C L E A

Clinical Legal Education Association

http://cleaweb.org

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John Sebert
BY HAND

Dear John:

The Clinical Legal Education Association (CLEA) submits these comments as an initial response to concerns expressed by a group of Deans, in a February 17, 2005 letter, opposing the proposed revisions to Interpretation 405-6 and 405-8. We reiterate the position that CLEA advanced in a statement submitted to the Committee dated March 9, 2005. We submit that the decanal February 17 letter misconstrues the force of the proposed revisions, and is inconsistent with the plain language of the governing Standard.

First, both the Standards Review Committee and CLEA have proposed changes only to Interpretations. The text of Standard 405 will remain exactly the same. The revisions would simply guide the Accreditation Committee, and clarify the long-standing rules, without changing them.

Second, the changes proposed in the December 10th draft are modest in their reach. For example, Interpretation 405-8 – as proposed – explicitly states that it requires "voting on non-personnel matters" only. CLEA continues to believe that this provision does not go far enough, and has argued to extend voting to all matters of faculty governance. Certainly, the explicit exclusion of clinical faculty from participation in the appointments process – even as to clinical appointments – is not consistent with "reasonably similar" treatment.

Third, we want to clarify CLEA's position on the revisions proposed to Interpretation 405-6. We realize that some of the controversy has arisen because of the Committee's selection of "a five year" term as the definition of the "long-term contract" already described by the Interpretation. CLEA has suggested that this revision does not go far enough. In part out of concern for risks to the academic freedom of clinical faculty, we have proposed that the Interpretation must also provide that there be a presumption of renewability in these contracts, after a probationary period. In our view, the Committee's proposal already reflects a compromise, inconsistent with the plain language of Standard 405.

Fourth, while we support clarification, in our view, the most important aspect of the proposed revision to the Interpretation is the change from "should" to "shall." In that regard, we note that it has been nearly ten years since "shall" was substituted for "should" in Standard 405. It is time to make the parallel change to the Interpretation.

Moreover, we note that the Committee's proposed Interpretation merely

specifies a "five-year" term as, in effect, a safe harbor. We suggest that law schools can seek to satisfy the mandatory language of Standard 405(c) in other ways. For example, we recognize that some public University systems prevent law schools from providing more than one-year contracts. In those circumstances, presumptive renewal of contracts offers the only means (other than tenure of some sort) for accommodating the demands of the standards. The Accreditation Committee should have the flexibility to approve schools that offer presumptive renewability of shorter-term contracts (after a probationary period) as satisfying the plain language of the Standard.

The decanal group has complained that the proposed revisions will "over-regulate" and "micro-manage" law schools. This charge is hard to credit, since no change at all is proposed to the governing Standard. The issue is really one of honest, good faith interpretation of the existing plain language of 405(c). Seasoned administrators recognize that when regulatory oversight is met with evasion, revisions clarifying and tightening the interpretation of those regulations may be necessary – but do not constitute "over-regulation." In effect, the revisions constitute "macro-management," seeking only to carry out the overall directive and the plain language of Standard 405.

The other decanal argument against revision is that there has been no outcome analysis with regard to the impact of 405(c) on legal education. We note that there has been no outcome analysis with regard to tenure for non-clinical faculty as far as we can tell. More importantly, there has been an outcome analysis of 405(c). The ABA itself, in its recently published Survey of Law School Curricula, reported that, in law schools that awarded clinical faculty tenure-track or at least long-term contract status, "the change in status raised the importance and value of the clinical experience, and thus the clinical experience was enhanced."

The fundamental choice posed by the revisions under discussion is this: who will have a vote in shaping the future direction of American legal education? Clinical faculty want to be at the table, with a meaningful role in the governance of the academy. Some law school deans oppose our participation. But we believe that we bring a valuable perspective to this enterprise, and would like to work in equal partnership with our academic colleagues and the legal profession to improve the preparation of law graduates for the practice of law.

Respectfully submitted,

Alex Scherr

Alexander Scherr
President, CLEA