I am writing to comment on the proposed adoption of an experiential learning requirement within Standard 303. I would urge the Council to adopt the original proposed six credit requirement, rather than the recently circulated proposal mandating fifteen such credits. I will try not to repeat points made elsewhere criticizing the 15 credit alternative, with which I generally agree.

Although I champion experiential learning in law school, and recently helped spearhead major curricular reform at my own institution that places a much greater emphasis on experiential learning, I am concerned that the 15 credit requirement, at least as currently conceived, will prove too onerous and confining on many law schools.

The original six credit proposal provides that the experiential learning requirement can be satisfied by “(i) simulation course(s); or (ii) clinical course(s); or (iii) field placement(s).” The proposal also states some general criteria for qualifying as an experiential course: it “must be primarily experiential in nature,” and must fulfill four other requirements, including providing “multiple opportunities for performance” and “opportunities for self-evaluation.”

The alternative proposal raises the experiential learning requirement from six to fifteen units, but in no way broadens or modifies the definition of what counts as an experiential course. As you are no doubt aware, the California State Bar has proposed its own 15 credit experiential learning requirement. However, the California definition of what meets the 15 credit requirement is broader than that proposed by the ABA, and would include many courses or course elements that would not necessarily be characterized as “simulation courses.”

At my own law school, beginning in Fall 2014, we will require all students to take 30 credits of coursework that we deem to have a significant experiential component.
Importantly, we have taken to heart the Carnegie Report, which implored legal educators to integrate skills, knowledge, and professional values in an organic way. Thus, rather than simply relegate experiential learning to clinics, externships, and mock trial and moot court activities, we have deliberately sought to integrate aspects of experiential learning into our doctrinal classes. But it is not clear if all of these classes would meet the ABA definition, or how professors teaching the courses will modify their curriculum to ensure that the courses do meet that definition.

As just one example, our first-year Civil Procedure class will be taught, in part, in the context of simulated litigation involving a Torts, Contracts, or Property-based fact pattern. Although we plan to offer a number of simulated exercises and writing assignments, the appropriate “mix” of theory and practice is something with which we are still experimenting. We are also still sorting out the optimal types and amount of assessments we utilize—for example, peer-assessment versus self-assessment. And we plan to collect and analyze data about how well our experiments serve our various pedagogical goals.

But if the ABA requires that the course a “simulation course” that is “primarily” experiential in nature, and that it “provide multiple opportunities for performance” and “opportunities for self-evaluation,” this could stifle some of the creativity and experimentation in which our Civil Procedure professors are engaging. Professors may disregard empirical evidence that may be gathered about what works best. They may eschew some of the deep integration championed by the Carnegie Report. And because it does not appear that a course can be given partial credit toward the experiential learning requirement (e.g., 2 out of 4 units), this exacerbates the risk that professors may “gerrymander” their courses to guarantee that they meet the ABA definition, regardless whether they believe that this serves the best interest of students.

If the ABA definition of what it takes to satisfy the experiential learning requirement is not broadened, law schools will either be required to rely more heavily on clinics (which are wonderful but can be extremely resource-intensive); externships (which can raise issues about ensuring that they meet the ABA’s requirements); or on “simulation courses” that are narrowly tailored to meet the definition of an “experiential course.” This has serious economic implications, and can stifle curricular innovation.

The six credit requirement provides an adequate floor that ensures that all law schools provide a meaningful experiential component. If the ABA is going to continue to consider the alternative 15 credit proposal, it should consider (a) broadening the definition of what counts as an “experiential course,” and/or (b) consider allowing a portion of the credits of a course that contains a substantial experiential component, even if it is not “primarily” experiential in nature, to count toward the requirement.
I expect that in the coming years, more and more law schools will, like my own, go far beyond what the ABA requires in terms of experiential training, both because they realize that this is what our students need and because it is what prospective students will likely demand. However, a requirement by an accrediting body that all law schools conform to a fairly narrow definition of “experiential courses” may have unintended consequences that ultimately harm the very persons they are designed to benefit—law school students and, ultimately, the clients they will come to serve.

Sincerely,
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