

ALWD letterhead

January 14, 2005

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American Bar Association
Section of Legal Education and Admissions to the Bar
321 N. Clark Street
Chicago, IL 60610

Re: Proposed Revision to Interpretation 405-9 to the ABA Standards for the Approval of Law Schools

Dear Stephen:

Thank you for the opportunity to testify at the Standards Review Committee's hearing in San Francisco on January 6. I thought it might be helpful for you to have a brief written summary of my comments for your file:

The Association of Legal Writing Directors (ALWD) supports the proposed modification, circulated by memorandum of December 10, 2004, to Interpretation 405-9 relating to ABA Standard 405(d).

Standard 405(d) requires ABA-accredited law schools to take such steps to "attract and retain" qualified legal writing teachers as may be necessary to provide "legal writing instruction as required by Standard 302(a)(2)" and to "safeguard academic freedom." Standard 302(a) requires "rigorous" legal writing training.

Interpretation 405-9 as it currently exists states that Standard 405(d) does not preclude the use of non-renewable contracts for legal writing teachers. Non-renewable contracts are inconsistent with both the text and the purposes of Standard 405(d). Non-renewable contracts are inconsistent with the *text* of the Standard because by definition contract caps have the intent and effect of forcing teachers out of a school, not retaining them. Non-renewable contracts are inconsistent with the *purposes* of Standard 405(d) because (a) contract caps deprive students at a law school of the expertise of a qualified teacher who wants to stay, but cannot because of automatic removal, and (b) contract caps prevent teachers from exercising academic freedom with respect to the curriculum of the courses they teach.

Thus, the proposed modification to Interpretation 405-9, which removes an apparent express endorsement of non-renewable contracts, is a step in the right direction in harmonizing the ABA's approach to rigorous writing training.

We recognize that the proposed modification does not affirmatively outlaw all non-renewable contracts. The proposed modification allows law schools to adopt bona fide fellowship programs designed to produce candidates for the full-time tenure- and clinical-track teaching markets. We do not oppose such bona fide fellowship programs. Individual law schools may justify their staffing models in ABA accreditation visits on a case-by-case basis.

Of course, ALWD will continue to press for parity between full-time legal writing professors and the rest of the full-time faculty. At the least, full-time legal writing professors deserve parity with members of the academy who are full-time clinical professors. Legal writing is a core subject of the ABA Standards. It is inconceivable to us that the full-time teachers of one of the ABA core subjects should have the least job security and the least academic freedom protection of any members of the legal academy, to the ultimate detriment of the students and the legal profession. ALWD is also concerned about the differential effect current Standard 405(d) has upon the group within the academy that consists of 70% women. But for purposes of today's hearing, we support the proposed modification of Interpretation 405-9 as an appropriate, modest step forward.

Sincerely,

Bradley G. Clary
President, 2004-05