Introduction

Following a hearing conducted at its meeting on June 27-29, 2013, and subsequent processes and proceedings, the Accreditation Committee of the American Bar Association Section of Legal Education and Admissions to the Bar (the “Committee”) imposed sanctions upon University of Kansas School of Law (the “Law School”) for willful violation of the ABA Standards for Approval of Law Schools.

The Committee previously determined that the Law School violated Standard 105-1 and Interpretation 105-1(4) (requiring that a law school obtain acquiescence before making a major change, including establish a new or different program leading to a degree other than the J.D. degree) and Standard 308 (specifically prohibiting a law school from establishing a degree program other than its J.D. degree program without obtaining the Council’s prior acquiescence¹), in that it established a degree program and enrolled students in classes leading to an LL.M. degree prior to applying for or receiving acquiescence.

The sanctions imposed, more specifically described below, are this public censure and a monetary penalty of $50,000.

Factual Background

In January 2012, the faculty of the Law School approved the institution of a LL.M. Program in American Legal Studies (the “Program”). The Program was designed primarily for students with a basic degree in law from an accredited foreign institution to prepare them for further law study in the United States and/or to sit for the New York bar exam. The Law School began to promote the Program on its website in January 2012. Two foreign students were accepted into the Program to begin their studies in fall 2012. The Law School did not apply for acquiescence in the establishment of the Program prior to accepting these students.

The students who had been accepted into the Program arrived at the Law School to begin the Program in August 2012. The University of Kansas Registrar informed the Law School administration that the students could not be enrolled in the Program because the LL.M. degree

¹ The Council has delegated authority to the Committee to make decisions with respect to applications for acquiescence in certain major changes, including the establishment of a new or different program leading to a degree other than the J.D. degree. See, Interpretation 105-6 and Rule 5(a)(3) of the Rules of Procedure for Approval of Law Schools.
in American Legal Studies did not exist in the University system. The Law School was informed that the Program could not be established without the approval of the Kansas Board of Regents. The Law School applied for such approval by application dated August 13, 2012 and submitted on or around September 3, 2012.

The Law School had an existing LL.M. program in Elder Law which received acquiescence in 2003. The Elder Law Program is designed for students with a J.D. degree from an ABA approved law school and, in fact, a J.D. degree from an ABA approved law school is a requirement for admission to the Elder Law Program. The two students who had been accepted into the American Legal Studies LL.M. Program for fall 2012, and who could not be enrolled in that Program because it lacked the required Board of Regents’ approval, were enrolled in the Elder Law LL.M. Program, despite the fact that neither student had a J.D. degree from an ABA-approved law school and thus did not satisfy the admission requirements for the Elder Law Program.

The Dean, at the hearing before the Committee, stated that he had been told that the situation had been explained to the students. He reported that he did not speak to them about it and did not know what exactly they were told. No written communication with these students advised them either that Board of Regents approval or ABA acquiescence was required and had not been granted. At the hearing, the Dean stated that he assumed the students paid the full tuition that would have been required for the Program, being $26,200.

After applying to the Kansas Board of Regents for approval to award the new LL.M. degree in American Legal Studies, the Law School wrote to the Consultant’s Office to provide notice that the Law School had added a new concentration in its existing LL.M program, which it did not consider a new degree. The Law School expressed its hope to avoid the need for acquiescence. The Law School did not disclose that an application was pending for a new degree before the Kansas Board of Regents. That information was not provided even after the Consultant’s Office advised the Law School that the Committee would need to know whether the new program required changes to the Kansas degree. On three separate occasions after applying for approval of the new degree from the Kansas Board of Regents, the Law School repeated its position to the Consultant’s Office that the new program was simply a new concentration in the existing LL.M. program, without disclosing its pending application for approval of the degree. The Law School also did not reveal that two students had been admitted to the Program and were currently enrolled in the Elder Law LL.M. Program, despite the fact that the students did not satisfy the admission requirements, had not applied to that program, and presumably were not expecting to receive that degree.

On December 19, 2012, the Kansas Board of Regents approved a new Master of Law in American Legal Studies at the Law School.

At its January meeting, the Committee directed the Consultant’s Office to contact the Dean. At that time the Dean advised the Committee that two students had been admitted to the Program and were enrolled at the Law School.

At its April 11-13, 2013 meeting, the Committee granted acquiescence to the Law School for the establishment of the Program, but directed that the Law School show cause why it should not be required to take appropriate remedial action, and/or have sanctions imposed upon it or be placed on probation pursuant to Rule 16(a)(5), (b), and (c).
One of the affected students was thereafter awarded an LL.M. in American Legal Studies. The other student remains enrolled in the Program.

Sanctions

Pursuant to Rule 16(f) of the Rules of Procedure for Approval of Law Schools, the Committee has the power to impose any sanction other than probation or removal from the list of approved schools. The conduct for which sanctions may be imposed include initiating a major change or implementing a new program without having obtained the prior approval or acquiescence required by the Standards. [Rule 16(a)(5)] Sanctions may be imposed even if a school has, subsequent to the actions that justify sanctions, ceased those actions or brought itself into compliance with the Standards. [Rule 16(b)]

Pursuant to Rules 16(a), (b) and (c) of the ABA Rules of Procedure for Approval of Law Schools, the Committee imposed the following sanctions upon the Law School:

(a) The issuance of this public censure of the Law School. The public censure (or a link to it) must be posted prominently on the Law School’s website for a period of 12 months. The censure also will be reported for a similar period on the website of the ABA Section of Legal Education and Admissions to the Bar. The Managing Director shall determine what constitutes prominent display on the Law School’s website.

(b) A monetary penalty of $50,000, to be paid to the ABA Section of Legal Education and Admissions to the Bar. This money will be utilized for the specific purpose of supporting the work of the Section of Legal Education and Admissions to the Bar focused on assuring law schools’ compliance with the Standards.

The Committee considered the amount of the monetary penalty to be appropriate, given that the Committee found the Law School to have made misleading statements in the matter, by representing to the Consultant’s Office and to the Committee that the Program it was proposing to begin was merely a new concentration in an existing LL.M. Elder Law Program, when the admission requirements and purpose of the programs were different, and despite the fact that the University had informed the Law School that this was a new program for which Board of Regents approval was required. At best, the Law School’s conduct in that regard was grossly negligent. Moreover, the Law School demonstrated an absence of candor, when it failed to voluntarily inform the Consultant’s Office or the Committee that students had already been admitted to the Program and were enrolled in the Law School. The Committee also considered the amount of the monetary penalty to be appropriate, given the significant risk at which the Law School placed the students who were admitted to the Program prior to the Program’s approval by the Board of Regents or acquiescence by the Council. The Committee also was mindful of the necessity to deter the Law School and other law schools from disregarding the requirements of the Standards.