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June 23, 2008

To: ALDA Members

From: David E. Van Zandt

Re: Report on ABA Accreditation and Other ALDA Board Activities

The following is an update on recent activities of the ALDA Board including our response to the McGregor Reports:

Recent Council Actions

The Council has taken a number of actions at its February and June meetings relevant to our concerns about the Standards.

Interpretation 405-6 Revision: At its February meeting, the Council postponed consideration of a recommendation from the Standards Review Committee to modify Interpretation 405-6. The recommendation was intended to negate the interpretation that the Accreditation Committee gave to the existing Interpretation 405-6 in the accreditation actions with respect to the law schools at Northwestern University, Saint Louis University, and the University of Pittsburgh. The Accreditation Committee's interpretation permitted those law schools to have clinical faculty, who are not on tenure lines or 5-year presumptively renewable contracts if those schools have in place adequate procedures to protect academic freedom. The ALDA Board had submitted a statement to the Council (posted on our web site) opposing the recommendation and asking that the Council at a minimum postpone consideration of the recommendation until the Council could act on the report of the McGregor Committee working on terms and conditions of employment issues.

Standard 307: At its June meeting, the Council adopted a recommendation of the Standards Review Committee that Standard 307, which prohibits law schools from offering bar preparation courses, be removed from the standards.

Standard 104: At the same meeting, the Council voted to put out for notice and comment a recommendation from the Standards Review Committee that Standard 104 and its related Interpretation be removed from the Standards and instead be incorporated into the Preamble. That Standard stated an aspiration that "an accredited law school should seek to exceed the minimum requirements of the Standards."

Interpretations 402-1 and 402-2: The Council at the June meeting also voted to put out for notice and comment a recommendation from the Standards Review Committee that Interpretations 402-1 and 402-2 be removed from the Standards. Interpretation 402-1 requires a law school to calculate its student/faculty ratio by giving faculty of different employment status different weights (1.0 for faculty in tenure lines or its equivalent, 0.7

these Interpretations as ones that should be removed because they push schools to have specific terms and conditions of employment.

Rick Matasar and I see all these moves as positive. At the June meeting, it was clear that there was some opposition to the last recommendation of the removal of Interpretations 402-1 and 402-2.

McGregor Committee Reports

As you probably know, the three committees appointed by Ruth McGregor, Chair of the Council on Legal Education, have submitted written reports to the Council. Those reports were discussed at the Council meetings on June 7 and 8 in Seattle. Links to each of those reports can be found on the home page of the ABA Section on Legal Education:

<http://www.abanet.org/legaled/>

The Council is seeking public comments on the recommendations of each of the Committees and on their Reports. The issues and comments will be discussed by the Council at its meetings in New York City on August 7 and 8. At the Council's meeting on September 27 and 28 in Chicago, it is our understanding that the Council intends to vote on whether it should accept the recommendations and direct the Standards Review Committee to propose changes to the Standards based on the recommendations. The following is a quick and probably incomplete summary of the Reports and their recommendations:

Outcomes Committee: The Outcomes Committee Report is a lengthy description of various outcome measures used in the standards of accreditation for other professional education programs. It called its Report interim and asked for guidance on how to proceed. The tenor of the discussion at the Council meeting was that the Council might ask the Outcomes Committee to continue to operate and to determine how any new outcome measures would relate to bar passage standards, recommend specific outcome measures that should be adopted, and propose specific language for the Council to review.

Transparency Committee: The Transparency Committee also examined the practices of other accrediting agencies with respect to disclosure and transparency. Its recommendations are fairly precise. The most important of them would permit all deans access through a secure internet site to review action letters and responses to those letters by specific schools and require the staff to publish statistics on the frequency at which schools are held or suspected to be out of compliance with specific standards. The Committee did not make a recommendation on whether such information should be made public, but some members of the Council indicated that they believe that issue should be addressed.

Security of Position Committee: If you read just one Report, please read this one (it is only 19 pages long). The Security of Position Committee did not make any recommendations. Instead, it first provided a historical, U.S.-based view of the necessity for tenure and then laid out an Alternative Approach to the current Standards, which require certain terms and conditions of employment. The Alternative Approach would instead require law schools that do not provide tenure to all faculty to demonstrate to the Accreditation Committee that they adequately protect academic freedom, have measures in place to attract and retain a good faculty, and provide all faculty with a role in the

academic governance of the law school. The report ends with a summary of the arguments for and against the Alternative Approach that were expressed by Committee members without attribution.

Rick Matasar and I made a statement on behalf of the ALDA Board on the Reports. A link to that statement can be found on the ALDA web site at:

<http://www.americanlawdeans.org/policystatements.html>

The Statement expresses the view that each of the reports is constructive and states that the ALDA Board supports each of the recommendations made. With respect to the Alternative Approach set forth by the Security of Position Committee, the Statement endorses it and urges the Council to direct the Standards Review Committee to recommend new Standards consistent with the approach taken by the Alternative Approach. While the ALDA Board would have preferred that the Report recommend that all references to terms and conditions of employment be removed from the Standards, we believe that our members can live with the Alternative Approach and that it would be major step in the right direction.

In our statement to the Council, we also indicated that the ALDA Board would provide a position statement on the Recommendations of the Committees prior to the August Council meetings. We anticipate that the statement will be a fuller statement of the Statement presented to the Council on June 8.

Other ALDA Board Activity

The ALDA Board sent to Senator Henry Reid a statement on the proposed Feingold amendment to the judicial pay act that would impose a limit on the amount that judges can be paid and have their expenses reimbursed or paid for by the host law school for a judge's visit to that law school. A link to the statement can be found on the ALDA web site at:

<http://www.americanlawdeans.org/policystatements.html>

The limits proposed are \$2,500 per visit and \$20,000 per year for all visits. It is very unclear when and if the Congress will vote on that amendment and the overall judicial pay bill.

ALDA Board Membership Changes

The ALDA Board has asked Kellye Testy (Seattle University) to join the Board to take the spot being vacated by Trish White, who is leaving her deanship at the Arizona State at the end of June. Kellye has accepted the invitation. In addition, the ALDA Board has selected Elena Kagan (Harvard University) to replace Trish as the Secretary-Treasurer of ALDA.