

Comments submitted by American Bar Association, Section on Legal Education and Admission to the Bar, Committee on Clinical Skills

to the

American Bar Association, Section on Legal Education and Admission to the Bar, Standards Review Committee

on

Security of Position, Academic Freedom
and Attract and Retain Faculty
Draft for January 8-9, 2011 Meeting

The American Bar Association, Section on Legal Education and Admission to the Bar, Committee on Clinical Skills (“the Committee”) submits these written Comments to urge the Standards Review Committee (“SRC”) to reject the proposed recommendations to change Standard 405 (c). The Committee was established, in part, to review and make recommendations “with respect to the role of skills training in law schools including programs of instruction and the status of teachers.”¹ The committee’s mandate recognizes the interlocking nature of status with programs of instruction and the importance of status to a quality legal education.

The proposed changes to 405(c) are harmful to legal education because the changes will leave clinical faculty without the security of employment that is needed for full participation in governance matters related to their respective law schools, including matters relating to developing innovative curricular offerings that are necessary to provide law students of the 21st century a sound legal education. Security of employment is also essential to ensuring clinical faculty’s participation in the broader current debates to change legal education, free from political pressures to limit the reach of clinical programs.

Through its reports on legal education and its regulatory function, the ABA has consistently sought to shape legal education to ensure its graduates are prepared for the profession. Through numerous reports and committees chaired by judges, lawyers and legal educators, the ABA has called on law schools to improve the ways they prepare students to understand and become competent, ethical beginning practitioners.² Most recently, these ABA perspectives have been reinforced by a study of the profession that included legal educators and others who study professional

¹ <http://www.abanet.org/legaled/committees/committees.html>

² See, Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183 (2008)

education, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW.³ (THE CARNEGIE REPORT).

Just at the time that law schools are poised to make some needed changes, we fear the proposed changes in status of clinical faculty will rob legal education of its most important voices in this change process. The CARNEGIE REPORT, together with a changing landscape for employment in the profession, has sparked the potential for change that the ABA has long supported. Law Schools are currently exploring through examination of teaching and programs of instruction how students might better develop professional identity and professional practices and skills. For the change to be real and not cosmetic, faculty who know how to educate students for the profession need a genuine and protected voice in these faculty conversations.

Thus, one of the important goals served by security of employment for clinical faculty –indeed, all faculty -- is to place faculty in a position to exercise independent judgment about how best to educate students for the profession. The design of quality programs for students, especially in times of shrinking resources, requires a robust debate about how to structure an educational program that thoughtfully provides students with professional growth opportunities to learn needed skills, norms, values and perspectives. Candid conversations and sometimes disagreements are needed to forge agreements about quality programming.

Without security of employment and a full voice for clinical faculty, a promising time in legal education may result in a diminished instead of enhanced professional education. In 1984 and again in 1996, with the passing and strengthening of 405 Standards for clinical faculty, the ABA recognized the link between giving security to clinical teachers and improving legal education. By requiring clinical faculty's participation in governance and legitimating their voices, the ABA increased the likelihood that a lawyer's education would prepare him or her for practice and thereby protect future clients. Clinical faculty with tenure requirements, and those receiving support for scholarship, have produced volumes that improve practice and teaching about practice.

Security standards are also necessary to protect the most vulnerable faculty from the current political climate that pressures clinics to restrict their work. More than other faculty, the views and presumed views of clinical faculty are often on a more public stage through the clinic's legal work. Censoring and stopping clinical legal work has occurred through public pressure from courts and legislatures that are instigated by powerful defendants in lawsuits brought by clinics. Those of us who teach in clinics and the Deans on our committee can attest personally to regular instances of pressures on

³ WILLIAM SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

Deans to restrict the clinics' work. Clinicians without security of employment are more susceptible to these claims and more likely to self-censor and restrict their legal work.

If the SRC approves the recommended change in 405 that permits different statuses for different faculty based on specialization, the progress made by 405 (c) and its potential for future progress will be eliminated. The fragmentation of legal education that THE CARNEGIE REPORT and other ABA reports have criticized is a likely and unfortunate result even at a time of great promise in legal education. We urge the Standards Review Committee to reject the suggested changes to 405. Instead, we ask that you reaffirm those who had the foresight to create this ABA Clinical Skills Committee and linked program instruction with status, recognizing that you cannot have enhanced programming while diminishing the status of those teaching it.

Thank you for your consideration of these comments.

Sincerely,

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