Barry A. Currier           c/o email: jr.clark@americanbar.org  
Section of Legal Education and Admissions to the Bar  

Re: Comment on Proposed Standard 303

Dear Mr. Currier:

I am writing in response to the notice for public comment on proposed revisions to Chapter 3 of the Accreditation Standards. For the reasons set out below, and as I will further explain at the hearing on February 5, Standard 303(a) should require 15 credits of experiential course work, including a requirement for each student to take a law clinic or field placement course prior to graduation.

For over 30 years, special committees of the ABA have been calling on the Section of Legal Education and Admissions to the Bar (Section) to require more professional skills training for law students, including courses that involve work with real clients. The 1979 ABA Report and Recommendation of the Task Force on Lawyer Competency: The Role of Law Schools, followed by the 1983 Task Force on Professional Competence, the 1992 ABA Report of the Task Force on Law Schools and the Profession (the MacCrate Report), and most recently the 2014 Task Force on the Future of Legal Education all pointed out the value to students from practice-oriented instruction in courses such as law clinics, externships, and simulations and the need for greater attention to such courses in law school. The Task Force on the Future of Legal Education’s report concluded that legal education needed to shift still further from doctrinal instruction toward more focused preparation for delivering legal services to clients. The ABA’s House of Delegates urged the Section in a 2011 resolution “to implement curricular programs intended to develop practice ready lawyers including, but not limited to enhanced capstone and clinical courses that include client meetings and court appearances.”

However, the Accreditation Standards do not reflect these calls from within the ABA. At present, Standard 302(a)(4) requires “substantial instruction” in professional skills, which the Section has interpreted to be satisfied by a single credit in a skills course. Proposed Standard 303(a)(3) would increase this to 6 or 15 credit hours, but would not require a law clinic or field placement. Instead, Standard 303(b)(1) would continue the vague, largely unenforceable, requirement that a school shall provide “substantial opportunities” to students for faculty supervised law clinics or field placements. Lest anyone think that the word “substantial” in Standard 303(b)(1) would assure students that they will be able to obtain clinical training, Interpretation 302-5 states that a school “need not offer these experiences to every student.”

Recent law school graduates often point out the inadequacy of the current level of professional skills training in law school. The ABA Task Force on the Future of Legal Education reported that much of what it “heard from recent graduates reflects a conviction that they received insufficient development of core competencies that make one an effective lawyer,
particularly those relating to representation and service to clients.” Echoing this concern, the ABA’s Young Lawyers Division passed a unanimous resolution in August 2013 calling on the Section to require at least one academic grading period of practical legal skills clinical experiences or classes as a graduation requirement, noting that “a J.D. degree alone does not make a lawyer.”

Surveys of recent law graduates show the need to require much, much more professional skills training, including clinical coursework. The ABA’s After the JD asked lawyers two to three years into their new careers to rate the importance of certain experiences and courses during law school in helping them successfully transition to practice. Clinical courses were rated the third most helpful experience, trailing only legal employment during summers and the school year; legal writing and internships followed law clinics. Behind those practice-based experiences were the traditional doctrinal courses that dominate most of a law student’s legal education. In a 2013 Kaplan Bar Review Survey, 97% of 2013 law graduates favored a law school model that incorporates clinical experience in the third year and 87% agreed that the legal education system needs “to undergo significant changes to better prepare future attorneys for the changing employment landscape and legal profession.” A National Association of Legal Career Professionals (NALP) survey asked lawyers to rate the usefulness of law school experiential learning opportunities in preparing for the practice of law. Lawyers in nonprofit and government legal positions rated law clinics extremely high, with clinics rated 3.8 using a scale of 1 ("not useful at all") to 4 ("very useful") and externships/field placements 3.6, followed by skills courses (3.3) and pro bono work (3.2).

In response to these repeated calls from practicing lawyers and recent law graduates are claims from within the legal academy that requiring more professional skills coursework, in particular requiring a clinical experience, is infeasible or would be too expensive for students. To test this claim, I collected and analyzed tuition, curricular, and enrollment data from all ABA-accredited law schools. The results of this empirical study are outlined briefly below and illustrated in the attached powerpoint slides. A full discussion of the study’s methodology and results can be found in Robert R. Kuehn, Pricing Clinical Legal Education, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2318042.

My research found:

legal education lags far behind the pre-licensing education requirements of other professions, which require one quarter to over one half of a student’s education in clinical courses; unlike law, those other professions do not leave it up to the school or student to decide what minimum amount of practice-based education is needed in order to enter the profession

a number of law schools (e.g., City University of New York, University of the District of Columbia, Washington & Lee) require their students to take more than 15 credits of experiential coursework, including a law clinic or externship, without any noticeable adverse effects on what students pay in tuition

a school’s public/private status, U.S. News ranking, and cost of living in its geographic area have a statistically significant effect on the tuition charged and explain about 74% of the total variation in tuition among ABA-accredited
there is no statistically significant relationship between the availability of experiential education courses for students and the tuition they pay

schools that require or guarantee a clinical experience (i.e., a law clinic or externship course) for all graduating J.D. students do not charge higher tuition than schools that do not have a requirement or guarantee

158 law schools (79%) already have the law clinic and externship course capacity (i.e., capacity in clinical courses) to provide each graduating J.D. student with a clinical experience

comparing the tuition at these 158 schools with sufficient law clinic and field placement positions for each student with schools that do not presently offer enough positions, there is no statistically significant difference in the tuition charged to require or guarantee these clinical experiences for all students

upon adoption of a clinical education requirement or guarantee, schools do not raise their tuition at a rate higher than schools that do not require or provide those courses; the rate of increase at three-quarters of those schools was actually less than the national average of other schools over that same time period

looking just at law clinics, schools with higher ratios of clinic positions to students (i.e., law clinic courses are more available to students) do not charge statistically higher tuition than schools that provide fewer law clinic opportunities for their students

there also is no statistically significant difference between the tuition charged by the 48 schools with sufficient capacity for every J.D. student to participate in a law clinic course before graduation and the tuition at schools that do not presently have that law clinic capacity

schools with a higher ratio of law clinic to field placement positions (i.e., providing a greater proportion of law clinic to field placement opportunities for students) do not have statistically significant higher tuition

schools with a greater percentage of students participating in a law clinic do not charge higher tuition than schools with lower clinic participation rates

students at schools ranked in the bottom quartile by U.S. News are offered less opportunity to obtain legal training through a law clinic or externship course than students at schools ranked in the top quartile; 50% percent more schools in the top quartile offer enough clinical positions to provide every graduating J.D. student with a clinical experience than do schools in the bottom quartile

looking at actual enrollment, not availability of positions within courses, while 43% of students at schools in the top U.S. News ranking quartile take a law clinic, only 25% of students at second-tier/unranked schools enroll in a clinic; by contrast, participation in field placement courses shows little difference across

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1. These three variables were controlled for the subsequent analysis.
having a highly regarded clinical program is not related to tuition as comparing schools ranked best in clinical training by U.S. News with schools not ranked shows no significant difference in tuition charged

The conclusion to be drawn from this data is that a school’s curriculum can be structured to provide students with significantly more experiential coursework and to give every J.D. student a clinical experience without having to charge students more in tuition. Notwithstanding the higher instructional costs of some forms of clinical education, students that are provided more experiential or clinical opportunities, or even required or assured of a chance to enroll in what are identified as more costly law clinics, are not charged more in tuition for those enhanced educational opportunities. Stated alternatively, students that receive fewer experiential or clinical education opportunities from their schools, or not offered law clinic training, do not benefit financially from this lost educational opportunity by paying less in tuition. Contrary to what is sometimes claimed, this study, and the examples at a number of schools, show that requiring 15 credits of experiential coursework and even requiring clinical training in law school need not cost students more in tuition.

As I found from examining the practice-based and clinical education requirements of other professional schools, a mere increase from one course in professional skills to two courses (the practical effect of raising the Standard to 6 credits) would still leave legal education far behind. For the ABA and law schools to fulfill their responsibility to ensure a legal education that adequately prepares students for the practice of law, all J.D. students as a condition of graduation should be required to satisfactorily complete at least 15 credit hours of practice-based, experiential coursework, including a law clinic or externship course. How schools choose to provide those 15 credits and a clinical experience is up to the individual schools. But, the ABA and law schools can no longer ignore the loud calls from the practicing bar for dramatic change and the clear need of graduating students for significantly more practice-based coursework, including at least one real-life practice experience.

Sincerely,

Robert R. Kuehn
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Associate Dean for Clinical Education
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attachment: powerpoint slides
PRICING EXPERIENTIAL EDUCATION

Robert R. Kuehn
Washington University in St. Louis

Presentation to ABA Section of Legal Education and Admissions to the Bar (Feb. 5, 2014)

Practice-Based and Clinical Education Requirements for Professional Schools

<table>
<thead>
<tr>
<th>Law</th>
<th>Medical</th>
<th>Veterinary</th>
<th>Pharmacy</th>
<th>Dentistry</th>
<th>Social Work</th>
<th>Architecture</th>
<th>Nursing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 credit in prof'l skills, no clinical requirement</td>
<td>2 of 4 years in clinical practice or clerkships</td>
<td>minimum 1 of 4 years in clinical settings</td>
<td>300 hours in 1st year &amp; 1,440 hours (36 weeks) in last year in clinical settings</td>
<td>57% of education in actual patient care</td>
<td>900 hours (18 of 60 required credits) in field education courses</td>
<td>50 of 160 credits in studio courses (nat'l licensing board's calculation of minimum needed for licensure)</td>
<td>varies by state — e.g., Cal. - 18 of 58 credits in clinical practice; Texas - 3 to 1 ratio of clinical to classroom</td>
</tr>
<tr>
<td>1/83</td>
<td>1/2</td>
<td>1/4+</td>
<td>1/4+</td>
<td>1/2+</td>
<td>1/3</td>
<td>1/3</td>
<td>1/3+</td>
</tr>
</tbody>
</table>

City University of New York (CUNY): 12- to 16-credit law clinic or field placement; $13,802 in tuition/fees (½ average of public law schools)

University of the District of Columbia (UDC): 7-credit law clinic in second year & 7-credit clinic in third year; $11,265 in tuition/fees (5th lowest outside P.R.)

Washington and Lee (W&L): 20 credits in 3rd year experiential courses including at least one law clinic or externship; $43,462 in tuition/fees

"the new curriculum is not more expensive to run than the prior third year curriculum, nor the current first or second year curricula (indeed, it is less expensive)"

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**W&L: Increase in Positions in Experiential Courses**

<table>
<thead>
<tr>
<th>Academic Year</th>
<th>Simulations</th>
<th>Law Clinics</th>
<th>Field Placements</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007/08</td>
<td>333</td>
<td>47</td>
<td>69</td>
<td>449</td>
</tr>
<tr>
<td>2008-09</td>
<td>431</td>
<td>68</td>
<td>59</td>
<td>558</td>
</tr>
<tr>
<td>2009-10</td>
<td>464</td>
<td>52</td>
<td>100</td>
<td>591</td>
</tr>
<tr>
<td>2010-11</td>
<td>402</td>
<td>45</td>
<td>98</td>
<td>545</td>
</tr>
<tr>
<td>2011-12</td>
<td>544</td>
<td>96</td>
<td>129</td>
<td>769</td>
</tr>
<tr>
<td>2007/08 – 2011/12</td>
<td>↑63%</td>
<td>↑104%</td>
<td>↑87%</td>
<td>↑71%</td>
</tr>
</tbody>
</table>

**Tuition/Fees increase 2007/08 – 2011/12:**

W&L: 29%

Private Law School Median: 27%
The Relationship of Experiential Legal Education to Tuition/Fees – Data

Tuition/fees, size of 1L J.D. class, and experiential course enrollment: ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS (2014)

Law school and clinical training ranking: U.S. NEWS, BEST GRADUATE SCHOOLS (2013)

Participation rates in law clinics or field placements: Center for the Study of Applied Legal Education (CSALE) (2010-11 survey)

Cost of Living: Census Bureau, Statistical Abstract of the United States (2012)
Experiential Course Capacity

- "Simulation courses are those courses in which a substantial portion of the instruction is accomplished through the use of role playing or drafting exercises, e.g., trial advocacy, corporate planning and drafting, negotiations, and estate planning and drafting."

- "Faculty-supervised clinics are programs in which students represent actual clients (individuals or organizations), are supervised by an attorney who is employed by the law school (faculty, adjunct, fellow, staff attorney, etc.), and include a classroom component."

- "Field placements are externships or internships (typically off-site) that are field supervised by persons not employed by the law school for which students receive credit and which may or may not include a classroom component." (ABA Annual Questionnaire)

Control Variables - Significantly Related to Tuition

<table>
<thead>
<tr>
<th>Variable</th>
<th>Estimate</th>
<th>Std. Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private School</td>
<td>17463.25</td>
<td>937.24</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Ranked (U.S. News)</td>
<td>-97.97</td>
<td>11.99</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Non-Ranked</td>
<td>-11785.33</td>
<td>1374.44</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Cost of Living</td>
<td>112.86</td>
<td>16.95</td>
<td>&lt;0.001</td>
</tr>
</tbody>
</table>

Adjusted R-squared 0.7401
Relationship of Experiential Course Positions Available to Tuition: None

- Comparing ratios of "# of positions available in simulation courses" + "# of positions available in faculty supervised clinical courses" + "# of field placement positions filled" to "# 1st-year JD Enrollment" with tuition/fees:

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Estimate</th>
<th>Std. Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experiential Course Positions/# of 1Ls</td>
<td>-66.29</td>
<td>204.92</td>
<td>0.747</td>
</tr>
</tbody>
</table>

![Scatter plot showing relationship between experiential course positions and tuition/fees.](scatter_plot.png)
Mandatory Clinical Experience

- 23 schools require each J.D. student to take a credit-bearing law clinic or externship as a graduation requirement (Tokarz et al. 2013)

Result: Schools that mandate a clinical experience charge, on average, around $1,000 less in tuition & fees than schools that do not, but difference is not statistically significant (p-value 0.488).
Guaranteed Clinical Experience

- 14 schools currently guarantee each J.D. student to take a credit-bearing law clinic or externship prior to graduation (Tokarz et al. 2013)

Result: Schools that guarantee a clinical experience charge around $350 less in tuition & fees than schools that do not, but difference is not statistically significant (p-value 0.837).
Rate of Increase in Tuition/Fees Upon Adoption of Clinical Experience Requirement or Guarantee

- Comparing rate of tuition/fees increase from time of adoption of school’s clinical experience requirement or guarantee with national average over same period.

Result:
  rate of increase < national average: 3/4 of schools
  rate of increase = national average: 1/8
  rate of increase > national average: 1/8

Clinical Experience Capacity

- Clinical Experience Capacity = "# of positions available in faculty supervised clinical courses" + "# of field placement positions filled - full-time & part-time" divided by "JD Enrollment 1st-year Total" (2014 ABA - LSAC GUIDE)
Relationship of Clinical Experience Capacity to Tuition: None

- Comparing tuition/fees at schools where sum of "# of positions available in faculty supervised clinical courses" + "# of field place positions filed - full-time & part-time" divided by "JD Enrollment 1st-year #" is ≥ 1.0 with tuition/fees at schools with ratios < 1.0.

Result: Schools with sufficient law clinic or field placement course capacity for every graduating J.D. student (ratio ≥ 1.0) charge approximately $280 less in tuition/fees than schools without that capacity, but difference is not statistically significant (p-value 0.612).
Relationship of Law Clinic Positions Available to Tuition: None

- Comparing ratios of "# of positions available in faculty supervised clinical courses" to "JD Enrollment 1st-year #" with tuition/fees (increase in law clinic positions vs. tuition/fees):

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Estimate</th>
<th>Std. Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Clinic Positions/ # 1Ls</td>
<td>284.34</td>
<td>929.89</td>
<td>0.76</td>
</tr>
</tbody>
</table>
Comparing tuition/fees at schools with ratios of "# of positions available in faculty supervised clinical courses" to "JD Enrollment 1st-year #" ≥ 1.0 with tuition/fees at schools with ratios < 1.0 (sufficient capacity for law clinic experience for every graduating J.D. student vs. schools without sufficient capacity):

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Estimate</th>
<th>Std. Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sufficient Clinic Capacity</td>
<td>1169.97</td>
<td>1059.09</td>
<td>0.116</td>
</tr>
</tbody>
</table>

Comparing ratios of "# of positions available in faculty supervised clinical courses" to "# of field placement positions filled" with tuition/fees (greater availability of law clinic courses to field placement courses vs. tuition/fees):

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Estimate</th>
<th>Std. Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Clinics/Field Placements</td>
<td>11.498</td>
<td>7.815</td>
<td>0.143</td>
</tr>
</tbody>
</table>
Comparing percentage of students who participate in a law clinic at a school with tuition/fees (greater percentage J.D. participation in law clinic courses vs. tuition/fees):

<table>
<thead>
<tr>
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<th>Estimate</th>
<th>Std. Error</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>% Participate Law Clinic</td>
<td>-24.01</td>
<td>25.22</td>
<td>0.343</td>
</tr>
</tbody>
</table>

CONCLUSIONS

- Contrary to popular opinion, enhanced experiential or clinical courses are not a measurable factor in what students pay in tuition/fees.
- Students provided more experiential or clinical education opportunities, or required or guaranteed a chance to enroll in a clinical course, are not paying more in tuition/fees (even where the opportunity includes law clinics).
- Stated alternatively, students provided fewer experiential or clinical education opportunities, or not offered law clinic training, do not benefit financially from this lost educational opportunity by paying less in tuition/fees.
- Providing or requiring more experiential courses or clinical training need not cost students more in tuition.