January 10, 2014

Jeffrey Lewis  
Saint Louis University School of Law  

Re: Use of the Term “Clinical Course(s)” in Proposed Accreditation Chapter 3

Dear Dean Lewis:

Last January, I wrote to you that use of the term "in-house clinical programs" in proposed ABA Accreditation Standard 303(b)(1) of the Standards Review Committee’s January 2013 draft was problematic. I proposed that the better term would simply be "law clinic." The Committee’s subsequent drafts dropped the term “in-house” but continued to refer to law clinics as “clinical courses,” in the process differentiating a “clinical course” from a field placement course. No explanation was ever provided to me, nor was one offered to my knowledge at any Committee meeting, why “clinical” is for the first time in any standard being used to refer solely to a law clinic and explicitly excluding field placements/externships. For the reasons set out below, the use of the “clinical” in the Standards to exclude field placements/externships is contrary to the long-standing usage of that term by the ABA and legal educators and should be changed to “law clinic.”

“Clinical course” has for decades been understood and used by the ABA to include both law clinic and field placement/externship courses. Current ABA Standard 302(b) requires substantial opportunities in “live-client or other real-life practice experiences” (i.e., clinical experiences) and explains in Interpretation 302-5 that these can be accomplished through “clinics or field placements.” The ABA’s Annual Questionnaire, reflecting that Standard, defines “faculty-supervised clinics” and “field placements” and does not use the term “clinical” to exclude field placement courses. The Section’s Managing Director, in discussing proposed changes to the accreditation standards at the recent AALS annual meeting, repeatedly used the term “clinical” when discussing law clinics and field placement courses, not as a term of art reserved for just law clinics.

Chapter 4 faculty standards use the term “clinical” to refer to law clinic and field placement/externship faculty and would be significantly impacted by no longer considering field placement courses as “clinical.” Standard 405(c) addresses security of position for “clinical faculty” and has been applied by the ABA, through site visits and accreditation reviews, to faculty that teach law clinics and field placement courses. The ABA’s “Format for an ABA Site Team Report” repeatedly uses the phrase “clinician” to include faculty who teach field placement courses, not just law clinics.

Although perhaps not the Committee’s intent, by excluding field placements/externships in proposed Standards 303 and 304 from the definition of “clinical,” those new standards would have the effect of no longer bringing faculty who teach field placement courses within the
The coverage of Standard 405(c) as they no longer would be considered “clinical faculty.” The Committee should not strip this important protection for field placement faculty and surely not do so simply by excluding field placement courses from the term “clinical.”

Within the legal academy, “clinical” also is understood and used to include both law clinic and field placement/externship courses. As I explained in my January 2013 letter, as Associate Dean for Clinical Programs I oversee both our law clinic and field placement courses, and the use of the term “clinical” in the titles at other law schools also encompasses both law clinics and field placements. The ABA Section on Legal Education and Admission to the Bar’s own Clinical Skills Committee has included faculty members who are directors of externship programs. The AALS’s Clinical Legal Education Section includes law faculty who teach field placement and law clinic courses. The Clinical Legal Education Association (CLEA), the nation’s largest association of law faculty, has always included faculty who teach law clinics or field placement courses. The Clinical Law Review, jointly sponsored by the AALS, CLEA, and NYU Law School, publishes peer-reviewed articles on both law clinic and externship topics. The Center for the Study of Applied Legal Education’s (CSALE) extensive tri-annual survey of “clinicians” includes those who teach in either a law clinic or field placement program. To all these professional organizations, the term “clinical courses” encompasses both law clinics and field placement/externship courses, and the term “clinician” refers to faculty who teach either a law clinic or field placement course.

Therefore, I recommend that the Committee insert the phrase “law clinics” for "clinical course" in proposed Standards 303(a)(3), 303(b)(1), 304(b), and Interpretation 311-2(a)(2) when seeking to differentiate those courses from field placement and simulation courses. The present draft’s exclusion of field placements/externships from the ambit of “clinical” and treatment of externship faculty as no longer “clinicians” are contrary to the longstanding practice of the ABA and the legal academy and not justified.

If for some reason the Committee believes that only law clinics, and not field placements, should be considered “clinical,” then I ask that the Committee explain why such a dramatic change is justified and why my request to use the phrase “law clinic” in its place would be problematic.

Please let me know if you have any questions or if I can help your Committee in any way.

Sincerely,

Robert R. Kuehn
Professor of Law
Associate Dean for Clinical Education

cc: Gemma Solimene & Barbara Fedders, Co-Chairs, ABA Clinical Skills Committee