Imagine you are a law professor looking for a mentor for a law student enrolled in the full semester long externship you teach. You find a good match based on many factors including the mentor’s expertise and the student’s interests. Now it’s your job to persuade this busy and successful lawyer or judge that he or she should take a student under their wing full time for 15 weeks. You explain that you are looking for the sort of experience the mentor would want for their own child, if that child were a law student. You set out the range of activity you expect the student will be engaged in – that it should involve not only direct client work, research, writing and appearance in court (as appropriate to the site and goals for the semester), but also the opportunity to shadow in the mentor in her professional work – from chamber’s conferences to participating in training events their mentor is offering; that the goals of the semester include integration of substantive law as applied (skills), and also emphasizes professional formation.

In the end of the conversation you make it clear that the experience must be at least as valuable as the experience the student would have if she remained on campus, enrolled in classes. You remind the potential mentor that the student is paying a full semester of tuition (at our law school, $23,000) for this experience.

As Director of Vermont Law School’s Semester in Practice for 28 years, I had this conversation many thousands of times. As a rough estimate, only about one potential mentor in 10 could move from saying, “Wow, I wish someone had done that for me (or someone did that for me and I want to do the same)”, to accepting the responsibility of a student for the semester. In my experience, the single most important factor in a successful negotiation was the fact that they would not also have to pay the student apprentice.

Why is it so important to be able to disconnect the student and the learning experience from pay? Three audiences all see the differences.

1 – Students know the experience is different. Lawyers are ordinarily accustomed to working with law students. They are not, however, used to teaching. Even in Vermont, where a three month long apprenticeship is still required as a requirement for admission (in addition to passing the bar exam), while the experience of working with a judge or lawyer is often valuable, most
students who have both a traditional paid (or even unstructured volunteer) and a field placement course, when pressed will report very significant distinctions between what they learn when they are enrolled in a well structured apprenticeship for credit and what happens in a paid or other unstructured summer experience.

2 – Lawyers know the experience is different. In the course of finding mentors I often talked to lawyers who already had law students working part time in their practices. These lawyers had two responses to my inquiry. Most of the time they would say, “We think your course sounds wonderful and every law student should be able to enroll. We don’t treat our paid students in the way you would like your students to be treated and we see problems with creating two classes of students. So we will regretfully decline”. A second, and much less common response was, “We can see how to distinguish between the paid students and the students who are paying for the experience and would be happy to accept your student”.

In both cases these lawyers did not need to me to explain. They were very clear that the paid students have a significantly different experience than the students working with them for academic purposes.

3 – Law professors know the experience is different. When a potential mentor wants to accept a student apprentice for academic credit they must often get permission from their own supervisors. One of the biggest negotiating tools they have is to tell the administrators the student won’t cost anything. Of course in reality supervising and teaching takes time. In a well structured field placement course mentors are told that while their practice may improve by virtue of involvement with the course, they will probably find that on balance it’s a “wash” – they will spend as much time supervising as they gain from work from the students.

Law professors also see a second benefit, supervisors of students who are not paid are much more willing to pay for them to attend continuing legal education events. Whether a national conference on death penalty defense work, an in-house training for environmental lawyers with the Department of Justice, or a family law workshop for lawyers in private practice, the law students one finds at these events are not students who are working, but are instead students who are enrolled in an field placement course. If they are already getting a salary these opportunities will be lost – not because it has to be that way, but because that is how it already works now and students getting pay and academic credit would be treated just like students getting pay – not taught and not involved in continuing legal education.
Finally, when a lawyer is getting a student for “free” they are much more willing to accept support and coaching from the credit awarding law school. Mentoring is a situation that is different from the ordinary law student experience and it opens the supervisors to the possibility that they could be better at the supervision they are providing.

By allowing pay the ABA will take away the law schools’ ability to negotiate for and create an experience worth a semester in the classroom. They will in addition create two tiers of experience, giving one more advantage to the wealth student. Most law students need money and will understandably select an experience for pay over one that does not pay. As a result the ABA’s rule change will value learning with a lawyer who can afford to pay over the experience with the lawyer who can provide excellent learning opportunities, but who has insufficient funding to pay students (and in fact often insufficient funds to pay their own staff adequately).

I would like to close by addressing those who say pay will not make a difference. There are two groups making this argument. (What law students may want is another matter, not to be addressed here, except to say that the “survey” presented to the ABA is not good legal work and should not be relied upon). One group is those few law professors who teach at religious law schools and whose mentors come from that same religious community. One can easily understand that coreligionists are much more inclined to provide just the sort of supervision and teaching all of us who take field placements/externships seriously are seeking. Those law schools and affiliated mentors do not need the “no pay” incentive. They have other reasons to treat students well. The second group is those who, for one reason or another, do not understand that externships and other field placement experiences are as powerful a teaching tool as exists. Whether they are from those doctrinal faculty, who often think little real learning happens in practice, or from internal clinical faculty, who often believe externships are a threat to their “superior” offerings, or from the administrative/career services world where the simple fact of getting students “out” in front of potential employers, and collecting some tuition dollars in the process is ordinarily their goal – no one from these groups believe that pay will affect the value of what they are offering; because what they are offering they already consider to be (and may in practice be) an inferior learning experience.

The ABA made the right decision when Oklahoma tried this almost 40 years ago. They should not now change and allow pay and credit for the same experience.
Of course it is not possible to address all the issues this proposal raises in one “comment”. I would be happy to provide more experience and data if the committee is interested.

Sincerely,

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