April 2, 2018

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

Subject: Comment on Revisions to Standard 205

Dear JR Clark,

I am writing on behalf of the Council for Christian Colleges & Universities (CCCU) to comment on the proposed changes to Standards 205 and 206, as described in the November 17, 2017 memo, “ABA Standards and Rules of Procedure – Matters for Notice and Comment.” The CCCU represents over 180 institutions of higher education around the world, including 7 in the US with ABA-accredited law schools.

As an attorney myself, I recognize the important role the ABA plays in ensuring students obtain a quality legal education. From Stanford to Samford, the diversity of institutions strengthens our legal system by providing students the opportunity to study and learn in a variety of environments that prepare them for the wide variety of legal careers, from representing indigent clients to Fortune 500 companies. I make the recommendations below in the spirit of furthering the diversity of both law students and law schools.


The proposed amendment to Standard 205 would add “gender identity” to the list of groups for which a law school may not discriminate against students, faculty, or staff. The ABA has recognized the conflict such policies in regards to sexual orientation may present for religious institutions by clarifying in Interpretation 205-2 that “So long as a school complies with standard 205(c), the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs.”

Should “gender identity” be added to the list of protected groups in Standard 205, I ask that it also be added to Interpretation 205-2 alongside sexual orientation.

2. Standard 206 – Diversity and Inclusion

The proposed amendment to Standard 206 requires that a law school “demonstrate by concrete action a commitment to: … Providing an environment that is inclusive with respect to race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, and disability” [emphasis mine]. The new interpretation 206-3 further notes: “As used in Standard 206(c), an inclusive environment is intended to connote an environment that is welcoming to individuals regardless of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability” [emphasis mine].
Should these amendments be made, I strongly recommend that another interpretation be added, similar to Interpretation 205-2, that would make it clear that this requirement shall not require religiously affiliated law schools to violate their sincerely-held religious tenets. In this matter, I strongly urge that you add the proposed wording from the comment submitted by the Ave Maria School of Law:

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 or beliefs.

In addition, any interpretation of “religiously affiliated law school” should make clear that it includes law schools that are sincerely religious, even when not formally affiliated with a particular denomination. This would be consistent with areas of law like Title VII, which recognizes that an organization need not be formally affiliated with a church or denomination to be religious, but that its religious nature may instead be indicated by other factors, such as its articles of incorporation or its day-to-day operations.

Please feel free to contact me or the CCCU’s Vice President for Government and External Relations, Shapri LoMaglio, with any questions on this matter.

Sincerely,

Shirley V. Hoogstra, J.D.
President
Council for Christian Colleges & Universities