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ABA Council of the Section on Legal Education and Admissions to the Bar
Office of the Consultant (Attn: Becky Stretch)

American Bar Association

321 N. Clark Street, 21st Floor

Chicago, IL 60610

Sent via email to Becky Stretch, StretchC@staff.abanet.org and by regular mail

Dear Members of the Council:

I am writing this letter on behalf of The Legal Writing Institute, an organization of over 2000 members, including law professors, attorneys, and judges. The Institute is the second-largest organization of law teachers in the country. Its members represent all of the ABA-accredited law schools in the United States as well as some foreign countries. Many Institute members have served on law school accrediting and re-inspection teams. Members of the Institute had the opportunity to review this letter prior to its submission.

We send these comments in response to the report of the Standards Review Committee regarding the proposal to delete Interpretations 402-1 and 402-2. The Institute has four main concerns:

1. **Failure to consider fully alternatives and consequences:** Without a careful, deliberate consideration of alternative student-faculty ratio measurements, and of the potential consequences of eliminating the Interpretations, the recommendation is premature.
2. **Failure to consider adequately the impact of depriving students of the student-faculty ratio information:** Students rely on the information provided by the student-faculty ratio and, without a thorough review of alternatives that might be more accurate, the recommendation to deprive students of this information altogether is ill-advised.
3. **Failure to consider fully the impact of the recommendation on transparency and consistency of accreditation procedures:** The student-faculty ratio formula is one objective measurement of adequacy of faculty resources. This provides a transparency and consistency to the accreditation review process.
4. **Failure to consider fully the impact of institutional reliance on the Interpretations:** Institutions have invested resources in reliance on the

current formulas. To remove those now without consideration of alternatives or impact on the regulated industry is premature.

Because of these concerns, which are more fully articulated below, the Institute opposes this recommendation.

1. Failure to consider fully alternatives and consequences:

The Committee concedes that the recommendation to eliminate the Interpretations may have unintended consequences, none of which appear to have been fully examined. Indeed, the recommendation to eliminate, rather than revise, the ratio was only carried by a split vote.

In the Explanation of Deletion of Interpretations 402-1 and 402-2 (Explanation), the Committee identifies several factors that supposedly weigh in favor of modifying or eliminating the Interpretations. Primary among those are the costs associated with calculating ratios under the Interpretations as compared to the benefit of the calculated ratio. The Committee notes that the variables associated with the calculation may result in a ratio that is inaccurate or misleading.

Notwithstanding, the Committee acknowledges that “there are obviously arguments in favor of continuing to produce a student-faculty ratio, as evidenced by the fact that three committee members voted to continue to calculate and publish a student-faculty ratio.” The first stated reason involves the amount of time and resources schools have devoted to improving their ratio under the Interpretations. Second, the Committee admits that the current student-faculty ratio, while imperfect, does provide a starting point for the inquiry as to the sufficiency of faculty size. Third is the extent to which “Interpretation 402-1 encourages schools to give more faculty members (e.g. legal writing faculty) security of position,” an incentive that would be lost with removal of the Interpretations.

Moreover, the Committee concedes that it “might invite a range of potential unintended consequences if [it] eliminate[s] the student-faculty ratio . . . without a full assessment . . .” However, the Committee has admittedly not conducted a full assessment. The solution should not be to eliminate prematurely the Interpretations without full consideration of alternatives and consequences.

The Explanation proposes that eliminating the Interpretations would be the “least drastic method of getting rid of the student-faculty ratio.” However, with a choice between eliminating the Interpretations altogether without a full, considered examination of potential implications, or a more thoughtful, deliberate approach to consider alternative measurements, the least drastic step is the latter. In fact, without further consideration of the potential consequences, elimination of the

Interpretations is arguably a more sweeping measure than carefully considering modifications to the Interpretations.

The Committee notes that writing a new interpretation “is not an easy task . . . [and] . . . may not be a necessary task” because the examination of the adequacy of the faculty size is tied to other standards. However, until the Committee addresses the task of writing a new interpretation, it cannot conclude that such a task would be difficult. Moreover, it is not clear that all potential consequences of eliminating the Interpretations are adequately addressed in other Standards. There is no legitimate reason for rushing to eliminate the Interpretations.

2. Failure to consider adequately the impact of depriving students of the student-faculty ratio information:

As noted, the Committee acknowledges that the current student-faculty ratio, while imperfect, does provide a starting point for the inquiry as to the sufficiency of faculty size. While the Committee makes reference to other sources for student-faculty ratio measurements as consumer information, it does not effectively address whether depriving students of this measurement altogether is appropriate, nor does it consider an alternative measurement that might be more illustrative. The Committee has not fully supported its contention that the current ratio wholly lacks value. Students need a source to judge what type of resources will be available to them during their legal education. Because the Committee has not fully explored how to modify the Interpretations to provide a perhaps more accurate measurement, denying students any information whatsoever without further examination is rash.

Moreover, the current ratio formula, while perhaps flawed, does represent a standard, objective measurement. If eliminated entirely, institutions will likely continue to compute and disseminate student-faculty ratio information. Without a standard, objective measure, institutions would be free to compute ratios based on differing methods, and results communicated by institutions would therefore not be comparable, and could be deceptive. Therefore, eliminating the standard, objective measurement could result in the dissemination of information that is more misleading than that produced by the arguable defects in the current methodology.

3. Failure to consider fully the impact of the recommendation on transparency and consistency of accreditation procedures:

As discussed, the Committee concedes that the current student-faculty ratio, while imperfect, does provide a starting point for the inquiry as to the sufficiency of faculty size. In fact, the Explanation warns that the ratio should not be eliminated “until we have developed better output measures that we might use in lieu of this traditional input measure.” The measurement provides an objective quantification for institutions seeking to comply with the Standards. While the Explanation

suggests that an alternative measurement might not be necessary because adequate faculty size is required under other Standards, the requirements in other standards are not sufficiently measurable to be meaningful.

For example, Standard 403 requires that the full-time faculty teach “the *major portion* of the law school’s curriculum, including substantially all of the first one-third of each student’s coursework.” Standard 403(a) (emphasis added). So, a law school could presumably have full-time faculty teach all first year courses, all required upper level courses such as Professional Responsibility, and all heavily enrolled upper level courses such as Wills and Corporations. Adjunct faculty could offer all other courses. The average law student at such a school could then hypothetically graduate with 86 credits, with 50 of those credits could come from full-time faculty-taught courses and 36 credits from adjunct-taught courses. Such an arrangement might satisfy Standard 403(a), but it would not satisfy the objectives that are currently addressed in the Interpretations.

Moreover, it would not be clear to the institution prior to a site visit whether such an arrangement might satisfy the Standards. Under the current Interpretations, in contrast, there is a transparency associated with compliance.

In addition to transparency, the current Interpretations offer some predictability. As noted, many schools have made a considerable investment in improving ratios under the Interpretations. Thus, schools that have modified faculty arrangements based on the formulas in the Interpretations have depended on those Interpretations in endeavoring to comply with the Standards. Eliminating the Interpretations could harm those institutions in unpredictable ways not fully explored by the Committee. Further, elimination of the Interpretations removes the proactive formula used by institutions to assess compliance. Finally, while the Explanation notes that the “Accreditation Committee has had years of experience applying the standards to determine whether a law school’s full-time faculty is of sufficient size,” the criteria employed over those years are not transparent to institutions in a manner that promotes predictability.

4. Failure to consider fully the impact of institutional reliance on the Interpretations:

Institutional reliance on the Interpretations should also be more fully considered. The Committee acknowledges that institutions have devoted resources to improving ratios consistent with the Interpretations. The availability of an objective formula, and institutional reliance on that formula, should be more fully considered.

Conclusion:

The Explanation notes, “writing a new interpretation now, without more time for consultation with the Accreditation Committee, is not an easy task.” However, and as acknowledged by the Committee, eliminating the Interpretations “as an isolated question and without a full assessment of all of Chapter Four of the Standards,” an assessment that admittedly has not been done, could invite a range of unintended consequences. In short, the Committee has not made a full projection of how elimination of the Interpretations could affect the behavior of the regulated industry, and the recommendation is therefore premature at best and, far more likely, ill-advised. For these reasons the Institute opposes elimination of the Interpretations and instead recommends that the Committee thoroughly, thoughtfully, and deliberately evaluate whether the student-faculty ratio should be modified and the potential consequences of modification and/or elimination of the Interpretations.

Very truly yours,

Ruth Anne Robbins

Ruth Anne Robbins
President, Legal Writing Institute

Original signed copy sent by U.S. Mail