From: Bogus, Carl
Sent: Friday, July 07, 2017 4:13 PM

Subject: Proposed Revision to Standard 403(a)

[Below is a comment on the proposed revision to Standard 403(a) of the ABA Standards and Rules of Procedure for Approved Law Schools.]

The proposal to delete the second sentence in Standard 403(a) should be rejected.

The Council recognizes that teaching by full-time faculty is "critical" in "creating a sense of academic community" within a law school. Even more significantly, the Council acknowledges that full-time faculty are essential to "a vibrant and meaningful atmosphere for the study of law." Implicit in the proposal is the view that these attributes – a sense of academic community and a vibrant and meaningful atmosphere for the study of law – are only necessary for one year and may be dispensed with for the remainder of law school.

Taking the proposal to its logical conclusion, there would be no reason for the ABA to require more than one year of formal legal education followed by an apprenticeship. Why require two additional years of a legal education if they do not necessarily provide "a vibrant and meaningful atmosphere for the study of law"?

The Council is entirely right in believing that full-time faculty – professional teachers and scholars – are essential to providing a quality legal education. The problem is that a quality legal education is expensive. Full-time teachers must be paid full-time salaries with benefits, and they must have time to engage in scholarship, discussion, and debate, and to participate actively in the academic community to which the Council refers. It is cheaper to replace full-time teachers with part-time adjuncts who derive much of their income from, and direct much of energies to, other endeavors.

Standard 403(b) is not an effective backstop for gutting Standard 403(a) because it is difficult, if not impossible, to objectively measure effective teaching. Nor will output measures serve as an effective backstop because there are precious aspects of a quality education that will never be effectively measured by objective assessments.

The claim that the proposal will give schools "more opportunity to innovate and be creative" is mere pretext. Faced with decreasing student enrollments and diminished revenues, law schools want to cut expenses. It is the duty of a responsible accrediting body to require a quality legal education even if some schools (and the universities to which they belong) no longer wish to provide it. It should be the unequivocal position of the ABA that the choice is not between whether or not to provide a quality education over the full course a law school's program. Rather, the choice must be between providing a quality legal education or closing a school – a choice that the Board of Trustees of Whittier Law School had the courage to face directly and honestly. It is less harmful to the profession, the public, and the nation that some law schools close than it is for the ABA to capitulate to significant dilutions of quality in legal education.

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