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Sent: Monday, July 10, 2017 9:57 AM

Subject: Comment on proposed revision to Standard 403

Comment from Professors Barnhizer, Candeub, Kuykendall and Lawton of Michigan State University College of Law sent from Professor Lawton's e-mail account:

We oppose passage of the proposed revision to Standard 403, which eliminates the requirement that full-time faculty members teach more than half the credit hours or two-thirds of the contact hours in the upper-level law school curriculum. The rationale for the proposed revision is that it will enable law schools to “innovate and be creative in how instruction is delivered.” The central problem is the assumption, imbedded in the proposal, that requiring full-time faculty to teach a majority of the upper-level courses in a law school somehow impedes not only creativity and innovation but also the ability of law schools to “develop class schedules that serve the students’ interests.” There is no evidence to support such an assumption. In fact, if adopted, the likely outcome of the revision over time would be to impoverish the curriculum at many law schools, especially those schools at the bottom of the US News hierarchy.

A law school faced with financial problems will take this proposed revision and run with it. Law schools will slow down or stop their tenure-line hiring. Tenured faculty members who retire or die will not be replaced. Freed from the constraints imposed by current Standard 403, deans at financially beleaguered law schools will hire part-time faculty members, who cost less, to teach many courses now taught by full-time faculty members. The change will not happen overnight, of course. But within a decade or two, this revision will fundamentally change the way law school faculties look, in particular in the bottom tiers, where the struggle to survive financially is most acute.

Imagine how much innovation will take place at a law school with a small tenure-stream faculty teaching in the first year and mostly part-time faculty teaching in the upper level. Who will develop new courses? Not part-time faculty, whose primary employment and responsibilities lie outside the law school. Innovation occurs when faculty members have a long-term commitment to an institution. What the proposed revision does, in the name of innovation and creativity, is allow law schools to replace professors who have incentives to innovate with those who do not.

Of course, it is possible that tenure-stream faculty members will design courses that part-time faculty members then will teach. Nothing in the current system precludes full-time faculty members from doing so now, however. The fact that it is not happening now is strong evidence it will not happen in the future, even with a change in the standard. How many full-time faculty members will devote their time to designing courses that part-time faculty members will teach? More important, how pedagogically sound is it to have course materials created by those who do not teach the subject matter?

It also is unclear how replacing full-time faculty members with part-time faculty members fosters a community of scholars and teachers. Those with a part-time commitment to the law school will devote less time to teaching and less time to meeting with and making themselves

available to students. The reason is simple: their primary employment, job responsibilities, and compensation lie outside the law school. Part-time faculty members will spend less time at the law school; they likely will not be integrated into the scholarly life of the institution and, because they have other “day” jobs, will not be around to participate in most law school functions. Their time at the law school will be spent teaching their classes and satisfying minimal office hour requirements.

Moreover, Interpretation 403-1 does little to allay our concerns. As any lawyer who has done employment discrimination work knows, it is a simple thing to create structures that insulate the organization from liability. Similarly, law schools can easily satisfy the “teaching effectiveness” requirement by dressing the windows. Creating a new deanship – the associate dean of teaching effectiveness - likely would stave off criticism by an ABA site visit team.

In conclusion, the proposal will not improve innovation or creativity. It will ensure that students at the weakest and most financially beleaguered law schools will receive a second-class legal education. What the proposal does is throw a lifeline to law schools now struggling to stay alive. The ABA should allow the market to do its job by forcing closure of law schools that are unable to survive financially.

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