

September 30, 2010

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American Bar Association
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Dear Bucky:

The Association of Legal Writing Directors welcomes the opportunity to comment on the May 5, 2010, draft of proposed revisions to Chapter 3 Program of Legal Education to be considered by the Student Learning Outcomes Subcommittee. We ask that you distribute copies of this letter to members of the Standards Review Committee.

We applaud the Subcommittee's hard work and creativity over the many months you have been working on these revisions. We wholeheartedly endorse the Subcommittee's general direction in focusing more attention on learning outcomes, and less on input requirements, in revising the accreditation standards.

ALWD generally supports revisions to Chapter 3 that aim to ensure that accredited law schools adequately prepare students to competently practice law. As the accrediting agency for law schools, the ABA Council has the central responsibility for identifying a core set of skills and values that the public has a right to expect every competent lawyer to demonstrate. ALWD urges the Subcommittee to recommend standards with sufficient rigor to drive meaningful change in legal education, and more specifically to address the longstanding concerns identified in the *Carnegie Report* regarding the quality and relevance of legal education.

In particular, we support revising the standards to provide additional outcome-based measures that seek to (1) evaluate whether law graduates understand legal theory as well as their professional and ethical responsibilities, (2) assess whether law graduates have acquired appropriate fundamental lawyering skills, (3) determine whether law graduates understand basic principles of public and private law, and (4) assure that law graduates understand that law is a public profession as identified in the ABA's Preamble.

As you know, learning outcomes have always been central to the pedagogy of modern legal analysis, research, and writing programs. We join with our clinical legal education colleagues in supporting the adoption of outcomes-based standards and assessment requirements throughout the legal academy. We share the conviction that such standards and requirements will best serve the interests of our students, the practicing bar, the courts, and the public.

While ALWD strongly supports standards that focus on learning outcomes, some input measures should be retained due to the complexity of measuring outcomes in an objective way. Input measures, including a standard methodology for calculating teaching ratios, have long served their purpose in strengthening legal education. To the extent there are baseline expectations of what a law graduate should be able to do, curricular input measures pertaining to core skills and values should be retained.

We offer the following recommendations in the spirit of finding the most effective and efficient way to implement these shared goals.

Standard 302. LEARNING OUTCOMES

We understand the subcommittee's purpose in promulgating Interpretation 302-1 is to assure the academy that skills training can be accomplished through a variety of means, not merely through individual classes related to individual skills. We believe, however, that this purpose can be accomplished more meaningfully by casting the interpretation in positive, rather than negative language. We respectfully offer the following suggested revisions:

Interpretation 302-1: *Training with respect to individual skills can be delivered in a variety of ways, and the Standard ~~does not require individual classes with respect to individual professional skills~~ encourages innovative courses that integrate multiple practice skills with doctrinal, theoretical, and experiential learning in ways that students are likely to encounter in practice.*

ALWD strongly supports the language in proposed Standard 302(b)(2) that requires law school outcomes to include competency in legal analysis and reasoning, critical thinking, legal research, problem solving, and written and oral communication in a legal context. Legal research, analysis, and writing are core skills of the profession and an essential obligation of legal education.

We also endorse the new language in 302(b)(2)(i) and (iii) that requires law schools to ensure graduates are competent in the skill of identifying and resolving ethical dilemmas, as well as other professional skills sufficient for effective, responsible, and ethical participation in the legal profession. We also support the new language in Standard 302(b)(3) that reinforces the goal that law graduates fully understand the values shared by the legal profession. Competently meeting the lawyer's ethical and professional obligations is a core value of the legal profession, and law schools are best suited to instill those values before graduates enter the profession.

With respect to proposed Standard 302(b)(2)(iii) relating to other professional skills, ALWD urges the Subcommittee to incorporate specific language identifying the other fundamental skills considered necessary to meet the aspirational goals expressed in the

Standard. At minimum, we believe every competent beginning lawyer should be able to demonstrate basic skills in client interviewing, client counseling, negotiation, and fact development and analysis.

We understand the subcommittee's concern with allowing some flexibility to law schools in identifying outcomes consistent with each school's mission and resources, as stated in proposed Interpretation 302-2. In particular, we agree that competency in conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation are worthy goals for legal education, and we support retaining that language in Interpretation 302-2. Nevertheless, the central role of the Council, as the designated accrediting agency, is to ensure that the mission and resource allocation of each ABA-accredited law school are consistent with meeting the educational and professional goals of law students, as well as the reasonable expectations of the legal profession regarding the fundamental skills of competent beginning lawyers.

With these considerations in mind, we respectfully offer the following suggested revisions to Standard 302(b)(2)(i) and Interpretation 302-2:

Standard 302.

...

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

...

- (2) competency in the following skills:

- (i) legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communications in a legal context, client interviewing, client counseling, negotiation, and fact development and analysis;
- (ii) the ability to recognize and resolve ethical and other professional dilemmas; and
- (iii) a depth and breadth of other professional skills sufficient for effective, responsible, and ethical participation in the legal profession.

Interpretation 302-2: *For the purposes of Standard 302(b)(2)(iii), 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~~ 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)(2)(iii).*

We concur in the sense of Interpretation 302-3 that students may elect different “tracks” with different “bundles of skills,” but we are concerned that, as written, the Interpretation could be construed to ignore the need to ensure that all students, regardless of “track,” master the fundamental skills specified in Standard 302(b)(2)(i) and (ii). We therefore suggest simply adding a clarifying phrase at the end of the current version, specifically:

Interpretation 302-3: *A law school may determine tracks for students, such that graduates from different tracks have proficiency in differing bundles of professional skills under Standard 302(b)(2)(iii).*

Standard 303. CURRICULUM

ALWD supports the subcommittee’s proposal to retain accreditation standards that require specific courses considered fundamental in the law school curriculum. Specifically, we agree that law schools should continue to require at least one course in professional responsibility, as proposed in Standard 303(a)(1), as well as at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year, as proposed in Standard 303(a)(2).

We understand and support the subcommittee’s purpose to ensure that the two rigorous writing experiences minimally required by 303(a)(2) are both “faculty supervised.” For example, an otherwise rigorous writing experience would not meet the minimum standard if supervised by law students. As currently worded, the standard could be interpreted to require faculty supervision for only the first-year rigorous writing experience. We suggest the following revision to clarify that both first-year and upper-level rigorous writing experiences must be faculty supervised:

Standard 303

- (a) A law school shall offer a curriculum that . . . requires every law student to complete satisfactorily at least:
. . .

- (2) one faculty supervised, rigorous writing experience in the first year and at least one additional faculty supervised, rigorous writing experience after the first year

We urge the Subcommittee to retain the current language of Interpretation 303-1, with one exception. Consistent with the requirement in Standard 303(a)(2) that the two rigorous writing experiences must be “faculty supervised,” we urge the Subcommittee to replace the term “writing instructor” in Interpretation 303-1 with “writing faculty member.” The term “writing instructor” may suggest that a non-faculty member or even an upper-level student might qualify, undermining what we believe the Subcommittee intended by adding “faculty supervised” to 302(a)(2). We respectfully suggest the following revisions to Interpretation 303-1:

Interpretation 303-1: *Factors to be considered in evaluating the rigor of writing instruction include: the number and nature of writing projects assigned to students; the opportunities a student has to meet with a writing ~~instructor~~ faculty member for purposes of individualized assessment of the student’s written products; the number of drafts that a student must produce of any writing project; and the form of assessment used by the writing-~~instructor~~ faculty member.*

As written, Interpretation 303-1 defines the factors to be considered in evaluating the rigor of writing instruction. We believe the language applies to both rigorous writing experiences required by Standard 303(a)(2). Any express limitation of this Interpretation to the required first-year rigorous writing experience would unnecessarily jeopardize many valuable second- and third-year programs of legal writing instruction. We recognize that students benefit from the guidance of all members of the faculty in writing seminar papers and in similar writing experiences, and we do not read Interpretation 303-1 as affecting that relationship in any way. Substituting “writing faculty member” for “writing instructor” in Interpretation 303-1, together with clarifying Standard 303(a)(2) as suggested above, merely emphasizes that all faculty members responsible for supervising required rigorous writing experiences are obliged to provide pedagogically sound writing instruction as well as doctrinal guidance.

With respect to Standard 303(a)(3), we agree with the observation by our clinical education colleagues that live-client clinics are the ideal way to introduce students to professional skills. Nevertheless, we understand that the Subcommittee proposes simulation courses as an alternative approach when live-client clinics are not feasible. We also support the subcommittee’s language in 303(b) that requires law schools to provide students substantial opportunities to participate in either live-client clinics or other real-life practice experiences, in addition to pro bono legal services or law-related public service. All of these opportunities encourage law schools to offer live-client clinics, without mandating that approach for law schools situated in geographical areas that do not realistically allow for live-client clinical education.

Standard 304. ASSESSMENT OF STUDENT LEARNING

We applaud the subcommittee's recognition that both formative and summative assessment methods should be introduced throughout the curriculum, as we have done in legal writing. We note, however, that the current draft's omission of "reliability" and "validity" requirements found in earlier drafts tends to undermine the value of the outcomes assessment process. We recognize that reliable and valid assessment methods are yet to be developed for many of the learning outcomes these standards are designed to achieve, but we are confident that they will be developed with appropriate encouragement, and we are persuaded by the comments submitted to date that this process will not be unduly costly or burdensome.

We therefore suggest reinstating so much of the language of the October 2009 Subcommittee draft as will ensure meaningful assessment, together with an interpretation recognizing that the development of reliable and valid assessment methods is a work in progress. Site teams should evaluate a school's compliance based on reasonable progress toward adopting such methods across the curriculum. We respectfully suggest the following language:

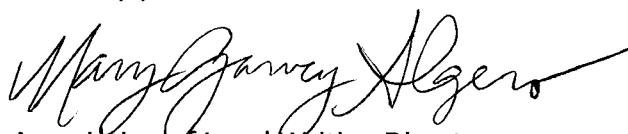
Standard 304

A law school shall apply a variety of valid and reliable assessment methods, both formative and summative, ~~methods~~ across the curriculum to provide meaningful feedback to students and faculty.

Interpretation 304-3. *A law school need not achieve all of the requirements imposed by Standard 304 immediately upon promulgation, but must demonstrate consistent and substantial progress toward the development, adoption, and evaluation of valid and reliable assessment methods, both formative and summative, across the curriculum.*

Thank you once again for the important work your Student Learning Outcomes Subcommittee has undertaken to focus the accreditation standards on improving legal education consistent with the *Carnegie Report*. We very much appreciate your diligence. Please let us know if we can provide any further assistance as you conclude your work.

Sincerely yours,



Association of Legal Writing Directors
Mary Garvey Algero, President