

C L E A

Clinical Legal Education Association

TO: Jeffrey E. Lewis
Chair, Standards Review Committee

Catherine Carptenter
Robert Cordy
Scott Pagel
Standards Review Working Group on Chapter 8

CC: Barry Currier, Managing Director,
ABA Section of Legal Education

FR: The Clinical Legal Education Association

RE: Proposed Elimination of Current Standard 803(d).

DT: February 5, 2014

We write to you as the Chair of the Standards Review Committee and the members of the Committee's working group on Chapter 8 of the Accreditation Standards. We wish to bring to your attention for your reconsideration a proposal you have made, perhaps inadvertently, in the Meeting Materials posted on Monday for this Friday's SRC meeting.

The proposed revisions to Chapter 8 include the complete elimination from the Standards and other governing documents current Standard 803(d), which reads:

“Proposals for amendments to the Standards, Interpretations or Rules may be submitted to the Consultant, who shall refer the proposal to the Standards Review Committee or other appropriate committee. The committee to which any such proposal is referred shall report its recommendation concerning that proposal to the Council within twelve months after the proposal had been referred to the Committee.”

This provision makes it possible for Council-affiliated organizations to ask the Standards Review Committee to consider proposals for revisions to the Standards and requires the Committee to make a recommendation to the Council -- however cursory -- about whether to adopt the proposal. In this fashion, the Council is made aware not only of positive but also of negative decisions of the Committee on proposed revisions and has the opportunity to reconsider those decisions.

In place of 803(d), the following language is proposed to be inserted into the Council's Internal Operating Procedures as part of proposed Rule 11:

“Proposals for amendments to the Standards, Interpretations or Rules may be submitted to the Managing Director, who shall refer proposals to the Standards Review Committee. The proposals will be considered by the Standards Review Committee as part of the annual or comprehensive review, as appropriate.”

This new provision does not require that the Council learn of rejections by the Standards Review Committee of proposals made by Council affiliates. Given other procedures embedded in the Standards and Rules, the effect of this change is to render it impossible for stakeholders in legal education to make their views known to the ultimate decision-makers in the Council. This is bad process and it is disrespectful. Constituents who are concerned with and knowledgeable about legal education may, from time to time, make proposals with which a majority of the Standards Review Committee disagrees but which have substantial support in the Council. The Standards and the Rules should require that those proposals be brought to the Council for consideration as it sees fit.

To our knowledge, Standard 803(d)'s process has been invoked only once. On July 1, 2013, CLEA, invoking the provisions of 803(d), sent a proposal to the Standards Review Committee that the required credits of experiential learning in the Standards be increased to fifteen. After a discussion lasting no more than five minutes, the Committee rejected this proposal. In accordance with the requirement of 803(d), this decision was reported to the Council at its meeting in December, 2013. The Council took a view different from that of the Standards Review Committee and voted to send CLEA's proposal out for Notice and Comment as an alternative to Standards Review's proposal. Absent the provisions of Standard 803(d) the Council would not have known about or had the occasion to consider the proposal from CLEA.

A decision to revoke the only access that affiliated organizations have to Council consideration of their proposed amendments to the Standards is unwise. In these difficult times in legal education, the ABA should not deliberately act to exclude constituents from participating in the Council's processes. All of us, including those of us who deliver legal education on a daily basis, have a stake in the outcomes of these decisions and so a stake in the process by which the decisions are made.