

Co-Presidents
Olympia Duhart
Ruben Garcia

Past Presidents
Norman Dorsen
Howard Lesnick
David Chambers
George Alexander
Wendy Williams
Rhonda R. Rivera
Emma Coleman Jordan
Charles Lawrence
Howard Glickstein
Sylvia Law
Patricia A. Cain
Jean C. Love
Linda Greene
Phoebe Haddon
Stephanie Wildman
Carol Chomsky
Margaret Montoya
Paula Johnson
Michael Rooke-Ley
José Roberto Juárez, Jr.
Holly Maguigan
Eileen Kaufman
Tayyab Mahmud
Margaret Martin Barry
Deborah Waire Post
Raquel Aldana
Steve Bender
Jackie Gardina
Ngai Pindell

Board of Governors
Wendi Adelson
Deleso Alford
Claudia Angelos
Elvia Arriola
Deepa Badrinarayana
Emily Benfer
Barbara Bernier
Pat Broussard
Kim Chanbonpin
Douglas Colbert
Benjamin Davis
Brooks Holland
Peter Joy
Margaret Kwoka
Beth Lyon
Karla McKanders
Beverly Moran
Peter Nicolas
Hari Osofsky
Marc Poirier
Sara Rankin
Denise Roy
Robin Runge
Natsu Taylor Saito
Colleen Shanahan
Mark Sidel
Aviam Soifer
Speart
Amy Vorenberg
Kaimipono Wenger

Equalizer Editor
Raleigh Levine
Treasurer
Patricia A. Cain
CLEA Liaison
Ian Weinstein
Secretary
Adele Morrison

SALT - Society of American Law Teachers

William S. Boyd School of Law, UNLV
Box 451098
4505 S. Maryland Parkway
Las Vegas, NV 89154-1098
www.saltlaw.org

COMMENT OF SOCIETY OF AMERICAN LAW TEACHERS ON INTERPRETATION OF STANDARD 305-3

We write on behalf of the Society of American Law Teachers (SALT) to comment on the proposed deletion of Interpretation 305-3, which forbids a law school from granting credit to a student for participation in a field placement program for which the student receives compensation. We urge the SRC not to remove a rule that has been critical in ensuring that field placement experiences are designed to be, and are, educational experiences worthy of academic credit.

As externship site supervisors, lawyers working in a wide range of fields—government agencies, nonprofit organizations, law firms, and corporations—have been willing to devote time and effort to helping students learn from work done in their field placements and to allowing students to observe as well as perform lawyering tasks. These on-site supervisors understand that their primary obligation is to teach and mentor the students. If students are paid for work done in their placements, the externship site dynamic shifts. The students essentially become employees, and their supervisors will be justified in expecting the students to spend most or all of their time producing work product for the benefit of the employer, not engaged in activities that will help the student learn from the placement. At a time when experiential activities are becoming more important to help students prepare for legal practice, as recognized by other proposed amendments in Chapter 3, removing the restrictions of Interpretation 305-3 is precisely the wrong move to make.

As the Clinical Legal Education Association (CLEA) explains in its statement of January 31, 2014, there is an essential difference between an employer/employee relationship and a mentor-teacher/student relationship. While students will learn from doing lawyer and clerk tasks in their jobs, the learning is entirely different when the focus is on the value to the student of the assignments and experiences rather than the value to the employer of the work produced. Faculty supervision and evaluation cannot substitute for the commitment of the on-site supervising lawyers to provide students a wide variety of meaningful tasks, to invite them to participate as observers, to spend time speaking with them about the full range of the legal practice, and to provide significant feedback and evaluation of the student performance. Employers who pay for student time simply cannot be expected to take on that responsibility.

There is no indication that allowing payment for credited placements is necessary either to promote paid work for students or to increase the number of field placements available. Nor is payment necessary under the Fair Labor Standards Act (FLSA), which permits unpaid work done primarily for the benefit of the employee rather than for the benefit of the employer, which are precisely the circumstances that should obtain in a field placement for credit

Having employers pay students also raises difficult questions about control of the assignment and crediting process, as CLEA has noted. Could the employer fire a student for not performing at high-enough levels? Would a faculty supervisor be able to reassign a student if the employer was not providing adequate on-site supervision, if that would have implications for other students working for that employer, with or without receiving academic credit? Could students refuse tasks assigned by their paying employer if those tasks were not consistent with the learning goals and the placement expectations? Would students be willing to discuss frankly with faculty supervisors any externship site supervision problems if they worried that it could mean displeasing an employer and potentially losing income? These are just some of the troubling pedagogical issues likely to arise if students earn academic credit for paid employment.

Finally, permitting students in paid placements to earn credit will likely undermine the ability of government agencies and non-profit organizations to attract students, as they will be in competition with paying employers, thus undermining school efforts to promote public service lawyering for its students.

With the changes being proposed elsewhere in Chapter 3 of the Standards, there is a need to strengthen and deepen the value of field placement experiences. Removing Interpretation 305-3 will have exactly the opposite result. For all the reasons expressed here, and the reasons articulated in the January 31, 2014 statement by CLEA, we ask the SRC to retain that provision.

Submitted on behalf of the Society of American Law Teachers by



Olympia Duhart
Co-President



Ruben Garcia
Co-President