

August 23, 2004

**MEMORANDUM**

**TO: Deans of ABA-Approved Law Schools  
University Presidents  
Chief Justices of State Supreme Courts  
Bar Admission Authorities  
Leaders of Organizations Interested in ABA Standards  
Deans of Unapproved Law Schools**

**FROM: John A. Sebert, Consultant on Legal Education**

**SUBJECT: Revisions to ABA Standards 302 and 305**

At its December 2003 meeting, the Council of the Section of Legal Education and Admissions to the Bar approved for notice and comment a comprehensive revision of Chapter 3 of the *Standards for Approval of Law Schools*, relating to the Program of Legal Education. Those proposed revisions were circulated for comment by memorandum dated December 16, 2003. At its June 2004 meeting, the Council adopted revisions to many provisions in Chapter 3. Those revisions were concurred in by the ABA House of Delegates at its August 2004 meeting and are already in force. A report concerning those revisions is contained in a separate document, and the revised Standards are available on the Section's website [<http://www.abanet.org/legaled>].

Also at its June 2004 meeting, the Council invited additional comment concerning the previously circulated proposed revisions to Standard 302 and to Standards 305(e)(5)&(7). A memorandum advising of the opportunity for further comment was circulated on June 8, 2004. After careful consideration of all of the comments received concerning those provisions, the Council at its August 2004 meeting adopted the revisions to Standards 302 and 305 that are set forth in this memorandum. Those revisions are not yet effective and will not become effective until concurred in by the ABA House of Delegates. The revisions will be presented to the House for its concurrence at the ABA Mid-Year Meeting in February 2005.

This memorandum provides an explanation of the revisions to Standards 302 and 305 that were adopted by the Council in August 2004, together with marked-up and restated versions of those Standards.

## **Revisions to Standard 302**

Standard 302(a) was redrafted to state obligations of the law school, which is the entity that the Standards regulate, rather than obligations of law students.

### **Standard 302(a)**

Revised Standard 302(a) states five separate types of instruction that a school must require that each recipient of a J.D. degree receive. It states separately (without intending to make a substantive change) in (a)(2) the requirement incorporated in current (a)(1) that all students receive substantial instruction in legal analysis and reasoning, legal research, problem solving, and oral communication.

Revised Standard 302(a)(3) restates existing requirements concerning instruction in legal writing. New Interpretation 302-1 provides additional guidance for determining whether a writing experience is “rigorous,” as required by the Standard.

New Standard 302(a)(5) restates the requirement [currently in Section 302(b)] that a school require that all students receive substantial instruction in the “history, structure, values, rules and responsibilities of the legal profession,” and this provision is further explicated by new Interpretations 302-6 and 302-9. Interpretation 302-9 provides that the required instruction includes such topics as the Model Rules of Professional Conduct and the law of lawyering.

Standard 302(a)(4) establishes a new requirement that all schools require that each student receive substantial instruction in “other professional skills generally regarded as necessary for effective and responsible participation in the legal profession,” and that requirement is further explicated in Interpretations 302-2 and 302-3.

Interpretation 302-2 makes it clear that the definition of “professional skills” is broad and includes far more than traditional litigation skills:

*Each law school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302 (a)(4).*

New Interpretation 302-3 makes it clear that schools have considerable leeway as to how to provide that required professional skills instruction:

*A school may satisfy the requirement for substantial instruction in professional skills in various ways, including, for example, requiring students to take one or more courses having substantial professional skills components. To be “substantial,” instruction in professional skills must engage each student in skills performances that are assessed by the instructor.*

The required professional skills instruction may be provided in a variety of formats, including simulation courses, externships, and live-client clinics. The required professional skills instruction may be provided in first-year or upper-class courses, and could be accomplished through a “skills” component of a larger classroom course (such as by having some students undertake a substantial planning and drafting exercise in conjunction with a Trusts & Estates course).

The Council understands that to the extent that revisions in the Standards require law schools to impose additional graduation requirements on students, those new requirements would apply only to new incoming students and that previously enrolled students would be permitted to graduate under the requirements in existence at the time that they enrolled.

#### Standard 302(b)

New Standard 302(b) states types of instruction with respect to which a law school must provide “substantial opportunities”, although the school need not require that each of its students receive such instruction. Subsection (b)(1) provides further direction as to the type of “live-client or real-life experiences” that satisfy the Standard, and that guidance is expanded by new Interpretation 302-5.

New subsection (b)(2) requires that schools provide substantial opportunities for participation in pro bono activities, and subsection (b)(3) restates the requirement of current Section 302(d) concerning opportunities for small group work.

New Interpretation 302-7 deals with matters covered in current Section 302(f). The revised provision permits a school to grant academic credit for a bar preparation course, but does not permit such credit to be counted toward the minimum classroom instruction required for graduation that is established in Standard 304(b).

### **Revisions to Standard 305**

#### Standard 305(e)(5)

This Standard establishes the requirements for on-site visits by a faculty member to externship field placement sites. The current version of the Standard continues the

type of requirement for on-site visits that has existed for a number of years: an actual on-site visit must occur each term a particular field placement is offered if more than six academic credits a term are awarded for fieldwork in the program.

The Council concluded that the present requirement was both too prescriptive and insufficiently rigorous. On the one hand, the Council concluded that a visit to a field placement site might not always be necessary every term the field placement program is offered, and that at times the purposes of an on-site visit might be satisfied by means other than an actual personal visit to the site. Thus the Council determined to permit law schools greater flexibility in the nature of the on-site supervision of field placement programs by providing that on-site visits must be undertaken “periodically”, rather than every term, and by permitting the use of supervisory methods that are the “equivalent” of on-site visits.

On the other hand, the Council also determined that the present threshold for required on-site supervision of field placement programs – which are now required only if more than six academic credits are awarded for the fieldwork – was too high. The Accreditation Committee’s experience in reviewing site evaluation reports indicates that the absence of required faculty oversight of field placement sites has often contributed to problems of quality control in field placement programs where fewer than seven academic credits were awarded for the fieldwork. Thus the Council determined to require that the type of on-site visits described in the previous paragraph be required if a student may earn “four or more” academic credits a term for fieldwork.

Standard 305(e)(7)

In order to encourage schools to provide a strong academic component to field placement programs that award a high amount of academic credit, the Council decided to require that if “four or more academic” credits are awarded for fieldwork, the required seminar, tutorial or other means of “guided reflection” must be provided “contemporaneously” with the fieldwork. It also should be noted, however, that the version of Standard 305(e)(7) that was adopted by the Council in June 2004, and which is currently in force, provides schools with more flexibility in one important respect. Under the prior version, in former Standard 305(f)(4), a “classroom or tutorial component” was required if the field placement program awarded more than six credits per term. Under current Standard 305(e)(7), in addition to a seminar or tutorial, “other means of guided reflection” may satisfy the requirement.

Cc: Council of the Section of Legal Education and Admissions to the Bar  
Standards Review Committee  
Accreditation Committee

**REVISIONS TO STANDARDS 302 AND 305**

**Adopted by the Council of the Section of Legal Education  
and Admissions to the Bar, August 6, 2004**

**Standard 302. CURRICULUM.**

**(a) All students in a J.D. program shall receive A law school shall require that each student receive substantial instruction in:**

**(1) instruction in the substantive law, values and skills (including legal analysis and reasoning, legal research, problem solving and oral and written communication) generally regarded as necessary to effective and responsible participation in the legal profession; and**

**(2) legal analysis and reasoning, legal research, problem solving, and oral communication;**

**(23) substantial legal writing instruction writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year. ;**

**(4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and**

**(5) the history, goals, structure, values, rules, and responsibilities of the legal profession and its members.**

**~~(b) A law school shall require all students in the J.D. degree program to receive instruction in the history, goals, structure, duties, values, and responsibilities of the legal profession and its members, including instruction in the Model Rules of Professional Conduct of the American Bar Association. A law school should involve members of the bench and bar in this instruction.~~**

**(eb) A law school shall offer in its J.D. program substantial opportunities for:**

**(1) adequate opportunities to all students for instruction in professional skills; and**

~~(21) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence; This might be accomplished through clinics or externships. A law school need not offer this experience to all students.~~

(2) student participation in pro bono activities; and

(3) small group work through seminars, directed research, small classes, or collaborative work.

~~(d) The educational program of a law school shall provide students with adequate opportunities for small group work through seminars, directed research, small classes, or collaborative work.~~

~~(e) A law school should encourage and provide opportunities for student participation in pro bono activities.~~

~~(f) A law school may offer a bar examination preparation course, but may not grant credit for the course or require it as a condition for graduation.~~

**Interpretation 302-1:**

*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 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.*

**Interpretation 302-12:**

*Instruction in professional skills need not be limited to any specific skill or list of skills. Each law school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302 (e)(1)(a)(4).*

**Interpretation 302-3:**

A school may satisfy the requirement for substantial instruction in professional skills in various ways, including, for example, requiring students to take one or more courses having substantial professional skills components. To be “substantial,” instruction in professional skills must engage each student in skills performances that are assessed by the instructor.

**Interpretation 302-24:**

A law school need not accommodate every student requesting enrollment in a particular professional skills course.

**Interpretation 302-5:**

The offering of live-client or real-life experiences may be accomplished through clinics or field placements. A law school need not offer these experiences to every student nor must a law school accommodate every student requesting enrollment in any particular live-client clinic or other real-life practice experience.

**Interpretation 302-6:**

A law school should involve members of the bench and bar in the instruction required by Standard 302(a)(5).

**Interpretation 302-7:**

If a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation.

**Interpretation 302-38:**

~~Each~~ A law school shall engage in periodic review of ~~the~~ its curriculum to ensure that it prepares the school’s graduates to participate effectively and responsibly in the legal profession.

**Interpretation 302-9:**

The substantial instruction in the history, structure, values, rules, and responsibilities of the legal profession and its members required by Standard 302(a)(5) includes instruction in matters such as the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association.

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**Standard 305. STUDY OUTSIDE THE CLASSROOM.**

**(e) A field placement program shall include:**

\* \* \*

(5) ~~on-site visits by a faculty member each academic term the program is offered if the field placement program awards more than six academic credits (or equivalent) for fieldwork in any academic term~~ **periodic on-site visits or their equivalent by a faculty member if the field placement program awards four or more academic credits (or equivalent) for fieldwork in any academic term or if on-site visits or their equivalent are otherwise necessary and appropriate;**

\* \* \*

(7) **opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student can earn ~~more than six~~ four or more academic credits (or equivalent) in the program for fieldwork, the seminar, tutorial, or other means of guided reflection must be provided contemporaneously.**

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