

# The New York Times

## *Federal Inquiry of Charlotte Law School Is Disclosed by Suit*

By **Elizabeth Olson**

Sept. 13, 2017

Barbara Bernier arrived at Charlotte School of Law four years ago to teach constitutional and other law courses.

But what she found at the for-profit law school was different from her prior teaching experiences, so she quit her tenured post in August 2016. A few months earlier, she had filed a federal claim that the school and its owner, the InfiLaw Corporation, defrauded taxpayers of \$285 million over a five-year period.

The whistle-blower lawsuit — which had been kept sealed under the federal False Claims Act — came to light in recent weeks, along with the disclosure that it had prompted a federal investigation. The fraud practices alleged in the lawsuit include evading federal requirements that for-profit schools receive at least 10 percent of revenue from sources other than federal student loans.

Details of that and other practices, including providing stipends to at-risk students to delay taking the state bar exam, were cited in Ms. Bernier's lawsuit.

When such lawsuits are successful — after litigation that takes several years or more — the whistle-blower receives a percentage of the total amount awarded.

It was unsealed last month when the United States attorney's office in Orlando, Fla. — where the lawsuit was filed, in InfiLaw's state — filed a notice that it would not intervene in the lawsuit.

According to The Charlotte Observer, which reported the unsealing last month, federal prosecutors in Orlando asked in August 2016 that Ms. Bernier's complaint be kept under seal while the federal government decided whether to take part in the case.

One of the prosecutors, Jeremy Bloor, said at the time that the United States attorney's office in Charlotte, N.C., "had initiated a criminal investigation" into both Charlotte Law and InfiLaw.

A year later, in August 2017, Mr. Bloor filed a motion to unseal Ms. Bernier's lawsuit. The motion noted that the federal government was not intervening in the case, although there was no indication whether the decision was influenced by lack of evidence or another reason.

Significantly, however, the motion noted that the investigation "will continue."

It is not known if the investigation remains active; the federal authorities in Charlotte and in Florida declined to comment.

In a statement, Charlotte Law acknowledged that, at least until last February, there had been a federal investigation, and said that its personnel had been cooperative.

"We have cooperated fully in the investigation and provided information that we believed satisfactorily answered the questions raised," the school said.

InfiLaw did not respond to requests for comment.

Despite the decision by federal prosecutors not to intervene, Ms. Bernier will continue her federal claim, hoping to refund hundreds of millions of dollars to the government as well as collect a percentage of any amount awarded.



Barbara Bernier filed suit against Charlotte Law School shortly after leaving it in 2016, accusing the for-profit institution of illegally evading federal requirements on the sources of its revenue.

Charlotte Law shut its doors last month, and it still faces several state and federal lawsuits from disgruntled law students who are saddled with tens of thousands of dollars in student debt. There is also a civil fraud inquiry on behalf of students being conducted by the North Carolina attorney general's office.

The school's problems escalated in 2016, when the American Bar Association's legal section, which accredits law schools, placed Charlotte Law on probation for deficiencies in several areas, including student admissions. A short time later, the federal Department of Education cited those shortcomings when it ended the school's eligibility for federal student loans — some \$337.1 million of which flowed into the school's coffers between 2010 and 2016.

According to Ms. Bernier, school officials shored up student numbers and performance metrics through unusual means. The Charlotte Law dean's office, she said in her legal papers, "telephoned graduates the night before the bar exam to actively discourage them from taking the exam the next day."

The reason for the last-minute calls and the offer of a \$5,000 stipend was to reduce the number of first-time bar exam takers who might fail it, she explained in a telephone interview.

Last January — after Ms. Bernier's suit had been filed — Charlotte's local public radio station, WFAE, broadcast recordings of a Charlotte Law school dean describing paying at-risk students to delay taking the bar and enroll in a bar preparation course. In the recordings, a dean noted that without deferring 21 students for the July 2015 exam, the pass rate "would have likely been 20-something percent."

Low bar passage rates not only tarnish a law school's reputation, but also threaten its American Bar Association accreditation and federal student aid.

Charlotte Law later introduced a mandatory bar preparation course, which students had to pass to obtain their law degree, Ms. Bernier said in an interview.

"That meant some students had to return to school for an additional semester, and take out student loans in order to get the degree they thought they had earned," she added.

Despite such efforts, Charlotte Law's bar passage rate has been noticeably low. In February 2017, only 25 percent of first-time takers passed North Carolina's exam. In February 2013, the comparable passage rate was 60 percent. Students who do not pass the bar cannot be licensed to practice law.

The school, Ms. Bernier alleged in her suit, pumped up its enrollment numbers by actively targeting military veterans for their paid educational benefits and admitting African-American students "who failed at an extremely high rate, and most did not make it through a second semester."

Before arriving at Charlotte Law, Ms. Bernier, who is Haitian-American, taught at several law schools, including Florida A & M College of Law for 10 years. She left there after filing a lawsuit charging discriminatory treatment and salary inequity. The lawsuit was settled, she said.

InfiLaw, a Naples, Fla., entity that is 88 percent owned by Sterling Partners, a venture capital firm with offices in Baltimore and Chicago, owns three for-profit law schools. Its consortium of schools also includes Florida Coastal School of Law, in Jacksonville, and Arizona Summit Law School, in Phoenix. All of the schools have been on rocky ground in recent years because of declining enrollment and low bar passage rates.

Lawyers for InfiLaw asked for a delay in responding to Ms. Bernier's lawsuit until Oct. 20, said Ms. Bernier's lawyer, Coleman W. Watson of Orlando.

"At Charlotte, there was constant talk of investors — referring to the school's owners," Ms. Bernier said, "and the focus was on the number of students. They were bringing them in and setting them up and then failing them out."

**Correction:** *September 13, 2017*

*An earlier version of this article misstated when Barbara Bernier began working at Charlotte School of Law and when she left. She began working there four years ago, not three. She left in August 2016, not January 2016.*

A version of this article appears in print on Sept. 14, 2017, on Page B6 of the New York edition with the headline: Whistle-Blower Suit Discloses Inquiry Into Practices of For-Profit Law School