

ABA Revises Judicial Clerkship Program Description Amid Controversy



The American Bar Association (ABA) has made adjustments to the description of its Judicial Clerkship Program following criticism from a conservative group that alleged the program's original wording suggested racial "quotas," potentially violating Title VI of the Civil Rights Act of 1964.

Allegations of Quotas Spark Changes

The Wisconsin Institute for Law & Liberty, a conservative advocacy group, filed a civil rights complaint in May, asserting that the ABA's language appeared to mandate racial quotas. Specifically, they argued that requiring law schools to send a specified number of students from underrepresented racial communities and asking judges to hire minority clerks, breached federal anti-discrimination laws. Title VI prohibits race, color, and national origin discrimination by entities receiving federal funds.

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ABA's Response and Program Revision

Annaliese Fleming, the ABA's senior associate executive director and general counsel, issued a statement clarifying the situation. She explained that the program itself had not been altered but that the language describing the program had been updated to more accurately reflect its operations. "In reviewing the program materials, some language was removed that did not accurately reflect the operation of the program," said Fleming.

Previously, the Judicial Clerkship Program's description stated that law schools participating in the initiative were expected to "send (and underwrite the costs for) four to six law students who are from underrepresented communities of color." The text also included a commitment for judges to hire at least two minority law clerks within five years.

The revised language no longer includes such explicit quotas. Now, it encourages law schools to "select a diverse group of students using criteria aligned with the ABA's Goal III objectives." The reference to judges committing to minority hires has been entirely omitted.

ABA Defends Its Program Goals

Fleming emphasized that the program remains committed to diversity and inclusivity, in line with the ABA's overarching Goal III, which seeks to enhance diversity and eliminate bias in the legal profession and judicial system. She also reaffirmed that the ABA has not imposed restrictions on which students can participate, leaving those decisions entirely to the discretion of individual law schools.

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In response to the conservative group's allegations, Fleming expressed confidence in the legality of the ABA's initiatives. "The programs at issue are lawful, and we intend to defend them vigorously against any challenges," she stated.

Wisconsin Institute's Legal Actions

The Wisconsin Institute for Law & Liberty's complaint, filed with both the U.S. Department of Justice and the Department of Education, extended its scrutiny to the participating law schools. The institute claimed that the ABA, by receiving federal funding and providing educational services, is subject to Title VI compliance. Their complaint called for an investigation into both the ABA and the universities involved in the Judicial Clerkship Program.

Despite the ABA's clarifications, the institute has yet to respond to the recent changes, and it remains unclear if further legal action will follow. Skylar Croy, associate counsel at the Wisconsin Institute, did not immediately respond to requests for comment.

Conclusion

The ABA's adjustments aim to address concerns over potential misinterpretations of its Judicial Clerkship Program while maintaining its commitment to fostering diversity. The revised description now places emphasis on the broad inclusion of diverse students without making explicit reference to specific quotas. However, the situation underscores ongoing tensions between efforts to promote diversity and claims of reverse discrimination, with potential legal ramifications for organizations like the ABA moving forward.

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