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Revised ABA Standards 303 (b) and (c) and the Formation of a Lawyer’s Professional Identity, Part 3: Cross-Cultural Competency, Equal Access, and the Elimination of Bias, Discrimination, and Racism

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From PDQ in NALP Bulletin+

Exclusive Preview from the November 2022 edition

AT A GLANCE

- 17 min read
- Third part of series focuses on subsection (c) of ABA Standard 303.
- Outlines the work ahead in eliminating bias, discrimination, and racism.
- Describes four successive opportunities for law schools after taking the first step of identifying stakeholders.

Editor’s Note: This is the third article in a three-part series. Part 1 and Part 2 appeared in the May and June 2022 editions of NALP’s *PDQ*, respectively, and a review of the authors’ new book appeared in the July/August 2022 edition. See Resources section for more info about the previous articles in this series.

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Section 1: Examining ABA Standard 303 (c)

In Parts 1 and 2 of this series, we examined the 2022 revisions to the American Bar Association’s Standard 303 that require accredited law schools to “provide substantial opportunities to students for ... the development of a professional identity” that “focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society.” The revisions provide guidance that “the development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.” In addition, the revisions state that “developing a professional identity requires reflection and growth over time.” The revisions accordingly provide further guidance that “students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.”

Here in Part 3, we pay special attention to the new subsection (c) that the ABA added to Standard 303. It provides that:

A law school shall provide education to law students on bias, cross-cultural competency, and racism:

- (1) at the start of the program of legal education, and
- (2) at least once again before graduation.

For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses.

Four accompanying “Interpretations” — numbered 303-5, 303-6, 303-7, and 303-8 — offer important explanations and elaboration (see Resources: ABA).

To understand the full reach and rationale of the 2022 revisions, the full package — standards and interpretations — needs to be read as an integrated whole. The following sections highlight key points drawn from an integrated reading (see Resources: Integrated Analysis).

Section 2: The Values and Responsibilities of the Legal Profession and Its Members Should Include Cross-Cultural Competency, Equal Access, and the Elimination of Bias, Discrimination, and Racism

For many years, ABA Standard 303(a)(1) has required law schools to offer a mandatory professional responsibility course that includes “substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.” At the heart of Section 303(c) is the principle that the values and responsibilities of the legal profession and its members should include “the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias,

discrimination, and racism in the law.” (Interpretation 303-6.) While the accreditation standard speaks directly to law schools, the principle declared here has relevance to the profession, its members, and the society it serves.

This central principle helps us see Standard 303(c)’s relationship to the requirement introduced by revised Standard 303(b) that law schools purposefully support students in the development of professional identity. Developing a professional identity means understanding, accepting, internalizing, and demonstrating all the competencies, obligations, and values that are needed for successful practice in a profession that owes special responsibilities to clients, the justice system, the rule of law, and society. Revised Standard 303(b), as explained by Interpretation 303-5, requires law schools to provide substantial opportunities for an intentional exploration of the values, responsibilities, and competencies considered foundational. Whatever the full range of those foundational ingredients might be, Interpretation 303-6 specifically states that they should include cross-cultural competency and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law.

The lawyer’s responsibility to promote equal access to the justice system is a familiar tenet spelled out in the Preamble to the Model Rules of Professional Conduct (see Resources: Preamble). Standard 303(c) and Interpretation 303-6 reinforce and build on that principle. Bias (explicit and implicit), discrimination (overt and subtle), and racism (systemic and structural manifestations of bias and discrimination) can impede the legal system’s fulfillment of its pledge of equal justice under the law. Those persistent problems can arise in the day-to-day representation of clients, impairing the lawyer’s ability to effectively represent each individual client with the requisite fiduciary mindset (see Resources: Fiduciary Mindset). They can be encountered in the courts, agencies, and offices that administer and dispense justice. They can appear in the law’s procedures, in its substance, and in the interaction of the two. However they manifest themselves, these problems hinder equal access to justice, and Standard 303(c) instructs that the legal profession — vested with special privileges that come with corresponding responsibilities to society — cannot disavow a role in their elimination.

Section 3: The Work Ahead for Law Schools

For lawyers to perform a constructive role in the search for solutions, they must learn about the challenges that bias, discrimination, and racism pose in the law. That takes us to the educational requirements prescribed by the ABA. An integrated analysis of the text of the new standard and its interpretations yields several requirements that fall into two sets.

Set 1: The Special Requirements of Standard 303(c)

The first set of requirements comes directly from Standard 303(c) and its interpretations. To comply with Standard 303(c), a law school:

(1) must provide education on cross-cultural competency, bias, and racism (a) at the start of the program and (b) at least once again before graduation, and [i.e., a requirement of two modules, at a minimum]; and

(2) should include in its required professional responsibility course the values of the importance of cross-cultural competency and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in law [i.e., a call for professional responsibility coverage].

The call for “professional responsibility coverage” follows from a careful reading of Interpretation 303-6, but the 2022 revisions offer no further specifics. In planning their own courses, professional responsibility instructors need to be mindful that Standard 303 envisions lawyers who can discern bias, discrimination, and racism however they operate in the law, and who have internalized a deep responsibility to work toward their elimination.

The 2022 revisions have a good bit more to say regarding the “two modules” requirement. Some of what is outlined points to the latitude schools enjoy. Interpretation 303-8 makes clear that the ABA is prescribing neither the form nor the content of the required education on bias, cross-cultural competency, and racism. Those matters are left to the judgment of each law school. As Interpretation 303-7 explains, schools can use a variety of forms of curricular engagement to provide the education required in the two modules. The required education on cross-cultural competency, bias, and racism “may be satisfied by, among other things, (1) [o]rientation sessions for incoming students; (2) [l]ectures on these topics; (3) [c]ourses incorporating these topics; or (4) [o]ther educational experiences incorporating these topics.”

Schools are advised to take careful note of two important conditions that need to be satisfied regarding the required two modules. The first, articulated in Interpretation 303-7, mandates a required substantial student activity. “While law schools need not add a required upper-division course to satisfy [the two modules] requirement, law schools must demonstrate that all law students are required to participate in a substantial activity designed to reinforce the skill of cross-cultural competency, and their obligation as future lawyers to work to eliminate racism in the legal profession.” The second is a special timing rule for the second module. This is found in Standard 303(c) itself, which states that “[f]or students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses.” While all schools need to be attentive, those schools that offer summer field placements should be especially aware of the special timing rule when planning their second module.

Set 2: The Requirements for Supporting the Development of Professional Identity Under Standard 303(b)

As Parts 1 and 2 of this series developed, the 2022 revisions blueprint requirements for law schools to support student development of a professional identity. Those requirements, associated with Standard 303(b), are relevant here.

The values and responsibilities of the legal profession and its members that law schools should introduce to students include cross-cultural competency, equal access, and the elimination of bias, discrimination, and racism. Because they are foundational to successful legal practice, they should be among the values and responsibilities that need purposeful focus in a student’s development of professional identity under Standard 303(b). That standard, and its interpretations, contemplate two basic requirements. A law school must:

(1) provide substantial opportunities on what it means to be a lawyer and the special obligations lawyers have to their clients and society that should include an intentional exploration of the values considered foundational to successful legal practice (which should include cultural-competency, equal access, and the elimination of bias, discrimination, and racism); and

(2) recognize that developing a professional identity requires reflection and growth over time and should provide frequent opportunities for reflection and growth on these values during each year of law school and in a variety of courses and co-curricular and professional development activities.

A school that satisfies this set of requirements will be providing curriculum modules and professional development activities “during each year of law school” that are designed to foster student “reflection and growth over time” on these values and topics, according to Interpretation 303-5. Law schools will need to pay attention to coordination and progression of these modules and activities. The task is easier and more effective if the school uses a milestone model, which entails: (1) articulating the competencies it expects students to develop, (2) identifying the successive stages of growth toward mastery for each competency that students should attain, and (3) determining how student progress will be assessed. A school that adopts a milestone model approach also will be aligning its efforts with the principles underlying ABA Standards 302, 314, and 315, which address learning outcomes and assessment of student progress on learning outcomes (see Resources: Milestones).

Section 4: Getting Started – Four Opportunities and a Particular Challenge

In Part 2 of this series, we offered some practical implementation advice that applies here as well. The first simple step to get started is the most important: Identify and assemble the faculty and staff members who are the most natural stakeholders in your endeavor to meet the new ABA standards. Take that first step, and attractive opportunities will follow. We want to highlight four particular opportunities that unfold one after the other. We also want to acknowledge a particular challenge that many schools will face.

Opportunity 1: Stakeholders

The first opportunity will become apparent the moment a school begins thinking about assembling a working group of natural stakeholders. This project will attract an unusually diverse array of law school faculty and staff, all with ample passion for the issues. At the typical school, many instructors already deal with cross-cultural competency, bias, discrimination, and racism in their teaching and research, and their roles span the range — doctrinal professors, clinical professors, professors of practice, externship supervisors, adjunct professors, program directors, and more. Staff members in various roles bring interest, knowledge, and experience to the table too. This assembled group should include professional responsibility faculty, as the new revisions call for recognition of these values and responsibilities in the courses they teach. Those who oversee orientation programming need to participate, given the requirement that education on these topics start there. Clinical and externship instructors similarly need to be involved, as the second required educational module will need to be coordinated with the student experiences they oversee. The law school will benefit from seeing this as a remarkable choice to practice and model enterprise-wide collaboration, and to explore the potential for learning communities to form in a law school that can advance teaching, scholarship, and professional development. The more diverse the working group, the more extensive its networks outside the law

school will be. Those networks can be tapped for ideas and models. Indeed, lines of communication are forming nationally within the legal academy to share insights and resources particular to Standard 303 and its requirements.

Opportunity 2: Student-Centered and Competency-Minded Approach

The working group quickly will see numerous (maybe countless) available paths. Choosing among them may seem daunting. Here is where a second significant opportunity can be seized. If the school takes a student-centered and competency-minded approach, it will be able to proceed with greater clarity and confidence. A student-centered approach will bring the school's goal into focus: the graduation of law students who are well-educated on cross-cultural competency, bias, discrimination, and racism in the law. A competency-minded approach will lead the school to reflect on and enumerate the skills and attributes that its well-educated graduating students should demonstrate. One school's list will not be identical to another school's list, but befitting the topic, both lists will be striking in their breadth. They will include cognitive and technical skills of the sort traditionally developed in law school courses, contextualized to the issues relevant to cross-cultural competency, bias, discrimination, and racism in the law. They also will include competencies of a different nature, focusing on a lawyer's relational skills (e.g., communication), personal development skills (e.g., reflection, self-awareness), and other essential competencies (e.g., teamwork and collaboration). Food for thought about the range of competencies that might be identified can be found in our open-source book, *Law Student Professional Development and Formation: Bridging Law School, Student, and Employer Goals* (2022). (See Resources: Competencies).

Opportunity 3: Pedagogy

A working group that has reflected on the competencies the school might pursue with its students will be positioned to seize a third opportunity. It can think clearly and creatively about pedagogy and who provides it. The teaching method best suited for one competency (e.g., critical analysis to discern the operation of systemic racism) will be different from the one best suited for others (e.g., the foundational skills needed to practice cross-cultural competency as a lawyer). A course or seminar taught in traditional ways fits the bill for the former. Placing students in professionally authentic experiences, augmented by coaching, workshops, and feedback, seems ideal for the latter. A variety of pedagogies means a variety of instructors in a variety of contexts. Education on bias, cross-cultural competency, and racism lends itself easily to an enterprise-wide strategy, drawing on the distinctive teaching talents of all who can help students advance their development.

Opportunity 4: Timing

When the working group connects pedagogies to competencies, it is conceptualizing modules — and modules are the makings of the potential curriculum the school will create to satisfy Standard 303. From this point on, the school's resources will dictate a lot that happens. Some modules will be readily doable — indeed, some might already be in place at the school. Other modules may be beyond immediate reach. When the process of assembling the feasible pieces into a curriculum begins, a fourth opportunity is going to reveal itself. The timing of a module matters, and timing can be used powerfully. Research shows that formation of a professional identity is very much a process of socialization, with

major experiences serving as transformational points for the student who is becoming a professional. Introducing the right pedagogies before, during, and after such experiences — including coaching and guided reflection — can significantly enhance their educational value for the student. Standard 303(c) applies these insights when it prescribes that the two required modules on cross-cultural competency, bias, and racism occur during orientation and then prior to or coincident to a student’s clinical or field placement experience. Leveraging major student experiences with well-timed pedagogies is a fruitful strategy that schools should employ generally as they create a curriculum to satisfy Standard 303.

Navigating Complex Terrain

We conclude by noting a difficult challenge that many schools will encounter. In several states, newly enacted legislation restricts the teaching of “divisive topics,” such as racism. Sometimes styled in political and public discourse as “anti-critical race theory” laws, these measures can expose offenders to liability and sanctions, and may authorize causes of action to be brought by third parties. Educators and administrators are wary that even entirely lawful teaching about bias, discrimination, and racism may become the occasion for attacks citing such laws. Uncertainty about what the law prohibits and permits only exacerbates the concerns. Law schools — working closely with counsel, university leadership, the ABA, state-level authorities, professional groups, and others — may be better equipped than many institutions in American education to navigate this complex terrain and chart a path that enables necessary instruction to occur while allaying risk and apprehension. It is not too early for leaders in legal education to bring their leadership to bear, and to begin the collaboration that will be needed to manage this challenge.

Resources

ABA: For the full text of the 2022 revisions and their accompanying interpretations, see American Bar Association’s Section of Legal Education and Admissions to the Bar, Report to the House of Delegates 4 (adopted Feb. 14, 2022).

Integrated Analysis: Our reading of new Standard 303(c) and the accompanying Interpretations 303-5, 303-6, and 303-7 as an integrated whole reduces to these eight steps. (To be sure, individual readers might articulate the steps or their sequence differently).

1. Standard 303(c) requires that a law school shall provide education to law students on cross-cultural competency, bias, and racism at the start of the program of legal education and at least once again before graduation. (For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses.)
2. Standard 303(b) requires a law school to provide substantial opportunities to students for the development of a professional identity.
3. Interpretation 303-5 states that the development of a professional identity should involve an intentional exploration of the values considered foundational to successful legal practice.
4. Interpretation 303-6 states that “the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values

and responsibilities of the legal profession to which students are introduced.”

5. Interpretation 303-6 also states that these values and responsibilities should be included in the school’s mandatory professional responsibility course, as required by Standard 303(a)(1). They thus are among “the values and responsibilities of the legal profession and its members.”

6. By implication, the values and responsibilities stated in Interpretation 303-6 are among the “values, guiding principles, and well-being practices considered foundational to successful legal practice” in Interpretation 303-5.

7. Interpretation 303-5 states that because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.

8. Interpretation 303-7 requires law schools to demonstrate that all law students are required to participate in a substantial activity designed to reinforce the skill of cultural competency and their obligation as future lawyers to work to eliminate racism in the profession.

Preamble: For further discussion of the Preamble and its call on lawyers to promote equal access to the justice system, see Part 1 of this series in Section 2.

Fiduciary Mindset: For further discussion of the importance of a fiduciary mindset and a lawyer’s need to understand, internalize, and demonstrate a deep responsibility and care orientation to others, especially the client, see Part 1 of this series in Section 2.

Milestones: For further discussion of Milestone Models and illustrations, see Neil W. Hamilton and Louis D. Billionis, *Law Student Professional Development and Formation: Bridging Law School, Student, and Employer Goals*, pp. 67-70, 99-110, Cambridge University Press, 2022.

Competencies: See Neil W. Hamilton and Louis D. Billionis, *Law Student Professional Development and Formation: Bridging Law School, Student, and Employer Goals*, pp. 9-13, Cambridge University Press, 2022.

Part 1: See Neil W. Hamilton and Louis D. Billionis, “ABA Standards 303(b) and (c) and the Formation of a Lawyer’s Professional Identity, Part 1: Understanding the New Requirements,” *NALP PDQ*, May 2022.

Part 2: See Neil W. Hamilton and Louis D. Billionis, “Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer’s Professional Identity, Part 2: Action Steps to Benefit Students, Law Schools, and the Legal Profession,” *PDQ*, June 2022.

Book Review: See Patrick E. Longan, Daisy Hurst Floyd, and Timothy W. Floyd, “Lessons for Legal Educators from *Law Student Professional Development and Formation: Bridging Law School, Student, and Employer Goals*,” *PDQ*, July-August 2022.

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Preparing and Implementing a Successful Plan for Meaningful Employment (2d ed. ABA Books 2018), which received the American Bar Association's Gambrell Award for excellence in professionalism.

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