

# CLINICAL LEGAL EDUCATION ASSOCIATION

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## CLEA's Testimony to Standards Review Committee Concerning Proposed New Interpretation 304-9

The Clinical Legal Education Association (CLEA) submits the following testimony concerning Proposed New Interpretation 304-9, which seeks to clarify the types of law school instruction that qualify as fulfilling the 45,000 minutes of instruction required by ABA Standard 304. As the December 13, 2002, Memorandum to Deans and others explaining Proposed New Interpretation 304-9 indicates, many deans, law professors, and others involved in legal education have long operated under the assumption that clinical coursework has been includable under the 45,000 minutes requirement. In that regard, CLEA strongly supports Proposed New Interpretation 304-9 as an important step toward removing any ambiguity that may currently exist. However, as this testimony will outline, CLEA urges the Council to consider one minor change. CLEA also urges the Council to adopt a more functional approach in determining which courses qualify under the 45,000 minutes of instruction rule in Standard 304.

### Support for Proposed New Interpretation 304-9

Proposed New Interpretation 304-9 goes a long way toward recognizing that modern law school instruction includes a variety of teaching methodologies, such as clinical teaching, professional skills instruction, and legal writing. In clinical courses, the "classroom" is often in the courtroom where students represent clients under the supervision of faculty or supervising attorneys, in the clinic law office where students meet with supervising faculty and other law students to discuss client representation issues and receive instructional feedback, and other locations where law students interact with each other and faculty to discuss clinical course subject matter. In professional skills courses, law school instruction often takes place in non-classroom settings such as trial and moot court rooms and interview rooms where students are not engaged in traditional "classroom" instruction but rather hands-on simulations where they put theory into practice. CLEA firmly believes that Proposed New Interpretation 304-9 is necessary to clarify that "regularly scheduled class sessions" as currently stated in Standard 304 is not limited solely to traditional classroom sessions. Additionally, Proposed New Interpretation 304-9 is necessary to reaffirm the Council's position that modern law schools utilize a variety of teaching methodologies in preparing law students for the practice of law.

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"Full-time" Should be Deleted from the Proposed Interpretation

Although CLEA supports the reasoning behind and ultimate import of Proposed New Interpretation 304-9, CLEA urges the Council to delete the requirement that that the clinical work must be supervised by a "full-time" member of the law school faculty or instructional staff. At many law schools, some faculties who have been, or who are eligible to be, "full-time" law faculty or instructional staff, work less than full-time. Many of those working less than full-time do so because of childrearing, family care, or health reasons. Some of those faculty move between full-time and less than full-time employment without losing other rights and responsibilities, such as participating in law school governance by serving on faculty committees and voting at faculty meetings. In fact, some schools permit persons to be tenured and work on less than a full-time basis. As proposed, the inclusion of "full-time" differentiates such faculty without any necessary relationship to the quality of supervision being provided.

As additional support for requesting the deletion of "full-time" from the proposed interpretation, CLEA notes that there is no similar exclusion from the 45,000 minutes of instruction if less than full-time faculty or instructional staff teaches classroom courses. To include "full-time" for clinical instruction and not for classroom instruction is inconsistent.

The current ABA Standards also provide sufficient safeguards to ensure the quality of teaching. Standard 402 states: "A law school shall have a sufficient number of full-time faculty to fulfill the requirements of the Standards and meet the needs of its educational program." Standard 403 requires that the "major burden of a law school's educational program rests upon the full-time faculty." Both of these requirements are also furthered by the method of computing student/faculty ratio as described in Interpretation 402-1.

In addition, Standard 405 specifically restricts clinical programs to employing limited number of fixed, short-term appointments and requires that every clinical program must be "predominantly staffed by full-time faculty members." CLEA believes that, when properly followed by law schools, Standard 405 guarantees the quality of clinical legal education in ABA approved law schools.

For all of the reasons stated above, CLEA believes "full-time" should be deleted from the proposed interpretation.

Inclusion of Courses in the 45,000 Minutes Requirement Should be Based on a Functional Definition of Instruction

CLEA believes that the Council can play a constructive role in introducing areas of law or types of instruction into legal education that otherwise have been overlooked or underutilized by most law schools. CLEA believes that the newly adopted standard on distance education, ABA Standard 306, reflects such an attempt. ABA Standard 306 sets forth certain technology

requirements for distance education courses, and then requires the following two educational components before distance education credit may count toward the 45,000 minutes of instruction required by Standard 304(b):

- (1) there is ample interaction with the instructor and other students both inside and outside the formal structure of the course throughout its duration; and
- (2) there is ample monitoring of student effort and accomplishment as the course progresses.

In adopting Standard 306, the ABA wisely articulated a rationale that looks at the features necessary to insure a quality learning experience and then equated the method of learning with traditional classroom instruction. This rationale applies equally to some current externship or field placement programs. In order to be consistent with the rationale underlying distance education, the ABA should adopt this approach to external clinical programs as described in Standard 305. In other words, externships or field placements that meet the requirements similar to those for distance education courses should be treated the same as classroom courses. Only those externships or field placements that do not contain a classroom component, ample opportunity for students to meet with faculty and other students both inside and outside the formal structure of the course, and the ample monitoring of student effort and accomplishments as the course progresses should continue to be excluded from the 45,000 minutes of instruction rule. Adopting such a functional approach will not only harmonize Standards 304, 305, and 306, but it will recognize the strides many law schools are taking to improving externships and field placement programs.

In addition, CLEA believes the requirements of ample opportunity for students to meet with faculty and other students both inside and outside the formal structure of the course, and the ample monitoring of student effort and accomplishments as the course progresses should be requirements for all courses to qualify for inclusion under the 45,000 minutes of instruction rule. Whether the course is a classroom course, simulated skills course, in-house clinical course, or externship experience, these two functional requirements for distance education courses reflect sound policies that should be required in every course.

Consistent with developing a more functional approach to monitoring law school course instruction, CLEA urges the Council to consider what conditions, if any, render classroom instruction ineffective. During the last decade, an increasing number of law schools have adopted small section programs for first year courses and other enrollment caps on courses in an effort to improve the quality of the educational experience. At the same time, some law schools have been lengthening the duration of classes from typical one hour class sessions to two hour or, at times, even three hour class sessions. However, current ABA Standards and Interpretations express no guidelines on classroom size or duration. As a result, there is an increasing potential for variance in the structure of classroom instruction that is likely affecting the quality of legal

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education. Classroom instruction will remain the primary teaching methodology in law schools for the foreseeable future. In light of the primacy of classroom instruction, CLEA urges the Council to conduct a study on the effectiveness of classroom instruction as related to class size, duration of classes, assessment techniques, and other relevant factors. Without such a study and, if necessary, resulting guidelines, CLEA fears that the quality of legal education may erode.

### Conclusion

CEA supports Proposed New Interpretation 304-9 and urges the Council on Legal Education and Admissions to the Bar to adopt it with the words "full-time" deleted for the reasons previously stated.

In addition, CLEA urges the Council to adopt a more functional approach in determining which courses qualify under the 45,000 minutes of instruction rule in Standard 304. CLEA believes that the Standards Review Committee and the Council have laid the groundwork for a functional approach when they adopted Standard 306. CLEA believes that the requirements of ample opportunity for students to meet with faculty and other students both inside and outside the formal structure of the course, and the ample monitoring of student effort and accomplishments as the course progresses should be requirements for all courses to qualify for inclusion under the 45,000 minutes of instruction rule. Thus, any course, whether a classroom course, in-house clinical course, or externship course, should be counted under the 45,000 minutes rule only if these factors are present.

Thank you.