

**National
Center for
Access to
Justice**
at Cardozo Law School

“Thou Shalt Not Ration Justice”
– Hon. Learned Hand

November 9, 2012

Jeffrey E. Lewis
Dean Emeritus and Professor of Law
Chair, ABA Standards Review Committee
Saint Louis University School of Law
3700 Lindell Blvd
St. Louis, Mo 63108

Re: Chapter 3, Law Student Pro Bono

Dear Dean Lewis:

We write to request that the Standards Review Committee modify the American Bar Association’s Law School Accreditation Standard, Chapter 3, with respect to its treatment of law student pro bono. In order to help secure access to justice and respond to related concerns within our courts, legal services bar, and law schools, we recommend changes to Standard 302(b) that are needed to strengthen support within the law schools for pro bono service performed by law students.

The current version of Chapter 3 does not adequately support law student pro bono involvement. The current standard, 302(b)(2), states that law schools “shall offer substantial opportunities” for “student participation in pro bono activities” but does not quantify “substantial.” An accompanying “Interpretation,” 302-10, states “Pro bono opportunities should at a minimum involve the rendering of meaningful law-related service to persons of limited means or to organizations that serve such persons” but does not define “meaningful.” For the last year, NCAJ has studied law school pro bono programs, and has discovered that few law schools know how many students are doing how much of what kind of pro bono work.

The gaps in the Standard, and in our knowledge of law student participation, are not without significance. They co-exist with reports of courts overwhelmed by massive numbers of unrepresented litigants, legal services programs turning away as many people as they help, and law schools providing an insufficient number of opportunities for students to acquire practical legal skills. Yet, the ABA’s accreditation standards set no measurable yardstick for law student pro bono work, aspirational or mandatory, beyond

the expectation that law schools should provide “substantial opportunities for student participation in pro bono” that “at a minimum involve the rendering of meaningful law-related service.”

It is therefore not surprising that on May 1, 2012, Chief Judge Jonathan Lippman of New York’s Unified Court System announced New York’s unilateral action to establish a new law requiring all applicants intending to practice in New York to first complete 50 hours of pro bono. The Chief Judge explained that the pro bono requirement was intended to respond to the access to justice crisis in the courts and in the legal services bar, to provide students an opportunity to develop legal skills, and to instill in future lawyers a lifelong commitment to pro bono participation.

Although New York has shown the way, the ABA is clearly better positioned than individual courts in the remaining 49 states to establish a national baseline defining the level of pro bono participation sufficient to warrant admission to the bar. We urge the ABA to modify the accreditation standard to establish a requirement of 50 hours of pro bono for all law students, relying on the definition of pro bono legal services provided in ABA Model Rule 6.1. Already, Model Rule 6.1 is taught in all the law schools, applies throughout the nation to admitted attorneys, and sets an aspirational goal for attorneys of 50 hours of service. Model Rule 6.1 is also already the underlying source of the language in Interpretation 302-10 that prioritizes the provision of pro bono legal services to persons of limited means and to the organizations that serve them.¹ As with the New York approach, our recommendation would be to allow clinics and stipend-supported activities to count toward satisfaction of the 50 hours requirement.

This approach – a requirement of 50 hours of pro bono for each student – would have many benefits. Across the country, it would help to strengthen support provided by law schools for pro bono work and to increase the level of pro bono activity by law students. Thus it would afford students the opportunity to gain practical skills and knowledge, to make more of a difference in people’s lives, and to develop the passion to do still more as professional attorneys. It would also simplify for law students and attorneys the burdensome task of tracking and satisfying multiple definitions of pro bono that might otherwise confront them as they consider the prospect of moving to a new state (or states) to secure employment. In this regard, California and New Jersey (and other states too) are launching exploratory initiatives that are potentially likely to establish divergent requirements in the types of pro bono they count, the number of pro bono hours they require, the academic preparation they anticipate, and the reporting responsibilities they impose. More fundamentally, this approach would help to strengthen data collection that can deepen our understanding of the impact of pro bono activities performed by law students, and of the role that pro bono experiences play in student learning and engagement.

¹ Model Rule 6.1 is available at, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service.html.

For all these reasons, we urge the Committee to modify Chapter 3 to adopt a standard establishing that each law school shall: i) require its students to perform 50 hours of pro bono legal services, as defined in Model Rule 6.1; and ii) ensure effective participation of its students in pro bono by providing them with training and supervision, and by tracking student participation and evaluating its impact. In the Appendix (below), we provide our specific recommendations for modifying Chapter 3 to achieve these goals.

We would appreciate an opportunity to present our views in person to the Committee at its upcoming meeting on November 15th and 16th in Atlanta, Georgia.

Thank you for considering these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Udell", written in a cursive style.

David Udell
Executive Director

Deborah L. Rhode,
Ernest W. McFarland Professor of Law and Director of the Center on the Legal Profession,
Stanford University

Appendix

Standard 303. CURRICULUM²

- (a) A law school shall offer a curriculum that is designed to produce graduates who have attained competency in the learning outcomes identified in Standard 302 and that requires every student to complete satisfactorily at least:
 - (1) one course of at least two semester hours (or equivalent quarter hours) in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;
 - (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
 - (3) one or more experiential course(s) totaling at least three semester hours (or equivalent quarter hours) after the first year that must integrate doctrine, theory, skills, and legal ethics and engage students in performance of one or more of the professional skills identified in Standard 302. An experiential course or courses must be: (i) simulation course(s); or (ii) in-house clinical course(s) in which students represent clients; or (iii) field placement(s) as defined in Standard 310(e).

- (b) A law school shall provide substantial opportunities to students for:
 - (1) in-house clinical programs in which students represent clients under appropriate supervision, or appropriately supervised field placement(s) as defined in Standard 310(e); and
 - (2) participation in pro bono legal services or law-related public service activities.

- (c) ***A law school shall require its students to perform 50 hours of pro bono legal services, as defined in Model Rule 6.1.***

² Our recommendations for Standard 302 appear as new Standard 303(c), edited Interpretation 303-3, and new Interpretation 303-4, denoted in bold and italics in the renumbered presentation of Chapter 3, titled “CLEAN COPY--DRAFT for November 2012 Meeting” posted by the Committee in November 2012, at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/July2012/2012_nov_src_meeting_materials.authcheckdam.pdf (accessed on November 7, 2012). In this letter, we do not take a position on the merit of other recommendations for Chapter 3, proposed by other commenters or by the Committee, that may be reflected in the text.

Interpretation 303-1

Factors to be considered in evaluating a writing experience include: the number and nature of writing projects assigned to students; the form and extent of individualized assessment of a student's written products; and the number of drafts that a student must produce of any writing project.

Interpretation 303-2

To qualify as experiential, a course must be primarily experiential in nature and:

- (a) integrate doctrine, theory, skills and legal ethics, and engage students in performance of one or more professional skills identified in Standard 302;
- (b) develop the concepts underlying the professional skills being taught;
- (c) provide multiple opportunities for performance; and
- (d) provide opportunities for self-evaluation.

Interpretation 303-3

Pro bono **legal services are defined in the ABA's Model Rule 6.1, and** involve the rendering of meaningful law-related service to persons of limited means, to organizations that serve such persons, or to other public service organizations not able to afford legal representation. Law-related service includes, among other things, activities providing information about justice, the law or the legal system to those who might not otherwise have such information and activities enhancing the capacity of the law and legal institutions to do justice. Pro bono and public service opportunities need not be structured to accomplish any of the outcomes required by Standard 302. Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program. **For purposes of the 50 hours requirement, Standard 303(b)(2) does not preclude consideration of credit-granting activities or stipend-supported activities, so long as the subject activities otherwise satisfy the definition in Model Rule 6.1.**

Interpretation 303-4

To ensure effective participation of students in pro bono opportunities, a law school shall:

- i) Prepare law students to participate in pro bono activities;**
- ii) Supervise, or assure the adequate supervision of the activities of law students in pro bono activities;**
- iii) Track the number of law students participating in such activities and the categories of the activities in which each law student participates;**
- iv) Evaluate the quality and impact of law students' pro bono activities.**