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December 15, 2008

ABA Council, Section on Legal Education & Admissions to the Bar  
Office of the Consultant  
Attn: Ms. Becky Stretch  
American Bar Association  
321 N. Clark Street  
Chicago, IL 60610

RE: Comments on Proposed Deletion of Interpretations 402-1 and 402-2

Dear Members of the Standards Review Committee:

We write on behalf of the Society of American Law Teachers (SALT) to comment on the proposed deletion of Interpretations 402-1 and 402-2 of the ABA Standards for the Approval of Law Schools. As you know, SALT is an affiliated organization with the Council. SALT is a membership organization of legal educators in law schools throughout the United States, representing the collective voices of law teachers for more than 30 years.

SALT opposes the proposed deletion of Interpretations 402-1 and 402-2, even while we understand the concerns about the Interpretations expressed by the Standards Review Committee (SRC) in its report. We believe that there has been insufficient consideration of the consequences that would flow from the removal of the interpretations, and that it is unwise to take such drastic action now, just as the SRC begins a comprehensive review of all the accreditation standards. That comprehensive review will allow consideration of the interplay of the student-faculty ratio with other standards of law school quality, ensuring a more thoughtful and transparent process of change.

Standard 402 requires that a law school have “a sufficient number of full-time faculty to fulfill the requirements of the Standards and meet the goals of its educational program.” The two Interpretations provide a means of measuring whether a school does, indeed, have a sufficient number of full-time faculty by providing formulas indicating how to count faculty with administrative

responsibilities and teachers who are not on tenure track or its equivalent. They also identify a range (20:1 or better) that presumptively indicates compliance as well as a range (30:1 or worse) that presumptively indicates non-compliance. Deleting the Interpretations will have the following problematic effects:

(1) There will be no clear measure that can be applied consistently to determine whether a school meets the requirement of having a sufficient number of full-time faculty to support its program. At a time when the Council and SRC have acknowledged the importance of increased transparency in the accreditation process, removing the one measure of appropriate staffing of law schools instruction is counter-productive.

(2) The report proposing the deletion notes that almost all schools (180 of 191) report ratios low enough to be considered presumptively compliant, while no schools report ratios high enough to create a presumption of non-compliance. One cannot conclude from this that the ratio is not important, however. Rather, it may be that the necessity of using the ratio to show compliance has motivated schools to monitor their use of adjuncts, teachers with administrative responsibilities, and teachers who are not eligible for tenure or its equivalent. Removing the ratio would free schools to ignore or place less emphasis on this issue, and to rely increasingly on teachers with less security and therefore independence, with consequences for institutional governance and curricular and pedagogical development. We note that there currently is a small class of law professors who have no permanent home, who make their living by visiting at a different school every year. These peripatetic teachers cover classes when a faculty member is on sabbatical, but schools might come to depend on such teachers more frequently and their numbers increase dramatically if schools were able to claim they have sufficient full-time faculty by hiring more such visitors or temporary faculty who teach on annual contracts.

(3) The provision that allows schools to count as .7 of a full-time teacher “clinicians and legal writing instructors not on tenure track or its equivalent who teach a full load” has the indirect but important impact of encouraging schools to give tenure-track-like status to such individuals in order to count them fully rather than only proportionately. We know of at least one instance when faculty members expressly indicated they supported such a change precisely because it would affect the student/faculty ratio for the school. Removing the Interpretation entirely will conversely encourage schools to continue current practices of leaving clinicians and legal writing instructors without the protections of tenure-like security. We note that encouraging schools to award tenure-like status to clinicians and legal writing instructors makes it more likely that those teachers will be able to participate fully in the governance of law schools, enhancing their role in curriculum at a time when the Carnegie Foundation report, the Best Practices report of the Clinical Legal Education Association, and the Outcomes Measures Subcommittee are encouraging law schools to expand the teaching of skills and ethics, areas in which clinicians and legal writing instructors must play a vital role.

For these reasons, we urge the Council to reject the proposed deletion of Interpretations 402-1 and 402-2. Given the valid criticisms of the current use of the student/faculty ratio, it would be sensible to consider further definition of what is meant by “full time faculty.” There may also be ways to enhance the data so it would be more meaningful. As noted in the SRC report, other numbers (such as what “portion of the first year curriculum and upper-level curriculum in the

day and evening divisions are taught by full-time and part-time faculty, what core subjects beyond the first year courses are taught by full-time and part-time faculty, and the extent to which faculty members are not meeting all of their obligations . . . because of overloads in one or more areas”) are of significance to the Accreditation Committee.

The Interpretations to Standard 402 are necessary to provide schools with guidance about what is required to have “a sufficient number of full time faculty.” Perhaps a revision in the way in which the student/faculty ratio is computed is warranted. What seems unwarranted is an abandonment of a transparent and useful tool for evaluating schools on their ability to deliver instruction through full time and full-time-equivalent teaching faculty. What seems particularly unwarranted is abandonment of that standard now rather than incorporating consideration of the student/faculty ratio provisions in the comprehensive review of all the accreditation standards already underway.

We thank you for the opportunity to comment on the proposal. Representatives of SALT will also be present at the SRC hearing in January 2009 and would be happy to speak further about these issues.

Sincerely yours,

A handwritten signature in black ink that reads "Deborah W. Post". The signature is written in a cursive, flowing style.

Deborah Waire Post  
Co-President