

June 17, 2026

Daniel R Thies, Esq.

Chair, Council of Section of Legal Education and Admission to the Bar
("Council")

Jennifer Rosato Perea,

Managing Director of Accreditation and Legal Education

The other members of the Council

Dear Chair Thies, Managing Director Perea, and the other members of the Council,

This letter is submitted on behalf of the Association of Legal Writing Directors ("ALWD"), the Legal Writing Institute ("LWI"), and the American Association of Law Schools Section on Legal Writing, Reasoning, and Research. ALWD and LWI are affiliates of the Council and collectively we represent legal writing faculty throughout the United States in Council-approved law schools.

In this letter, we request that the Council make small changes to Standard 405 that would have an enormous impact on providing additional security of employment for legal writing faculty. As shown below, this request is consistent with fifty years of work by the ABA and the Council and is supported by many studies commissioned by the ABA, the AALS, and other influential legal organizations calling for enhanced security of employment for skills faculty. This letter addresses both the historical concerns that have been raised about extending additional security to our community and newer concerns stemming from recently authored documents, such as the CLEAR Report and the Council's Core Principles and Values. We know Standard 405 will be reviewed by the Council's Advisory Committee this summer, and we ask the Council to forward this letter to the Advisory Committee as it considers whether security of employment of law school faculty is a proper role for a national accreditor.

***History of The Struggle for Security of Employment for
Legal Writing Faculty within the Accrediting Standards***

For almost fifty years, the legal writing community has watched as the ABA has studied, recommended, and endorsed providing security of employment for our members, only to be disappointed because, as Lucy does with Charlie Brown's football, security of employment proposals get whisked away at the last second, time after time.

Forty-six years ago, in 1980, the Council adopted Interpretation 405-2, as follows:

Individuals in the “academic personnel” category whose full time is devoted to clinical instruction and related activities in the JD program constitute members of the “faculty” for purposes of Standard 405, and denial to them of the opportunity to allow tenure appears in violation of Standard 405(d).¹

What happened? The Council withdrew the proposed Interpretation shortly after its passage.²

The 1980 proposal was withdrawn despite having been based, in part, on the ABA’s own report, published in 1979, which concluded faculty who teach skills contribute substantially to the law school community and are every bit as deserving of the opportunity to earn security of employment promotion as are traditional tenure track faculty:

Law school policies and practice of faculty appointment, promotion, and tenure should pay greater rewards for commitment to teaching, including teaching by techniques that foster skills development. Experimentation with and creation of new teaching methods and materials that focus on the improvement of such fundamental lawyer skills as legal writing, oral communication, interviewing and counseling, or trial advocacy should be valued no less highly than research on legal doctrine.³

The 1980 proposal was withdrawn by the Council despite a joint ABA-AALS study, published a few months before adoption of the Interpretation, which concluded, “the importance of clinical legal studies to the law school curriculum requires the application of tenure status to individuals teaching in the clinical studies curriculum. . . . The failure to

¹ SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM.BAR ASS’N, STANDARDS FOR APPROVAL OF LAW SCHOOLS, Interpretation 2 of Standard 405(d) (1981), as reported in Peter A. Joy and Robert R. Kuhn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENNESSEE L. REV. 183, 195 (2008) (hereinafter Joy & Kuhn, *Evolution*).

² Joy and Kuhn, *Evolution*, *supra* n. 1 at 195. For a discussion of the relationship between the terms “clinical faculty,” “legal skills faculty,” and other similar terms, see *infra* nn. 32-33 and related text. Additionally, for a discussion of the foundational skills taught by legal writing faculty, see *infra* nn. 78-82 and related text. The writing skills taught by our community often provide the foundation for later clinical education. See e.g., Mary Nicol Bowman and Lisa Ellen Bodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning through Transference*, 25 CLINICAL L. REV. 269 (2019).

³ SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM.BAR ASS’N, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS, 1, 26 (1979), reported in Joy and Kuhn, *Evolution*, *supra* n. 1 at 191 (emphasis added). The ABA’s report is commonly referenced as the “Crampton Report,” eponymously named after its principal author and Chair of the Task Force who studied the issue, Dean Roger C. Crampton of Cornell Law School, as reported in Joy and Kuhn, *Evolution*, *supra* n. 1 at 191.

consider clinical legal studies in the context into legal education leads to a second-class status for clinical legal studies.”⁴

The 1980 proposal was also withdrawn despite a 1971 study by the Council on Legal Education for Professional Responsibility (“CLEPR”), which concluded that:

[A] good clinical program require[s] that a clinical faculty member have “security at the law school . . . and prestige among his [sic] colleagues” for without the security of a continuing employment relationship with the law school and a voice in law school governance, clinical faculty and the courses they teach are marginalized.⁵

In 1982, forty-four years ago, the Council drafted another proposed Interpretation to Standard 405, and referred it to the Standards Review Committee for its recommendation:

Full-time clinical faculty members are entitled to an employment relationship substantially equivalent to that enjoyed by other members of the full-time faculty. This Standard may be satisfied by: (1) the inclusion of full-time clinical faculty on the same tenure track as the other members of the full-time faculty; (2) a separate tenure track; or (3) employment contracts, such as successive renewable, long-term contracts that provide features substantially equivalent to tenure. The approach chosen shall also include terms and conditions of

⁴ AM. BAR ASS’N & ASS’N OF AM. LAW SCHS., CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS/AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 1, 59, 113 (1980), as reported in Joy and Kuhn, *Evolution supra* n. 1 at 193, 194 (hereafter “Joint ABA-AALS Report”). The Joint ABA-AALS Report’s precise recommendation was as follows:

One or more of the faculty who have principal responsibility for the clinical legal studies curriculum should have the same underlying employment relationship as the faculty teaching in the traditional curriculum . . . [and] full-time positions not eligible for tenure should be long-term employment.”

The Joint ABA-AALS Report further explained:

Such full-time positions not eligible for tenure should be long-term employment if the occupants are required to: (1) possess or develop an expertise in the theoretical and empirical literature related to the issues covered in the clinical studies curriculum and engage in the related teaching; (2) develop or teach classroom components of the clinical legal studies curriculum; and (3) supervise the training or teaching of other faculty or professional staff engaged in teaching the clinical legal studies curriculum.

Joint ABA-AALS Report at 33-34, as reported in Joy and Kuhn, *Evolution, supra* n. 1 at 192-93.

Similarly, the Joint ABA-AALS Report, “stressed that the full integration of clinical studies into legal education required the full integration of clinical teachers into law faculties.” *Id.* at 194.

⁵ Joy and Kuhn, *Evolution supra* n. 1 at 189, quoting from “CLEPR Holds Workshops on Life and Times of the Clinical Law Professor,” NEWSLETTER (Council on Legal Educ. for Prof. Resp., Inc., New York, N.Y.) Nov. 1971 at 1 (cleaned up).

employment substantially equivalent to those offered to non-clinical, fulltime members of the faculty.⁶

What happened? The Council withdrew the 1982 proposed Interpretation in 1983.⁷

The 1982 proposal was withdrawn despite a report from the ABA's Task Force of Professional Competence in early 1983, just a few months before the Council withdrew the proposed Interpretation, which concluded:

[W]e believe that the contributions of clinical teachers should receive greater and more appropriate weight than is now often the case. We believe that the distinctive role and workload of the clinical teacher should be recognized as a desirable and acceptable substitute for the traditional scholarship of a law faculty member in tenure and promotion criteria.⁸

The 1982 proposal was withdrawn despite a 1977 CLEPR report that provided "if clinicians are to be truly equal members of the law school community . . . they should be considered for and granted tenure on the basis of demonstrated excellence."⁹

The 1982 proposal was withdrawn despite a 1983 report in the Chronicle of Higher Education that concluded:

[L]aw schools treat clinicians with something approaching disdain. . . [T]he law schools withhold the symbols and perquisites of the profession from [clinicians].¹⁰

After withdrawing the 1982 proposed Interpretation, the Standards Review Committee recommended a new proposed Standard 405(e) be adopted in 1983, forty-three years ago.¹¹ The proposed Standard 405(e) would have required law schools to offer skills faculty the opportunity to earn security of employment within their schools. The proposed standard made it a requirement by using the word "shall." At the same time, it

⁶ Joy and Kuhn, *Evolution*, *supra* n. 1 at 196, n. 73 (cleaned up).

⁷ *Id.* at 199.

⁸ TASK FORCE ON PROF'L COMPETENCE, AM. BAR ASS'N, FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE 1, 12 (1983), reported in Joy and Kuhn, *Evolution*, *supra* n. 1 at 198. This ABA report is sometimes referred to as the "Friday Report," after its Chair Herschel H. Friday.

⁹ Laura Sager, *Career Perspectives for Clinical Teachers (A First Report)* CLEPR NEWSLETTER (Council on Legal Educ. for Prof. Resp., Inc., New York, N.Y.) Sept. 1977 at 1.

¹⁰ Beverly T. Watkins, *Teachers of Clinical Law Seek Recognition, Better Treatment* CHRON. HIGHER EDUC. Jan. 19, 1983, at 14.

¹¹ Joy and Kuhn, *Evolution*, *supra* n. 1 at 200.

also included two significant Interpretations that furthered the goal of positional security for full time skills faculty.

The proposed Standard and the two Interpretations were adopted by the Council in its December 1983 meeting.¹² The 1983 Proposed Standard 405(e) provided:

The law school shall afford to *full-time faculty members whose primary responsibilities are in its professional skills program*, a form of security of position reasonably similar to tenure and perquisites reasonably similar to those provided other fulltime faculty members by Standards 401, 402(b), 403 and 405. . .¹³

In explaining the employment protections envisioned under Standard 405(e), the Council adopted Interpretation “A,” which required that post-probationary skills faculty on a separate “skills” track could only be terminated upon a school’s showing of “good cause”:

A form of security of position reasonably similar to tenure includes a separate tenure track or a renewable long-term contract. Under a separate tenure track, a full-time faculty member, after a probationary period reasonably similar to that for other full-time faculty, may be granted tenure as a faculty member in a professional skills program. *After tenure is granted, the faculty member may be terminated only for good cause*, including termination or material modification of the professional skills program.¹⁴

The Standards Review Committee recognized that while the contributions of skills faculty and research faculty might be different, both contributed significantly to the academy as indicated in its second proposed 1983 Interpretation, Interpretation B:

In determining if full-time faculty members in a professional skills program meet standards and obligations reasonably similar to those provided for other full-time faculty, *competence in the areas of teaching and scholarly research and writing should be judged in terms of the responsibilities of the faculty member in the professional skills program*. . .¹⁵

¹² *Id.*

¹³ *Id.* at 199, n. 91 (emphasis added)

¹⁴ *Id.* at 199, n. 92 (emphasis added)

¹⁵ *Id.* at 199-200, n. 93 (emphasis added)

What happened? In August 1984, the Council withdrew the 1983 proposed Standard,¹⁶ and later withdrew the proposed Interpretations.¹⁷

Instead, in 1984 the Council recommended passage of a watered-down version of its 1983 proposed Standard 405(e), changing the word “shall” to “should,” thereby requiring nothing, but suggesting:

The law school should afford to full-time faculty members whose primary responsibilities are in its professional skills program, a form of security of position reasonably similar to tenure and perquisites reasonably similar to those provided other fulltime faculty members . . .¹⁸

The House of Delegates passed the “should” version of 405(e) in August 1984.¹⁹

The Council’s withdrawal of the 1983 “shall” proposal in favor of the 1984 “should” proposal was accomplished despite the Council’s *unanimous* affirmation of the “shall” proposal just a few weeks earlier, in its May 1984 meeting.²⁰

The withdrawal of the “shall” proposal occurred despite Council Member Judge Henry Ramsey’s plea that the verb “shall” was crucial because, “it was grossly unfair to discriminate against law teachers on the basis of what they teach,”²¹ and despite the arguments of Robert McCay, Chair of the Section on Legal Education and Admission to the Bar, who echoed Judge Ramsey’s support of the “shall” language by stating “equity fairness and educational necessity underpin this issue.”²²

Significantly, the Council withdrew the “shall” proposal despite the pleas to retain it from the three law school deans on the Council, Richard Huber (Boston College of the Law), Norman Redlich (New York University School of Law) and Gordon Schaber (McGeorge School of Law). Indeed, these deans authored a letter (“Deans’ Letter”) sent to all other deans of Council-accredited schools explaining why security of employment was necessary to assure the academic freedom of skills professors:

¹⁶ *Id.* at 204.

¹⁷ *Id.* at 212. The 1983 proposed Interpretations were passed by the House of Delegates, but in 1996, the Council proposed revisions to those Interpretations, as discussed in nn. 31-32, *infra* and text accompanying.

¹⁸ *Id.* at 204.

¹⁹ *Id.* at 205. The two proposed Interpretations were eventually broken into three, but the language above was that adopted by the Council in its May 1983 meeting. *Id.*

²⁰ *Id.* at 201-02.

²¹ *Id.* at 202.

²² *Id.*

Few have ever questioned the relationship of tenure status to quality of legal education when applied to traditional academic faculty. Tenure, or some equivalent status, provides the assurance of academic freedom, which has long been regarded as essential for a quality faculty. This is no less true for teachers in a professional skills training program. The assurance of academic freedom affects quality in at least two ways: (a) it permits teachers to perform their academic responsibilities, in the classroom and in scholarship, without fear of reprisal; and (b) it helps to recruit high-quality faculty since potential teachers of distinction are more likely to be attracted to academic life if they can be assured of permanent status on a law school faculty.²³

In urging the adoption of the “shall” language of the 1983 proposal, the Deans’ Letter also noted the moral inequity in granting tenure to “research” faculty, but withholding similar employment protections from skills faculty, given their equivalent contributions to legal education:

We believe that Standard 405(e) is important not only as an assurance of high-quality professional skills teaching, but also as a matter of elemental fairness and decency. There should be no second class citizens among the full-time members of an academic faculty. Persons who are dedicating their professional careers to teaching our students the essential ingredients of lawyering skills should not be forced to tolerate a status which the rest of us would find wholly unacceptable. They should be carefully evaluated by whatever standards the faculty establishes, but once they meet those standards, they have as much right to full membership in the academic community as does anyone else. In academic life, such full membership means tenure, or the substantial equivalent thereof.²⁴

The issue of tenure or its equivalent for skills faculty did not end in 1984 with the adoption of the “should” language version of Standard 403(e) by the House of Delegates. Instead, the Council, the ABA, and others commissioned studies on the effect of the “should” Standard on security of employment for skills faculty throughout member schools. For example, in 1991, a report from the ABA’s Office of Consultant on Legal Education determined that the percentage of full-time skills faculty holding “tenure eligible slots” had dropped by 5% between 1984 (the date of adoption of Standard 405(e) with the

²³ *Id.* at 203.

²⁴ *Id.*

“should” language) and 1991.²⁵ That statistic, and others, demonstrated the ineffectiveness of the “should” approach: “the data produced by this project does not demonstrate that ABA Accreditation Standard 405(e) has improved the status of full-time teachers of professional skills, nor does the data indicate trends which would suggest a probability of significant future progress.”²⁶

In turn, the Consultant’s Report led to the MacCrate Report in 1982, which similarly concluded that the “progress in increasing the number of full-time skills faculty has not been uniform, and at some institutions, it has come slowly and without the commitment that is necessary to develop and maintain skills instruction of a quality commensurate with the school’s overall educational aspirations.”²⁷

The MacCrate Report was followed by a study undertaken by the ABA’s Skills Training Committee, which concluded that “a significant percentage of schools were disregarding 405(e)” and its “should” language, and were providing no security of employment for skills faculty.²⁸ Similarly, a study by the AALS in 1991 also concluded that Standard 405 (e) had engendered no significant progress in the struggle for security of position for skill professors.²⁹

Despite these studies, and others, it was not until 1996, twelve years after passing the “should” Standard, that the Council recommended changing “should” back to “shall” in Standard 405(c) (Standard 405(e), with its “should” language, had been renumbered as 405(c) as part of this process).³⁰ However, even then the Council did so in a way that harmed the legal writing professorate. While the 1984 “should” version and its related Interpretations applied to “. . . *full-time faculty members whose primary responsibilities are in its professional skills program* . . .,” which would undoubtedly include legal writing faculty, the 1996 “shall” version was changed by the Council so that it only applied to “clinical faculty.” The Council made similar wording changes to the relevant

²⁵ ROY STUCKY, *OFFICE OF THE CONSULTANT ON LEGAL EDUC. FOR THE AM.BAR ASS’N, FINAL REPORT: RESULTS OF SURVEYS AND QUESTIONNAIRES REGARDING THE STATUS OF PROFESSIONAL SKILLS TEACHERS 1984–1991* (1991) at 3.

²⁶ *Id.* at 5.

²⁷ SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM.BAR ASS’N, *REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (1992) at 7 (known as “the MacCrate Report.”).

²⁸ Joy and Kuhn, *Evolution*, *supra.* n. 1 at 209-10.

²⁹ Report of the Committee on the Future of the In-House Clinic, 42 J. LEGAL EDUC. 508, 556 (1992).

³⁰ Joy and Kuhn, *Evolution*, *supra.* n. 1 at 212.

Interpretations.³¹ The reason for these changes is not apparent from any documentation we, or other academics, can find.³²

Possibly in the vernacular of the times, “skills faculty” and “clinical faculty” were used synonymously. There is some, albeit not definitive, support for that understanding in the literature,³³ and our examination of the proceedings and reports of the Council from 1980 through 1996 lead us to believe it is possible that some, or perhaps all, members of the Council during those years had that understanding. A glance back through the Council’s proposals and other studies cited earlier in this letter show some fluidity between the use of “clinical” and “skills.” If that understanding is correct, the change from “full-time faculty members whose primary responsibilities are in its professional skills program” to “clinical faculty” was a change in nomenclature only, perhaps for brevity, and Standard 405(c) was intended from its inception to govern legal writing and other skills faculty. If true, then amending the current version of Standard 405(c) to include legal writing faculty as suggested in our proposal would be a step towards restoring the Standard’s original meaning.

However, the “synonym” theory is not free from doubt, and we recognize there must have been a reason for the Council to make the wording change. Indeed, subsequent actions of the Council and others involved in legal education cast some doubt on the “synonym” understanding and provide circumstantial support for the notion that protections given clinical faculty under proposed Standard 405(c) were not intended to be applied to legal writing and other skills faculty. At best, there is uncertainty whether the Council considered the terms “skills faculty” and “skills education” coincident with “clinical faculty” and “clinical education” in 1996.

Given this uncertainty, an amendment specifically relating to “legal writing teachers” was proffered and accepted at the 1996 House of Delegates meeting where the Council’s 1996 proposed Standard 405(c) and related Interpretations were adopted. Under that amendment, legal writing faculty were at least officially recognized by the ABA in the Standards, but that amendment provided NO security of employment for legal writing

³¹ SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM.BAR ASS’N, STANDARDS FOR APPROVAL OF LAW SCHOOLS 43 (1996); Erica Moeser, Report No. 1 of the Section of Legal Education and Admissions to the Bar, 121 ANNUAL REPORT OF THE AMERICAN BAR ASSOCIATION 375–77 (1996).

³² See, e.g., J. Lyn Entrikin et al., *Treating Professionals Professionally: Requiring Security of Position for All Skills-Focused Faculty Under ABA Accreditation Standard 405(c) and Eliminating 405(d)*, 98 OR. L. REV. 1, 8 (2020) (hereafter “Entrikin et al., *Security for Skills Professors*”); Joy and Kuhn, *Evolution*, supra. n. 1 at 212.

³³ See, e.g., Entrikin et al., *Security for Skills Professors*, supra n. 32 at 8.

professors, in contrast to the “tenure or substantial equivalent” language mandated for “clinical faculty” in Standard 405(c).³⁴ That amendment became Standard 405(d).³⁵

In 2001, the Council amended Standard 405(d) to its current form, providing a small measure of security of employment for legal writing faculty,³⁶ but still far less than that provided for “clinical” professors in Standard 405(c).³⁷ Standard 405(d) remains the only provision in Standard 405 that governs “teachers” (of legal writing) instead of “faculty” (for all other legal instruction). Further, Interpretation 405-9, passed to interpret Standard 405(d), is the only Interpretation in any Standard that specifically allows for the duties and responsibilities of a particular discipline -- legal writing instruction -- to be accomplished by fellowship programs. Interpretation 405-9 is also the only Interpretation that specifically calls out and permits short-term contracts to be provided to a particular class of professors – “legal writing teachers.”³⁸

³⁴ The original Standard 405(d) adopted at the 1996 House of Delegates meeting, provided:

(d) Under Standard 405(a), law schools employing full-time legal writing instructors or directors shall provide conditions sufficient to attract well-qualified legal writing instructors or directors.

ABA Sec. of Leg. Educ. & Admis. to the Bar, Standards for Approval of Law Schools and Interpretations, Standard 405(d), at 43 (1996), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/1996_standards.pdf.

³⁵ Am. Bar Ass’n, Proceedings for the Annual Meeting of the House of Delegates, 121 ANN. REP. 1, 24-25 (1996).

³⁶ *Entrikin et al., Security for Skills Professors*, *supra* n. 32 at 13 (renaming “legal writing instructors” as “legal writing teachers” and mentioning retention and academic freedom in Standard 405(d)).

³⁷ The current Standard 405(d) provides:

(d) A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 303(a)(2), and (2) safeguard academic freedom.

AM, BAR ASS’N, Standards and Rules of Procedure for Approval of Law Schools, www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2025-2026/2025-2026-standards-chapter-4.pdf.

³⁸ Interpretation 405-9 provides:

Subsection (d) of this Standard does not preclude the use of short-term contracts for legal writing teachers, nor does it preclude law schools from offering fellowship programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experience.

www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2025-2026/2025-2026-standards-chapter-4.pdf. While Standard 405(c) does authorize “a limited number of fixed, short-term appointments in a clinical program,” it requires that such a program be “predominately staffed by full-time faculty members” or be “an experimental program of limited duration.” *Id.* Therefore,

Additionally, the proposed revisions to Standard 405 during the 2008-2014 cycle demonstrated the inadequacy of current Standard 405(d). During the 2008-2014 comprehensive standards review process, the Council engaged in “a protracted debate over whether the accreditation standards require (or should require) that schools have a tenure system for any category of faculty.”³⁹ During that process, the Council sent for notice and comment two proposals, including one that “would have removed the term ‘tenure’ from Standard 405(b) and instead would have required schools to provide full-time faculty members with a form of security of position sufficient to ensure academic freedom and to attract and retain a competent full-time faculty -- language very similar to that used in 405(d).”⁴⁰

The response to these proposals were “overwhelmingly negative from law faculty who were either tenured or on the tenure track.”⁴¹ For example, Carol Chomsky, speaking on behalf of the Society of American Law Teachers, noted that “Alternative 1 on its face looks like it has a requirement of security of position, ‘security of position sufficient to ensure academic freedom and attraction and retention of a competent, full time faculty,’ but experience shows us that *that language carries no punch. That’s exactly what legal writing [faculty] are guaranteed now and at many institutions they have no security of position.*”⁴²

Legal writing faculty also submitted comments demonstrating that the “attract and retain” approach in Standard 405(d) was insufficient to protect legal writing faculty.⁴³ Given the overwhelmingly negative record against moving all faculty to “attract and retain” protection, the Council voted in 2014 to leave Standard 405 in place, without amendment.⁴⁴ But the Council did so without addressing the insufficiency of “attract and

Interpretation 405-9 treats “legal writing teachers” uniquely by expressly authorizing short-term contracts for all permanent “teachers” within this one academic discipline.

³⁹ Entrikin *et al. Security for Skills Professors*, *supra* n. 32 at 15.

⁴⁰ *Id.* at 16. That proposal was “Alternative 1.” The other proposal, Alternative 2, would have provided even less protection by completely eliminating any provision addressing security of position for any professor. *Id.*

⁴¹ *Id.* at 17.

⁴² *Id.* (emphasis in original) (citing Section of Legal Educ. and Admissions to the Bar, Am. Bar Ass’n, Transcript of Public Hearing--Amendments to Standards and Rules of Procedure for Approval of Law Schools 10-11).

⁴³ *Id.* at 18.

⁴⁴ *Id.* (citing Section of Legal Educ. and Admissions to the Bar, Am. Bar Ass’n, *Council Acts on ABA Law School Approval Standards at March 2014 Meeting* (2014), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/march2014councilmeeting/2014_march_council_announcement_re_comprehensive_review.pdf [https://perma.cc/S95W-2YNK]).

retain” in Standard 405(d), despite “the open secret that 405(d) provides no real protection for legal writing faculty at all.”⁴⁵

Struggles for Security of Employment for Legal Writing Faculty Since 2023

The struggle for security of employment for legal writing professors has resurfaced in the past few years. But the same pattern of dangling potential security of position protections before our community, only to have them be yanked away at the last minute, continues.

In 2023, three years ago, the Council adopted as part of its 2023-2024 Agenda, a study of Standard 405:⁴⁶ “We recommend getting feedback from the Council on how it would like to proceed in light of the proposed revisions to Standard 405 relating to the status of Legal Writing faculty and the number of entities in support of them.”⁴⁷ At its November 2023 meeting, the Council voted to send for notice and comment a proposed revision of Standard 405 that largely paralleled a joint proposal from ALWD and LWI, and was supported by CLEA and SALT, requiring law schools to provide “the opportunity for tenure or a form of security of position reasonably similar to tenure, and reasonably similar non-compensatory perquisites” to all full-time faculty, including legal writing faculty.⁴⁸ The 2023 proposal also required law schools to provide legal writing professors, as well as all other full time faculty, voting and other governance rights substantially equivalent to those of tenure-line faculty.⁴⁹

What happened? The Council withdrew its 2023 proposal in 2024. The withdrawal occurred despite 153 of the 156 comments received during the notice and comment period on the proposal urging its adoption, and only 3 that in any way opposed it.⁵⁰

⁴⁵ Entrikin *et al.* *Security for Skills Professors*, *supra* n. 32 at 18.

⁴⁶ www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov23/23-aug-council-open-session-minutes.pdf.

⁴⁷ www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/aug23/23-aug-sc-memo-proposed-2023-2024-standards-committee-agenda.pdf.

⁴⁸ www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov23/23-nov-memo-revisions-304-405.pdf.

⁴⁹ *Id.*

⁵⁰ www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2023/comments-received-standards-304-405.pdf.

In August 2024, two years ago, the Council once again voted to send for notice and comment a revised proposal which also provided for security of position for legal writing and other full-time faculty.⁵¹

What happened? The Council once again withdrew its proposal, despite, again, an overwhelming number of comments received during the notice and comment period in support of sending the proposal to the House of Delegates for approval, either as drafted or with slight revision.⁵²

In 2025, a year ago, the Council authored another proposal which would have provided security of employment to any full-time faculty member whose primary responsibility was classroom instruction. It undoubtedly would have covered legal writing professors. The Council organized a virtual roundtable of interested parties to discuss the proposal on June 30, 2025.⁵³ Those of us who participated in the roundtable heard general support for the proposal and its approach.

What happened? The Council failed to recommend the “classroom instruction” proposal even be put forward for a vote to send it for notice and comment.

No proposal regarding security of employment from the Council has followed, despite the Standards Committee stating in its 2025-2026 Agenda memorandum, “The Council *must work quickly* to protect the security of position and academic freedom of clinical faculty due to the nature of law clinic casework as well as for other full-time faculty members who are in vulnerable employment situations.”⁵⁴

Our Proposal

Respectfully, enough is enough. There have been enough studies; there have been enough occasions when the Council has come out in favor of security of position for legal writing faculty but has not delivered on that promise; there have been enough withdrawals and watering down of proposals. In fifty years, the steps towards job security for our community have been too tentative and the protections provided too weak. It is time to enact meaningful security of position for legal writing professors.

⁵¹www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/aug24/24-aug-recommended-revisions-206-405-notice-comment-revised.pdf.

⁵²www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/aug24/comments-standard-405-october-2024-notice-period.pdf.

⁵³www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2025/council-meeting/2025-august-standards-committee-agenda-memo-for-council.pdf.

⁵⁴ *Id.* (emphasis added). Although that document is labeled 2024-2025 Agenda, it is dated August 2025.

We propose that the Council make small but significant changes to the existing Standards. In 2023, ALWD and LWI jointly sent a draft proposal to the Council.⁵⁵ That proposal served as the foundational draft for the Council’s proposals in 2023, 2024, and 2025. We offer a similar proposal today to the Council and urge its adoption. Our full proposal is attached as Appendix A to this letter, but its significant points are:

- (1) Elimination of Standard 405(d), the Standard regulating “legal writing teachers,” and Interpretation 405-9, the Interpretation based on Standard 405(d) which allows for short term contracts for legal writing teachers and fellowship programs in lieu of a legal writing faculty. Our proposal acknowledges the need for short term appointments via visiting appointments and does not prohibit fellowship programs – it just eliminates the Interpretation that explicitly authorizes fellowship programs only for legal writing instruction. Similarly, programs that largely employ adjunct professors to teach legal writing are permitted under our proposal, as are short-term appointments for experimental programs.⁵⁶
- (2) Amend Standard 405 (c) so that its provisions regulate “clinical and legal writing faculty.” If enacted, a school will be required to provide an opportunity for tenure or its substantial equivalent to both clinical and legal writing faculty after a probationary period. A substantial equivalent can be, as it is today, a presumptively renewable contract of five years or more.⁵⁷
- (3) Define “presumptively renewable contracts” in light of the legal and colloquial meaning of that term – either evergreen contracts or term contracts that automatically and presumptively roll over without having faculty members establish their entitlement to reappointment.⁵⁸ As with a fully tenured appointment, a post-probationary faculty member can always be terminated upon a showing of “good cause” as defined by the school, with the school having the burden to establish the good cause and to provide due process. Also as with

⁵⁵ ALWD’s and LWI’s 2023 proposal can be found here:

www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/aug23/23-aug-comments-received.pdf. and in Appendix B to this letter.

⁵⁶ Standard 405(c) itself contains that language, making Interpretation 405-9 unnecessary.

⁵⁷ For schools in states where presumptively renewable contracts are prohibited, the Standards should put the burden on the school to establish meaningful security of employment protections after a probationary period.

⁵⁸ We have provided two alternatives that can accomplish this goal, one based primarily on the Council’s 2023 proposal to amend Standard 405, and the second based primarily on the Council’s 2024 proposal.

a fully tenured appointment, financial exigency or the good faith elimination of a program can qualify as “good cause.”

- (4) Amend Interpretation 405-8 to add legal writing faculty, and to add “voting” to the requirement that a school must provide governance rights to clinical and legal writing faculty that are “reasonably similar” to those governance rights granted to traditional tenure-track faculty. Under our proposal, a school is free to decide whether clinical and legal writing faculty may vote on the appointment or promotion of tenure track faculty. Our proposed revision keeps the existing structure regarding governance rights but clarifies that voting is included within those governance rights and allows legal writing faculty to participate as full citizens on the law school faculty.⁵⁹

The reasons these revisions are needed are many, varied, and important. They have been spelled out time and time again, as discussed above in the earlier “History” section of this letter and in ALWD’s and LWI’s original proposal letter sent in 2023, which is attached to this letter as Appendix B and is available on the ABA’s website.⁶⁰ But perhaps the best summary for the rationale behind amending Standard 405(c) to increase security of employment for the legal writing professorate came from the Standards Committee itself. In its August 17, 2023, Proposed Agenda Memo to the Council, it summarized the ALWD/LWI proposal:

The changes are proposed to help break down the current hierarchy in Standard 405 that allows only “legal writing teachers” to be offered short-term, non-presumptively renewable contracts when almost all permanent faculty have a route to tenure or long-term presumptively renewable contracts. Legal Writing faculty members teach skills and courses required by the Standards and the NextGen Bar Exam and their lack of long-term job security inhibits their academic freedom and participation in law school governance. Legal Writing faculty members are also predominately women

⁵⁹ The lack of voting rights is a serious issue among legal writing professors. Forty-five percent of full-time legal writing faculty employed on short term-contracts have “no voting rights.” See ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., ALWD/LWI ANNUAL LEGAL WRITING SURVEY: REPORT OF THE 2021-2022 INSTITUTIONAL SURVEY at Q8.2, available at <https://alwd.org/images/resources/2021-22-Institutional-Survey-Report-FINAL-June-2023.pdf>. (“2021 Survey”) Similarly, 43% of full-time legal writing faculty with long-term contracts that do not satisfy Standard 405(c) report having no voting rights. *Id.* While most faculty with Standard 405(c) status or better have at least some voting rights, four schools continue to give legal writing faculty with 405(c) status no voting rights. *Id.* On why it matters whether legal writing professors have faculty voting rights, see Susan P. Liemer, *The Hierarchy of Law School Faculty Meetings: Who Votes?* 73 UMKC L. REV. 351, 363-373 (2004-2005).

⁶⁰ www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/aug23/23-aug-comments-received.pdf.

and have a smaller percentage of people color when compared to full-time faculty. Comments from the Clinical Legal Education Association (CLEA) and the Society of American Law Teachers (SALT) supported the proposal submitted by ALWD and LWI.⁶¹

The principal points of our current proposal were included in the proposals from the Council in 2023, 2024, and 2025. Many have generated no objection during the notice and comment period. For example, there has not been a single objection received to giving legal writing faculty substantially equivalent voting and governance rights as those enjoyed by traditional tenured and tenure-track faculty. Similarly, not one complaint about the elimination of Standard 405(d) and Interpretation 405-9 has been received in response to the Council's recent proposals. This result is unsurprising given that Standard 405(d) was not well crafted from the beginning and was the hasty product of an unexplained wording change from "skills" faculty to "clinical" faculty. However, if Standard 405(d) is eliminated, there would be nothing whatsoever in the Standards that would govern security of employment for legal writing professors. Therefore, the least restrictive change to the Standards that would cover legal writing professors – the pebble that will cause the fewest ripples in the pond – is simply to include legal writing faculty in Standard 405(c) along with our clinical colleagues. If the Council prefers instead to incorporate historical language, we would support amendment of Standard 405(c) so that it applies to "full-time faculty members whose primary responsibilities are in its professional skills program."⁶²

Of course, there has been some objection from the Dean's Council, the AALS, and others to proposals mandating that post-probationary legal writing faculty can only be terminated for "good cause" rather than be treated as mere "at will" employees. Truthfully, many of these objections are not new and are raised whenever increased security of employment for any segment of the law school faculty is proposed. We address these objections, and newer considerations that have surfaced because of the CLEAR Report and the Council's Core Principles and Values, below.

What is the Urgency?

Why we are seeking an amendment to Standard 405(c) now is certainly a fair question. We are aware the Advisory Committee appointed by Chair Theis is going to meet this summer and will be reviewing Standard 405 to determine if the Council should regulate security of employment for any faculty. So why is it not prudent to hold our request until the

⁶¹www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/aug23/23-aug-sc-memo-proposed-2023-2024-standards-committee-agenda.pdf.

⁶² See *infra* n.13 and related text.

Advisory Committee meets and we know what it recommends? There are a few answers to that.

First, the Advisory Committee is only that – a committee that will give advice, not orders, to the Council. Even if Committee advises that an accrediting body should not be involved in determining the employment practices of a school and that the Council should eliminate any mention of tenure or its equivalent from the Standards, the Council may reject such advice. Certainly, if the Council ultimately decides that requiring a school to have a tenure policy is outside its purview and withdraws Standard 405 in its entirety, there would be no exception for legal writing faculty. But until that were to occur, there is no reason not to put this issue before the Council now.⁶³

Second, should the Council decide that the security of employment principles underlying Standard 405 are an accreditation matter, and we believe they are, then there is an urgency to our proposal. As we are sure every person on the Council can attest, law professors are under constant attack for raising issues or designing problems that shouldn't be considered controversial but are considered dangerous by many currently in power – issues like the rule of law, the values of diversity, and the importance of an independent judiciary. Classroom lectures and assigned problems are under assault. If there was ever a need for protection of position for law professors it is now, and that protection is needed regardless of the subjects taught by the faculty member. Such protection can only be expediently and meaningfully provided by a national accreditor. Without a Council mandate, history shows little progress is made toward providing security of employment for legal writing faculty, as evidenced by contraction of tenured faculty lines between 1984 and 1966, when the “should” Standard was in force.⁶⁴

The Council itself has recognized the need to act sooner than later. As referenced earlier, in its Agenda Memorandum for 2025-2026, the Standards Committee stated:

While the Council has dedicated substantial time and effort to revising Standard 405, this issue is increasing urgent given the challenges to higher education and academic freedom currently coming from multiple directions. The Council must work quickly to protect the security of position and academic freedom of clinical faculty due to the nature of law clinic casework

⁶³ The Managing Director's November 2025 [Report](#) indicated that the Council's consideration of Standard 405 changes did not need to wait for the outcome of the Core Principles Review: “The Council adopted the proposed Standards Committee Agenda for the year, which includes a general review of the Standards to determine how the Council's work might better promote innovation, affordability, and efficiency in the delivery of legal education. *In addition*, the Standards Committee *will be continuing to examine Standard 405 (professional environment)[.]*” (emphasis added).

⁶⁴ See *infra* nn. 25-33 and text accompanying.

as well as for other full-time faculty members who are in vulnerable employment situations.⁶⁵

Legal writing faculty are indeed in “vulnerable employment situations.” Fifty-six law schools recently reported having full-time legal writing faculty employed on short-term contracts.⁶⁶ Additionally, 28 schools reported employing full-time legal writing faculty with long-term contracts that do not meet the requirements for 405(c) status.⁶⁷

If the Council is going to keep some version of Standard 405, then making the small revisions to increase the security of position protections for legal writing faculty is, indeed, an urgent matter.⁶⁸ We urge the Council to act on our proposal quickly, much in the manner the Council recently dealt with urgently needed revisions to Standard 316.⁶⁹

Why Can’t a Strong Academic Freedom Policy under Standard 208 Suffice to Protect Security of Employment for Legal Writing Professors?

Some have argued that Standard 208, which requires a school to adopt a policy to protect academic freedom, may render unnecessary Standard 405’s protection of security of employment. That argument, however, rests on several false premises.

First, members of the Council themselves have long recognized and stated the view that security of employment is necessary to secure meaningful academic freedom. For example, in the Deans’ Letter, the members of the Council noted, “Tenure, or some equivalent status, provides the assurance of academic freedom, which has long been regarded as essential for a quality faculty. This is no less true for teachers in a professional

⁶⁵ www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2025/council-meeting/2025-august-standards-committee-agenda-memo-for-council.pdf.

⁶⁶ See 2021 Survey, *supra* n. 59 at Q8.2. That figure represented approximately 39% of the 144 schools that responded to the survey.

⁶⁷ *Id.* (representing 19% of responding schools). Because schools often use multiple approaches to legal writing faculty status, it is impossible to measure the extent of the overlap, so the true figure may be higher. See *id.* at Question 8.16.

⁶⁸ Legal writing faculty, of course, are not the only legal educators in “vulnerable employment situations,” and we support the Council’s continued efforts to address other groups in need of protections who are not currently mentioned in Standard 405. But the 2023, 2024, and 2025 drafts from the Council demonstrate the drafting challenges in doing so. As discussed above, we ask the Council to make these changes without waiting on the broader potential for redrafting of Standard 405.

⁶⁹ In May 2026, the Council approved changes to Standard 316 regarding “Licensure Assessment Outcomes” because that Standard was inadequate to deal with recent developments regarding alternative pathways to licensure. During the public portion of the meeting, multiple members of the Council noted that comments received during the notice and comment process raised some additional changes to Standard 316 that were worthy of further consideration. However, given the urgent need for reform, the Council approved the proposed amendments to Standard 316 that had been sent out for notice and comment but indicated that the Council would continue to discuss potential additional changes.

skills training program.”⁷⁰ Those of us who have had the privilege of attending the Open Meetings of the Council over the past few years have heard current members of the Council express a similar view.

But more fundamentally, there are differences in the protections offered by a stand-alone academic freedom policy – even a broad and robust one – and an academic freedom policy coupled with tenure or its equivalent.

Many attribute the origin of modern tenure to the American Association of University Professors’ (“AAUP’s”) 1940 Statement of Principles on Academic Freedom and Tenure.⁷¹ In part, the Statement provides:

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.⁷²

The first difference between what is protected under a stand-alone academic freedom policy, and one coupled with a security of employment guarantee, is described in “(2)” above. There is an economic security aspect to tenure that no academic freedom policy can safeguard. Someone who has garnered skills as a practicing lawyer and who wants to teach those skills in a law school environment surely will be more inclined to do so by the promise of earning security of employment. As noted above, in the Deans’ Letter, members of the Council signified their awareness of tenure’s importance in providing economic security to those lawyers who were considering leaving lucrative and familiar careers and jumping to the academy: “It [the opportunity for security of employment] helps . . . to recruit high-quality faculty since potential teachers of distinction are more likely to be attracted to academic life if they can be assured of permanent status on a law school faculty.”⁷³ A stand-alone academic freedom policy does not and cannot provide such incentive.

⁷⁰ Joy and Kuhn, *Evolution*, *supra*. n. 1 at 203.

⁷¹ See, e.g., Ralph S. Brown & Jordan E. Kurland, “Academic Tenure and Academic Freedom,” 53 *LAW AND CONTEMPORARY PROBLEMS* 325, 326 (1990) (hereafter “Brown & Kurland, *Tenure*”); Erwin Chemerinsky, “Is Tenure Necessary to Protect Academic Freedom?” 41 *AM. BEHAV. SCI.* 638,644 (1998) (hereafter “Chemerinsky *Tenure and Academic Freedom*”).

⁷² American Association of University Professors, *1940 Statement of Principles on Academic Freedom and Tenure* at 3.

⁷³ Joy and Kuhn, *Evolution*, *supra*. n. 1 at 203.

The second reason why a vigorous academic freedom policy alone cannot substitute for one coupled with security of employment protections turns on the dynamic of how the policies work. As Dean Chemerinsky explained in his article entitled “*Is Tenure Necessary to Protect Academic Freedom?*,”⁷⁴ an academic freedom policy gives a professor a right to assert a claim if she is terminated because of protected speech or conduct. To exercise that right, however, the professor would have to initiate a lawsuit after she is terminated, at a time when she is without an income and can be (and almost certainly would be) characterized as a disgruntled ex-employee. Given the cost of obtaining counsel and the potential for the school to justify its decision by noting instances over the course of the professor’s career in which she was not a “team player,” the professor may reasonably conclude a lawsuit is not worth the risk, process, time, and expense.

On the other hand, if a professor has security of employment protection, the school must first act to “de-tenure” the faculty member and establish “good cause” for termination while she is still employed and receiving an income. The school would need to establish a violation of its own “good cause” policy, specifying particular conduct that would justify termination, and could not lean on collateral issues to justify its actions. In a de-tenure hearing, the professor would not be characterized as a disgruntled ex-employee but rather as someone being punished for exercising freedom of speech or conduct – a very different portrait, and one consistent with protections of academic freedom.⁷⁵

A third difference between the protections provided by a stand-alone academic freedom policy and one coupled with tenure or its equivalent concerns the procedural protections provided by tenure. The AAUP has established a series of procedural protections provided a professor when a school seeks to terminate or materially punish the professor for speech or conduct the school believes is detrimental to the institution.⁷⁶ These procedural protections include: (1) an attempt to resolve the dispute in an ADR session before any formal charges are brought; (2) an informal investigation by the appropriate committee to see if the charges should go forward before they are filed; (3) the right to receive a statement of charges against the professor listed with “reasonable particularity”; (4) the burden of proof to show adequate cause for termination is put on the school, not the professor; (5) a “clear and convincing evidence” standard of proof; (6) a right to an “academic advisor” of her choice at the school at no charge to her, to help frame her defense; and (7) a right “to obtain necessary witnesses and documentary or other

⁷⁴ Chemerinsky, *Tenure and Academic Freedom*, *supra* n. 71 at 645-66.

⁷⁵ *Id.*

⁷⁶ Melissa H. Weresh, “*Best Practices for Protecting Security of Position for 405(c) Faculty*,” 66 J. LEGAL EDUC. 538. 545 (2017).

evidence” without going through formal discovery.⁷⁷ A professor who has been terminated and is seeking reinstatement or other damages in court for violation of an academic freedom policy alone would have none of these rights and protections.

Even an academic freedom policy crafted with some procedural protections needs to be coupled with security of employment protections to ensure that the substantive rights under an academic freedom policy are meaningfully protected and to provide economic security for current and prospective faculty. Standard 208, by itself, does not provide the necessary and long-standing safeguards that allow a faculty member to engage in speech, conduct, or problem design without fear of reprisal or incentivize her to leave practice and join the academy.

Having an Accreditor Provide Security of Employment Protections Is Consistent with the CLEAR Report

We are aware of the importance the Council places on the National Center for State Courts’ CLEAR Report,⁷⁸ which raises, among other things, issues of the proper regulatory scope of an accreditor versus a regulator, as well as significant criticisms of the disconnect between legal education, licensure, and law practice. However, a careful reading of the CLEAR Report shows that it supports our proposal.

The CLEAR Report emphasizes the importance of the legal skills training provided by legal writing faculty.⁷⁹ The CLEAR Report’s definition of “Practice Readiness,” includes several components that are foundational to legal writing classes, including understanding the legal process and sources of law⁸⁰ and interpreting legal materials and identifying legal issues.⁸¹ The “Legal Practice” category of Practice Readiness also includes core legal

⁷⁷ *Id.*

⁷⁸ Committee on Legal Education and Admissions Reform (CLEAR) [Report](https://www.ncsc.org/sites/default/files/media/document/CLEAR_Report.pdf) and Recommendations July 27, 2025, https://www.ncsc.org/sites/default/files/media/document/CLEAR_Report.pdf.

⁷⁹ For example, the CLEAR Report notes that surveys of practicing lawyers over the last 20 years generally “found that lawyers rated skills (e.g. legal writing and analysis) as more important than the knowledge and memorialization of specific legal concepts.” *Id.* at 26. See also *id.* at 27 (discussing Shultz & Zedeck list of 26 “lawyering effectiveness” factors, including analysis and reasoning, writing, speaking, researching the law – all things legal writing faculty teach from a practice-oriented perspective).

⁸⁰ *Id.* at 32. Within the Foundational Knowledge and Analytical Skills component of Practice Readiness, the Report lists “a. Understanding legal processes and sources of law: Newly admitted attorneys need to understand how legal authorities—statutes, state and local rules, and case law—interact, how federal and state authorities apply in a legal matter, and the process through which matters move from trial to appellate levels.” These are core skills taught in first-semester legal writing, often beginning in Orientation.

⁸¹ *Id.* Section c. states “Ability to interpret legal materials and identify legal issues: Newly admitted attorneys need to be able to interpret case law, statutes, and rules while linking them to sometimes complex client fact patterns to identify legal issues.” Legal writing classes, unlike most 1L podium classes, specifically focus interpretation of legal materials in the context of application to client matters.

writing content: “ability to conduct research,” “ability to draft legal writing that meets professional standards,” and “ability to provide effective oral advocacy.”⁸²

The CLEAR Report also echoes the findings of the numerous ABA reports mentioned earlier in identifying faculty status issues as a significant impediment to effective skills training in law schools: “Law school faculty composition *and stratification in faculty status play a role in a law school’s ability to infuse practical learning throughout every facet of curriculum* and provide experiential learning opportunities.”⁸³

Similarly, the CLEAR Report recognizes the ways in which prioritizing scholarship over legal practice experience silos skills faculty within law schools and thereby hinders students’ effective education: “Law schools often prioritize scholarship over practical experience in faculty hiring, which in turn can silo experiential and doctrinal faculty in a way that impedes practical training.”⁸⁴

Over the last decade, pronounced shifts in faculty hiring have worsened a longstanding divide between “podium” and “skills” faculty. The CLEAR Report notes that in 2011, about 26% of candidates for entry-level faculty hiring had an advanced degree, but by the 2023-24 hiring cycle, that figure was 60%.⁸⁵ As a result, aspiring law faculty have “less incentive to practice, while those with significant practice experience are less likely to invest the time needed to pursue an advanced degree.”⁸⁶ These changes directly affect students’ education: “As a result, tenured or tenure-track faculty, who often teach ‘podium’ courses, are less frequently equipped to bring practical training into the classroom.”⁸⁷ This statement echoes the earlier Deans’ Letter rationale about the importance for recruiting high-quality skills faculty of providing “permanent status on a law school faculty.”⁸⁸

Significantly, the CLEAR Report’s discussion of “ABA Overregulation” does not include Standard 405’s protections. The CLEAR Report states “[t]he impact of ABA accreditation on practice readiness presents a dichotomy, where evolving standards can

⁸² *Id.* at 35.

⁸³ *Id.* at 47 (emphasis added).

⁸⁴ *Id.*

⁸⁵ *Id.* at 48 (concluding that this shift is at least somewhat affected by “AALS’s scholarly focus”).

⁸⁶ *Id.* (cleaned up). The Report also notes that tenured and tenure-track faculty already outnumber “[s]ecured clinical faculty or those on a clinical security track.” *Id.* This divide is increasing: “hiring trends of law school faculty are trending towards tenured and tenure-track faculty, while hiring for clinical and research and writing faculty is increasing at a slower rate.” *Id.*

⁸⁷ *Id.* “While it is important to teach fundamental analytical skills in applying law to a fact pattern, the traditional 1L doctrinal curriculum misses opportunities to incorporate more complex real-world fact patterns and skills-based work, like drafting a contract or complaint in contracts or civil procedure classes.” *Id.*

⁸⁸ Joy and Kuhn, *Evolution*, *supra*. n. 1 at 203.

emphasize experiential learning across law schools while overregulation can stifle the innovation it seeks to encourage.”⁸⁹ The Report details the ways that standards encouraging experiential learning can improve practice readiness, with implementation possible in a variety of ways, while noting that these recent changes have not increased enrollment in clinics or field placements.⁹⁰

Nothing in the CLEAR Report suggests that the Council provide less protection for skills faculty. Instead, the CLEAR Report supports the need to provide meaningful employment security and governance rights for faculty who are equipped to, and do, provide practice-ready training within law schools. Moving “legal writing faculty” into Standard 405(c), and the other protections provided by our proposal, would thus be consistent with, and in fact further, these goals.

A Standard Requiring Security of Employment for Legal Writing Faculty is Also Consistent with, if Not Required under, the Council’s Core Principles and Values

The Council has set a high bar to justify regulation of security of position in its Core Principles and Values: “Accreditation should not protect the terms and conditions of employment of law school employees, unless necessary and narrowly tailored to achieve one of . . . five objectives.”⁹¹ While the standard is high, establishing security of employment for legal writing professors meets and exceeds it.

One of the five objectives in the Core Principles and Values is as follows:

Accreditation requires that law schools maintain a rigorous program of legal education that prepares their students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.⁹²

For almost fifty years, the ABA and the Council have acknowledged a “rigorous program of legal education” requires skills training by legal writing faculty. Indeed Standard 303(a) requires students to have two writing experiences while in law school and to undergo six hours of skills training in experiential learning courses. As discussed above, the Council for decades has endorsed the principle that skills teaching requires lawyers who have practical experience. Lawyers with practical experience are more likely to join faculties if there is a pathway to security of employment. Skills professors are better able to

⁸⁹ CLEAR Report, *supra* n. 76 at 45.

⁹⁰ *Id.* at 46.

⁹¹ www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2025/core-principles-and-values-of-law-school-accreditation.pdf.

⁹² *Id.*

design problems and lead class discussion on contemporary issues if they have academic freedom, and to secure academic freedom, the opportunity to earn security of position needs to be provided. A national accreditor can ensure that a security of position pathway exists.

Hence, to “maintain a rigorous program of legal education . . . that prepares students, upon graduation for . . . effective . . . participation as members of the legal profession,” it is “necessary” for the Council to require schools to provide opportunities for long-term security of employment to legal writing faculty. Such a mandate is “narrowly tailored” to the goal of effective representation because no other alternative, including a stand-alone academic freedom policy, is sufficient to provide the rigor the Council is required to achieve.

There are other reasons to amend Standard 405 to allow for security of employment for legal writing professors, and we have set forth those reasons both in our original 2023 joint proposal found in Attachment B to this letter, and in this letter itself on pages 15-16. But we wanted to illustrate for the Council that mandating positional security for the legal writing professorate is consistent with, if not required under, the Council’s Core Principles and Values.

***The Council Should Enact Employment Protections for Legal Writing Professors
Despite Some Small Decrease in Decanal Autonomy***

While the number of comments arguing against the 2023 Council proposal to revise Standard 405 and increase positional security of skills faculty were few (3 of 156), notably one was in a memorandum co-signed by a number of law school deans.⁹³ One of their objections to the proposal, recently articulated again by the Dean’s Council before the Council, is that deans need maximal financial and administrative autonomy going forward, and mandating security of position for legal writing faculty would hinder that autonomy.

The decanal autonomy argument is old. For example, as Professors Joy and Kuhn tell us, as far back as 1983 Dean Paul Carrington and other deans argued against the “shall” proposal described above because of its infringement on the deans’ unfettered discretion to terminate its untenured faculty at will:

Among the comments submitted was a letter written by Dean Paul D. Carrington and signed by two other law school deans voicing opposition to the

⁹³ See the Memorandum to Chair McCormack co-signed by a number of deans in response to the Council’s 2023 proposal as part of the notice and comment process, www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2023/comments-received-standards-304-405.pdf, at 89.

proposed clinical security of position standard. The three deans argued that the accrediting process should be “lean” and should not intrude on the “autonomy” and sense of professional responsibility of the institution being regulated.⁹⁴

But the arguments against it are old as well. As Joy and Kuhn also recount, the Deans’ letter, sent in response to Dean Carrington’s 1983 objections, countered the autonomy and overregulation argument:

With regard to the argument that Standard 405(e) was “an example of overregulation,” the Council members noted that “it has never been suggested that a requirement of a tenure system for full-time faculty was an instance of overregulation.” They also stated that tenure was not required, but security of position and “benefits and obligations . . . reasonably equivalent to those of other faculty members” were required.⁹⁵

It would be disingenuous for us not to recognize that a Standard providing post-probationary legal writing professors could only be fired for “good cause” affects a dean’s ability to fire that professor at his or her whim and, in that way, inhibits the fiscal and administrative autonomy of a dean. But it is also disingenuous for a dean not to recognize there is financial and administrative flexibility under our proposal. A school can hire visitors to teach legal writing when they are needed. A school can hire adjuncts for legal writing instruction. A school can transfer to, or continue with, a fellowship model. A school can make short-term appointments to try experimental programs. Salaries can be adjusted; assignments to teach different subjects can be required. Schools can define for themselves what would be “good cause” for termination or other material discipline. In short, our proposal allows more flexibility and autonomy than there is for any other professorate discipline. What a school cannot do under our proposal is discriminate in its job security protections among full-time professors based on the subjects they teach. And that is a positive value, worth some small loss of decanal autonomy.

Studies Demonstrate That a Revision of Standard 405(c) is Necessary and Such Revision Will Likely Not Harm the Legal Writing Community

The final objections that have been raised to the Council’s recent proposals to amend Standard 405 are that the Council should not act until more studies are concluded showing the need for security of employment mandates, and that such mandates may, in

⁹⁴ Joy and Kuhn, *Evolution*, *supra*. n. 1 at 200-01 (footnote omitted).

⁹⁵ *Id.* at 203 (footnote omitted).

fact, hurt the legal writing community because some schools could terminate their current legal writing faculty and conduct searches for their replacements.⁹⁶

The request for more studies is also an old argument. It is often made to disguise a desire for delay. And for those with a “delay mindset,” there are no number of studies that ever will satisfy them, nor is there a methodology for any study that will escape criticism. The necessity for security of employment protections for legal writing faculty has been studied *ad nauseum*. Indeed, as far back as 1984 members of the Council confronted the “lack of studies” argument in its Memorandum to the House of Delegates in support of the “shall” proposal:

The employment status of clinicians and other professional skills teachers has been debated for years and thoroughly studied by the Legal Education Section since 1981. Two rounds of hearings (for a total of four hearings) have been held. The matter is ripe for decision.⁹⁷

This Memorandum was right; this issue had been studied plenty by 1984, and the numerous studies since then all come to the same conclusion: a Standard calling for enhanced security of position for legal writing faculty should be adopted by the Council. There is no need for further “studies” on this question.

Those who argue the legal writing community should be careful what we ask for, since schools might terminate the current legal writing faculty and look for replacements, make our point – security of employment is necessary so legal writing faculty do not have to worry continually about their careers being terminated or their contracts being unrenewed at the whim of their deans. As has been argued elsewhere, without security of position, we are in a perpetual pre-tenure position and, because of that, cannot be fully participatory members of our law school communities.⁹⁸

Additionally, the benefits that many legal writing faculty would receive under this proposal outweigh the risks of adopting this proposal. Even if schools believe they would be required to terminate their current writing faculty in light of a revision to Standard 405(c), with the NextGen Bar’s advent and the possibility of the Council increasing the number of required experiential units, this is not a time for a school to lose its experienced legal writing faculty. ALWD and LWI have repeatedly engaged their members about this issue,

⁹⁶ See, e.g., the Memorandum to Chair McCormack co-signed by a number of deans in response to the Council’s 2023 proposal as part of the notice and comment process, www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2023/comments-received-standards-304-405.pdf, at 89.

⁹⁷ Joy and Kuhn, *Evolution*, *supra* n. 1 at 202.

⁹⁸ See, e.g., Appendix B.

and the legal writing community has continued to strongly support the efforts to reform Standard 405, notwithstanding the risk.

We have provided a lot of information to the Council. We hope it is useful in this time of uncertainty for everyone in legal education. We write this letter to secure agreement by the Council that, after half a century, the time has come to act and require law schools to adopt a form of tenure or its equivalent for the legal writing community.

APPENDIX A

Redlined Version of Proposed Changes to Standard 405 and Relevant Interpretations

Standard 405. PROFESSIONAL ENVIRONMENT

(a) A law school shall establish and maintain conditions adequate to attract and retain a competent faculty.

(b) A law school shall have an established and announced policy with respect to academic freedom and tenure of which Appendix 1 herein is an example but is not obligatory.

(c) A law school shall afford to full-time clinical and legal writing 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. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical or legal writing program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

~~**(d) A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 303(a)(2), and (2) safeguard academic freedom.**~~

Interpretation 405-6 (Option 1)

A form of security of position reasonably similar to tenure includes a separate tenure track or a program of **presumptively** renewable long-term contracts. Under a separate tenure track, a full-time clinical **or legal writing** faculty member, after a probationary period reasonably similar to that for other full-time faculty, may be granted tenure. After tenure is granted, the faculty member may be terminated only for good cause, including termination or material modification of the entire clinical **or legal writing** program. A program of **presumptively** renewable long-term contracts shall provide that, after a probationary period reasonably similar to that for other full-time faculty, during which the ~~clinical~~ faculty member may be employed on short-term contracts, the services of a **the** faculty member in ~~a clinical program~~ may be either terminated or continued by the granting of a **presumptively renewable** long-term ~~renewable~~ contract. For the purposes of this Interpretation, **“presumptively renewable long-term contract”** means at least a five-year contract ~~that is~~

whereby reappointment at the end of such a contract would be presumed, and no justification reappointment by the clinical or legal writing faculty member would be required, absent a good faith and substantial objection to reappointment made to or by the Dean presumptively renewable or other arrangement sufficient to ensure academic freedom. During the initial long-term contract or any renewal period, the contract may be terminated for good cause, including termination or material modification of the entire clinical or legal writing program.

OR

Interpretation 405-6 (Option 2 – based on the Council’s August 2024 proposed language, in blue, with changes in red to explicitly account for contract renewals)

A form of security of position reasonably similar to tenure means such security of position as is sufficient to attract and retain a competent faculty and to ensure academic freedom. Providing such security of position requires that, following an appropriate probationary period, a full-time faculty member may be terminated, or suffer an adverse material modification to their contract, or otherwise fail to have their contract renewed, only for good cause as demonstrated by the law school. Such good cause determination shall be made only after the full-time faculty member has been afforded due process. ~~includes a separate tenure track or a program of renewable long-term contracts. Under a separate tenure track, a full-time clinical faculty member, after a probationary period reasonably similar to that for other full-time faculty, may be granted tenure. After tenure is granted, the faculty member may be terminated only for good cause, including termination or material modification of the entire clinical program. A program of renewable long-term contracts shall provide that, after a probationary period reasonably similar to that for other full-time faculty, during which the clinical faculty member may be employed on short-term contracts, the services of a faculty member in a clinical program may be either terminated or continued by the granting of a long-term renewable contract. For the purposes of this Interpretation, “long-term contract” means at least a five-year contract that is presumptively renewable or other arrangement sufficient to ensure academic freedom. During the initial long-term contract or any renewal period, the contract may be terminated for good cause, including termination or material modification of the entire clinical program.~~

Interpretation 405-7

In determining if the members of the full-time clinical or legal writing faculty meet standards and obligations reasonably similar to those provided for other full-time faculty,

competence in the areas of teaching and scholarly research and writing should be judged in terms of the responsibilities of clinical **or legal writing** faculty. A law school should develop criteria for retention, promotion, and security of employment of full-time clinical **and legal writing** faculty.

Interpretation 405-8

A law school shall afford to full-time clinical **and legal writing** faculty members participation in faculty meetings, **voting**, committees, and other aspects of law school governance, in a manner reasonably similar to other full-time faculty members. This Interpretation does not apply to those persons referred to in the last sentence of Standard 405(c).

Interpretation 405-9

~~Subsection (d) of this Standard does not preclude the use of short-term contracts for legal writing teachers, nor does it preclude law schools from offering fellowship programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experience.~~

APPENDIX B

A Proposal for Eliminating Standard 405(d) and Conforming Standards Changes Affecting Legal Writing Faculty

**Jointly Submitted by the Association of Legal Writing Directors and the Legal Writing
Institute, May 2023**

Standard 405 creates an unjustified hierarchy regarding security of employment among law school faculty.⁹⁹ Almost all permanent law “*faculty*” have a route to either tenure or long-term presumptively renewable contracts under Standards 405(b) and (c). However, only “legal writing *teachers*” can be offered “short term contracts” that are not presumptively renewable under Standard 405(d) and Interpretation 405-9. Providing different classes of faculty with different employment security based on the subjects they teach is outdated and hinders the ABA’s recent efforts to improve legal education. Treating legal writing “*teachers*” as something less than non-legal writing “*faculty*” also adversely affects legal writing professors’ role in faculty governance at many schools, as well as their job security. As detailed below, Standard 405(d) and Interpretation 405-9 are out of step with the ABA’s increased emphasis on practical skills training in legal research and legal writing, act as a barrier to legal writing faculty’s full participation in faculty governance, frustrate curricular efforts to produce practice-ready graduates, and have damaging gendered and racial effects on faculty diversity.

First, Standard 405’s hierarchy is inconsistent with the ABA’s increased emphasis on producing practice-ready graduates. ABA Standard 303 has long required a “writing experience in the first year,” and “at least one additional writing experience after the first year” as two of only a few curricular requirements. More recently, the ABA has required “at least six credit hours . . . in an experiential course(s)” and material on developing professional identity and cross-cultural competency. These are the skills and courses legal writing faculty teach. Further, the NextGen Bar Exam will test the written analytical skills inherent in legal writing courses. Standard 405(d) is therefore out-of-step with the contemporary evolution of legal education, particularly the Council’s increased emphasis on skills training. Legal writing faculty need security of employment to develop a curriculum that teaches and develops those skills.

A lack of long-term security inhibits legal writing faculty from full participation in a law school and inhibits their academic freedom. Standard 405’s hierarchy allows schools to subject their legal writing faculty perpetually to governance risks faced by pre-tenure

⁹⁹ A redlined version showing our proposed changes to the current ABA Standard 405 and its related Interpretations is included as Appendix A to this proposal.

faculty. Like all faculty, legal writing professors need security of employment to express views on contentious issues, and to develop a curriculum, which may be controversial both internally and externally. “Short-term,” not presumptively renewable contracts do not provide that protection. The Council at least implicitly recognized this when it last debated revisions to Standard 405 in 2014. Then it considered replacing the requirement that a school have an announced tenure policy with a standard granting “all full-time faculty members a form of security of position sufficient to ensure academic freedom and attraction and retention of a competent full-time faculty.”¹⁰⁰ Instead of deciding to apply the language of the proposal to all faculty, the Council left the lesser protections to apply solely to legal writing “teachers” in Standard 405(d) and kept the greater protections of an announced tenure policy for tenure-line faculty only.¹⁰¹

The Standards’ allowance for legal writing faculty to be denied long-term security of employment has a disproportionate gendered effect. Over 70% of legal writing faculty identify as female.¹⁰² No reason has ever been offered as to why such a largely female segment of the Academy is provided less security of employment protections and governance than other faculty, and why the burdens of what has been accurately called a “caste system” in legal education¹⁰³ fall disproportionately on this large segment of legal writing faculty.

The third-class status of legal writing faculty under the Standards likely also has an inhibitory effect on racial diversity and inclusion within the legal writing discipline. A recent article in the ABA Journal reported that about 21% of full-time law professors identified as

¹⁰⁰ Memorandum from the Hon. Solomon Oliver, Jr., Council Chairperson of Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, and Barry A. Currier, Managing Dir. of Accreditation and Legal Educ, to Interested Persons and Entities (Sept. 6, 2013), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20130906_notice_comment_chs_1_3_4_s203b_s603d.pdf at 66 [<https://perma.cc/J8N8-U4DS>].

¹⁰¹ Section of Legal Educ. and Admissions to the Bar, Am. Bar Ass’n, Council Acts on ABA Law School Approval Standards at March 2014 Meeting (2014), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/march2014councilmeeting/2014_march_council_announcement_re_comprensive_review.pdf at 1 [<https://perma.cc/S95W-2YNK>]

¹⁰² See ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., ALWD/LWI ANNUAL LEGAL WRITING SURVEY: REPORT OF THE 2019-2020 INSTITUTIONAL SURVEY (hereinafter “2019 survey”) question 8.11 (71% of survey respondents identify as female), available at <https://www.alwd.org/resources/survey>. This is the latest publicly available results of a survey of legal writing programs conducted by ALWD and LWI seeking information from each member school. The survey had an 85% response rate (169 schools). *Id.* at iii.

¹⁰³ See, e.g., Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS’N LEGAL WRITING DIRECTORS 12, 14 (2002), available at <https://www.alwd.org/lcr-archives/fall-2002-volume-1/245-the-caste-system-and-best-practices-in-legal-education>.

belonging to a racial minority group.¹⁰⁴ However, recent data provides that only 13.9% of the legal writing community identifies as non-white.¹⁰⁵ This discrepancy is unsurprising: minority candidates' choice between a career path leading to security of employment or one leading to short term contracts is not much of a choice. Eliminating Standard 405(d) would help the legal writing community and law faculties as a whole become more diverse by eliminating the disincentive for candidates to choose a legal writing career. Doing so would advance the rationale expressed in Standard 206(b)'s requirement that law schools "demonstrate by concrete action a commitment to diversity and inclusion by having a faculty and staff that are diverse with respect to gender, race, and ethnicity."

Our proposal is measured and targeted. Although these equity and inclusion principles support equal faculty status and rights for all faculty, we do not seek a unified tenure requirement. Instead, we propose that Standard 405(d) be eliminated so that, after a probationary period, full-time legal writing faculty have either some form of tenure under 405(b) or 405(c) or, at a minimum, the protection of presumptively-renewable long-term contracts as clinical faculty under 405(c) as explained in Interpretation 405-6. Because Interpretation 405-6 sometimes uses the term "renewable long-term contracts" and in other places uses the term "presumptively renewable" contracts, we propose a consistent usage of the term "presumptively renewable long-term contracts" in the Interpretation. Additionally, we propose that the word "presumptively" in this context be defined in accord with its ordinary meaning, namely that reappointment of a professor at the end of such a contract would be presumed, and the professor would not have to justify his or her reappointment absent a good faith and substantial objection to reappointment made to or by the Dean. Finally, for clarity, we propose that 405(c) specifically apply to "clinical" and "legal writing" faculty.

A school that offers legal writing using adjuncts or in a fellowship model would not be affected by our proposal, although we do recommend elimination of the specific reference in Interpretation 405-9 that a law school can teach legal writing via fellows. We do not believe the ABA Standards should specifically authorize fellows to teach legal writing, but not other subjects. Our proposal also continues the practice of a limited use of short-term legal writing appointments, such as for Visitors to fill temporary needs and "look-see" hirings.

A consequence of this proposal is that a school must allow legal writing faculty to participate meaningfully in the governance of the law school, either as part of the tenured

¹⁰⁴ <https://www.abajournal.com/web/article/how-many-tenured-law-professors-are-black-public-data-does-not-say>.

¹⁰⁵ 2019 survey, *supra* note 4, at question 8.22.

faculty or as part of the clinical faculty under Interpretation 405-8. Recent survey data show that less than 1% of legal writing faculty who lack 405(c) protection have “full voting rights,” and about 39% have no voting rights at all.¹⁰⁶ This proposal includes a modification of Interpretation 405-8 to require meaningful voting rights for legal writing faculty equivalent to what clinical faculty now have.¹⁰⁷

At least 74 schools use 405(d) short-term contracts for some permanent legal writing faculty.¹⁰⁸ Thus, eliminating Standard 405(d) would affect approximately 37% of accredited law schools, and other schools may need to make adjustments to their implementation of Standard 405(c) and the other suggested changes in our proposal.

Legal writing faculty are “faculty,” and they play an essential role in legal education. Those who chose legal writing as a career should not be put at a security of employment disadvantage for doing so by the ABA Standards. Elimination of Standard 405(d) and the other changes in our proposal are the next logical step in the ABA’s ever-increasing focus on skills, promotion of diversity, and demands for equality in ABA-accredited institutions.

ATTACHMENT A

Redlined Version of Proposed Changes to Standard 405 and Relevant Interpretations

Standard 405. PROFESSIONAL ENVIRONMENT

(a) A law school shall establish and maintain conditions adequate to attract and retain a competent faculty.

(b) A law school shall have an established and announced policy with respect to academic freedom and tenure of which Appendix 1 herein is an example but is not obligatory.

(c) A law school shall afford to full-time clinical **and legal writing faculty members a form of security of position reasonably similar to tenure, and non-compensatory**

¹⁰⁶ 2019 Survey, *supra* note 2, at Q10.2. Zero full time faculty on short term contracts had “full voting rights,” while 42% had no voting rights. *Id.* For those on long-term contracts that do not meet 405(c) standards, one respondent (3% overall) had full voting rights, while 33% identified that they had no voting rights. *Id.* The Survey also shows that some legal writing faculty with less than 405(c) status are not permitted to serve on law school committees (question 10.8), and those with that status who do serve on committees face limitations on that service. *Id.* at questions 10.9.1-10.9.2.

¹⁰⁷ Interpretation 405-8 already requires that clinical faculty be afforded faculty governance rights “in a manner reasonably similar to” other faculty. This proposal adds to that Interpretation an explicit reference to voting rights, to be implemented in accordance with each school’s particular governance standards.

¹⁰⁸ 2019 Survey, *supra* note 4, at question 8.2. Additionally, 33 schools report employing full-time legal writing faculty with long-term contracts that do not satisfy Standard 405(c). Because schools often use multiple approaches to legal writing faculty status, it is impossible to measure the extent of the overlap, so the true figure may be higher. See *id.* at question 8.16.

perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical **or legal writing** program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

~~(d) A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 303(a)(2), and (2) safeguard academic freedom.~~

Interpretation 405-6

A form of security of position reasonably similar to tenure includes a separate tenure track or a program of **presumptively** renewable long-term contracts. Under a separate tenure track, a full-time clinical **or legal writing** faculty member, after a probationary period reasonably similar to that for other full-time faculty, may be granted tenure. After tenure is granted, the faculty member may be terminated only for good cause, including termination or material modification of the entire clinical **or legal writing** program. A program of **presumptively** renewable long-term contracts shall provide that, after a probationary period reasonably similar to that for other full-time faculty, during which the ~~clinical~~ faculty member may be employed on short-term contracts, the services of ~~a the~~ faculty member in ~~a clinical program~~ may be either terminated or continued by the granting of a **presumptively renewable** long-term renewable contract. For the purposes of this Interpretation, “**presumptively renewable** long-term contract” means at least a five-year contract ~~that is~~ whereby reappointment at the end of such a contract would be presumed, and no justification for reappointment by the clinical or legal writing faculty member would be required, absent a good faith and substantial objection to reappointment made to or by the **Dean** ~~presumptively renewable or other arrangement sufficient to ensure academic freedom~~. During the initial long-term contract or any renewal period, the contract may be terminated for good cause, including termination or material modification of the entire clinical **or legal writing** program.

Interpretation 405-7

In determining if the members of the full-time clinical **or legal writing** faculty meet standards and obligations reasonably similar to those provided for other full-time faculty, competence in the areas of teaching and scholarly research and writing should be judged

in terms of the responsibilities of clinical **or legal writing** faculty. A law school should develop criteria for retention, promotion, and security of employment of full-time clinical **and legal writing** faculty.

Interpretation 405-8

A law school shall afford to full-time clinical **and legal writing** faculty members participation in faculty meetings, **voting**, committees, and other aspects of law school governance, in a manner reasonably similar to other full-time faculty members. This Interpretation does not apply to those persons referred to in the last sentence of Standard 405(c).

Interpretation 405-9

~~Subsection (d) of this Standard does not preclude the use of short-term contracts for legal writing teachers, nor does it preclude law schools from offering fellowship programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experience.~~