The New York State Bar Association's March 2016 opinion holding that private law firms may ethically charge clients fees for work that unpaid student interns perform is fundamentally flawed and should be reconsidered. *See* https://nysba.org/CustomTemplates/Content.aspx?id=62862 (Mar. 31, 2016).

Critically, the opinion assumes that unpaid internships at private firms "compl[y] with applicable law" – a proposition that is highly doubtful notwithstanding the Second Circuit's rejection of the U.S. Department of Labor's six factor test for determining interns' coverage under the Fair Labor Standards Act ("FLSA"). Under the Second Circuit's "primary beneficiary" test, outlined in *Glatt v. Fox Searchlight Pictures, Inc*., 811 F.3d 528 (2d Cir. 2016), a law firm that charges for an intern's free labor unquestionably derives a substantial and direct economic benefit. It is unlikely that this benefit can be offset simply because the intern's school, in exchange for the intern's tuition dollars, awards the intern academic credit. At the very least, the FLSA and New York Labor Law's tests for determining whether an intern is covered and thus due to be paid is a fact-intensive process that would likely lead to coverage in most for-profit law firm instances, especially if the firm is billing clients for the intern's work. The Ethics Committee's rendering of an opinion without even considering the requirements or purposes of the FLSA and New York Labor Law – remedial laws that require employers to pay the minimum wage for all work they "suffer or permit" – undermines the opinion's effectiveness and credibility.

More broadly, the opinion fails to consider the circumstances of most unpaid legal internships and the important moral questions they raise. As many have documented, law students today are burdened with enormous debt, stemming from the unprecedented cost of undergraduate and law school education. At the same time, entry-level, paid jobs are scarcer than ever. Students who cannot afford to work for free, including many students of color, either must forgo unpaid internships and lose out on the networking opportunities they offer, or take on more debt in order to intern unpaid. This catch-22 undermines the opportunities for law students, including students of color, when they enter the job market as graduates. Private law firms, which undoubtedly have the resources to pay interns the minimum wage (currently $9/hour in New York), should not contribute to these hardships. In addition, permitting and encouraging private firms' use of free labor hurts competing firms that are doing right by their interns, and paying the minimum wage, promoting a race-to-the-bottom in the field.

As lawyers, we have an ethical duty to "seek improvement of the law[.]" *See* N.Y. Rules of Professional Conduct No. 1. Just because students with no bargaining power are willing to work for free does not mean that it is right for private firms to employ them, especially when firms profit from their work by charging clients fees. This not only undermines the right to be paid "a fair day's wage for a fair day's work" enshrined in federal and state minimum wage laws, it devalues the work of aspiring lawyers and ultimately all legal work.

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