PUBLIC INTEREST IN LEGAL EDUCATION: EVALUATING ARIZONA'S EARLY BAR INITIATIVE

Editorial Board*

The Arizona Supreme Court recently considered a petition from the three Arizona law schools asking the court to modify the rule that regulates admission to the Arizona State Bar. The petition proposed that the court allow students to sit for the Arizona Bar Examination during the second semester of their third year of law school. The court provisionally approved the change for two years. This Essay attempts to evaluate what interests the Arizona Supreme Court should consider in 2015, when it reevaluates its decision. The Essay examines how and why the American Bar Association's accreditation objectives provide a useful framework for evaluating the amendment's effect on the public interest in quality legal education, and asserts that only after the public interest is satisfied should the court consider individual interests.

* Arizona Law Review Editorial Board 2012–2013. University of Arizona James E. Rogers College of Law. Our deepest gratitude to contributing students, alumni, faculty members, and friends of the Arizona Law Review.

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INTRODUCTION

In response to the current challenges in the legal market, law schools and the legal community have begun to consider policy changes in legal education.[1] On January 5, 2012, Arizona's three law schools—The University of Arizona James E. Rogers College of Law; Arizona State University, Sandra Day O'Connor College of Law; and Phoenix School of Law—petitioned the Arizona Supreme Court to amend Rule 34 of the Rules of the Supreme Court ("Rule 34") to allow third-year law students to take the bar exam before graduation.[2] The schools determined that allowing students to sit for an early bar exam would provide them with an advantage in finding employment and beginning work sooner, while also offering more practical coursework during their final semester. On December 10, 2012, the court granted the petition on a two-year provisional basis.[3]

The simple fact that the court only provisionally granted the petition suggests that it is searching for additional information and assurance that this change will promote quality legal education in furtherance of the public interest.[4]

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1. *See* Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 11, 2013, at A11 ("There is almost universal agreement that the current system is broken . . . .").

2. *In re* Petition to Amend Rule 34, Rules of the Supreme Court (Jan. 5, 2012), [hereinafter Petition to Amend Rule 34], *available at* http://azdnn.dnnmax.com/Portals/0/NTForums_Attach/1152290871.pdf.

3. Order Amending Rule 34, Rules of the Supreme Court (Dec. 10, 2012), [hereinafter Order Amending Rule 34], *available at* http://www.azcourts.gov/Portals/20/2012Rules/120512/R120002.pdf.

4. When the Arizona Supreme Court regulates in this field, it does so in the public interest. *In re* Smith, 939 P.2d 422, 424 (Ariz. 1997) ("Respondent argues that imposition of MCLE requirements violates due process of law. But such requirements, we believe, are rationally related to this court's obligation to serve the public interest."); Bates v. State Bar of Arizona, 433 U.S. 350, 361, 401 (1977) ("[T]he regulation of the activities of the Bar is at the core of the State's power to protect the public. . . . [T]he interest of the States in regulating lawyers is especially great since lawyers are essential to the primary

This Essay argues that in searching for such support, the court should first examine the rule change through a broad public interest standard that ensures a quality legal education. The court should use the American Bar Association's ("ABA's") accreditation objectives as a framework to evaluate how the provisional change to Rule 34 affects the public interest.[5] Only after the court has determined that the law schools can still provide a quality legal education alongside the opportunity to take the early bar exam should the court consider additional concerns, such as those expressed by the law schools in their initial petition to change the rule.

Part I discusses the administrative process used to approve the provisional amendment to Rule 34 and the public interest standard the court uses to evaluate rule changes. Part II describes the public interest in the ABA accreditation objectives. Finally, Part III applies the ABA accreditation objectives to Rule 34's provisional change to explore what evidence the court ought to seek when it reevaluates this rule change in 2015.

I. RULEMAKING IN THE PUBLIC INTEREST

A. The Petition

Rule 34 governs the process for being admitted to the Arizona State Bar.[6] Historically, Rule 34 required persons sitting for the Arizona bar exam to first hold a Juris Doctor degree ("J.D.") from an ABA-approved school.[7] On January 5, 2012, Arizona's three law schools petitioned the Arizona Supreme Court to amend Rule 34.[8] The proposed amendment was to allow third-year law students to sit for the exam in February during their final semester.[9] According to the petitioners, this "early bar" option would address contemporary challenges facing law students and law schools.[10]

In their petition, the law schools focused on three concerns: (1) the limitations of the third-year law school curriculum; (2) the challenging nature of

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governmental function of administering justice, and have historically been 'officers of the courts.'").

5. *See infra* Part II.

6. ARIZ. SUP. CT. R. 34. (2012) (modified, on an experimental basis Jan. 1, 2013).

7. *Id.*

8. Petition to Amend Rule 34, *supra* note 2.

9. *Id.*

10. *See* Supplemental Information Regarding Early Bar Proposal, Petition to Amend Rule 34, Rules of the Supreme Court, at 2 (Nov. 8, 2012), [hereinafter Supplemental Information Regarding Early Bar Proposal], *available at* http://azdnn.dnnmax.com/Portals/0/NTForums_Attach/1118495521471.pdf. Other states, including two Uniform Bar Exam states, allow law students to take the bar exam early, but while the requirements vary, none of these states' rules permit law students to take the bar in February of their third year. *Id.* Georgia had an early bar provision that allowed law students to take the bar in February of their third year, but Georgia later removed this rule because the law schools reported that it was interfering with their program of study. *Id.* It would be a worthwhile research endeavor for another paper to address the pros and cons of other states' early bar provisions.

the current legal market; and (3) the rising costs of legal education.[11] They posited that the early bar exam would allow the law schools to offer practical coursework in the last semester, enable graduates to join the job market sooner, and lower the debt burden on graduating students who can forgo summer bar costs.[12] The petitioners also sought to address how law schools could ensure students obtain public sector jobs. The early bar exam would allow students to quickly move into the job market.[13] In particular, the petitioners hoped that the early bar would create an advantage for those who wish to enter the public sector, which often has a hiring schedule that precludes recent graduates from obtaining such employment.[14]

The court decided to open the matter for public comment from January 13, 2012, to May 21, 2012.[15] Then, on August 31, 2012, the court instructed the petitioners to form a committee of representatives from each of the three law schools, the Arizona State Bar, and the Attorney Regulation Advisory Committee ("ARC"). It instructed this committee to provide further detail on the proposed rule change and to respond to a set of ten questions the court posed.[16]

During the comment period, ARC raised concerns with the proposal.[17] First, it questioned how the early bar exam would affect the law school curriculum and student welfare.[18] Second, it raised concerns about possible risks to students that the proposed rule change could not address: Students may fail the early bar exam and then receive none of the benefits of the program. Other states may not accept a bar exam result obtained prior to a student earning a J.D. Lastly, students may be unable to fulfill ABA requirements for graduating with a J.D. due to the strain of preparing for the early exam.[19]

In response to the court's request, the petitioners supplemented their original petition and amended some of the language from the original rule change

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11. *Id.*

12. *Id.* at 3.

13. *Id.*

14. *Id.*

15. *Court Rules Comment Forum*, ARIZ. SUP. CT. (last updated Dec. 10, 2012), [hereinafter *Court Rules Comment Forum*] http://azdnn.dnnmax.com/AZSupremeCourtMain/AZCourtRulesMain/CourtRulesForumMain/CourtRulesForum/tabid/91/forumid/7/postid/1618/view/topic/Default.aspx. *But see id.* (listing several comments posted after the court's comment period deadline). Whereas the court considers all comments filed timely, it gives no assurances that it would consider comments filed after the deadline. *Frequently Asked Questions, Court Rules Comment Forum*, ARIZ. SUP. CT., http://azdnn.dnnmax.com/Default.aspx?tabid=90 (last viewed Mar. 18, 2013).

16. *See* Supplemental Information Regarding Early Bar Proposal, *supra* note 10, at 1, 4–6.

17. Despite ultimately supporting the petition, only the ARC raised concerns about the proposed rule change. *See* Letter from Hon. William J. O'Neill, Chair, Attorney Regulatory Advisory Committee, to Hon. Rebecca W. Birch, Chief Justice, Arizona Supreme Court (May 8, 2012) [hereinafter Letter from Hon. William J. O'Neill], *available at* http://azdnn.dnnmax.com/Portals/0/NTForums_Attach/1619391875571.pdf.

18. *See id.*

19. *See id.*

proposal.[20] On December 10, 2012, the court adopted the modified petition on a two-year provisional basis (January 1, 2013 until December 31, 2015)[21] and instructed the petitioners and ARC to file status reports on the initiative at the end of the two-year period.[22] This decision signals that the court is sympathetic to the law schools' concerns, but committed to evaluating evidence of positive or negative changes in the Arizona legal market resulting from the early bar exam.

B. The Public Interest

The Arizona Supreme Court has the ultimate authority and responsibility to regulate the practice of law.[23] When it exercises this authority, the court acts to ensure that it protects the public interest in having competent and ethical legal representation.[24] Although the court's regulatory mechanisms, such as its notice and comment process, provide some transparency,[25] the court has never clearly defined what factors it considers in the process of regulating to protect the public interest. There are, however, several sources of guidance one can examine to arrive at a definition of "public interest" as it relates to judicial rules that govern legal education, including: (1) Arizona Supreme Court decisions; (2) rule-change petitions; and (3) prior related judicial rulemaking. The third source, previous regulation, is probably the most useful in understanding what the court believes is in the public interest.

Arizona Supreme Court decisions on the subject only present a general depiction of what the court seeks to achieve when it regulates in the public interest. Consider, for example, the court's regulation of the scope of the practice of law. The court has held that it is in the public interest to adopt legislative provisions that allow lay representation of employees in administrative hearings, even though

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20. Supplemental Information Regarding Early Bar Proposal, *supra* note 10, at 7.

21. Order Amending Rule 34, *supra* note 3.

22. *Id.*

23. ARIZ. CONST. art. 6, §§ 2, 3, 5, 7, 24, 41, 42; *id.* at art. 6.1, §§ 1, 4, 5; *see also* Heat Pump Equip. Co. v. Glen Aledn Corp, 380 P.2d 1016, 1017 (Ariz. 1963). Rule 28 governs the procedures by which the court exercises its rulemaking power. ARIZ. SUP. CT. R. 28. Because these powers are exclusive, no other governmental body has the power to review decisions by the court. DANIEL J. MCAULIFFE & SHIRLEY J. WAHL, 2 ARIZ. PRAC., CIVIL TRIAL PRACTICE § 2.1 (2d ed.). This authority is grounded in the separation of powers doctrine, which ensures that court procedural rules are free from legislative restraints, so long as they do not abridge, enlarge, or modify substantive rights. *Id.*

24. Bates v. State Bar of Arizona, 433 U.S. 350, 361, 401 (1977) ("[T]he regulation of the activities of the Bar is at the core of the State's power to protect the public. . . . [T]he interest of the States in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.'"); *In re* Smith, 939 P.2d 422, 424 (Ariz. 1997) ("Respondent argues that imposition of MCLE requirements violates due process of law. But such requirements, we believe, are rationally related to this court's obligation to serve the public interest.").

25. ARIZ. SUP. CT. R. 28 (2012).

those individuals have not undergone the rigors of legal education.[26] The court also regulates nonlawyers and disbarred attorneys from attempting to practice law.[27] Moreover, the court has imposed mandatory continuing legal education requirements, which are "rationally related to th[e] court's obligation to serve the public interest."[28] These decisions reveal a single policy aim: promoting an effective and responsible legal profession that competently serves the public. Although these decisions establish a basic standard of competence for attorneys who practice in the state, they do not provide a specific metric by which to gauge what constitutes the public interest as it relates to judicial regulation of legal education. The court should therefore look elsewhere to find a specific standard by which it can measure the early bar exam's effect on public interest.

The petition for, and comments in response to, any rule change could provide guidance as to specific criteria the court considers when evaluating the public interest in the context of any rule change. In the case of the early bar proposal, parties notified the court of its possible benefits and costs, as noted above.[29] But interested and regulated parties were the ones to voice these concerns.[30] In contrast, the court itself, as the ultimate authority on judicial rulemaking, likely has broader concerns that it must also take into account. After all, it regulates for the *public* interest, not *special* interests.[31] The concerns raised in the law schools' petition, as well as the comments responding thereto, thus fail to provide a sufficient starting point for the court to adequately evaluate the proposal.

Instead, previous judicial regulation in the field may provide a more useful framework for evaluating whether the provisional rule change should be made permanent.[32] After all, when courts interpret a new rule change they often look to the policy goals of existing rules to ensure consistency.[33] In this case, Rule 34 requires persons to have graduated from an ABA-accredited law school before they can be admitted to the Arizona State Bar.[34] By requiring applicants to have attended an ABA-accredited school, the court has implied that ABA accreditation serves the public interest in the field of legal education. Therefore, the ABA

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26. Hunt v. Maricopa Cnty. Emp. Merit Sys. Comm'n, 619 P.2d 1036, 1041 (1980).

27. *In re* Creasy, 12 P.3d 214, 216 (Ariz. 2000).

28. *In re Smith*, 939 P.2d at 424.

29. *See supra* notes 15–20 and accompanying text.

30. In the case of the early bar exam proposal, these parties include the Arizona law schools, recent graduates, the State Bar of Arizona, the Arizona Student Bar Association, the Arizona Attorney Regulation Advisory Committee, and the Arizona Secretary of State. *See Court Rules Comment Forum*, *supra* note 15.

31. *See supra* note 4.

32. *See* Chronis v. Steinle, 208 P.3d 210, 211 (Ariz. 2009). The court itself has stated that a "rule's context, the language used, the subject matter, the historical background, the effects and consequences, and its spirit and purpose" lend insight into a rule's intent. *Id.*

33. *See, e.g.*, *id.*

34. ARIZ. SUP. CT. R. 34.

objectives are an appropriate lens through which the court ought to examine and evaluate the amendment's impact on the public interest.

II. PUBLIC INTEREST AND THE ABA

In 2015, when the court reviews whether to make the provisionally implemented Rule 34 permanent, it will evaluate whether the new rule serves the public interest.[35] The court should employ the ABA's accreditation objectives in doing so because they establish minimum quality requirements for legal education nationwide.[36] By focusing on this standard, the court can ensure that those entering the legal profession in Arizona will have the quality legal education necessary to competently represent their clients.[37] Once this standard is met, considering other issues such as the cost of legal education and hiring schedules becomes appropriate.

The quality of legal education has a tremendous impact on the public interest in competent and effective counsel. In 2011, 71% of available jobs in Arizona went to graduates of Arizona law schools.[38] With this high percentage of retention, the role that the Arizona law schools play in fostering a high-quality, in-state legal profession cannot be overstated. This is likely the reason why Rule 34 has historically required those sitting for the bar exam to have first received a J.D. from an ABA-approved school.

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35. *See supra* note 4. The remaining question is what criteria the court should consider in evaluating whether the change satisfies its public interest standard.

36. The ABA accreditation objectives (found at the beginning of the chapter on ABA accreditation standards) speak broadly about the goals of ABA accreditation. We use these objectives to define quality legal education because: (1) the court already recognizes the ABA in Rule 34; and (2) ABA accreditation is a signal of quality legal education.

37. While this Essay uses the ABA as a proxy for what defines quality legal education, we are aware of common critiques of the ABA regulatory structure. *See generally* Douglas W. Kmiec, *Law School Accreditation: Responsible Regulation or Barrier to Entry?*, 11 TEX. REV. L. & POL. 377 (2007); Thomas D. Morgan, *The Changing Face of Legal Education: Its Impact on What It Means to Be A Lawyer*, 45 AKRON L. REV. 811, 826 (2012); George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2094 (1998); Herb D. Vest, *Felling the Giant: Breaking the ABA's Stranglehold on Legal Education in America*, 50 J. LEGAL EDUC. 494 (2000); *see also* WILLIAM M. SULLIVAN ET. AL., EDUCATION LAWYERS: PREPARING FOR THE PROFESSION OF LAW SUMMARY (2007), *available at* http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf. Nonetheless, the ABA objectives speak broadly about the underlying purpose behind the ABA's regulatory structure and provide a commonsense definition of quality legal education.

38. NALP CLASS OF 2011, at 77 (2012) (on file with the University of Arizona, James E. Rogers College of Law Career Services) (showing that the total jobs taken in Arizona in 2011 was 487 and the number of employed graduates from Arizona staying in Arizona was 346).

The ABA supports the legal profession throughout the nation by accrediting law schools.[39] ABA regulation ensures a minimum national legal education standard and prevents a fragmented system by requiring all states to follow the same basic guidelines.[40] In fact, the U.S. Department of Education has recognized ABA regulation as a "reliable" measure of quality legal education.[41]

The ABA's rules for accrediting law schools are premised on two objectives—an effective and quality education, and reasonably comparable education opportunities for all students.[42] The first objective requires that a law school offer "an educational program that prepares students for both admission to the bar, and effective and responsible participation in the legal profession."[43] To satisfy this objective, accredited law schools typically provide an educational program that consists of diverse course offerings, clinical opportunities, scholarly publication participation, and faculty interaction. The ABA explicitly directs schools to offer opportunities for "live-client or other real-life practice experiences"; "pro bono activities"; and "small group work through seminars, directed research, small classes, [and] collaborative work."[44] Additionally, the ABA encourages schools to provide educational opportunities outside the traditional classroom, such as "moot court, law review and directed research programs."[45]

The second ABA objective requires that law schools provide all students with "reasonably comparable opportunities to take advantage of the school's educational programs."[46] This means that schools providing more than one enrollment or scheduling option, such as a part-time program, must provide roughly proportional opportunities for students to benefit from the school's "educational programs, co-curricular activities, and other educational benefits."[47] The ABA has stated that it will consider the following factors in determining whether a reasonably proportional education is being offered: "whether students have reasonably comparable opportunities to benefit from regular interaction with

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39. There are more than 200 accredited law schools in the United States. *ABA-Approved Law Schools*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited April 5, 2013).

40. James P. White, *The American Bar Association Law School Approval Process: A Century Plus of Public Service*, 30 WAKE FOREST L. REV. 283, 288 (1995).

41. Nicola A. Boothe-Perry, *Standard Lawyer Behavior? Professionalism as an Essential Standard for ABA Accreditation*, 42 N.M. L. Rev. 33, 44 (2012) (noting that the ABA has been officially recognized as a "reliable authority" since 1952); *see also* 20 U.S.C. § 1099(c) (2012) (listing the requirements for recognition as a "reliable authority as to the quality of education or training offered").

42. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 2012–2013, at 17, Standard 301(a)–(b) (2012) [hereinafter ABA STANDARDS], *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf.

43. *Id.* at 17, Standard 301(a).

44. *Id.* at 20, Standard 302(b).

45. *Id.* at 25, Interpretation 305-1.

46. *Id.* at 17, Standard 301(b).

47. *Id.*

full-time faculty and other students, from such co-curricular programs as journals and competition teams, and from special events such as lecture series and short-time visitors."[48]

By requiring all members of the Arizona State Bar to hold a J.D. from an ABA-accredited institution, the court has signaled a link between the public interest in legal education and these ABA objectives.[49] The objectives help maintain an educational program that prepares students for "current and anticipated legal problems" as they enter the legal market.[50] A student body put through the rigors of this high-quality legal education ideally translates into a competent state bar ready to serve the public. In other words, the Arizona Supreme Court has recognized the ABA accreditation objectives as an appropriate rubric for ensuring that legal education serves the public interest.

These same objectives should be applied when reevaluating the Rule 34 amendment in 2015. The court should ensure that the legal education provided alongside the early bar exam is consistent with the rationales behind the ABA objectives. Such consistency is necessary to ensure that the proposal has a positive effect on the public interest in quality legal education.

III. USING THE ABA OBJECTIVES AS A STARTING POINT TO EVALUATE THE RULE CHANGE IN THE PUBLIC INTEREST

The following analysis will explore how the Rule 34 amendment may affect the ABA's two overarching objectives: effective and quality education, and reasonably comparable educational opportunities for all students.[51] At the root of this analysis is an assumption that schools and students operate under limited resources. Schools have limited financial and faculty resources, and students have a limited amount of time to devote to their various responsibilities.[52]

A. Effective and Quality Education

The ABA's first objective is effective and quality education.[53] This objective suggests that schools should provide diverse course offerings, clinical opportunities, scholarly publication participation, and faculty interaction.[54] To evaluate whether the Rule 34 amendment maintains or advances an effective and quality education, the court should examine the amendment's affect on the availability of such opportunities.

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48. *Id.* at 18, Interpretation 301-4.

49. *See* ARIZ. SUP. CT. R. 34.

50. ABA STANDARDS, *supra* note 42, at 17, Interpretation 301-1.

51. *Id.* at Standard 301(a)–(b).

52. This assumption is justifiable, as it has been implicitly acknowledged by the law schools' petition for the Rule 34 amendment. Concerns over the practical training of students and the costs of legal education indicate that the parties involved are already concerned about current resource constraints. *See* Petition to Amend Rule 34, *supra* note 2.

53. ABA STANDARDS, *supra* note 42, at 17, Standard 301(a).

54. *See supra* notes 42–45 and accompanying text.

The provisional change to Rule 34 requires that students complete all but eight units of their required coursework before sitting for the February bar exam.[55] For the months leading up to the bar exam, students' enrollment options are limited, allowing them to effectively study for the bar.[56] Therefore, students must complete the bulk of their legal education, including required courses, within the first two-and-a-half years of enrollment.[57] On its face, this constraint is not concerning. Those individuals preparing and sitting for the early bar exam will do so voluntarily and will enroll in a new specialized practical training before and after the exam.[58] This practical training is intended to replace any educational opportunities that students forego in their preparation for the early exam's requirements.[59]

But the change in enrollment may force students to refrain from enrolling in the opportunities that the ABA has suggested produce high quality education.[60] Then, with lower enrollment numbers for clinical, publication, and competition opportunities, those students who *are* pursuing these opportunities may have difficulty maintaining their program due to their own time constraints and limited resources. Similarly, schools operating under limited financial and faculty resources may find it difficult to justify offering specialized programs or courses when only a handful of students are available to enroll.

As the court reevaluates the early bar amendment in 2015, it should consider whether the schools are providing legal education at a level of quality consistent with (or better) than prior to the rule change. Thus, in deciding if the amendment is truly in the public interest, the court ought to consider *both* the success of the newly created practical coursework program for early bar exam takers, *and* the continued vitality of course offerings, clinical programs, scholarly publications, and moot court competitions.

B. Comparable Opportunities for the Education of All Students

The ABA's second objective states that whatever educational opportunities or specializations a school might offer, those opportunities should be reasonably proportional.[61] "A law school may offer . . . educational program[s] designed to emphasize certain aspects of the law or legal profession," such as publications and competition teams, but that school must also ensure that all

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55. ARIZ. SUP. CT. R. 34(b)(2)(C).

56. *See* Supplemental Information Regarding Early Bar Proposal, *supra* note 10.

57. Prior to the passage of the provisional rule change, law students at the University of Arizona were required to take a minimum of 13 units each semester. *Student Handbook*, UNIV. OF ARIZ., JAMES E. ROGERS COLLEGE OF LAW, at 15 (Feb. 19, 2013), *available at* http://www.law.arizona.edu/current_students/Student_Handbook/student_handbook_pdf.cfm. Because students plan their spring courses in the fall, the effects of the amended rule may extend beyond the provisional time period.

58. *See* Supplemental Information Regarding Early Bar Proposal, *supra* note 10.

59. *Compare* Letter from Hon. William J. O'Neill, *supra* note 17, *with* Supplemental Information Regarding Early Bar Proposal, *supra* note 10.

60. *See supra* notes 42–48.

61. ABA STANDARDS, *supra* note 42, at 17, Standard 301(b).

students have "opportunities to take advantage" of those programs.[62] For those schools that offer multiple tracks of education (such as full-time and part-time programs), this objective is satisfied if "the opportunities are roughly proportional based upon the relative number of students enrolled" in those tracks.[63] In sum, the second ABA objective ensures that regardless of what track a student elects, he or she will receive an educational quality roughly proportional to others.[64]

The provisional Rule 34 does not mandate that third-year students at Arizona law schools take the early bar exam.[65] Some students enrolled in Arizona's law schools will elect to complete a six-semester course of study and complete the bar examination in July following graduation.[66] Therefore, the early bar exam will create multiple education tracks at Arizona law schools, with some students taking the early-bar-exam curriculum and some students opting for a more traditional law school experience.

With multiple educational tracks, the court will want to look for evidence that schools make efforts to ensure their educational programs are available to all students. ARC was concerned that even the law schools' new courses, designed to provide practical skills, might only be available to students who take the early bar and not to the entire student body.[67] Additionally, as noted in the preceding Section, the court will want to evaluate to what extent the schools feel pressure to either reduce educational programs or diverse and specialized course offerings. As suggested by this second ABA objective, the court should consider whether early bar exam students are participating in clinical, publication, and competition team opportunities at levels that are proportionate to students who choose not to take the early exam.

Evidence of these concerns will inform the court as to whether the schools, under the provisional amendment, can satisfy the principles of the ABA's second objective and ensure the public interest in legal education is protected. Without reasonably proportional educational opportunities for all students, the quality of legal education that each student receives may be inconsistent. In turn,

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62. *Id.* at 17–18, Interpretations 301-2, 301-4.

63. *Id.* at 18, Interpretation 301-5.

64. *Id.* at 17, Standard 301(b).

65. *See* ARIZ. SUP. CT. R. 34.

66. Students enrolling in the traditional course may plan to practice in a different jurisdiction. For a discussion on how each jurisdiction determines if a bar exam score is transferable, see Supplemental Information Regarding Early Bar Proposal, *supra* note 10 ("The effect of early examination (prior to award of J.D.) on scores earned in Arizona, including reciprocal agreements, recognition of score, and portability of score, cannot be determined until final rule language is adopted and shared with each jurisdiction, allowing their rulemaking authorities to take action."). For an example of an Arizona Supreme Court case on how character and fitness does not receive full faith and credit, but the doctrine of comity may apply, see *Application of Macartney*, 786 P.2d 967, 969 (1990).

67. *See* Letter from Hon. William J. O'Neill, *supra* note 17 (stating that the proposal "moves law schools away from making positive changes in their curriculums [sic] for all students and places a premium on the educational experience for those chosen to prepare for early examination").

the court would not be able ensure that all Arizona graduates entering the State Bar of Arizona are equally qualified to provide competent legal representation and serve the public interest.

CONCLUSION

Undoubtedly, the challenges faced by law schools and students in today's market are daunting. But in searching for innovative solutions, the public interest in legal education should not be disregarded in exchange for individual advantages. As the ultimate arbiter of who can and cannot practice in the field of law, the Arizona Supreme Court has a duty to protect the public interest in competent representation. To protect this interest, this Essay suggests that using the educational objectives set forth by the ABA can provide the court a starting point from which to evaluate this very important issue. By analyzing whether the law schools are capable of maintaining effective and quality education for all students under the new amendment, the court can determine the amendment's affect on the public interest. Regardless of the amendment's effects, it is clear that the provisional amendment affects *people*—students entering the legal profession and clients who consume their services. With the potential to drastically affect legal education, the court must first ensure that the public interest is protected.