

From: Seely, Linda
Sent: Monday, July 10, 2017 10:01 AM
Subject: FW: FW: Matters for Notice and Comment - ABA Standards

Mr. Clark,

On behalf of the Dispute Resolution Section, our Legal Education Policy Committee submits, via email, the comments contained in the email below. Thank you for the opportunity to provide our thoughts.

Best,

Linda Warren Seely
Director, Dispute Resolution Section
American Bar Association

From: Jennifer Reynolds
Sent: Friday, June 09, 2017 3:49 PM
Subject: Re: FW: Matters for Notice and Comment - ABA Standards

Dear Linda, Ben, and Nancy (cc: Peter):

Thank you for the opportunity to provide feedback to the Executive Committee on proposed revisions to Standards 403(a) and 503. The Legal Education Policy Committee has no comments on the proposed revisions to Standard 503, but has considered the proposed revisions to Standard 403(a) and offers the following thoughts.

Generally speaking, it is good for law schools to have flexibility around instruction and staffing, for curricular and financial reasons. Additionally, legal education should stay connected to practice and to interdisciplinary work, in the interest of providing high quality training to future lawyers.

That said, our Committee raises the following concerns:

One, we should be careful not to undervalue the teaching contributions that full-time faculty make. Practitioners and judges are not professional teachers, and although their experiences are often incredibly useful and illuminating, these experiences do not substitute for the broader informed perspective and pedagogical skill of professional faculty. In other words, just bringing in adjuncts does not guarantee a rich educational experience. The ABA has tried to mitigate this particular risk by stating that the adjuncts need to be trained and monitored by the law school, which may help but may also create new challenges (for example, around monitoring). The ABA should also consider ways to encourage professional faculty to stay connected to practice and to partner with members of the profession, the judiciary, etc., in the delivery of courses.

Two, the proposed revisions may give rise to claims of false advertising. Schools try to attract students in many ways, including promoting the quality of their full-time faculty. The revised 403(a) makes it more possible that a student will choose a school in part for the chance to take classes with some big-name faculty and later find that the majority of classes are being taught by

adjuncts. Given the climate in the past several years and the number of lawsuits alleging various kinds of fraud/false advertising on the part of law schools, this could be another avenue to make that kind of claim.

A third potential issue involves scheduling. If lots of classes are taught by practitioners who hold down full-time jobs, lots of classes will be scheduled in the evening. One of our Committee members recalled that her institution had to fill a tax slot this year with an adjunct who taught tax for 3 hours on Monday nights. That made for some really difficult schedules for the students and turned them off from taking the class. Pedagogically, cramming a substantive class like that into one night isn't ideal.

Speaking more specifically to ADR, this rule would have a negative impact on our field because law schools may decide not to hire full-time permanent dispute resolution faculty but instead farm out ADR courses to practitioners. This will have a detrimental impact on ADR scholarship, since practitioners are too busy to engage in this way.

In addition, using adjuncts to teach ADR courses may have a detrimental impact on ADR pedagogy and by extension experiential learning. It is not easy to teach in an experiential setting, as we all know. Even an outstanding negotiator in the professional world may not be able to distill that experience to general lessons or connect it to scholarship, much less put together a series of lessons and simulations designed to explore and practice negotiation skills across contexts.

So although our Committee supports the increased contributions of adjuncts and practitioners in our curriculum, we maintain that the students need full-time professors who are integrated into the classroom and the institution as a whole and have the time to dedicate to the students. The proposed revision would eliminate (and not reduce, which seems more prudent) the requirement of half the upper level courses being taught by full-time faculty. Our Committee does not believe that proposed change on the whole will have a beneficial impact, pedagogically or academically, especially when it comes to experiential learning and ADR courses.

Thank you again for the opportunity to share these thoughts.

Jen, Chair of Legal Education Policy Committee

Jennifer W. Reynolds
Associate Professor of Law
Faculty Director, ADR Center
The University of Oregon School of Law