissions to the Bar decided to add several new questions to law school questionnaires regarding jobs held by 2011 graduates nine months after graduation.<sup>52</sup> Boxer wanted the ABA to collect this

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<sup>43</sup> Complaint at 2, *Gomez–Jiminez v. N.Y. Law Sch.*, 943 N.Y.S.2d 834 (N.Y. Sup. Ct. 2012) (No. 652226/2011).

<sup>44</sup> *Id.* at 24.

<sup>45</sup> Complaint at 1-2, *MacDonald, Jr. v. Thomas M. Cooley Law Sch.* (No. 11-CV-00831).

<sup>46</sup> *Id.* at 3-4.

<sup>47</sup> Tim Karan, *Law School Grad Can't Find Job, Sues College for \$50M*, NEWSER (Jun. 3, 2011; last updated Jun. 5, 2011), <http://www.newser.com/story/120160/law-school-graduate-cant-find-a-job-sues-college-for-50-million.html>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Debra Cassens Weiss, *Law Firms Announce Plans to Sue 15 More Law Schools Over Job Stats*, A.B.A. J., Oct. 5, 2011, [http://www.abajournal.com/news/article/law\\_firms\\_announce\\_plans\\_to\\_sue\\_15\\_more\\_law\\_schools\\_over\\_job\\_stats/](http://www.abajournal.com/news/article/law_firms_announce_plans_to_sue_15_more_law_schools_over_job_stats/).

<sup>52</sup> *Id.*

information for 2010 graduates as well.<sup>53</sup> The ABA is currently amending the 2012-2013 questionnaire forcing law schools to differentiate between alumni who have jobs in law-related fields and those who do not.<sup>54</sup>

The ABA's response to the lawsuits against law schools and its attempt to fix the problem does not go far enough. The ABA "has approved changes to its annual law school questionnaire to include more employment and placement information about graduates."<sup>55</sup> This includes questions related to "employment status, employment types and employment locations. It will also request...information on whether a graduate's employment is long-term or short-term."<sup>56</sup> Although this is a step in the right direction, it still allows the law schools to take the questionnaires and manipulate the data to their benefit. Since the ABA produces these questionnaires, it should be responsible for ensuring that the published information on each law school is uniform and fully accurate.

Although this new practice may help future law school applicants make more informed decisions on which law school to attend, it is unclear how it will help current students and alumni who may have relied on previous false information. While frivolous lawsuits should not be filed to keep up with current complaints by alumni, the ABA needs to do more to show that it is taking this issue seriously. The ABA should take disciplinary action against the law schools that engaged in intentional deceitful conduct. It is imperative that this type of conduct be stopped, and the best way

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Mark Hansen, *ABA's Legal Ed Section Approves Questionnaire Changes on Reporting of Graduates' Employment*, A.B.A. J., Jul. 27, 2011,

[http://www.abajournal.com/news/article/abas\\_legal\\_ed\\_section\\_approves\\_questionnaire\\_changes/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=ABA+Journal+Top+Stories](http://www.abajournal.com/news/article/abas_legal_ed_section_approves_questionnaire_changes/?utm_source=feedburner&utm_medium=feed&utm_campaign=ABA+Journal+Top+Stories).

<sup>56</sup> Memorandum from A.B.A. ABA Section of Legal Education and Admissions to the Bar Will Collect Additional Employment Information from Law Schools in its Annual Questionnaire (Jul. 27, 2011), [http://www.abanow.org/wordpress/wp-content/files\\_flutter/1311794682lawschool\\_employment\\_info\\_072711.pdf](http://www.abanow.org/wordpress/wp-content/files_flutter/1311794682lawschool_employment_info_072711.pdf).

to do that is to show law schools that such actions have consequences.<sup>57</sup> It is evident that “[l]aw schools...play a significant role in helping...law student[s] develop the necessary character to fully admit past mistakes and acknowledge past character deficiencies, while taking full responsibility for them...and [even] adopting a personal code of ethics that might help them avoid such acts in the future.”<sup>58</sup> Given that law schools help shape future lawyers, the schools themselves must also admit their past mistakes and acknowledge their wrongful behavior if they expect their students and alumni to do the same.

Although some of these suits are yet to be decided, these students have revealed to the public, through their complaints, that law schools are engaging in unjust practices. Whether the wrongful conduct will subject law schools to additional penalties beyond monetary damages is yet to be determined. However, it is the ABA’s job to do *something* to address this dire situation. Given that some law school faculty have admitted to deliberately reporting false information – a clear violation of professional conduct<sup>59</sup> – the ABA should be required to take serious disciplinary action against them. The severity of the situation requires harsh discipline that should include the possibility of law schools losing their accreditation. Although it may sound extreme, such punishment may and should force all law schools to report accurate information.

Given the challenging economic climate in the past five years, it makes sense that those students who applied to law schools would rely on this highly-publicized information in selecting their school. Statistics showing a strong history of high employment rates gave these students more confidence to take on the debt associated with tuition. However, on March 21, 2012, Judge Melvin

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<sup>57</sup> “The ABA’s overall competency has recently been questioned by the National Advisory Committee on Institutional Quality and Integrity, which advises the Department of Education...Specifically, the committee found that the ABA had failed to comply with 17 regulations, including, among others, failing ‘to set a standard for job placement by its member institutions.’” See Paul L. Caron, *ABA Takes Heat from Advisory Panel on Accreditation*, TAXPROF BLOG (June 10, 2011), [http://taxprof.typepad.com/taxprof\\_blog/2011/06/aba-is.html](http://taxprof.typepad.com/taxprof_blog/2011/06/aba-is.html).

<sup>58</sup> Timmer & Berry, *supra* note 27, at 3.

<sup>59</sup> See MODEL RULES OF PROF’L CONDUCT R. 4.1(a) and 4.1(b) (2011).

L. Schweitzer of the Supreme Court of New York dismissed the class-action lawsuit against NYLS, which could ultimately impact the other similar lawsuits around the country.<sup>60</sup> Judge Schweitzer found that “the plaintiffs failed to prove that the law school had misled them ‘in a material way’”<sup>61</sup> and merely concluded that the students and alumni individually cannot turn “their disappointment and angst on their law school for not adequately anticipating this possibility” of an economic downturn.<sup>62</sup> Judge Schweitzer continued by stating that the plaintiffs’ allegations that NYLS failed to differentiate types of employment when publishing its employment statistics, and that its only published salary information was based on a small amount of the graduate population, were not “misleading in a material way for a reasonable consumer acting reasonably” since those who attend law school are a “sophisticated subset of education consumers, capable of sifting through data and weighing alternatives before making a decision.”<sup>63</sup>

It appears that Judge Schweitzer took his frustration out on the plaintiffs, as well as current and future law school students, for what he deems to be numerous frivolous lawsuits around the country. However, Judge Schweitzer failed to look at the seriousness of the false and misleading information that law schools throughout the country publish to the world, and the fact that the ABA has not done enough to combat this problem. The legal profession seeks to help secure justice for clients, but in this instance, the justice system has failed these plaintiffs as well as current and future law school students. The plaintiffs in the NYLS case attempted to fix a common problem through the law school community – misleading practices. Judge Schweitzer’s ruling provides law schools with legal grounds to continue engaging in misleading practices. As a result, the ABA will likely be less inclined to take disciplinary actions against such misconduct. It will be interesting to see what

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<sup>60</sup> Katherine Mangan, *Judge Dismisses Lawsuit Accusing Law School of Inflating Job and Salary Data*, CHRON., Mar. 21, 2012, [www.chronicle.com/article/Judge-Dismisses-Lawsuit/131266](http://www.chronicle.com/article/Judge-Dismisses-Lawsuit/131266).

<sup>61</sup> *Id.*

<sup>62</sup> *Gomez-Jiminez v. New York Law Sch.*, 943 N.Y.S.2d 834, 855 (N.Y. Sup. Ct. 2012).

<sup>63</sup> *Id.* at 843.

happens with the plaintiffs' appeal and whether the higher courts in New York will take the numerous claims more seriously.

On July 20, 2012, Judge Gordon Quist of the U.S. District Court for the Western District of Michigan dismissed a case against Cooley Law School.<sup>64</sup> Interestingly, Judge Quist agreed with the graduates on some issues and went against Cooley's argument that the lawsuits should have been aimed at the ABA since it makes the rules on reporting employment statistics.<sup>65</sup> However, given that the complaint alleged violations of the Michigan Consumer Protection Act, Judge Quist said he did not find this to be a consumer issue and that the plaintiffs would have an uphill battle regarding the fraud allegation.<sup>66</sup> He went on to say that attending law school to secure high-level jobs was more of a business reason than a consumer protection reason.<sup>67</sup>

### **Building a Case Against the Law Schools**

Given that a large majority of law students will be in debt after pursuing a law degree,<sup>68</sup> they rely heavily on and trust the ABA to ensure that law schools are reporting accurate information. If the information provided is false or misleading, students have a valid claim against the law schools for engaging in false advertising. Based on New York law (in the case being appealed against NYLS), a plaintiff must show "that the advertisement (1) had an impact on consumers at large, (2) was deceptive or misleading in a material way, and (3) resulted in injury."<sup>69</sup> The law does not require that a defendant, in this case NYLS, act intentionally, which makes this case easier to prove. In addition, a plaintiff must focus on the fact that the alleged false advertisement affected the public at large, as

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<sup>64</sup> Karen Sloan, *Counsel in Suit Against Law Schools Vow to Proceed Despite Dismissals*, N.Y. L.J., Jul. 25, 2012, <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202564237774>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Josh Block & Janet Lorin, *Law School Students Debt Exceeds \$100,000 Amid Job Shortages*, BLOOMBERG NEWS (Apr. 18, 2012) <http://www.bloomberg.com/news/2012-04-18/law-school-student-debt-exceeds-100-000-amid-jobs-shortage.html>.

<sup>69</sup> 2A N.Y. Jur. 2d Advertising § 24.

opposed to focusing on the plaintiff's own specific situation since that would not lead to a successful claim of false advertising.

First, the plaintiff must focus on whether the false advertisement had an impact on consumers at large.<sup>70</sup> In *People by Vacco v. Lipsitz*, a case of nationwide first impression, the State of New York brought suit against a business located in New York that was selling magazines via the Internet to the public at large.<sup>71</sup> The Attorney General of New York sued the company for “consumer fraud and false advertising.”<sup>72</sup> Lipsitz engaged in “specific advertising gimmicks – such as the disguised source of e-mail messages to group members and the references to a “club”...[which] were particularly designed to inspire confidence [in the organization]...[and] the mere falsity of the advertising content is sufficient as a basis for the false advertising charge.”<sup>73</sup>

Similarly, it is highly likely that prospective applicants relied on NYLS's numbers, including the percentage of students who were employed after graduation, when applying to the law school for admission. These students knew the high cost of law school and the significant debt they would assume after graduation, thus NYLS's reported information had a large impact on the public. The mere fact that NYLS was reporting numbers that were not *entirely* accurate is enough to show that the school's false advertisements negatively affected the public and that law school applicants relied on those numbers when deciding to apply to NYLS. In 2009, NYLS admitted 736 students, a thirty percent increase from the previous year – making it the second largest law school class in the country after Cooley.<sup>74</sup> Given the economic decline in 2008, the fact that NYLS received more applications and admitted more students than ever before serves to prove that the newly admitted students relied on NYLS's reported information when deciding which law schools to apply to and

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<sup>70</sup> *Id.*

<sup>71</sup> 663 N.Y.S.2d 468, 470 (N.Y. Sup. Ct. 1997).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 476.

<sup>74</sup> Complaint, *supra* note 43.

ultimately attend. These plaintiffs can also show that thousands of applicants relied on NYLS and Cooley's reported employment information, which showed percentages in the 90<sup>th</sup> percentile.<sup>75</sup> This helps explain both an increased amount of applications during the economic recession, and the fact that NYLS and Cooley began admitting more students than ever before.

In addition, plaintiffs will have to reveal what is incorrect about the numbers being reported. Based on these recent lawsuits, the two primary issues of misrepresentation involve the percentage of law students who have jobs within six or nine months of graduation, and the average salary that students have in their post-law school jobs.<sup>76</sup> What is problematic, and what the ABA should be held responsible for, is that the reported percentages of students who obtain jobs after graduation include those with non-legal jobs, and those who were hired by those same law schools for short-term employment strictly to increase these percentages.<sup>77</sup> Although the ABA questionnaires beginning in 2012-2013 will force law schools to specifically state which alumni have jobs in law-related fields and which ones do not,<sup>78</sup> the plaintiffs can reveal how the law schools may be able to get around this issue by self-selecting which responses to include. In addition, the average salary information reported includes only those alumni who actually report back to the law schools about their employment. If the schools were to include the salaries of those who have failed to obtain jobs or do not have law-related jobs, the median salary would drop drastically.

Second, the plaintiffs will have to focus on whether the advertisements "[were] deceptive or misleading in a material way."<sup>79</sup> They will have to show that the false information they relied on misled them to the point that they were willing to invest hundreds of thousands of dollars on a legal education based on a 90-95% chance of gaining legal employment within six or nine months of

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Mark Hansen, *ABA's Legal Ed Section Approves Questionnaire Changes on Reporting of Graduates' Employment*, A.B.A. J., Jul. 27, 2011, [http://www.abajournal.com/news/article/abas\\_legal\\_ed\\_section\\_approves\\_questionnaire\\_changes/](http://www.abajournal.com/news/article/abas_legal_ed_section_approves_questionnaire_changes/).

<sup>78</sup> *Id.*

<sup>79</sup> 2A N.Y. Jur. 2d Advertising § 24.



graduation. Rodi, a former student of Southern New England School of Law (“SNESSL”) brought a suit against SNESSL for making false statements and engaging in misrepresentation.<sup>80</sup> Although the case involves different causes of action, the court focused on whether a reasonable person would have relied on the Dean’s oral and written statements about his law school’s possible upcoming accreditation by the ABA.<sup>81</sup> After SNESSL failed to obtain accreditation while Rodi was in law school, Rodi sent transfer applications to both Rutgers School of Law – Newark and Seton Hall Law School.<sup>82</sup> Once the Dean of SNESSL discovered that Rodi sent in transfer applications, he wrote Rodi a letter urging him to stay and assuring him that the school would be accredited by the ABA.<sup>83</sup> Ultimately, Rodi was denied admission to both Rutgers and Seton Hall.<sup>84</sup> The court determined that “even assuming that Dean Larkin and Dean Prentiss [of SNESSL] made false statements of material fact for the purpose of inducing Rodi to remain at SNESSL, no reasonable jury could find (1) that Rodi relied on their statements, or (2) that his reliance was reasonable.”<sup>85</sup>

In contrast, the plaintiffs bringing suit against NYLS can show why thousands of potential applicants, as opposed to the plaintiffs alone as individuals, relied on NYLS’s published information. That information was also submitted to the ABA and *US News and World Report*, which publishes law schools’ rankings and statistics.<sup>86</sup> It is evident that the published data made many potential applicants feel confident that attending NYLS and investing an average of \$149,000 would give them a great legal education with a very high likelihood that they would obtain legal jobs after graduation. Their reliance was also reasonable given that NYLS, as an ABA-accredited law school, was required to report accurate information to the ABA and the public at large. Given the poor economy and NYLS’s reported 90-95% student employment figures within six months of graduation, it is evident

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<sup>80</sup> *Rodi v. S. New England Sch. of Law*, 532 F.3d. 11, 13 (1st Cir. 2008).

<sup>81</sup> *Id.* at 19.

<sup>82</sup> *Id.* at 14.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 16.

<sup>86</sup> *Id.*

that applicants relied heavily on NYLS's reported employment information. The plaintiffs' main position in this suit should be to reveal that their reliance on the inaccurate information misled them to the point where many are now in severe financial debt with no job security to help pay the debt.

Lastly, the plaintiffs will have to show that their reliance on the misleading information resulted in an injury. As discussed above, the injury could be considered the fact that many students, like the three plaintiffs, did not obtain legal jobs within six months of graduation. In fact, it took two of the three plaintiffs at least a year and half to obtain employment.<sup>87</sup> The other plaintiff, Scott Tiedke, did obtain employment after graduation, but currently works in a non-legal position as a compliance officer at an investment management firm – not exactly where he saw himself working after obtaining a law degree.<sup>88</sup> In addition to not obtaining employment, the plaintiffs are obligated to start paying back their law school debt six months after graduation, regardless of their ability to pay. This could ultimately lead plaintiffs to pay back less money than required, resulting in increased interest rates and possibly bankruptcy.

The plaintiffs in the cases against Cooley and Thomas Jefferson School of Law will take similar stances against their former law schools. The only difference involves each state's law with regards to false advertising, but what must ultimately be proven will be very similar. The plaintiffs suing Cooley will have to adhere to the false advertising laws that govern in Michigan and the plaintiffs suing Thomas Jefferson School of Law will have to adhere to the false advertising laws of California. Ultimately, the outcome of these cases will have a national impact and will hopefully force law schools throughout the country, and perhaps around the world, to engage in non-deceptive practices.

### **Where Do We Go From Here?**

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<sup>87</sup> Complaint, *supra* note 43.

<sup>88</sup> *Id.*

According to the Law School Admission Council, “[t]he number of law school applicants is down nearly 14 percent from a year ago.”<sup>89</sup> Thus, it appears that as a result of the economic climate and the lawsuits that emerged in the last year, more individuals are determining that law school may just not be worth the investment in time and money. This includes taking the Law School Admission Test, applying to law schools, adjusting to the difficult curriculum, time demands, cost, debt and a difficult job market, among other things. It is interesting to note that the ABA in the last year has accredited ten new law schools.<sup>90</sup> In the article, *The First Thing We Should Do is Kill All the Law Schools*, the author suggests that dating back to Shakespeare, lawyers have been vilified and it appears that sentiment towards attorneys has not changed.<sup>91</sup> Along those lines, law schools are equally responsible for giving the legal profession a bad name. They are accepting more and more students, while presenting inaccurate information, and ultimately duping those students for financial gain.<sup>92</sup> What happened to the notion of schools hiring qualified faculty to teach their students and prepare them for the world ahead? It is also interesting to note that now, more than ever, there are many unemployed lawyers, yet there is still a high demand for representation.<sup>93</sup>

Interestingly, more articles are emerging highlighting the need for law schools to make legal ethics a core part of the law school curriculum. The Multistate Professional Responsibility Exam (MPRE) was first administered in 1980.<sup>94</sup> Now the majority of states require all law school graduates to pass this exam, as well as the bar exam, to ensure they are ready to ethically practice law.<sup>95</sup> As a result, a course on legal ethics and/or professional conduct is required by the ABA for accredited law schools. Given that the MPRE has been in existence for over thirty years, why has the ABA, and

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<sup>89</sup> Spencer Aronfeld, *The First Thing We Should Do is Kill All the Law Schools*, THE HUFFINGTON POST (June 29, 2012), [www.huffingtonpost.com/spencer\\_aronfeld/law-school-job-prospects\\_b\\_1635579.html?utm\\_hp\\_red=email\\_share](http://www.huffingtonpost.com/spencer_aronfeld/law-school-job-prospects_b_1635579.html?utm_hp_red=email_share).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Paul T. Hayden, *Putting Ethics to the (National Standardized) Test: Tracing the Origins of the MPRE*, 71 FORDHAM L. REV. 1299, 1299, 1304 (2003).

<sup>95</sup> *Id.*

now courts, determined that law schools can engage in unethical practices, while still mandating that law students learn about ethics?

In the article, *Legal Ethics Must Be the Heart of the Law School Curriculum*, author Russell G. Pearce stresses “[o]nly recognition that legal ethics [be] the most important subject in the law school curriculum will lead to real and significant changes in the teaching of legal ethics.”<sup>96</sup> It is evident that this type of course will be helpful to students throughout law school and in their future roles as practicing attorneys because lawyers who violate state ethical laws are susceptible to punishment, up to and including disbarment. Many argue that law students’ “values are fully formed before they begin law school and are not susceptible to change through legal education.”<sup>97</sup> This statement makes little sense given that law students become fully emerged in a totally different type of learning environment where they discover a whole new way of processing the information presented to them. In fact, if law students did not change as a result of legal education, many would believe that anyone right out of high school or college could become a lawyer, thus making law school obsolete. Maybe it is time to not only stress the importance of legal education, but also to make sure that law school graduates are prepared to practice law in a fair and ethical manner so that the reputation of lawyers can improve in society. “In the midst of the legal profession’s current doldrums, we cannot afford to do anything less than transform legal education to make legal ethics the single most important subject.”<sup>98</sup>

Although law schools should suffer consequences for acting unethically and engaging in false advertising, the question remains that if any of these lawsuits against law schools succeed, what are appropriate damages for the injured plaintiffs? The reimbursement of tuition or other damages to plaintiffs will not solve the problem – systematic change will. Although the plaintiffs in these

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<sup>96</sup> Russell G. Pearce, *Legal Ethics Must Be the Heart of the Law School Curriculum*, 26 J. LEGAL PROF. 159, 159 (2001-2002).

<sup>97</sup> *Id.* at 162.

<sup>98</sup> *Id.* at 163.

numerous cases are seeking monetary damages, it seems unlikely that courts will award significant compensation given that other students or former alumni could then follow suit and file similar lawsuits with the same goal. This could very well be the reason why the NYLS case was dismissed and why the same happened with Cooley Law School in July 2012. Although those judges would allege that the plaintiffs were not harmed in a material way, they may have dismissed the cases given that the difficulty in assessing monetary damages would be tremendous. In order to fix the problem, the goal must be to protect other students from being harmed in the same way as those who entered law school with the expectation of high job placement rates and salaries. Thus, it appears that although the plaintiffs do have valid claims in these lawsuits, their objective in gaining monetary damages will probably not be successful. However, the courts do need to look at these issues more seriously and hold law schools liable for misleading practices by forcing the ABA to create stricter guidelines, and possibly putting law schools who engaged in such practices under probation to force them to make the necessary changes going forward.

### **Conclusion**

The economic decline that began in 2008 may not have been the trigger that led law schools to misrepresent their statistics in order to make their schools look more attractive to potential applicants. The fraudulent reporting has probably been going on for some time, but the poor economy has led students to discover these unethical practices and the need to bring them to the public's attention. The ABA requires accredited law schools to offer courses in legal ethics and professional responsibility, but this is problematic when law schools are violating the very legal and ethical rules they teach. Legal professionals have an obligation to clients to ensure that they fully understand the laws so that they can provide adequate representation. These rules are extremely important and now law schools must be held responsible for reporting false information to the public at large.

The ABA may have taken a stand by amending its annual questionnaire to make sure that law schools are reporting accurate information, but more must be done so that society can once again trust the ABA and law schools. In addition, the recent lawsuits filed against NYLS, Cooley, Thomas Jefferson School of Law and now fifteen other unnamed law schools throughout the country will force the legal educational community to reevaluate itself and take steps to ensure that it is reporting accurate information upon which potential students can rely. In addition, law schools must prove that they are engaging in legal and ethical practices, the very subjects they teach to their students – not only to improve their reputation in society, but also to guarantee that their alumni will move on to become ethical attorneys and good representatives of the honest and moral legal institutions from which they came.