

# C L E A

## Clinical Legal Education Association

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*Leigh Goodmark, CLEA President*  
Univ. of Balt. Law School  
Baltimore, MD 21201  
410 837 5639  
[lgoodmark@ubalt.edu](mailto:lgoodmark@ubalt.edu)

April 18, 2012

**Jeffrey E. Lewis**  
Chair, Standards Review Committee  
**Dean Emeritus and Professor**  
**Saint Louis University School of Law**  
3700 Lindell Blvd.  
St. Louis, MO 63108  
By email to [lewisje@slu.edu](mailto:lewisje@slu.edu)

Re: Proposed Standards 302 and 304  
Comments of Clinical Legal Education Association

Dear Dean Lewis:

I attach here the comments of the Clinical Legal Education Association on Proposed Standards 302 (Learning Outcomes) and 304 (Curriculum), which I understand the Standards Review Committee will be considering at its upcoming meeting on April 20, 2012. I also attach an Appendix with proposals for language changes that CLEA urges the SRC to consider as you review these standards.

Thank you for sharing our comments with the members of the Committee. As always, we appreciate the opportunity to be of help as the Committee continues its comprehensive review of the Standards.

Regards,



Leigh Goodmark  
President

cc: Becky Stretch (by email)  
Bucky Askew (by email)

*CLEA is the nation's largest association of law teachers, representing over 1000 dues-paying faculty at over 180 law schools. CLEA is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. Its membership consists of law professors who teach students in their role as lawyers and who devote their energy and attention to identifying, teaching, and assessing proficiency in the skills and values essential to lawyering.*

**CLINICAL LEGAL EDUCATION ASSOCIATION  
COMMENTS ON PROPOSED REVISIONS TO CHAPTER 3  
STANDARDS 302 AND 304**

April 18, 2012

The Clinical Legal Education Association submits these comments on the proposed changes to Chapter 3, Program of Legal Education, of the Accreditation Standards that are before the Standards Review Committee at its April, 2012 meeting. CLEA has long advocated that legal education attend more to student outcomes and include direct student engagement with real-world problems. The current draft of Chapter 3 moves in the right direction, but still falls short of setting a minimal standard that will guarantee that every graduate is able to give value to clients, communities and the profession. Hoping to be concrete and helpful, we attach draft language in our Appendix that proposes changes to the set of lawyering skills that law schools must assess and that requires that every law student encounter a real-world problem as part of his or her legal education.

Our proposals aim to better realize the vision of the Council of the Section of Legal Education, as expressed in its 2008 *Report of the Outcome Measures Committee*. That report begins from the fundamental premise that professional education has three necessary components: (1) acquisition of academic knowledge; (2) acquisition of practical skills; and (3) development of professional values and identity.<sup>1</sup> Relying in part on CLEA's publication, *Best Practices for Legal Education*, the report captured the widespread concern "that legal education focuses disproportionately on developing the academic knowledge base . . . to the exclusion of developing necessary practical skills and professionalism."<sup>2</sup> In the four years since the Council report was issued, significant changes in the profession and the wider world have brought increased pressures on legal education and attention to its deficiencies in producing graduates who are competent to practice. The learning outcomes required by the Standards must respond to these vital concerns.

**Standard 302: The Need to Mandate Basic Lawyering Outcomes**

Proposed Standard 302, "Learning Outcomes," requires law schools to identify and announce the things it aims to teach its students. Subsection (b) identifies the core knowledge, skills and values that every school must aim to teach and instill. Unfortunately, the current draft only requires accredited law schools to ensure that their graduates emerge with the same outcomes that have been part of the curriculum for decades. The only mandated outcomes in Proposed Standard 302(b) are knowledge, research, and analysis of law.<sup>3</sup> These areas are also

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<sup>1</sup>Report of the Committee on Outcome Measures, American Bar Association, Section on Legal Education and Admission to the Bar, 6-7 (July 2008).

<sup>2</sup>*Id.* at 8. The Report relied on two studies, WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation 2007) and ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association 2007).

<sup>3</sup> Proposed Standard 302(b)(2) requires law schools to include the only the following learning outcomes: "legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communication in a legal

the exclusive focus of bar examiners, so the pressures on law schools to narrow the focus of legal education to these skills are substantial. Yet the Council report noted above, as well as most experts, regard it as well settled that contemporary law graduates need much more.

The other lawyering skills recognized as fundamental since the ABA Section of Legal Education and Admissions to the Bar's own widely-heralded report, *Legal Education and Professional Development-An Educational Continuum* (commonly known as the MacCrate Report) -- such as client interviewing, counseling, negotiation, fact development and analysis, conflict resolution, organization and management of legal work, collaboration, cultural competence, and self-evaluation -- are relegated in the proposed standards to the status of exemplar options. They are collected in Proposed Interpretation 302-2 in a laundry-list of skills to which a law school *might* offer its graduates an introduction. If, as urged by the Council's Outcome Measures Report, the purpose of revising Standard 302 is to address the well-documented disconnect between law school education and the full range of basic skills necessary to the practice of law, the proposed standard has gotten it backwards. The proposed standard requires law schools to do only what they already do to excess and leaves it up to individual schools to decide whether to remedy the widely acknowledged problems of the current law school curriculum.

The professional skills listed in Interpretation 302-2 as optional law school learning outcomes are not optional in the practice of law. Interviewing, fact development and analysis, counseling, dispute resolution, and cultural competence are fundamental to lawyering and the building blocks of legal practice in any setting. Legal knowledge is of no use to clients or society if lawyers cannot identify objectives, acquire and evaluate facts, analyze options, effectively resolve disputes, and manage the challenges of cultural difference that increasingly characterize a diverse society and a globalized legal profession.

Proposed Interpretation 302-2 recognizes that the nearly two hundred ABA accredited law schools have varying strengths and resources.<sup>4</sup> This is certainly true. Law schools can and should seek to comply with the requirement that their graduates achieve entry-level competence in the mandatory law practice skills in creative and individual ways. The implementation of the requirement should, as currently proposed, give law schools time to examine their current curricula and their faculty resources and implement change.<sup>5</sup> But it is unfortunately inevitable that unless basic practice skills are among the mandatory outcomes for accreditation many schools will simply not include them. For at least some graduates of ABA accredited law schools the chasm between their legal education and the demands of our profession will remain.

For these reasons, CLEA urges that the "illustrative" lawyering skills in Proposed Interpretation 302-2 -- interviewing, counseling, negotiation, fact development and analysis,

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context; and the exercise of professional judgment consistent with the values of the legal profession and professional duties to society."

<sup>4</sup> "[A] law school shall determine in which other professional skills its graduating students shall have competency, in a way that fulfills the mission of and uses effectively the strengths and resources available to the law school."

<sup>5</sup> See the "Effective Date" and "Implementation" provisions included at the end of Proposed Chapter 3.

conflict resolution, and organization and management of legal work -- be included among the mandatory skills in Standard 302(b), as we suggest in our proposed language below.

### **Standard 304: The Need to Mandate Client Learning Experiences**

Proposed Standard 304(a) requires that every law student take a skills course that uses simulated or real legal problems to “integrate doctrine, theory, skills and legal ethics and engage students in performance of” any skill that the school chooses.<sup>6</sup> While the proposed standard would likely bring modest improvement in some law school skills courses, it does not do what it should to address need to better teach professional skills and values. Every law student should have one faculty-supervised experience working with a client or clients to solve a legal problem or to realize an opportunity.

The current version of Proposed Standard 304(a)(3) requires every student to take at least one “skills” course involving either simulation, a live-client clinic or an externship field placement. Critically, in the second decade of the 21<sup>st</sup> Century, a law student could still graduate with one simulated experience but never having encountered a real client or a real legal problem. Other professions, including medicine, architecture and social work require students to engage in real-world supervised practice before becoming a licensed professional. Our profession should require no less.

While the proposed professional skills requirement is an important step, is not sufficient. Simulation courses require students to role-play lawyering functions based on static facts and imagined, clients. They can powerfully advance learning and performance of professional skills, but they do not replicate complexity of real people and real situations. Perhaps most importantly, students are denied the chance to grapple with the affective and normative realities of professional practice. No one learns to swim by moving their arms and legs on a gym floor, however useful work outside the pool may be.

Live-client clinical courses and well-supervised field placements provide the essential additional dimensions. In clinics, students work as lawyers with direct and primary responsibility for solving real legal problems and working with people for whom something is actually at stake. In well-supervised field placement, students are immersed in carefully chosen real practice settings with faculty oversight and opportunities for structured critical reflection.

Therefore, CLEA urges the adoption of an additional curricular requirement, in the language proposed by the Society of American Law Teachers as new Standard 304(a)(4) and set out in the Appendix here.<sup>7</sup> An adequate legal education must include opportunities to develop and integrate knowledge, skills and values through real legal work addressing the legal problems presented by real clients or matters.

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<sup>6</sup> Proposed Standard 304(a)(3), requiring a skills course, permits individual law schools to choose any “skill” it finds convenient. It makes reference to “one or more professional skills identified in Standard 302 (b) (3).” But, as noted, no skills are actually identified in that proposed standard, which reads in full: “a depth in and breadth of other professional skills sufficient for effective, responsible and ethical participation in the legal profession.”

<sup>7</sup> Society of American Law Teachers, Comment on Chapter Three of the Standards, April 13, 2012.

The addition of this curricular requirement would also permit striking the unfortunate current proposed language that equates simulation based work with clinic and field placement classes involving real legal problems. This change would reflect the current best understanding of the respective roles of these kinds of experiential education in law school. Finally, we propose that law schools identify and announce the skills students are expected to develop in any course complying with 304(a)(3). This would promote thoughtful curricular development, aid students in making good course choices and simplify the work of accrediting teams. Our proposed changes to 304 are also in the attached appendix.

### **Standard 310: The Need for Adequate Supervision in Field Placements under 304(a)(3).**

Finally, we urge resolution of a latent tension between the proposed revision of Standard 304(a)(3), which provides that the skills course requirement can be fulfilled by a field placement, and Proposed Standard 310(e), which regulates field placements. In short, while the first standard could be met by any field placement, the second standard sets baseline requirements for field placements earning *four or more* academic credits but permits lower credit offerings to dispense with such key components as periodic on-site visits and a contemporaneous seminar or tutorial component. Under this two-tiered system, field placements carrying three credits or fewer can -- and some do -- involve very little oversight by law schools.

Given the importance of field placements in contemporary legal education and in Proposed Standard 304(a)(3), we urge that any field placement fulfilling the requirement comply with the heightened requirements of 310(e), regardless of the number of credits awarded and also comply with the provisions of Interpretation 304-2, *i.e.*, “development of concepts and theories underlying the skills being taught; multiple opportunities for students to perform tasks with appropriate feedback and self-evaluation; and evaluation of the students’ performance by a qualified faculty member.” We offer proposed language to accomplish that aim in the attached appendix.

### **Conclusion**

We know that the Committee, the Council, and the ABA are, like CLEA, are committed to better serving law students, the profession, and the public. Our proposals will advance our shared goals. We appreciate this opportunity to bring them to you.

**APPENDIX  
CLEA PROPOSALS FOR CHAPTER THREE**

[Amendments are to the proposals before the Standards Review Committee in April, 2012. New material is underscored; deleted material is struck through.]

**Standard 302. LEARNING OUTCOMES**

**(b) The learning outcomes shall include competency as an entry-level practitioner in the following areas: . . .**

**(2) the professional skills of:**

**(i) legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communication in a legal context;**

**(ii) interviewing, counseling, negotiation, fact development and analysis, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation; and**

**(iii) the exercise of professional judgment consistent with the values of the legal profession and professional duties to society, including recognizing and resolving ethical and other professional dilemmas**

**Interpretation 302-2**

For the purposes of Standard 302(b)(3), a law school shall determine in which other professional skills its graduating students shall have competency, in a way that fulfills the mission of and uses effectively the strengths and resources available to the law school. ~~Interviewing, counseling, negotiation, fact development and analysis, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation are among the professional skills that could fulfill Standard 302(b)(3).~~

**Standard 304 CURRICULUM**

**(a) A law school shall offer a curriculum that is designed to produce graduates who have attained competency in the learning outcomes identified in Standard 302 and which, in addition, requires every student to complete satisfactorily at least . . .**

**(3) one or more faculty-supervised, rigorous course(s) totaling at least three semester hours (or equivalent quarter hours) after the first year. The course or courses must integrate doctrine, theory, skills and legal ethics and engage students in performance of one or more professional skills identified in Standard**

~~302(b)(3). The course or courses shall be: (i) simulation course(s); (ii) live client clinic(s); or (iii) field placement(s) complying with Standard 310.~~

**(4) one faculty-supervised experience working with a client or clients to solve a legal problem or to realize an opportunity.**

### **Interpretation 304-2**

The course(s) described in Standard 304(a)(3) should have the following characteristics: development of concepts and theories underlying the skills being taught; multiple opportunities for students to perform tasks with appropriate feedback and self-evaluation; and evaluation of the students' performance by a qualified faculty member. Schools should specify in their course descriptions the specific professional skills that students can expect to develop in any course that qualifies toward the requirement in Standard 304(a)(3).

### **Standard 310. STUDY OUTSIDE THE CLASSROOM**

**(f) To fulfill the professional skills requirement in Standard 304(a)(3), a field placement course must meet all of the requirements of Standard 309(e), regardless of the number of credits earned in a semester, and must ensure that students in the field placement are receiving appropriate instruction in the theory and concepts underlying the professional skills taught, multiple opportunities to perform lawyering skills, and appropriate feedback on their performances.**