

**American Bar Association
Law Student Division**

**Comment of American Bar Association Law Student Division
on Interpretation 305-3**

The ABA Law Student Division Board of Governors unanimously urges the Council of the ABA Section of Legal Education and Admissions to the Bar to follow the recommendation of the Standards Review Committee and eliminate Interpretation 305-3, which prohibits a law school from granting academic credit to a student for participation in a field placement program for which the student receives compensation from the employer.

At a time when experiential learning activities have been recognized as critical in preparing students for legal practice, retaining Interpretation 305-3 would unduly restrict available field placement opportunities and harm students who cannot afford to forego paid opportunities. Students increasingly have to choose between working in a paid position or pursuing a non-paying externship that provides academic credit. When a legal-related job meets the same educational objectives as an externship, a blanket rule such as Interpretation 305-3 should not preclude law students from receiving both academic credit and compensation. The Law Student Division received feedback from thousands of our members about the adverse impact Interpretation 305-3 has on students. Approximately 42% indicated that they held an externship during law school, and about half of those respondents indicated that they had to decide between taking an externship that was unpaid and another law-related job for which compensation was received. One survey respondent summarized the situation by stating, “the payment restriction on those endeavors for which students receive credit only serves to amplify the already serious financial burden borne by law students.”

The Clinical Legal Education Association (CLEA) comment letter dated January 31, 2014 expressed its opinion that there is no need to eliminate Interpretation 305-3, stating *“nothing suggests that field placement courses are displacing a large volume of paid part-time work for law students. To the contrary, pervasive anecdotal evidence suggests that employers are unable to pay and would prefer that students work without pay.”*

The Division survey responses suggest otherwise. The responses indicated that employers are able and willing to provide compensation, and that students have had to choose between opportunities to receive credit or compensation. Survey responses also indicate that a blanket prohibition against receiving credit and compensation places limits on the available field placement opportunities. As previously mentioned, students have refrained from educational paying jobs because they need the academic credits that Interpretation 305-3 prohibits. Further, some employers have balked at allowing students to work without pay and only for academic credit because of potential issues that may arise with the Fair Labor Standards Act. Both of these factors constrict the supply of externships and learning opportunities.

In a comment letter dated February 5, 2014, the Society of American Law Teachers (SALT) expressed concern about the pedagogical difficulties when students are paid and receive credit. The Division feels these concerns are unfounded and there is no evidence that the educational value of field placements would be hindered merely because a student is being paid. The pedagogical concern is that students who are compensated for work in their field placements would essentially become employees and would not be engaged in activities that will help the

student learn from the field placement. However, the concern that certain employers would take advantage of students or neglect the academic focus of field placements currently exists, even though students cannot receive compensation. Nothing suggests that law schools are not fully capable of ensuring that students who earn credit for field placements will receive educational value. Just the opposite: law schools that offer field placements have always monitored the employers with whom they place students to guarantee students are receiving educational benefit, and they will continue to assess field placement employers regardless of whether students are being paid.

The deletion of Interpretation 305-3 would permit law schools to *allow* their students to earn credit and compensation, but it would not require them to do so. Each law school may craft its own policies and procedures for its experiential learning programs. Whether or not students are compensated, schools will have to meet all of the requirements of Standard 305. Law schools would continue to establish safeguards so that the primary goals of field placements—to teach and mentor the students—would be maintained by the externship site supervisors. Through the policies devised by each law school, on-site supervising lawyers would continue to provide students with meaningful tasks, significant feedback, and evaluation of the student performance to make certain that the law school’s pedagogical objectives are met. Schools would develop procedures to control the assignment and crediting process, just as they do now. Accordingly, schools will continue to work with externship coordinators to promote an educational experience through field placements even if compensation is permitted.

A common argument against the elimination of 305-3 is that students will choose paying field placements, thereby reducing the number of students that participate in clinics and public service jobs. However, law students will always retain an interest in such work. Many law schools offer grants and stipends to motivate students to participate in such summer programs. The deletion of Interpretation 305-3 would allow these students to receive academic credit in addition to compensation, further encouraging student participation in these jobs. Moreover, pro bono requirements and loan forgiveness programs are additional incentives already in place to encourage students to pursue public interest jobs. Ultimately, if any law school is so concerned that participation in public service jobs will be reduced, it will always retain the option to place further restrictions on paid externships to address that school’s specific concerns.

Finally, the Division shares the concern raised by the Standards Review Committee that Interpretation 305-3 conflicts with the U.S. Department of Labor interpretation of the Fair Labor Standards Act (FLSA). According to the Department of Labor, for an unpaid placement not to violate FLSA, the work must provide “no immediate advantage” to the employer. The core work of externships is comprised of legal research and drafting of memorandums, both of which provide immediate advantages to the employer. An apparent solution is to eliminate the Interpretation so that no such conflict exists.

For all of the reasons outlined above, the Law Student Division Board of Governors, representing 34,000 law student members from ABA-approved law schools, urges the Council of the Section of Legal Education and Admissions to the Bar to eliminate Interpretation 305-3. As always, we remain available to the Council to answer any further questions that it may have.

Respectfully submitted:

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