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August 20, 2008

To: ALDA Members

From: David E. Van Zandt

Re: ABA Council Actions (August 8, 2008)

The following is an update on the status of the terms and conditions of employment issue in the ABA Council on Legal Education and Admission to the Bar's (the "Council") consideration.

Vice President Rick Matasar and I attended the Council meetings on August 7-8, 2008, in New York City, to represent the ALDA Board. These were open meetings. At the direction of the chair, Chief Justice Ruth McGregor, none of reports of the various organizations in attendance addressed the terms and conditions issue or other issues raised by the three McGregor reports. I reported on behalf of the ALDA Board and described our recent communications to members of Congress on the Feingold Amendment to the Senate version of the Judicial Pay Act. We did, however, discuss the terms and conditions issues with individual Council members outside of the meetings.

The Council did discuss and take some actions on the recommendations of the various McGregor reports at the Friday morning, August 8, session. The actions taken were:

- *Outcomes Report:* The Council voted to refer the Outcomes Report to the Standards Review Committee (and its new chair Don Polden) with the mandate to move the Standards toward outcome measures. The Outcomes Committee (chaired by Randy Hertz, the incoming Chair of the Council) is to act as a "consultant" to the Standards Review Committee. The Standards Review Committee was expressly directed to look at the accrediting standards of the other, nonlegal education agencies. There was some discussion of the difficulty and complexity of moving to outcomes measures as well as the potential additional costs to law schools and students some outcome measures might impose. No deadline was provided the Standards Review Committee.
- *Transparency Report:* The Council moved quickly through each of the recommendations contained in the Transparency Committee's report as follows:

- Recommendation 1 (Dean access through password protected site on the Section's web cite to Action Letters to and Responses from individual law schools after the date of adoption): While the Committee split on this issue 5 to 4, the Council adopted the motion without dissent. There was discussion of whether this meant that those letters would effectively be public. There was no engagement on the issue of whether more information should be provided directly to consumers of legal education. The Council indicated that the Standards Review Committee would have to review and alter the current Rule [25], which provides confidentiality for such documents.
 - Recommendation (2) (post on Section's web site a memorandum describing the accreditation issues that schools are struggling with): Adopted without dissent.
 - Recommendation (3) (post on Section's web site aggregate data on the types of actions and results of accreditation reviews)
 - Recommendation (4) (Consultant's office to prepare memoranda to assist schools in complying, which include information on how the Accreditation Committee is treating certain issues): Adopted. The Accreditation Committee will approve any such memorandum and the Council will review it
 - Recommendation (5) (Council to form committee to work with staff to design web site to provide information promptly on Council activities such as Council agendas and minutes.
 - Recommendation (6) (each site visit team to have a staff member on the visit): The Council took no action on this recommendation. During the discussion, the concern raised was that this would require more staff.
 - Recommendations (7) through (11): All were adopted without discussion.
- *Security of Position Report*: The Council voted to refer the issue to the Standards Review Committee. There was substantial discussion of the issue both in terms of the substance and the process to be followed by the Standards Review Committee. Some Council members sought to require the Standards Review Committee to put this issue last on its agenda on the view that the outcome measures needed to be decided first; the argument was that the outcome measures and the terms and conditions of employment are closely tied. In the end, the Council took no position on the structure of the Standards Review Committee's agenda.

The following is Rick's and my interpretation of the events: the Council remains deeply riven on the terms and conditions issue. There is substantial support for removing such requirements entirely from the Standards, but it is not at all clear that at present there is a majority in favor of that move. The Council did not follow the ALDA Board's recommendation that the Council not refer the issue to another committee and instead decide the issue as a policy matter. Our sense is that a majority of the Council prefers to not face the issue at this time.

Based upon the Council's action at its June meetings in Seattle, a hearing on the proposed deletion of Interpretations 402-1 and 402-2 (setting the method for calculating the student-faculty ratio and requiring that faculty receive different weightings depending on the terms and conditions of their employment) will be held at the AALS meetings in January 2009. There was no substantive discussion of this issue at the Council meetings this time. The ALDA Board will prepare and submit a comment on this proposal.

The ALDA Board will be discussing what steps to take on the overall issue of terms and conditions of employment in the wake of the Council's decisions.