

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

GARY H. PALM,)	
)	
Plaintiff,)	Case Number: 00 CH 06316
)	
v.)	Honorable Richard J. Billik, Jr.
)	
THE UNIVERSITY OF CHICAGO,)	
)	
Defendant.)	

**AMICUS CURIAE BRIEF OF THE CLINICAL LEGAL EDUCATION
ASSOCIATION (“CLEA”) TO INFORM THE COURT ABOUT
AMERICAN BAR ASSOCIATION STANDARD 405(C) FOR THE
APPROVAL OF LAW SCHOOLS**

INTRODUCTION

The Clinical Legal Education Association (CLEA) submits the following Amicus Curiae brief regarding the above-captioned matter. The purpose of the brief is to inform the Court about American Bar Association (“ABA”) Standard 405(c), which affords protections to clinical legal educators related to job security. The defendant fails to incorporate this Standard into its Motion for Summary Judgment. CLEA requests the Court to consider Standard 405(c) in determining defendant’s motion.

STATEMENT OF INTEREST

The Clinical Legal Education Association (“CLEA”) is a non-profit educational organization that was formed in 1992 to improve the quality of legal education both in the United States and abroad. CLEA currently has approximately 700 dues-paying members representing more than 140 law schools from six continents. To meet its goal, CLEA engages in activities designed to: (1) encourage the expansion and improvement of clinical legal education

in this country and abroad; (2) encourage, promote and support clinical legal research and scholarship by, among other things, publishing a peer edited journal devoted to such work; (3) disseminate information to and between clinical teachers; (4) work cooperatively with other groups interested in clinical education, the improvement of legal education, and the improvement of the legal system; (5) promote and/or conduct conferences and other educational activities designed to facilitate the other purposes of the organization; and (6) promote the interests of clinical teachers. *See By-Laws, Clinical Legal Education Association* (adopted January 5, 2002), available at <http://www.cleaweb.org/about/bylaws.html>.

CLEA is committed to ensuring the success and quality of clinical legal education because it is an integral part of a sound legal education for future attorneys. Through clinical education, students “learn from experience” by interacting with and on behalf of real clients. *Association of American Law Schools, Section on Clinical Legal Education Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 511 (1992), as excerpted in CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS, 25 (1997). Students develop their professional skills through both the educational and the service components of their clinical experience.

One of CLEA’s core missions since its founding is to ensure that clinical legal educators are valued faculty members who are afforded the same protections as “doctrinal” or “traditional” faculty. Indeed, clinical legal educators were traditionally – and, in some instances, continue to be – viewed as “second-class citizens” within their respective institutions. For example, they often worked pursuant to yearly or other short-term contracts and enjoyed little, if any, of the protections and rights afforded to “doctrinal” or “traditional” faculty, such as tenure and

governance rights. As a result, CLEA has actively advocated for the implementation of governing standards that provide baseline protections to clinical legal educators at their respective institutions. Such protections include rights related to job security, academic freedom and faculty governance. These protections are necessary to promote the development of lawyering skills and professional values in U.S. law schools because these protections integrate clinical faculty and clinical legal education into law schools. The above-captioned matter falls squarely within CLEA's advocacy on this issue as the defendant, in its Motion for Summary Judgment, ignores the fact that that law schools are governed by these ABA standards.

Thus, the purpose of this amicus brief is to inform the Court of ABA Standard 405(c) and Interpretation 405-6. *See* ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2007-2008), available at <http://www.abanet.org/legaled/standards/standards.html>. (“ABA STANDARDS”). ABA Standard 405(c) requires law schools to afford to clinical faculty members “a form of security of position reasonably similar to tenure and non-compensatory perquisites reasonably similar to those provided other full-time faculty members.” As a result, all ABA-approved law schools must provide clinical legal educators the job security (or “security of position”), other protections and “perquisites” reasonably similar to those afforded to tenured and tenure-track faculty members. As explained in Interpretation 405-6, one such “reasonably similar” protection related to security of position is that the long-term contracts of clinical legal educators are “presumptively renewable.”

I. AS A LAW SCHOOL ACCREDITED BY THE COUNCIL OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR OF THE AMERICAN BAR ASSOCIATION, THE DEFENDANT IS GOVERNED BY THE STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS.

Since 1952, the United States Department of Education has approved the Council of Section of Legal Education and Admissions to the Bar (“The Council”) of the American Bar Association (“ABA”) as the accrediting body for law schools in the United States. *Forward to ABA STANDARDS* at iv. The Council both grants ABA approval to law schools, and “adopts the Standards for Approval of Law Schools and the Interpretations of those Standards, and the Rules of Procedure that govern the law school approval process.” *Id.* at vi. Most of our states’ highest courts, including the Illinois Supreme Court, “rely upon ABA approval of a law school to determine whether the jurisdiction’s legal education requirement for admission to the bar is satisfied.” *Id.* at iv. These courts require that applicants for admission to the Bar in their respective jurisdictions obtain a law degree from a law school accredited by the ABA.

As an accredited law school, the defendant is governed by the ABA Standards for Approval of Law Schools and the Interpretations. Thus, the defendant must meet these standards to maintain ABA approval. *See* ABA Standard 101 (“A law school approved by the Association...shall demonstrate that its program is consistent with sound legal principles. It does so by establishing that it is being operated in compliance with the Standards.”).

For the reasons set forth below, ABA Standard 405(c) and Interpretation 405-6 particularly relate to Defendant’s Motion for Summary Judgment. Accordingly, this Court should consider these standards in deciding the Motion.

II. PROFESSOR GARY PALM, AS WITH ALL CLINICAL LEGAL EDUCATORS EMPLOYED ON LONG-TERM CONTRACTS, WAS ENTITLED TO ENJOY PROTECTIONS “REASONABLY SIMILAR” TO TENURE PURSUANT TO AMERICAN BAR ASSOCIATION STANDARD 405(C) FOR THE APPROVAL OF LAW SCHOOLS.

ABA Standard 405 sets out the professional environment that law schools must foster with regard to faculty. Standard 405(c) provides to “full-time clinical faculty members a form of security of position reasonably similar to tenure....” Interpretation 405-6 “provide[s] additional guidance concerning the implementation of [this] Standard and ha[s] the same force and effect as [the] Standard.” ABA STANDARDS, at vii. It explains that “[a] form of security of position reasonably similar to tenure includes a separate tenure track or a program of renewable long-term contracts.” ABA Interpretation 405-6.¹ It defines a long-term contract as one that is “at least a five-year contract that is presumptively renewable or other arrangement sufficient to ensure academic freedom.”² Thus, the Interpretation continues, the contract may be terminated during any renewal period “for good cause, including termination or material modification of the entire clinic program.”

Professor Palm was employed at the University of Chicago for thirty years. He had a regular professorial track appointment for twenty-one years, culminating in his appointment and renewal as Professor of Law. Beginning in 1991, the defendant appointed him a four-year contract and renewed his appointment in 1995 for five years. Interpretation 405-6 makes clear

¹ While these protections related to security of position are provided to clinical faculty, “this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominately staffed by full-time faculty members, or in an experimental program of limited duration.” ABA STANDARD 405(c). However, this provision clearly does not apply to the instant matter because Professor Palm worked pursuant to long-term contracts and directed a long-established clinical program.

² In an October, 2006 decision involving Northwestern University School of Law, the Accreditation Committee of the American Bar Association’s Section on Legal Education and Admissions to the Bar held that one-year contracts satisfy this Interpretation as long as the school sufficiently ensures the academic freedom rights of those working

that these were long-term contracts. At the time of Professor Palm's termination in 2000, the Defendant was required to provide Professor Palm protections that were reasonably similar to those afforded to tenured and tenure-track faculty, including that his contracts were to be "presumptively renewable." As a result, his contract could have been terminated -- even at the renewal period -- *only* if the defendant had "good cause" to do so.

The current version of Standard 405(c) was adopted in 1996.³ Its overall purpose was to remedy, at least somewhat, the historic resistance to clinical legal education and clinical legal educators. *See* Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. ____ (forthcoming 2008) ("The value of clinical legal education courses and the faculty teaching those courses has long been contested.").⁴ Historically, clinical legal educators had no voice in their institutions: They often labored under one-year contracts and could be terminated for any reason or no reason at all; they did not enjoy academic freedom; and they had no faculty governance rights. Standard 405(c) was adopted to extend the rights afforded to tenured and tenure-track faculty to clinical faculty. By adopting Standard 405, the ABA not only recognizes the centrality of clinical courses to a sound legal education, but also the importance of fully including clinical faculty members in the Academy.

under such contracts. However, that decision is of no import here, as Defendant does not argue that it provided some "other arrangement sufficient to ensure [Professor Palm's] academic freedom."

³ The current 405(c) was originally adopted as ABA Standard 405(e) in 1984. It originally set forth an aspirational "should" standard. *See* Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. ____ (forthcoming 2008). The use of "should" was intended to provide schools a window to experiment with different clinical appointments. When the ABA revisited Standard 405(e), it concluded that clinical teachers were still being treated as second-class citizens, had no faculty governance rights and did not have any job security at many law schools. As a result, the ABA, adopted 405(c) in 1996. It changed "should" to the mandatory "shall." It became effective immediately upon its adoption.

Interpretation 405-6 was most recently revised in 2005 to define a "long-term contract" as one that is at least five-years in length and presumptively renewable "or other arrangement sufficient to ensure academic freedom." *Commentary on Revisions to Standards 2004-2005*, Syllabus (ABA Section of Legal Educ. and Admissions to the Bar), Fall 2005, at 59.

CONCLUSION

For the reasons set forth above, CLEA requests this Court to consider the Standards and Rules of Procedure for Approval of Law Schools, particularly Standard 405(c) and Interpretation 405-6, in determining the Defendant's Motion for Summary Judgment.

Respectfully submitted,

Michael Pinard
President, Clinical Legal Education Association

Dated: March ____, 2008

⁴For a detailed history of Standard 405 see Joy & Kuehn, *supra* note 3.