March 21, 2018

American Bar Association
Section of Legal Education and Admissions to the Bar

Subject: Proposed Revisions to Standard 205

Dear JR Clark,

I submit these comments on behalf of Ave Maria School of Law ("AMSL") on the proposed changes to Standards 205 and 206, as set forth in the Memorandum dated November 17, 2017.

A. Proposed Change to Standard 205

The proposed amendment to Standard 205 would, among other things, prohibit discrimination on the basis of "gender identity." If the ABA amends the Standard itself to add "gender identity," it should include a corresponding reference to "gender identity" in Interpretation 205-2. Interpretation 205-2 would then read as follows (amended language underlined):

Interpretation 205-2
So long as a school complies with Standard 205(c), the prohibition concerning sexual orientation and gender identity does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs. For example, Standard 205(c) does not require a school to recognize or support organizations whose purpose or objectives with respect to sexual orientation or gender identity conflict with the essential elements of the religious values and beliefs held by the school.

AMSL is a Catholic law school that respects the Church’s teachings on gender identity as well as sexual orientation. Interpretation 205-2 acknowledges a religiously affiliated law school’s right to act in accordance with its religious values and beliefs with respect to sexual orientation. It should likewise acknowledge a religiously affiliated law school’s right to act in accordance with its religious values and beliefs with respect to gender identity.
B. Proposed Changes to Standard 206

Proposed Standard 206(c) would require a law school to “demonstrate by concrete action a commitment to . . . Providing an environment that is inclusive with respect to . . . gender identity, sexual orientation . . . .” Interpretation 206-3 provides guidance on how a law school can demonstrate its commitment to this goal. We would request that a sentence be added to Interpretation 206(3) that, like Interpretation 205(2), acknowledges a religiously affiliated law school’s right to act in accordance with its religious values and beliefs. Specifically, we would propose the following language:

To demonstrate an environment that is welcoming with respect to gender identity and sexual orientation, a religiously affiliated law school shall not be prohibited from professing any religious belief or required to take any action that is inconsistent with its religious values and beliefs.

We make this request to ensure not only that a law school’s profession of belief in Catholic teaching in these areas will not itself be construed as creating an unwelcome environment, but also to ensure that a religiously affiliated law school will not be required to engage in supportive actions, such as certain pro bono and externship activities, that would themselves be inconsistent with the school’s religious beliefs.

If you have any questions, please feel free to contact me.

Sincerely,

[Signature]

Kevin Cienly
President and Dean
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