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Associate Dean Joan Howland, Chair
Council of the Section on Legal Education and Admissions to the Bar
University of Minnesota Law School
229 19th Street
Minneapolis, MN 55455

Dear Chair Howland:

We write on behalf of the Society of American Law Teachers (SALT) to encourage the Council to reject the proposed change to Interpretation 305-2. We continue to believe that allowing students to get paid for credited field placements will inevitably interfere with the educational purpose of such experiences. Although the proposal suggests that the problem can be addressed by requiring that schools “demonstrate sufficient control of the student experience” to ensure that the requirements of Standard 305 are met, the requirements in Standard 305 may not be sufficient to ensure a rigorous and successful education experience for students in paid (or unpaid) externships. If the Council believes it appropriate to allow paid externships, we urge the Council to first ask the Standards Review Committee to consider changes to Standard 305 to help govern all externships—but particularly paid externships—more effectively.

As SALT and organizations such as the Clinical Legal Education Association (CLEA) have noted in previous statements (*see* Feb. 5, 2014 SALT Comment on Interpretation of Standard 305-3 *and* CLEA January 31, 2014 Comment on Interpretation 305-3), allowing students to get paid for an academic field placement course undermines students’ educational experiences. Field placements should focus on student learning, not merely on the production of useful work product. When solicited to host students, site supervisors should understand that their primary obligation is to ensure students have a meaningful educational experience and that this requires opportunities both to observe and to perform, coupled with substantial feedback and mentoring. The employer/employee relationship

differs from the mentor/teacher/student relationship. Employers have different expectations than mentors/teachers. When students are on the payroll, the balance shifts from focus on the educational value to the student to one of value to the employer. Employers may reasonably decide they do not want to pay a student for time spent observing meetings, hearings, client interviews, depositions, etc., even though guided observation is one of the best ways for students to learn about the full range of work at the site. Employers may decide students' time is best spent doing routine paperwork or document review providing little educational value to the students, thus freeing the site's lawyers to engage in other tasks. When paying for student time, employers are less likely to understand that the *quid pro quo* for student work is to teach and mentor the student, because payment has become the *quid pro quo* for student work. These potential shifts in site supervisors' perspectives undermine the students' field placement learning experience.

Allowing students to get paid for field placement experiences also threatens a law school's ability to ensure field placements are educational experiences worthy of academic credit. Students are much less likely to report problems such as lack of meaningful work or other site supervision problems because they will be reporting on their employer, not simply providing information to a law school supervisor. Faculty supervisors will have more difficulty challenging the choice of assignments or the quality of feedback and mentoring when dealing with employers who are paying for student time and have legitimate arguments about their power to decide what work their employees perform.

The Interpretation attempts to address concerns about whether schools can adequately ensure a meaningful educational experience in two ways. First, the Interpretation allows schools to choose whether to allow paid placements. Theoretically, a school worried about the negative impact of allowing students to be paid may choose not to allow paid placements. This "solution" ignores today's reality. If some schools allow students to be paid, schools that refuse to do so will be at a disadvantage at a time of fierce competition for students. Students will more readily see the loss to their pocketbooks from being denied the option of payment than the loss to their educational experience from being paid. If even a few schools allow pay for field placement work, others are likely to follow, whether or not they believe it is sound educational practice.

Second, the proposed Interpretation requires schools with paid externships to "demonstrate sufficient control of the student experience to ensure that the requirements of the Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard." This requirement is only as strong as Standard 305 itself, however. Standard 305, which received little or no scrutiny during the comprehensive review, provides schools little specific guidance about what must be done to ensure a quality educational field placement experience. For example, there is no requirement that students perform or observe legal work, be supervised on-site by a lawyer, or be supervised by a faculty member. While there are now specific definitions of what is required in an experiential course, a simulation course, and a law clinic, Standard 305 contains no such constraints on or guarantees of learning occurring almost entirely outside the law school. The least regulated of all experiential learning courses should not be coupled with compensation, a change that undermines the focus on students' educational experiences for the reasons already noted.

There is another risk of allowing pay for credited externships: uneven distribution of opportunities. Pay for externships will most likely come from law firms and corporate law offices, not government and nonprofit agencies, and students may understandably gravitate towards the paid opportunities, thus undermining the training opportunities in the public arena. Moreover, placements that pay for student time may understandably want to choose their interns, and base their choice on criteria other than what will work best and be most appropriate for the student. And where students are permitted to find their own placements, as is typical in some or many programs, paid externships may more likely be found by students with family or other connections.

Legitimate concerns about the cost of legal education exist, and students understandably are seeking ways to offset the costs, but allowing pay for credited externship work is not the right way to address those concerns. As suggested in comments during the consideration of Standard 305 in the comprehensive review, there are options that may be explored to help fund externships and field placements through the law schools themselves; for example, law firms or corporate offices wishing to contribute to externship opportunities could donate scholarship funds to the school, which could distribute them to participating students as it distributes other scholarship funds. Such funding could help to offset tuition costs or provide stipends to externship students without undermining the educational control exercised by the law school and faculty supervisor.

The proposed change to Interpretation 305-2 undermines the Council's obligation to ensure students receive a quality educational experience and should be rejected. If the Council believes it appropriate to consider paid externships, we urge the Council to first ask the Standards Review Committee to consider modifications to Standard 305 to help govern all externships more effectively. After such changes are made, it may be time to propose a rule that paid externships be permitted with proper documentation of compliance with a more robust Standard.

SUBMITTED ON BEHALF OF THE SOCIETY OF AMERICAN LAW TEACHERS BY:



Olympia Duhart

Co-President



Ruben Garcia

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