January 29, 2014

Council of the ABA Section of Legal Education
and Admissions to the Bar
321 North Clark Street
Chicago, Illinois 60654

Dear Council Members,

I am a clinical law professor of color. As such, I write to express my deep concerns with efforts to adopt new standards that would eliminate the existing Accreditation Standard 405(c). As set forth below, the existing Standard 405(c), including its interpretations, is especially necessary to 1) allow clinical law professors to develop innovative pedagogical methodologies that broaden perspectives and give students the range of experiences necessary to handle the array of complex lawyering issues they will confront in their respective practices; to work with marginalized individuals, institutions and communities who otherwise lack access to counsel and cannot secure justice; and to translate these varied experiences to scholarship; 2) enable law professors of color to bring otherwise marginalized perspectives to the academy through teaching, scholarship and service; and 3) help address the various diversity crises in legal education.

As a clinical law professor for fourteen years, and in my former capacity as the President of the Clinical Legal Education Association, I am all too familiar with the several occasions over the past couple of decades in which clinical law professors have faced criticism, pressure and opposition from a range of constituencies—alumni, trustees, donors, elected officials, private companies, opposing counsel—because of their work.¹ I know firsthand that much of our work—such as representing individuals who are incarcerated or undocumented, engaging in law reform work through litigation or the legislature, or representing communities seeking to preserve their health and safety—meets with criticism and even anger. Indeed, the very essence of clinical legal education—to give students lawyering experiences on behalf of marginalized individuals and communities—is constantly at risk of being compromised or worse because of opposing views from powerful stakeholders who are equipped to exert pressure on law schools and universities. Without the protections afforded in the existing Standard, clinical law professors engaging this work would be stifled. They would face the Hobson’s choice of engaging the work and risk termination or staying away from the work at the outset.

Moreover, as my colleagues from across the United States have detailed in prior written submissions and their oral testimony in January, 2014, professors of color are also particularly at risk if the existing Standard 405(c) is abolished. In many instances, we add perspectives to the classroom—through a richer, deeper examination of traditional doctrine or through courses designed to examine these issues thoroughly—that reflect the experiences of marginalized individuals and

¹ See generally Robert R. Kuehn & Bridget M. McCormack, Lessons from Forty Years of Interference in Law School Clinics, 24 Geo. J. L. Ethics 59 (2011) (detailing instances of political and other types of interference with law school clinical programs)
communities. We often bring perspectives into the classroom that would otherwise go unnoticed or ignored. Many of us do the same with our scholarship, developing fields of legal discourse or broadening and deepening traditional scholarship. Last, many of us carry obligations to address issues of fairness, equality and consciousness within our respective institutions—the need to hire professors of color, to bring marginalized perspectives into the classroom, to ensure better treatment of staff, and to cultivate sustained relationships with surrounding communities. All of these issues are hard, difficult and, for many, uneasy. As result, tensions and conflict arise. The existing Standard 405(c) is necessary to allow all professors, but particularly professors of color, to address these issues without fear of reprisal.

Last, Standard 405(c) is necessary to attract and retain stellar, racially diverse faculty. For far too long we have faced diversity crises in legal education. The lack of racial diversity in clinical legal education is particularly acute and longstanding.\(^2\) According to the Center for the Study of Applied Legal Education, 86.6% of clinical law professors who responded to a survey conducted in 2007-8 identified as white.\(^3\) During this same reporting period, the Association of American Law Schools reported that 74.4% of faculty identified as white.\(^4\) Thus, there are several racial diversity crises in legal education. Security of position is a critical element—among many—necessary to bring more individuals of color into the academy and to make sure they remain.

The existing Accreditation Standard 405(c) is critical to attract and retain stellar, racially diverse faculty, to allow faculty to take on the tough issues that innovative teaching, scholarship, service and practice demand, and to teach students about their obligations to provide access to justice for marginalized individuals and communities. Throughout my career, first as a public defender and now as law professor, I know all too well that innovation involves risk and always meets opposition. The existing Standard 405(c) allows us all to address and learn from opposing voices, not to shy away from them. For these reasons, I ask that the Council reject the proposed changes to Standard 405(c) and retain the existing Standard and its interpretations.

Sincerely,

Michael Pinard
Professor of Law
Director, Clinical Law Program

