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June 24, 2015

J.R. Clark
ABA Section of Legal Education and Admissions to the Bar
321 N. Clark St., 21st Floor
Chicago, IL 60654

Re: Proposed New ABA Rule with Respect to Paid Internships

Dear Mr. Clark:

On behalf of the New York City Bar Association I write to supplement my letter to you of April 29, 2015 (a copy of which is attached). Specifically, I write to endorse the recommendation of the Council of the Section of Legal Education and Admissions to the Bar to modify Interpretation 305-2 to allow law schools to give academic credit for field placements for which a student receives compensation. At the same time, I offer below two proposed modifications that would both clarify the proposed change and help ensure it would actually allow law students to find paid experiential opportunities in the private sector.

The New York City Bar Association strongly endorses the elimination of the prohibition on giving academic credit to law students who work in field placements for pay. As noted in my April letter, the prohibition currently embodied in Interpretation 305-2 severely restricts the number of opportunities for experiential learning, prevents the student from being paid for valuable work and lacks justification. My letter noted that it makes no sense to give academic credit to a law student who works for a non-profit or government agency, and who receives no compensation, while denying such credit to that same law student, who may be doing essentially the same job, but who receives compensation, in part because under the Fair Labor Standards Act ("FLSA") the employer believes it is required to pay the student. Specifically, I wrote:

> Under the rule, as interpreted, a student can receive academic credit working for a legal employer *if* that student does not receive compensation for the work. But under the [FLSA] private employers (practically speaking) are required to pay student interns. Thus, a law student can work for a government or non-profit law office, which is not subject to the FLSA, and can gain both academic credit and valuable experience with the potential for future employment with that employer. However, that same student cannot have the same experience working for a private sector employer who, to avoid violating

the FLSA, would have to pay the student, thereby preventing that student from receiving academic credit for the employment experience.

The proposed change in Interpretation 305-2 would eliminate this artificial paid/unpaid distinction and would go far toward increasing the opportunities law students could have in gaining hands on experience.

However, the proposed interpretation still appears to make an unnecessary distinction between paid and unpaid externships. If the student is being paid, the school "must demonstrate sufficient control of the student experience to ensure that the requirements of the Standard are met." Such an obligation is not imposed on a school giving academic credit for unpaid field work.
It goes without saying that law schools should ensure that all law school externships – paid or unpaid – should offer students a valuable educational experience. We therefore suggest that the interpretation be revised to eliminate this distinction and instead simply state that law schools giving credit for field placements should maintain records, to be reviewed at their seven year accreditations, that demonstrate the school maintains appropriate control of the student's experience to ensure that the Standards are met.

We also urge that the requirement of record keeping not be overly burdensome and the required record keeping not be unduly detailed, as otherwise it might have the unintended effect of discouraging schools from promoting externships.

Thank you for considering our comments. We appreciate the Council's continuing work on this important issue.

Respectfully,

Debra L. Raskin

cc: Barry A. Currier
Managing Director, Accreditation and Legal Education