

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
Plaintiff,) Civil Action No. 95-1211 (CRR)
)
v.)
)
AMERICAN BAR ASSOCIATION,)
)
Defendant.)
)

**JOINT MOTION OF THE UNITED STATES AND AMERICAN
BAR ASSOCIATION FOR MODIFICATION OF THE FINAL JUDGMENT**

The parties move this Court to modify the Final Judgment entered in this case.

1. On June 27, 1995, the United States filed its Complaint, accompanied by a proposed Final Judgment, to which the parties had consented. On June 25, 1996, the Court entered the Final Judgment. The parties now agree to modify that Final Judgment to reflect changes in the law school accreditation process necessitated by regulations promulgated by the Department of Education pursuant to the Higher Education Act, 20 U.S.C. 1099b (1998).

2. The Final Judgment entered by this Court included provisions that among other things enhanced the involvement of the ABA's House of Delegates in certain aspects of the accreditation process carried out by the Council that governs the ABA's Section of Legal Education and Admissions to the Bar ("Section of Legal Education"). The Section of Legal Education has been administering law school accreditation since 1921.

3. After the decree was entered, the Department of Education determined that the House of Delegates' role in the accreditation process did not conform to provisions of the Higher Education Act, 20 U.S.C. 1099b (1998), and Department regulations, 34 C.F.R. § 602.3 (1999). The Department of Education informed the ABA that the Higher Education Act required either that the Council be the final decision-making authority or that the composition of the House of Delegates be changed. After discussions between the ABA and the Department of Education, the ABA decided to make the Council the final decision-making authority, and the Department of Education agreed that the House of Delegates could retain a "House of Lords" role, in which it could review and remand Council decisions, but not reverse them. The House would be limited to two remands of a Council decision, except for a decision to remove accreditation, for which there would be one remand. The ABA enacted the necessary changes to the accreditation process at its 1999 Midyear and Annual Meetings.

4. Accordingly, the parties agree that Sections VI and VIII of the Final Judgment should be modified to reflect the changes necessitated by the Department of Education's determination that the House of Delegates cannot be the final decision-maker on the rules that govern the accreditation process or accreditation decisions while preserving to the extent possible the oversight role of the House of Delegates in the accreditation process. The proposed modifications are in the public interest.

5. Section VI currently states:

The ABA shall:

(A) require that all Interpretations and Rules be subjected to the same public comment and review process and approval procedures that apply to proposed Standards.

The Court should vacate this provision and replace it with the following:

The ABA shall:

(A) require

- (1) that the adoption or amendment of all Standards, Interpretations, and Rules be subject to the same public comment process before the Standards Review Committee and Council and the same review process, including approval by the Council; and
- (2) that following notification by the Council of the Council's action to adopt or amend any Standard, Interpretation, or Rule, the House of Delegates shall vote either to agree with the Council's action, or refer it back to the Council for reconsideration based on reasons specified by the House, provided that the House shall be limited to referring an action back to the Council a maximum of two times, and that the decision of the Council will be final following its consideration of the last permitted referral;

6. Section VI(M) should be added to the Judgment to require that the ABA shall:

(M) permit appeals to the House of Delegates from a Council decision granting or denying provisional or full approval to a law school, or withdrawing, suspending or terminating approval of a law school. The House shall vote either to agree with the Council's action or to refer it back to the Council for reconsideration based on the reasons specified by the House. An action granting or denying provisional or full approval may be referred back to the Council a maximum of two times. An action withdrawing, suspending or terminating approval may be referred back to the Council one time. The decision of the Council will be final following its consideration of the last permitted referral.

7. Section VIII currently states:

The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

* * *

(D) providing the United States, during the term of the Final Judgment, a copy of all proposed changes to the Standards, Interpretations and Rules before they are acted on by the House of Delegates, and a copy of all Standards, Interpretations and Rules adopted by the House.

Because the House no longer adopts Standards, Interpretations, or Rules, the Court should vacate Section (D) and replace it with the following:

(D) providing the United States, during the term of the Final Judgment, a copy of all proposed changes to the Standards, Interpretations, and Rules before they are acted on by the Council, and a copy of all Standards, Interpretations and Rules adopted by the Council;

8. The United States does not believe that this modification is subject to the Antitrust Procedures and Penalties Act ("Tunney Act"), 15 U.S.C. § 16(b)-(h). However, in this case, the United States intends to follow the comment procedures outlined in the attached Explanation of Procedures. After completion of the procedures, and providing the United States has not withdrawn its consent to entry of the Modification Of Final Judgment, either party may file another motion requesting that the Court enter the attached Modification Of Final Judgment.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

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