Comment on Proposal to Eliminate Interpretation 305-3 Which Prohibits Law Schools From Granting Credit For Externships When Students Also Receive Compensation

April 18, 2014

Dear Council of the Section of Legal Education and Admissions to the Bar:

We, as individuals with extensive experience developing, teaching, and managing law school externship programs, offer the following comments in opposition to the proposed elimination of Interpretation 305-3, which currently prohibits law schools from granting credit “for participation in a field placement program for which the student receives compensation.”

We share the concern raised by the ABA Student Division in their January 2014 letter regarding rising tuition and student debt load; however, based on our experience, we do not believe that allowing externs to receive both pay and credit is the solution. The primary purpose of a law student’s externship is, and should remain, furthering her legal education and professional development. As externship supervisors, we constantly monitor each externship to ensure that this purpose remains paramount. Based on our collective experience, we believe that permitting students to earn pay for an academic externship will undermine that purpose and lead students to make decisions driven by financial need rather than educational value.

As expressed by CLEA and others, we share the concern that allowing credit and pay creates a conflict in the role of placement supervising attorneys. Are they primarily employers or educators? The ABA standards would continue to require that externship faculty ensure the pedagogical value of the experience: however, students being paid will be less likely to discuss and promote their learning goals with supervising attorneys, to ask for varied assignments and opportunities that will move them towards those goals, or to be permitted to observe or participate in meetings, presentations, court hearings, etc. Part of the externship experience is for students to advocate for themselves and to use us, the externship faculty to ensure a positive educational experience. Students often comment about the richness of their externship experience, particularly in the areas of diversity of assignments and the quality of the supervision and feedback, in contrast to their paid experiences where assignments flow from the need of the office, not the students’ educational goals.

In California, in light of changes to the bar admissions requirements which are currently in the implementation phase, we hope to foster and encourage a pro bono ethic while raising the profile and importance of work with legal services organizations, legislative and policy-oriented non-profits, and government agencies. If students are permitted to receive credit and pay for externships, these under-resourced organizations are likely to have fewer candidates for these positions as students choose to pursue externships that offer pay. Ultimately, eliminating Interpretation 305-3 will create a hierarchy of placements in which judicial externships, legal services organizations, non-profits and governments agencies - which tend to provide solid training opportunities - and generally give their time/energy in the form of training/mentoring/observational opportunities because they cannot pay, may become less desirable. Additionally, for the non-profit and government placements that feel compelled to pay externs to maintain interest, this will take away from their ability to put resources towards fellowships or 'real' jobs for graduates.
There is also the risk of further enhancing a hierarchy of schools. It is not difficult to envision that some placements will offer pay to students from some schools to entice them. However, students from other schools may be offered a position for credit but not for pay. Who will monitor these issues? While eliminating the prohibition does not require an individual school to allow externships for credit and pay, in the same way that some schools permit students to receive academic credit for private placements and others do not, this requirement puts pressure on schools to make decisions for reasons other than the pedagogical value of the experience.

As the demand for experiential learning at law schools, and externship opportunities specifically, continues to grow, we need to focus our energy on quality placements. The proposed change will inevitably create more administrative and monitoring work for externship programs. What happens when placements that pay students assign more administrative (non-legal) tasks or placements fail to pay students as promised? It seems clear that externship faculty will need to get involved in these interactions if credit is involved. Given that our primary concern, as directed by the ABA Standards, is ensuring the educational experience of students, this would not be the best use of our expertise.

The current interpretation does not preclude reimbursement of reasonable out-of-pocket expenses related to the field placement. Perhaps a better change, and in response to students who forego distant placements due to the expense, would be explicitly permitting placements to cover transportation, housing, or other incidental costs. This modification would provide financial support to students to pursue placements that further their educational goals more directly than allowing for both credit and pay.

This letter is sent on behalf of the following individuals. Thank you for considering our comments*

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*These comments are offered in our individual capacities and are not intended to represent the views of the institutions with whom we are affiliated.