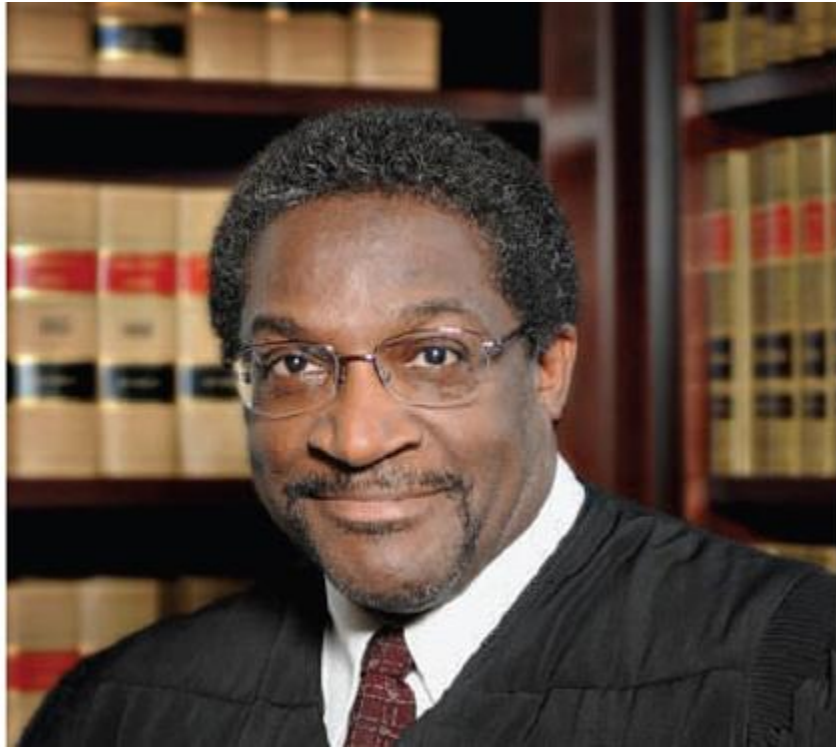


# ABA Council Abandons Bid to Drop Tenure Requirement

*Karen Sloan, The National Law Journal*

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Solomon Oliver Jr., chief judge of the U.S. District Court for the Northern District of Ohio  
*Photo via Wikimedia Commons*

The American Bar Association’s Council of the Section of Legal Education and Admissions to the Bar voted over the weekend to continue requiring law schools to protect tenure for full-time faculty members as a condition of accreditation.

The council reversed the earlier call by a majority of its members to do away with the tenure requirement in favor of a so-called “security of position” system that would give law schools more flexibility and afford equal job protections to all kinds of faculty—doctrinal professors, clinicians and legal writing instructors.

The existing rules—which the council has now endorsed—afford doctrinal faculty greater job protections than enjoyed by clinicians and legal writing instructors.

“It’s an imperfect standard, but the attempts to change it would have been far worse. It would have been a race to the bottom,” said Kate Kruse, president of the Clinical Legal Education Association and the director of clinics at Hamline University School of Law.

The council tackled a number of controversies during its two-day meeting in San Diego as it began to wrap up a six-year review of the ABA’s accreditation rules. It voted to boost a practical-skills credit minimum and leave the bar-passage requirement alone, and voted tentatively to let students receive both pay and academic credit for externships. None of those proposals met as much opposition as the proposal to get rid of tenure, however.

Most council members still are dissatisfied with the existing tenure standard, but were unable to reach a consensus on the best way to fix it, said chairman Solomon Oliver Jr., chief judge of the U.S. District Court for the Northern District of Ohio.

“The comments we received were overwhelmingly in favor of keeping some form of tenure system,” he said.

“Those comments came from throughout the law school teaching profession, and from people who are very well known with the profession. On the other side, we did not receive a large number of submissions in support of either of the proposals we put forth.”

The council never received any clear arguments about what, exactly, the problems are with the tenure system, he said, nor did they get a clear picture of what law school-staffing models would look like without it.

The council has been flooded with letters and comments arguing that tenure protects academic freedom both in and out of the classroom. Angry law professors packed an informational session about the proposals during the Association of American Law School’s annual meeting in January, giving council members an earful on the matter. Oliver attended that forum and told the audience that he would take their comments into consideration. In August the council voted to issue two proposals for notice and comment. The first would have required all full-time law faculty members to enjoy some form of security of position that would protect academic freedom, but not necessarily tenure as traditionally understood. The second option would have eliminated any reference to security of position, but require schools to provide job protections sufficient to attract competent faculty. Tenure would be considered a "safe harbor" under either option, but not mandated.

Proponents of the change have argued that law schools need more flexibility in staffing to help cut tuition costs. Several council members noted that other graduate school accrediting bodies don’t require tenure, and that other legal professionals don’t enjoy such strong job protection.

The role of the accreditation standards is to ensure the minimum quality of education, and tenure does not belong there, Loyola University Chicago School of Law Dean David Yellen said. He supports tenure, but said he does not believe it's the ABA's role to require it.

"It's not surprising, given that the overwhelming majority of law professors around the country are opposed to the change," Yellen said of the council's decision. "It was always the likely outcome that the council would accede to those demands. I recognize that they aren't writing on a clean slate, and taking away those expectations of tenure is extremely difficult."

The Association of American Law Schools has been vocal in its opposition to getting rid of the tenure requirement, sending numerous letters to the ABA and hosting the January forum during which law professors decried the possible change.

"I'm very pleased that the council listened to those of us who urged them not to adopt either of those proposals, which I thought were seriously flawed," association executive director Judith Areen said. "Tenure is not a perk for law faculty. It's a protection for people who think it's important to innovate in law schools. You need to feel comfortable in order to be able to try new things."

In other matters, the council voted to:

- Maintain the minimum bar-passage standard. After years of back-and-forth, the committee going through all the standards contemplated making the standard tougher, but ultimately the council opted to retain the existing rule. It requires 75 percent of a law school's test takers to pass the exam within five years of graduation.
- Drop the ban against students receiving both pay and academic credit for legal externships. The change is intended to open more externships for students, although critics worry that working for pay could diminish the educational aims of externships. The council has put this proposal out for public notice and comment, and is scheduled to make a final decision in June.
- Increase the number of experiential course credits law students must complete. The existing requirement stands at just one credit, but the council has decided to increase that to six credits. The Clinical Legal Education Association had asked the council to require 15 credit hours of clinics, externships and simulation courses. Kruse said Monday that the group is pleased with the outcome. "Six credits is a great improvement over the status quo," she said.
- Keep the requirement that law schools must use the Law School Admission Test. However, the council decided to make it easier for law schools to maintain small programs under which they admit certain students

who have not taken the LSAT. Schools will be allowed to bring in 10 percent of their student bodies under such programs without first obtaining a waiver from the ABA.

Additionally, the council decided to modify the interpretation of the standard pertaining to pro bono work, suggesting—but not requiring—that law schools aspire to have each student perform 50 hours of pro bono work.

Some pro bono advocates had asked the ABA to make 50 hours a requirement for a juris doctor degree, citing new rules in New York and California mandating that standard before law graduates are admitted to the bar.

“I think the council should be applauded for embracing the idea that pro bono service should be more clearly understood in law schools,” said David Udell, executive director of the National Center for Access to Justice at Yeshiva University Benjamin N. Cardozo Law School. “By defining ‘substantial opportunities,’ the council begins to make the standard quantifiable rather than vague.”

The council plans to send all of its proposed accreditation standards changes to the ABA's House of Delegates in August for its concurrence. The council will meet one last time before then, in June.

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